

# Understanding and responding to victimisation of whistleblowers

Inez Dussuyer  
Russell G Smith  
Anona Armstrong  
Kumi Heenetigala

Report to the Criminology Research Advisory Council  
Grant: CRG 23/13-14

**May 2018**

# Contents

Acknowledgements	4
Executive summary	5
Introduction	11
The extent of victimisation of whistleblowers	12
Factors predicting retaliation	13
An international example of retaliation	13
Aims and scope of this study	13
Method	15
Recruitment	16
Interviews	17
Analysis	17
Characteristics of whistleblowers	18
Characteristics of those who dealt with whistleblowers	18
Limitations of the study	20
Findings	21
Perceptions of people who dealt with whistleblowers	21
Nature of the misconduct reported by whistleblowers	21
Views about whistleblowers	22
Anonymity	23
Managing expectations	25
Stress of reporting	26

Support for whistleblowers	26
Avenues of reporting	27
Consequences of reporting	28
How organisations respond to whistleblowing	29
Management responses to whistleblowing	
Outcomes	30
Private sector approaches to dealing with whistleblowers	31
A whistleblower support group perspective	35
The whistleblowers and their experiences	36
Nature of the misconduct observed by whistleblowers	37
Reporting processes used	43
Consequences of reporting misconduct – retaliation and reprisals	46
Impact of the whistleblowing experience	48
The aftermath – changed lives	49
Discussion	50
Retaliation and impact of whistleblowing	49
Whistleblowing reporting processes	50
Legislation for protecting whistleblowers	54
Private sector approaches	56
The way forward in preventing retaliation	56
Whistleblowers' suggestions	59
References	61
Appendix A – Consent form	64
Appendix B – Information for participants	66
Appendix C – Interview schedules	69
Appendix D – Private sector case studies	74

## Acknowledgements

The authors would like to thank the Australian Institute of Criminology's Criminology Research Grants Program for providing funding this study. Additional in-kind resources were generously provided by Victoria University and the Australian Institute of Criminology. The authors are also grateful to STOPline, in particular Allan Pocock, Executive Director, as well as Cynthia Kardell, President of Whistleblowers Australia, for their support and assistance in recruiting participants for the study. Finally, the study could not have been completed without the generous participation of the individuals who agreed to be interviewed as whistleblowers, as well as the other individuals who dealt with whistleblower disclosures in various professional capacities including as investigators, hotline and support-line staff and disclosure coordinators. All provided invaluable insights into whistleblowers' experiences.

## Executive summary

### Aims and scope of the study

This study had three primary aims:

- to understand the nature of retaliation experienced by whistleblowers who have disclosed, or who have attempted or threatened to disclose actual or suspected illegal behaviour, misconduct, or other forms of wrongdoing;
- to determine what factors are associated with retaliation experienced;
- to identify ways in which retaliation can be avoided and how whistleblowers can best be protected from retaliation.

The term '*whistleblower*' was used in this study, despite some sectors now preferring less emotive expressions such as 'public interest discloser' or 'complainant'. It was decided to retain the use of whistleblower in view of its popular acceptance in the academic and policy literature.

A *whistleblower* is a person who has discovered actual or suspected illegal behaviour, misconduct, or other forms of wrongdoing and discloses information about the discovery in the public interest.

The generic term '*misconduct*' was used to describe the various forms of illegal behaviour, misconduct, or other forms of wrongdoing the subject of disclosure. The misconduct discovered may have occurred within the public or private sectors, but would not amount to whistleblowing if it related solely to private or domestic settings.

'*Disclosures*' may be made within organisations, to external reporting entities, to the media or online. Disclosures may also be made in confidence, anonymously, or using the whistleblower's actual name or identity.

'*Disclosure recipient*' generically, refers to those who received and coordinated disclosures from whistleblowers.

'*Disclosure Coordinator*' is an officer in the public sector who manages whistleblowing and protected disclosures.

'*Retaliation*' for disclosure includes acts or omissions directed at the whistleblower or the whistleblower's family, associates or interests, and can involve threats, acts, omissions or other forms of detrimental action, negative treatment or victimisation. The retaliation must be in response to the disclosure, rather than in response to other conduct unrelated to the disclosure. Retaliation may take place at any time following the disclosure.

'*Victimisation*' is a generic category for all negative consequences experienced as a result of whistleblowing including retaliation.

In order to understand the context in which retaliation occurred, the study also obtained information on the misconduct that led to the disclosure as well as the situation of the whistleblower within the organisation at the time the wrongdoing was discovered, the avenues and

procedures for disclosure that were available and made use of, and the reasons why retaliation occurred. Information was also sought on the types of retaliation that occurred and the general impact that whistleblowing had on the whistleblower. Finally, the question of how the observed retaliation could have been prevented is examined.

## Research participants

Interviews were undertaken with two groups of participants: those who had undertaken whistleblowing in the past, and those who received and coordinated disclosures from whistleblowers.

Whistleblowers were sourced from two organisations: STOPline (STL), a provider of a confidential, anonymous hotline for reporting misconduct; and Whistleblowers Australia (WBA), an association for those who have exposed corruption or any form of malpractice, especially if they were hindered or abused, and for those who are thinking of exposing it or who wish to support those who are doing so.

Each organisation was asked to provide potential interviewees with a letter of request, that had been approved by Victoria University's Institutional Human Research Ethics Committee (HRE14-159), that asked willing individuals to make contact with the researcher in order to arrange a time for interview.

