

Model for internal reporter support

1. Objectives

- To provide advice to organisations on models for supporting internal reporters and the operational separation of investigation and support functions.
- To outline the reporting lines for those providing internal reporter support.

2. Why is this important?

Experience has shown that reporting wrongdoing is rarely an easy experience. Practical and active support for people who report wrongdoing is the foundation for the success of the [Public Interest Disclosures Act 1994](#) – and it should be part of any organisational response.

Staff who are thinking about reporting wrongdoing need to believe that they will be adequately supported if they do. This belief will be based on their perception of the nature and level of support available to them, and whether other internal reporters have been appropriately supported. This support is vital for organisational integrity and is part of the organisation's duty of care to staff.

Guideline D1: Internal reporter support strategy described how to routinely assess the internal reporter's need and proactively provide support in individual matters. This guideline outlines the broader systems, structures and reporting lines an organisation should implement to ensure internal reporters are adequately and appropriately supported in a holistic fashion.

The *Whistling While They Work* research found that perhaps only 1.3% of 'public interest' reporters surveyed received formal support from their organisation.¹ This may be because they are unaware support was available – or because they didn't want to become known as a 'whistleblower' or as someone unable to deal with the situation.

While providing organisational support to staff who report wrongdoing is vital to preventing or minimising the intra-organisational conflicts that can easily accompany reporting, it is currently the single weakest area of most organisation's responses.²

3. Legal and management obligations

3.1 Work health and safety and duty of care requirements

Reporting wrongdoing can be a difficult process and, if not properly managed, can result in stressful interactions with

colleagues and managers. Stress is a legitimate and serious workplace concern and may result in a staff member sustaining a serious injury.

The [Work Health and Safety Act 2011](#) states that a person conducting a business or undertaking – which includes public sector departments, authorities and councils – has a primary duty of care to ensure the health and safety of workers and others. An organisation can fulfil this obligation by doing what they reasonably can in the circumstances to manage health and safety risks. All officers who can make decisions that significantly affect their organisation must exercise due diligence to ensure compliance. Failure to comply with health and safety duties is a serious offence that attracts significant penalties (ss.31-33).

Organisations also have a duty of care under common law to provide a safe workplace for their staff. This means that managers and supervisors are responsible for taking all reasonable steps to prevent inappropriate behaviour at work – which includes harassment, bullying, discrimination and victimisation. Organisations have been successfully sued for compensation for breaching this duty of care where the staff member has become ill or suffered injury – physically or psychologically – as a result.

In 2001, the New South Wales District Court awarded a police officer \$664,270 in damages.³ The police officer made a report to internal affairs alleging corruption on the part of a senior officer. The officer claimed that, because of his disclosure, over the following decade he was subject to harassment and victimisation and was denied welfare assistance, leading to psychiatric illness.

The court found that the State of NSW was liable for the Police Service's breaches of its duty of care to the officer by failing to:

- properly investigate the allegations
- provide a proactive system of protection
- give proactive support and guidance
- prevent ostracism of the officer by colleagues
- assure the officer that he had done the right thing by reporting.

Another matter in 2011 saw an electorate officer being awarded \$429,166 in damages following a breach of duty of care by the Speaker of the Legislative Assembly. The Court found the Speaker was vicariously liable for his office's failure to take all reasonable steps to ensure that the officer's psychiatric illness was not exacerbated.⁴ The officer's illness was triggered in part when she made criminal allegations to the police against the Member of Parliament that she worked for.

4. What does this mean for your organisation?

4.1 Estimating the need for internal reporter support

Resources are a key indicator of organisational commitment – and all organisations face the challenge of effectively matching the level of resources with need.

When deciding what resources will be needed to deliver internal reporter support, your organisation should:

- Estimate the number of staff likely to report wrongdoing each year. This could be based on evidence of reporting patterns within your organisation, available empirical research, or the anticipated impact of any changes to your internal reporting policy and staff awareness.
- Estimate the proportion of known internal reporters who are at-risk and in need of support. This could be based on evidence of how many internal reporters currently experience negative outcomes within your organisation or available empirical research.

For example:

- Research shows that 12% of all public sector staff reported public interest wrongdoing over a two year period and, on average, 22% of those perceived themselves as having been mistreated.⁵
- Organised support is provided to the highest risk internal reporters (10% of all reporters), identified through a risk management approach.
- For an organisation of 10,000 staff, this would amount to 120 employees over a two year period.⁶

4.2 Choosing a model

Your organisation should decide which model you are going to implement to meet your anticipated need for internal reporter support. Research has identified three broad choices for providing support to internal reporters (see Table 1) – the standing, devolved and case-by-case models.⁷

All three models presume support responsibilities will be shared across various parts of your organisation. They all reinforce that managers and supervisors retain responsibility for their workplace and the welfare of internal reporters, unless they are unaware of the identity of the reporter or this is inappropriate in the circumstances. The internal reporter may also communicate with peer support people and external supports (family, union, lawyers). The typical roles of a 'confidant' and 'mentor' are described in [Guideline D1: Internal reporter support strategy](#).

Disclosures coordinators should ensure there is a high level of coordination between all parties involved – including investigators, support people, supervisors, line managers, senior management and investigating authorities. In particular, the investigator should have lines of communication and coordination with the person responsible for providing support and any internal reporter support unit. You should document who is responsible for doing this communicating, and when and how frequently it should occur – see [Guideline D2: Information, advice and feedback to internal reporters](#).