The age of those interviewed ranged from the 30s to 70s at the time of interview and participants resided principally in Victoria, New South Wales and Queensland with a minority in the other states. More men than women were interviewed, although an equal percentage of those responding were men or women (64%). Twice as many whistleblower interviewees came from the private sector, as from the public sector, with most of those in the private sector being sourced from WBA.

Both organisations contacted large numbers of whistleblowers, although relatively few responded and agreed to participate in interviews. STOPline, for example, contacted 250 individuals, but only 19 responded and 11 eventually agreed to be interviewed (as well as one providing a response in writing), giving 12 participants. In the case of WBA, 37 responded but only 24 participated through interview (20, including two colleagues regarding the same case) and four providing written responses.. The sample raises the likelihood that those who participated in interviews (and those who provided written responses) were not representative of whistleblowers generally, and, arguably, could have focused on those with more serious experiences of victimisation. As indicated above, the present study was not designed to assess levels of prevalence of victimisation, but just the retaliation experiences of those who were willing to participate.

In addition to conducting interviews with whistleblowers, this study also canvassed the views of those to whom disclosures were made in order to obtain an alternative perspective on acts of reprisal and retaliation experienced by whistleblowers. Interviewees included staff of independent hotlines, integrity bodies with roles in whistleblowing processes, including investigators, public sector disclosure coordinators as well as persons from the private sector with a role in handling whistleblower disclosures. These interviewees were sourced principally with the assistance of STL and WBA who sent email invitations to potential participants that they knew in relevant organisations. Again, interested individuals were asked to contact the researcher to arrange a time for interview. Twenty-one semi-structured interviews were conducted with 6 women and 15 men.

Eleven Disclosure Recipient interviews were conducted face-to-face in Victoria (52 percent), with the remainder by telephone. In two cases face-to-face interviews were supplemented by telephone interviews as well. Interviews generally lasted between 30 and 60 minutes and a hand-written record was taken as most preferred not to have their interviews recorded electronically.

In reporting extracts of interviews, quotes will be referenced as 'STL' for whistleblowers sourced from STOPline, 'WBA' for whistleblowers sourced from Whistleblowers Australia, and 'DR' for Disclosure Recipients, with consecutive numbers assigned for each group. Quotes from interviews indicated by italics, have been integrated into the accompanying text in order to illustrate the exact words used by those interviewed – sometimes including errors of grammar and expression.

## Type of misconduct reported

Responses from both the whistleblowers and disclosure recipients indicated that while the misconduct the subject of the disclosure could have involved dishonesty, fraud and deception, most related to what could broadly be described as 'workplace grievances', such as bullying, harassment and intimidation. The majority of such types of behaviour would not fall within the definitions of 'whistleblowing' or 'protected disclosures' contained in Australian legislation. For some whistleblowers, particularly those from WBA, the misconduct in question had occurred many years ago, while in the case of those from STL, it had occurred in the last six years. In many instances the misconduct had gone on for some time prior to whistleblowers making disclosures.

## Whistleblowing reporting processes

Whistleblowers working in the public sector usually made a disclosure in the first instance to their immediate manager or higher, or else to a designated disclosure coordinator. For those in the private sector, disclosures tended to be made to an independent hotline such as STL. In general, when whistleblowers used a hotline, anonymity was assured with the hotline acting as a facilitator between the whistleblower and the client organisation. Anonymity appeared to be less certain in public sector organisations, although investigative bodies went to considerable lengths to protect the identity of those who had made disclosures.

Whistleblowers expressed frustration and concern regarding many procedural issues relating to the management of disclosures. Importantly, they were often not clear about the nature and extent of protections that would be provided to them once a disclosure had been made. This was seen to be of critical importance in deciding whether or not to make a report in the first instance. Interviewees were also unclear as to whom a disclosure should be made – both within and outside organisations, and the procedures that had to be followed when reporting. In addition, many were not kept informed about what was happening to their reports and what the outcomes of whistleblowing were.

Dissatisfaction also arose when disclosures were not taken seriously or were simply ignored. On occasions, this resulted in further and multiple instances of reporting being required to other bodies such as trade unions, politicians, the media, anti-corruption bodies and employment commissions. On other occasions, whistleblowers sought private legal advice with a view to commencing litigation. The result was that whistleblowers were faced with an array of avenues for reporting, but were

unsure which was the most appropriate for their own situation. This occasionally meant that reports were made to the wrong body with action delayed or not pursued.

When dealing with whistleblowers in their professional capacity, many disclosure recipients said that it was important to clarify whistleblowers' expectations at the outset and to discuss what could be achieved in a practical sense. Some said that 'unrealistic' expectations of many whistleblowers led to unclear and unconstructive interactions with the respondent agencies, causing frustration and often anger amongst those who made reports.

## Consequences of reporting – retaliation and reprisals

Both whistleblowers (once their identity had become known), and some of those who dealt with them, generally acknowledged that 'speaking out' led to a range of negative consequences. These included lack of support, criticism, denial, blaming and retaliation by management, feelings of fear and actual bullying and harassment. On occasions, it was only the whistleblower who knew of these consequences and a number of those who dealt with whistleblowers stated that they often were unaware of what had happened to whistleblowers and had no or little knowledge about any negative treatment the whistleblowers were subjected to.

Whistleblowers themselves were able to provide many examples of forms of victimisation they had suffered. Most common were bullying and harassment in the workplace associated with ostracism, isolation, being excluded from meetings and being subjected to derogatory remarks on social media. Some were also subjected to disciplinary action and counter-allegations that had to be defended. Examples were given where whistleblowers had also been physically assaulted and their families threatened.

An enduring theme arising from interviews was the lack of welfare and support for whistleblowers. This was particularly emphasised by those who dealt with whistleblowers some of whom said that support was either absent or inadequate, apart from general workplace counselling and welfare services that were provided by some organisations. None of those interviewed, be they whistleblowers or those who dealt with them, indicated that the protections offered by whistleblower legislation were effective in preventing and deterring acts of retaliation and reprisal. Nonetheless, many suggestions were provided by both whistleblowers and, in particular, by those who dealt with them, as to how whistleblowers and whistleblowing processes could be improved and how negative experiences could be minimised.

## Impact on whistleblowers

For many whistleblowers the outcomes of disclosing misconduct were significant. It was not possible to relate impacts to the circumstances of the disclosure itself, as opposed to the types of retaliation experienced, although forms of retaliation invariably exacerbated the overall impact on whistleblowers. Emotional and psychological impacts, including stress, exhaustion, mental and physical health-related issues were some of the most profound impacts experienced. In addition, substantial financial impacts were suffered including costs of legal advice and litigation, and loss of income when employment was terminated, contracts were not renewed, promotions not obtained and career development impaired.



All of the whistleblowers interviewed were, at the time of interview, no longer working for the organisation at which the misconduct, the subject of the reporting, had occurred. Indeed, many were no longer working at all, being unemployed or retired when interviewed. Unfortunately it was not possible to determine clearly at what point the whistleblowers had left the organisation. Above all, whistleblowers had a pervasive sense of injustice and perceived a lack of fairness at the treatment that they had been subjected to after reporting misconduct. This adversely affected their sense of trust and confidence in people and organisations. In many instances, experiences of being badly treated following whistleblowing, led to radical changes in their lives with some changing the direction of their careers, some going back to further study (employment/workplace law in particular) and others writing about their experiences and publishing books on the subject.

Others had gone on to work for, or establish, whistleblower support organisations that provide practical advice about how best to handle the process and aftermath of whistleblowing.

Finally, those whistleblowers who were interviewed were asked whether they would report the misconduct again. Approximately half said emphatically that they would, while the remainder said no, never. Thus, despite the overwhelming negative consequences of reporting, one in two would not be deterred from reporting misconduct again in the future.

### **Improving protection for whistleblowers**

None of the persons interviewed, whether they were whistleblowers or those dealt with them, perceived current legislation as being effective in preventing victimisation (see Griffith University 2017 and Roberts, Brown & Olsen 2011 for Australian legislation). More often it was improvements in management and workplace culture that were identified as being more beneficial. Interviewees stressed the need for workplace policies that are in place to be actually implemented and complied with, as well as more practical welfare support being made available to whistleblowers. Finally, more and better education in the workplace about whistleblowing procedures and processes was identified as important in ensuring that those who contemplate reporting misconduct in the public interest know where and how to embark on the often difficult and lengthy course of action.

## Introduction

The importance of whistleblowing in uncovering misconduct cannot be underestimated. Without the initiative of whistleblowers, much serious misconduct would remain undetected and would continue. As Kennedy (2004) observed:

It has been said that... secrecy is no longer acceptable; too many lives and livelihoods have been lost or destroyed because a whistle could not be blown. But too often the voice of the honest worker or citizen has been drowned out by the abusive, unaccountable bosses. Invariably, staying silent was the only option. Creating a safe alternative to silence represents a difficult challenge, legally and culturally; separating the message from the messenger is still obstructed by vested interests; deeply ingrained sociological habits and attitudes, and by the limitations of the law (Kennedy 2004:1).

It is of critical importance for whistleblowers to come forward and to speak out, but there should also be ways to report misconduct that do not leave individuals concerned and fearful of the consequences of doing so. Prior research has found that one of the main reasons why potential whistleblowers decline to report their concerns is fear of the consequences that might ensue. Brown's (2008) study of whistleblowing in the Australian public sector in 2005-08, found that approximately 70 percent of those surveyed said they had directly observed at least one incident of wrongdoing in their workplace over the previous two years but of these, only 28 percent who had observed very or extremely serious wrongdoing, had formally reported it. When asked why the wrongdoing had not been reported, 37 percent believed that nothing would be done, that they would not be protected or supported, and that their identity would not be kept secret. Another 24 percent feared reprisals from the wrongdoer, colleagues and/or the organisation.

A more recent survey conducted by Victoria's Independent Broad-based Anti-corruption Commission (IBAC) found similar concerns. The survey canvassed the views of 1,480 suppliers who had contracted goods or services to the Victorian public sector (comprising both state and local government), as well as suppliers who were interested in potential future contracting opportunities. Of the 276 respondents who said that they were unlikely or very unlikely to report corruption relating to procurement, 36 percent gave the reason that they believed their details would not be kept anonymous, and 31 percent were anxious about the personal impact of whistleblowing (IBAC 2016: 7).

Speaking out in the public interest – being a whistleblower – can be risky. Media reports and public inquiries into allegations of misconduct in the public and private sectors regularly recount the negative consequences that those who make reports in the public interest have experienced – despite the presence of legislation that seeks to prevent reprisals and retaliation for disclosing misconduct. The study by Wolfe, Worth, Dreyfus and Brown (2014) of whistleblowing protection laws in G20 countries documented important shortcomings in channels for reporting and the protections available to whistleblowers.