4.3 Keeping investigation and support functions separate

There may be a conflict of roles if the people investigating reports of wrongdoing and detrimental action in reprisal for reporting wrongdoing are also responsible for supporting the internal reporter. Regardless of which 'internal reporter support' model your organisation adopts, the investigative and support functions should be clearly separated to ensure their independence.

Table 1. Models for providing internal reporter support⁷

Features of the standing model	Features of the devolved model	Features of the case-by-case model
<ul style="list-style-type: none"> • Particularly appropriate for larger agencies. • Includes a permanently staffed internal reporter support unit, headed by the organisation's disclosures coordinator, to coordinate protection and support. • As appropriate, the primary network of responsibility for support includes the internal reporter's first level manager and confidant/mentor. The internal reporter may also communicate with their second level manager as appropriate. 	<ul style="list-style-type: none"> • Similar to those found in mid-sized agencies. • The organisation's disclosures coordinator coordinates protection and support. • In the absence of a permanently staffed internal reporter support unit, confidants/mentors have the primary responsibility for providing support – this means their role is more intensive and structured. • As appropriate, the network of responsibility for support also includes the internal reporter's first level manager and they may communicate with their second level manager. 	<ul style="list-style-type: none"> • Often the default choice for small agencies. • Involves similar officers but all involved – including the confidant/mentor – are appointed on an as-needed basis rather than being part of an existing program with ongoing roles. This presumes that the appropriate skills and responsibilities are held by generic staff – such as human resource managers. • Responsibilities should not be worked out only when a case arises – they should be understood and defined in anticipation of the next matter.

While research shows that internal investigation units rank as a significant source of support for internal reporters, their value tended to decrease when the internal reporter experienced poor treatment. This highlights the reality that, in many instances, while investigators might be highly sympathetic and a source of crucial advice to reporters, they might not be able to substantiate the allegation or arrive at a conclusion that the reporter expects. Further, their responsibility is to move on to the next investigation or other duty, rather than provide ongoing support.⁸

The separation of investigative and support functions is easiest to achieve in a standing model, where a permanent internal reporter support unit can work with – but be kept institutionally separate from – internal investigators. Ensuring separation and independence of functions becomes more difficult in small organisations or where resources dictate that the disclosures coordinator is located in the same unit or is the same person that has other organisational integrity functions, including conducting investigations.

If your organisation is small or has one person responsible for receiving, assessing and dealing with public interest disclosures (PIDs), you should apply the principle of separating functions to the maximum extent possible. For example, you could consider alternatives for either investigating or providing support such as:

- using external investigators that are not part of your organisation
- training all managers in your organisation to be confidants or mentors, so that a manager unrelated to the investigation can provide support to the internal reporter
- appointing a person who is external to your organisation to provide support.

Any investigation of detrimental action in reprisal for reporting wrongdoing should be done independently of the original investigation, even if this means engaging external investigators.

Organisations are free to engage any competent and experienced investigator. To ensure organisations will be able to access appropriate investigative services for PID matters, the NSW Ombudsman has entered into a [Memorandum of Understanding with Internal Audit Bureau Services](#) to establish a panel of experienced PID investigators.

4.4 Reporting lines

Your organisation's disclosures coordinator should be a senior officer with a direct line of reporting to the head of your organisation or, in very large organisations, to another senior executive. They should also have the authority to involve the NSW Ombudsman or other investigating authorities when external investigation or support is warranted.

Similarly, all staff responsible for providing support to internal reporters should have clear and direct lines of reporting – outside normal reporting lines – to whatever organisational levels are necessary to influence management decisions about an internal reporter's wellbeing. This might include the need to recommend that certain action be stopped or initiated – for example, a desired transfer, additional leave or relocation. This 'access to the top' is likely to be particularly important in devolved or case-by-case models, where providing support is the primary responsibility of confidants or mentors who typically have no management responsibility.

5. Additional resources

- [Guideline D1: Internal reporter support strategy](#)
- [Guideline D2: Information, advice and feedback to internal reporters](#)
- [Public Interest Disclosures Act 1994](#)
- [Work Health and Safety Act 2011](#)
- NSW Ombudsman's [Memorandum of Understanding with Internal Audit Bureau Services](#)

6. Last updated

December 2011

7. Endnotes

- 1 Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 208–212.
- 2 Roberts, P, Brown, AJ, & Olsen, J 2011, *Whistling while they work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU E Press, Canberra, pp. 74, 77.
- 3 *Wheadon v State of NSW*, unreported, District Court of New South Wales, No. 7322 of 1998 [2 February 2001] per Cooper J.
- 4 *Sneddon v The Speaker of the Legislative Assembly* [2011] NSWSC 508 per Price J.
- 5 Brown, pp. 38, 123.
- 6 Roberts et al., p. 104.
- 7 Roberts et al., pp. 102–104.
- 8 Roberts et al., p. 107.

Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

Level 24, 580 George Street
Sydney NSW 2000

Email nswombo@ombo.nsw.gov.au

Web www.ombo.nsw.gov.au

General inquiries 02 9286 1000

Facsimile 02 9283 2911

Toll free (outside Sydney metro) 1800 451 524

Tel. typewriter (TTY) 02 9264 8050

Telephone Interpreter Service (TIS): 131 450

We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.