Instances in which whistleblowers have lost employment and careers, have suffered harassment and intimidation, and experienced acts of threatened and actual violence continue to occur in both the public and private sectors (Brown 2008). One recent inquiry into unsafe practices in the National Health Service in the United Kingdom (Francis 2015) found extensive victimisation of doctors and

nurses who reported misconduct, while Woodford (2012), former CEO and President of Olympus in Japan, suffered loss of his position and other serious consequences when he investigated and publicly exposed a \$1.7 billion accounting fraud in the company. Comparable examples exist in Australia, particularly involving hospital management; policing and corrections (see Brown 2008, Whistleblowers Australia 2016). The Royal Commission into Institutional Responses to Child Sexual Abuse (2017), currently being conducted in Australia, also demonstrates how reluctance to report misconduct and reluctance to act upon the allegations, enables the abuse to continue unchecked. In addition, on 30 November 2016, the Australian Senate referred an inquiry into whistleblower protections in the corporate, public and not-for-profit sectors to the Joint Parliamentary Committee on Corporations and Financial Services (2016). The Committee has received 70 submissions and is due to report by 30 June 2017.

## The extent of victimisation of whistleblowers

According to Martin (2013), reprisals against whistleblowers occur regularly, often being associated with failures in official channels to support those who make disclosures in the public interest. Martin (2013) estimated that at least 90 percent of those who contact the volunteer support line WBA (where he is an office holder) have blown the whistle and suffered reprisals.

However, Brown's (2008) study of whistleblowing in the Australian public sector in 2005-08 found that 78 percent of whistleblowers believed that they had been treated well or at least the same by management and co-workers as a result of their reporting, while 22 percent believed that they were treated badly. The study also found that when whistleblowers were treated badly, it was more likely to come from management than from colleagues and that being maltreated would also reduce the likelihood of reporting wrongdoing again. Most of the mistreatment took the form of intimidation, harassment, heavy scrutiny of work, ostracism, and being given unsafe or humiliating work. It was also noted that only '... in very rare cases is the nature of the reprisal such that it could meet the legal threshold required to prove criminal liability' (Brown 2008: xxviii). Brown (2008) also found that approximately 42 percent of all whistleblowers were likely to have suffered increased stress as result of reporting wrongdoing.

Internationally, research has found differences in reporting of misconduct in different countries as well as in rates of retaliation against whistleblowers. Miceli & Near (2013), for example, conducted a secondary analysis of a number of large studies in Australia, Norway and the United States to determine the extent of misconduct, rates of reporting and prevalence of retaliation. In Australia, over the preceding 24 months, between 33 and 36 percent of respondents said that they had seen wrongdoing in the workplace, varying according to type of misconduct, while between 40 and 83 percent had seen misconduct in the preceding 12 months in Norway, and 45 percent in the 12 months prior to 1980 in the United States and 14 percent in the 12 months prior to 1992 also in the United States. The percentage who said they had received negative treatment or retaliation as a result of their reporting varied from 22 percent in Australia, 17 percent in 1980 and 38 percent in 1992 in the United States, and between 4 and 8 percent in Norway (Miceli & Near 2013).

More recent research by the Ethics Resource Centre (2012) in the United States suggested that retaliation against whistleblowers was increasing. According to the Centre's annual survey, approximately 45 percent of employees had observed misconduct, the majority of whom had reported it (65 percent). Of those who reported misconduct, 22 percent had experienced retaliation

for doing so, with retaliation varying from being given ‘the cold shoulder’, to harassment, direct disciplinary action, pay cuts and physical violence. By way of contrast, the Ethics Resource Centre’s (2009) survey found a retaliation rate of 15 percent. In the Centre’s 2005 survey, of the whistleblowers who had not reported misconduct, 46 percent did so because they feared retaliation (Ethics Resource Centre 2005).

## Factors predicting retaliation

A number of studies have attempted to identify the social, cultural and organisational factors that might be predictive of whether whistleblowers will experience retaliation following their disclosures. For example, Etienne (2015) identified various cultural differences between France and the United Kingdom that could explain differences in the treatment of whistleblowers in the two countries. It was also found that whistleblowers’ protection legislation had little effect on whether or not misconduct was reported in both countries.

Miceli & Near (2013) identified a number of factors that were found to be predictive of retaliation against whistleblowers. These tended to be inversely related to the degree of power that whistleblowers held in the organisation, with more retaliation likely against whistleblowers with low levels of power. Other studies cited by these authors suggested that whistleblowers’ perceptions as to whether their managers and supervisors were supportive and also the type of wrongdoing reported were correlated with retaliation. As well, where disclosures were not formally substantiated, whistleblowers tended to be more at risk of retaliation. The authors concluded that when whistleblowers report wrongdoing ‘...*there is some possibility that they will suffer retaliation, but it is not an automatic consequence, particularly not in Norway. Allowing for differences in the way the original studies were conducted ... country culture and legislative support can vary in important ways and may affect observation of wrongdoing, whistleblowing and its consequences*’ ... (Miceli & Near 2013: 444).

Prior research has also shown that when whistleblower investigations were not resolved internally but became external, retaliation was more likely. Similarly, when investigations did not result in positive outcomes for the whistleblower, then retaliation was more likely. Also of interest was the finding that whistleblowers who appeared to have higher original expectations about management support tended to suffer reprisals more than those with lower expectations (Miceli & Near 2013). The authors concluded that these results ‘... confirm the importance of internal disclosure systems that support employees in navigating management response to disclosures, given the trust that employees are asked to place in management by reporting and the reality that the responses of individual managers can be adverse ... (Miceli & Near 2013: xxix). The trajectory of whistleblowing has been described by both Martin (2013) and de Maria and Jan (1997). The process begins when individuals inform their managers that they have concerns regarding conduct in the workplace or have observed misconduct or other inappropriate behaviour. If no response is forthcoming or there are negative reactions to the complaint, then many whistleblowers approach others for help, such as integrity/watchdog bodies or the media.

## An international example of retaliation

A recent example of the kind of retaliation that can occur comes from the findings of an inquiry into the Mid Staffordshire National Health Service (NHS) Foundation Trust in the United Kingdom (Francis 2015). As part of the inquiry, frontline health workers were asked about their experience of working in the NHS, taking evidence from more than 600 workers and receiving 19,000 responses from an online survey. It found that working in the NHS, where 'bullying' was reported to be widespread, meant working in a 'pervasive culture of fear', where to survive, 'people kept their mouths shut'. Consequences for those who had spoken out included high levels of stress, burnout and mental suffering. The government's response to the inquiry noted that:

The Public Inquiry exposed shocking, unacceptable levels of patient care and a toxic and intimidating management culture which deterred staff from raising concerns. Although vulnerable patients were being left in their own excrement, or deprived of water, when concerns were raised in good faith they were ignored, and staff were vilified for speaking up. There was no recognition or understanding of the important part that staff play in improving and ensuring acceptable levels of patient care. The board had lost its moral sense of priority and refused to listen to its own people about the neglect and suffering that it was presiding over. There was an instinct to deny rather than to learn, to defend rather than to improve, which created an organisation that was out of touch with the horrific reality of poor care occurring on their watch (Department of Health 2015: 31).

The findings of the inquiry resulted in the government developing a range of strategies to address the problems of NHS management that had been identified, including the issue of retaliation against those who report misconduct. The recommendations for dealing with retaliation against whistleblowers included:

- requiring staff contracts to cover whistleblowing rights;
- publishing new guidance by the Whistleblowing Helpline;
- increasing the number of organisations to which staff can blow the whistle;
- applying the concept of vicarious liability to the whistleblowing legislative framework (this means that where there is any bullying or harassment of a whistleblower by a fellow worker, this is treated as being done by the employer); and
- fostering a culture of openness and transparency in the NHS in which concerns about care can be raised, investigated and acted upon (Department of Health 2015: 31).

Best practice models have also been developed following this enquiry and are described in the discussion, below.

## **Aims and scope of this study**

This study sought to understand the nature of victimisation experienced by whistleblowers who had reported or attempted to report wrongdoing in their workplace in Australia. Unlike much other research into whistleblowing, this study investigated what was done and what happened to whistleblowers after wrongdoing had been reported including acts of retaliation, reprisals and other forms of detrimental action. The report also sought to identify ways in which whistleblowers could better be protected from victimisation and how the procedures and safeguards involved in the whistleblowing process could be strengthened.

This study had three primary aims:

- to understand the nature of retaliation experienced by whistleblowers who have disclosed, or who have attempted or threatened to disclose actual or suspected illegal behaviour, misconduct, or other forms of wrongdoing;
- to determine what factors are associated with retaliation experienced;
- to identify ways in which retaliation can be avoided and how whistleblowers can best be protected from retaliation.

The term '*whistleblower*' was used, despite some sectors now preferring less emotive expressions such as 'public interest discloser' or 'complainant'. It was decided to retain the use of whistleblower in view of its popular acceptance in the academic and policy literature, although one interviewee indicated that he did not see himself in that role but rather saw himself as a person who wanted to right a wrong (WBA-08).

A *whistleblower* was defined as a person who has discovered actual or suspected illegal behaviour, misconduct, or other forms of wrongdoing and discloses information about the discovery in the public interest.

The generic term '*misconduct*' was used to describe the various forms of illegal behaviour, misconduct, or other forms of wrongdoing the subject of disclosure. The misconduct discovered may have occurred within the public or private sectors, but would not amount to whistleblowing if it related solely to private or domestic settings.

*Disclosures* may be made within organisations, to external reporting entities, to the media or online. Disclosures may also be made in confidence, anonymously, or using the whistleblower's actual name or identity.

*Retaliation* for disclosure includes acts or omissions directed at the whistleblower or the whistleblower's family, associates or interests, and can involve threats, acts, omissions or other forms of detrimental action or negative treatment. The retaliation must be in response to the disclosure, rather than in response to other conduct unrelated to the disclosure. Retaliation may take place at any time following the disclosure.

*Victimisation* is a generic category for all negative consequences experienced as a result of whistleblowing including retaliation.

In order to understand the context in which retaliation occurred, the study also obtained information on the misconduct that led to the disclosure as well as the situation of the whistleblower within the organisation at the time the misconduct was discovered, the avenues and procedures for disclosure that were available and used, and the reasons why retaliation occurred. Information was also sought on the types of retaliation that occurred and the general impact that whistleblowing had on the whistleblower. Finally, the question of how the observed retaliation could have been prevented was examined.

## Method

Qualitative semi-structured interviews were conducted with a group of 36 whistleblowers who had contacted either an independent hotline service, STL, or the volunteer support group, WBA regarding misconduct or wrongdoing. STOPline provides confidential, anonymous hotlines for reporting misconduct, while WBA is an association for those who have exposed corruption or any form of malpractice, especially if they were hindered or abused, and for those who are thinking of exposing it or who wish to support those who are doing so. Although participants from the two sources differed in some of the reasons they were using the services provided, they all were able to provide valuable insights about their experiences after reporting misconduct. Details of the whistleblower participants are shown in Table 1.

**Table 1 – Whistleblower interviewees (n)**

	STOPline		Whistleblowers Australia*		Total		
	Resp	Int	Resp	Int	Resp	Int	% Int / Resp
Men	8	4	23	16	31	20	64.5
Women	11	8	14	8	25	16	64.0
<b>Total</b>	<b>19</b>	<b>12</b>	<b>37</b>	<b>24</b>	<b>56</b>	<b>36</b>	<b>64.3</b>
Public sector		5		6		11	
Private sector		7		18		25	
<b>Total</b>		<b>12</b>		<b>24</b>		<b>36</b>	

Source: VU-AIC data 2016.  
 \* Includes one interview with two colleagues concerning the same matter  
 Resp – Responded; Int – Interviewed or provided a full written response.

In addition to conducting interviews with whistleblowers, this study also canvassed the views of those to whom disclosures are made in order to obtain an alternative perspective on acts of reprisal and retaliation experienced by whistleblowers. Interviewees came from staff of independent hotlines, integrity bodies with roles in whistleblowing processes, including investigator, public sector disclosure coordinators as well as persons from the private sector with a role in handling whistleblower reports. Twenty semi-structured interviews were conducted with 7 women and 13 men as indicated in Table 2.

**Table 2 – Disclosure recipient interviewees (n)**

Source	Men		Women		Total	
	Resp	Int	Resp	Int	Resp	Int
Ombudsman	6	4	0	0	6	4
Public sector disclosure coordinators	4	4	6	4	10	8
Private sector disclosure coordinators	6	4	2	1	8	5
Hotline / support line staff	4	3	1	1	5	4
<b>Total</b>	<b>20</b>	<b>15</b>	<b>9</b>	<b>6</b>	<b>29</b>	<b>21</b>

Source: VU-AIC data 2016.  
 Resp – Responded; Int – Interviewed.

The research was approved by Victoria University's Human Research Ethics Committee in September 2014 (HREC No.0000023639). Approved informed consent forms, participants' information sheets and semi-structured interview schedules are attached in Appendices A to C.



## Recruitment

Recruitment of interviewees was carried out with the assistance of STL and WBA. These two organisations were asked to send emails inviting individuals on their client databases who might be willing to participate in the study to make contact with the principal researcher in order to arrange a suitable time for interview. Names and contact information of potential participants were not supplied to the Principal Researcher and it was entirely up to those approached to decide whether or not to participate. If they were willing to be interviewed, they were provided with information and consent forms as set out in Appendices A and B.

Potential participants were contacted by STL in 2014 and included those who had approached STL with allegations of misconduct in the preceding five years. STOPline's database had 500 names but 250 email addresses were inactive or invalid. Potential participants were contacted by WBA 2015 and included all those on the WBA contact and members lists (total numbers were not available). In response to the invitation from STL, 19 made initial contact with the Principal Researcher (7.6 per cent of the 250 emails sent). Of these, 7 were subsequently found to be unable to participate or uncontactable, leaving 12 who were interviewed (4.8 per cent of the 250 contacted). This rate of acceptance is comparable with other social scientific survey research (Smith 2008).

In response to WBAs invitation, 37 responses were received of whom 24 were interviewed (13 could not be contacted further to arrange an interview).

Recruitment of disclosure recipients and others who dealt with whistleblowers was undertaken in a similar way by STL agreeing to send invitations to their client organisations, integrity bodies and related organisations. In response, 29 of those invited to participate made contact with the Principal Researcher of whom 21 were interviewed (Table 2).

To be eligible to participate in the study, whistleblowers had to consider themselves to be whistleblowers, had contacted either STL or WBA, had reported misconduct or wrongdoing (in the preceding five years for STL), were aged over 18 years were capable of providing informed consent and were resident in Australia at the time of the interview (3 exceptions to this were resident in the United Kingdom at the time the interview was conducted).

As such, all participants were self-selected, thus providing a potential source of sampling error and making the interviewees not necessarily representative of all whistleblowers or disclosure coordinators. It was apparent that those who agreed to participate were more likely to be individuals who had reported serious misconduct and who had experienced reprisals, retaliation or others forms of victimisation. This, however, was not problematic for the current study as prevalence of retaliation was not being measured. Rather, the present study sought to ascertain the nature of retaliation experiences and why they occurred.

The whistleblowers who made contact were then provided with the informed consent form and the participant information sheet, and asked to indicate a suitable time and location for a face-to-face interview, or, in the case of most, to provide an appropriate telephone number through which the interview could be conducted. It was found that of the 19 individuals who responded to STLs invitation, 7 did not reply further, failed to appear at interview or their email address was no longer valid. The remaining 11 were interviewed and one providing only a written response to the questions asked; thus giving 12 participants (Appendix C). One whistleblower indicated he wanted to



participate but his case was still being dealt with in the courts, and, accordingly, an interview was not conducted. In the case of WBA respondents, 36 replied to the invitation to participate and 24 were able to be interviewed by telephone or face-to-face.

In summary, there 56 whistleblowers from the two sources who responded, of whom 36 participated and were interviewed and/or provided written information (4 per cent).

## Interviews

Semi-structured interviews were conducted with participants, mostly by telephone, although in some cases in Victoria, face-to-face. The inability to undertake more face-to-face interviews was due to many participants residing outside Victoria where the Principal Researcher was based. In three cases, interviews were conducted with individuals in the United Kingdom. Several provided written responses to the interview questions set out in Appendix C. Interviews lasted between 30 and 60 minutes and handwritten notes were made that were developed with further detail immediately after interviews finished. Notes were assigned a unique code that ensured that individuals and organisations could not be identified, and names of individuals were not recorded.

Direct quotes are referenced by the letters of the contact organisation for whistleblowers (STL-STOPline, WBA-Whistleblowers Australia), or DR for Disclosure Recipient – those who received complaints and dealt with whistleblowers. In addition to being interviewed, many whistleblowers provided written material to help explain their experiences, some providing links to media reports relating to the misconduct, and others providing additional information relevant to the aims of the study.

The questions set out in Appendix C canvassed the nature of the misconduct reported, the procedures used to make reports, the nature and location of the organisation in which the misconduct occurred, and, importantly, the consequences of reporting and any evidence of retaliation or reprisal taken as a result of reporting. The questions provided a stimulus to focus the discussion and some issues were explored to a greater or lesser degree than others.

## Analysis

Handwritten notes from each interview were transcribed and transferred onto a computer for coding and analysis. In view of the relatively small number of interviews conducted and their short duration, qualitative analytic software was not deemed necessary. Instead, a set of pre-determined themes were developed from reading the notes and the information was then coded and analysed under these themes. Throughout the analysis, themes were refined and new sub-themes added to ensure that all the research questions were able to be addressed.

## Characteristics of whistleblowers

Those interviewed ranged in age from their 30's to their 70's. Whistleblowers comprised 20 men and 16 women (Table 1). While no questions were asked about ethnicity or country of birth, all, except one, were fluent in English. Both STL and WBA have a national presence and many of the whistleblowers indicated that they had made disclosures concerning misconduct in organisations outside Victoria, mostly in New South Wales and Queensland. Others had worked for organisations in Western Australia, South Australia and the Northern Territory. At the time of making disclosures,

approximately equal proportions of whistleblowers contacted by STL were working in the public or private sectors, while in the case of WBA, more than twice as many come from the private sector as the public sector (Table 1). For the whistleblowers from STL, their experience was relatively recent, that is, within the last 5-6 years, whereas many of the WBA interviewees had blown the whistle a long time ago, resulting in the latter group being older than the former group of interviewees and often being retired from the workforce.

The types of public sector organisational settings at which whistleblowers had worked included state government agencies, schools, tertiary institutions such as universities, as well as hospitals, health/care services and community welfare services. In respect of the private sector, workplaces included the hospitality industry, mining sites, and transport companies as well in the health /related sector, telecommunications and in sporting areas. Many were employed in large national companies, although a number were employed on contract or were employed on a casual or interim basis. Public servants were more likely to have had security of tenure. Most of the whistleblowers had been in their place of work for long periods of time, although some held positions for less than 5 years and several for less than one year. Overall, the general level of education of whistleblowers was high, with most having completed tertiary education and some having professional or postgraduate qualifications.

The characteristics of whistleblower interviewees were generally the same as those reported by the individuals who dealt with them. When asked to describe the demographic characteristics of the whistleblowers they had encountered those interviewed said that *...they can come from all age groups, with about equal numbers of males and females ... (DR-14)*. One observed that there can be *....a whole range of whistleblowers, males, females and all types of misconduct ... (DR-13)*. Others noted that whistleblowers were unlikely to be aged under 30, and more likely to be older than 45 years; as one person said *...they know their rights...they own property, businesses... (DR-30)*. A disclosure coordinator with a council said that about two thirds of whistleblowers he had dealt with were male and more likely to be over 40 years.

## Characteristics of those who dealt with whistleblowers

A total of 29 persons who dealt with whistleblowers in a professional capacity had expressed interest in the study of whom 21 were able to be interviewed. Sixty-five percent of these interviewees were men and the age range of all interviewees was between 30-40 and 60 or more years of age. Ten had specific roles within Victoria while the remainder had Australia-wide roles, with four of these based in New South Wales. The types of organisations in which these participants had worked included three from the Australia-wide independent hotline services; five from Ombudsman and other integrity bodies; five disclosure coordinators/managers with responsibilities for whistleblowers within Victorian local/state governments, and five from private sector organisations. In addition, one person from WBA who dealt with whistleblower calls and provided support was interviewed (Table 2).

The five interviewees with experience in integrity bodies, such as the Ombudsman's office were responsible for receiving whistleblowers' complaints and assessing them to determine whether they met the statutory criteria of protected disclosures. Where appropriate, these individuals would investigate complaints or refer them to other agencies. Their roles also included providing training about whistleblower policies and procedures for disclosure co-ordinators in public sector agencies.

The five persons with responsibility for coordinating public interest disclosures in Victorian public sector organisations generally had less experience and had seen fewer whistleblowers; they had seen between 20 and 40 whistleblowers each in this role, compared to those from the integrity bodies support hotlines who had seen many more. . Furthermore, while the persons from the integrity bodies had roles which primarily focussed on whistleblowing complaints, the disclosure recipients, particularly those from local government, had a multiplicity of other roles in addition to handling whistleblowers. These other responsibilities included work relating to corporate services, contracting, governance, liaising with legal counsel, internal auditing, risk management and compliance. Some had additional responsibilities for dealing with Freedom of Information and Privacy legislation. Their role often included training staff about whistleblower policies, although several in the public sector group noted that they were not as familiar or aware of what the legislation required. On occasions, whistleblowers received no or poor advice, with the result that according to some interviewed, the concerns raised were not followed-up or investigated.

The three interviewees with backgrounds in policing who worked for independent whistleblower hotlines that were conducted on a commercial basis for client organisations were required to assess complaints and report back to client organisations. Generally, investigations were not conducted, but they did provide feedback to whistleblowers when they found out what action had been taken by the client organisation. These individuals listened to whistleblowers' concerns about suspected misconduct, explained the process for dealing with disclosures and were able to clarify the nature of whistleblowers' concerns and obtain sufficient information to enable the client organisations to take action, and investigate where appropriate.

According to one hotline operator, based on the only data available, misconduct was mostly reported by telephone (70 per cent), with fewer reports by email (19 per cent and rarely by letter (8 per cent. Although approximately 40 percent of whistleblowers were willing to identify themselves to hotline staff, 60 percent wanted to remain anonymous to their employers. Some whistleblowers chose not to pursue the matter after having reported it, while *...others are looking to [the hotline] for a 'magic wand' to fix the matter..... (DR-12).*

Four other individuals from large private sector companies were interviewed. These handled whistleblower complaints in addition to discharging other duties as senior managers in connection with risk management, security and compliance.

One other person spoken to came from a volunteer support line for whistleblowers and had a long involvement with whistleblowers, having been a whistleblower previously.

Many of those from the independent hotlines, integrity bodies and volunteer support lines, had more than ten years' experience in dealing with whistleblowers, and had contact with more than one hundred whistleblowers each. Others had spoken with more than 1,000 whistleblowers each.

## Limitations of the study

Although this study provided a rich source of information on how whistleblowers are dealt with after they disclose misconduct, the number of interviewees was relatively small. Those interviewed were also self-selected from amongst the clients of two organisations that receive complaints and provide support services. Accordingly, the findings cannot claim to be representative of all whistleblowers in Australia who report misconduct in the public interest. By agreeing to participate, the findings were

limited to the views of individuals who were sufficiently interested in contributing their views and experiences about what happened after they had reported misconduct, thus creating a systematic bias in the results obtained. In addition, the invitation carried in the title 'the victimisation of whistleblowers' thus attracting those with particular views concerning retaliation and reprisals. Self-selection also meant that respondents defined themselves as whistleblowers which could have led to others who made reports in the public interest being deterred from participating. It would, of course, be difficult to locate such individuals.

In addition, many of those interviewed would not fulfil the requirements of the definition of whistleblowing, or public interest disclosure in some state, territory and Commonwealth legislation. Finally, because a probability-based, representative sample of whistleblowers was not used, no information was available on the prevalence of whistleblowing and associated acts of retaliation and reprisal. Quantification of the extent of reprisals was not, however, the aim of the present study. Nonetheless, the interviews provided a rich source of information on the impact of whistleblowing on individuals and on their experiences of retaliation and reprisal that have taken place in Australia in recent times.

## Findings

The information derived from interviews will be presented in two parts: first, from those who dealt with whistleblowers and then with the whistleblowers themselves. There is a possibility that some of those who dealt with whistleblowers might have had actual experience in dealing with the same individuals who had made disclosures and who were also interviewed in this study. This was not, however, pursued in view of the guarantees of anonymity provided, as well as the difficulty of aligning information from these two separate sources. By initially presenting the information coming from the interviews with the persons who received or handled reports of misconduct, this provided some context of the organisational settings in which interactions with whistleblowers had occurred. It was intended that this might assist in understanding whistleblowers' own narratives that are presented in the following section.

### Perceptions of people who dealt with whistleblowers

Persons interviewed who had dealt in their official roles with whistleblowers came from a range of organisational contexts and varying backgrounds and experiences with whistleblowers. Key questions for those who dealt with whistleblowers related to their views about whistleblowers and what happened to them after they reported wrongdoing, how they were protected and whether they had been subject to reprisals. Further questions considered how whistleblowers were managed in the organisation in which they had been employed as well as issues such as the importance of anonymity, the investigative process, knowledge of outcomes, and available policies and procedures to protect the whistleblowers. Their advice on improvements to the whistleblowing process was also sought.

### Nature of the misconduct reported by whistleblowers

The types of misconduct that whistleblowers report are extremely diverse. Brown et al. (2014), for example, grouped misconduct into 39 categories including material gain, conflict of interest, improper or unprofessional behaviour, defective administration, waste or mismanagement of resources, perverting justice or accountability, personnel and workplace grievances, reprisals against whistleblowers and others. In New South Wales, section 8 of the *Independent Commission against Corruption Act 1968* (NSW) includes an extensive list of types of corrupt conduct that fall within the jurisdiction of the Commission. Included are examples that involve dishonest or partial exercise of official functions, conduct that constitutes or involves a breach of public trust, and conduct that involves the misuse of information or material acquired in the course of functions. Subsection 2 of section 8 lists 25 specific types of conduct that can amount to corruption. According to the majority of those interviewed for the present study, the misconduct reported to them by whistleblowers generally involved incidents of mistreatment, bullying and harassment and other workplace grievances rather than involving more serious allegations of fraud, dishonesty or deception. On the whole, the misconduct canvassed in the present study would not have fallen within the jurisdiction of most anti-corruption commissions in Australia (e.g. s. 20 *Protected Disclosure Act 2012* (Vic)). In the words of one interviewee, complaints were low level, and overwhelmingly employment-related, *not in the league of serious misconduct involving corruption and criminal behaviour....* (DR-27).

Disclosure coordinators from councils, hospitals and the tertiary education sector said that misconduct reported by whistleblowers often involved workplace concerns, such as conflicts of interest, employee complaints against management, not being promoted, falling out between people and favouritism. Many complaints involved bullying and harassment, although occasionally they could involve fraud and abuse of entitlements, such as travel, which were sometimes identified by finance officers or through internal audit. Others from the public sector noted that misconduct could relate to access to and misuse of inappropriate information, or improper procurement and tendering.

When asked about the types of misconduct whistleblowers reported, one STOPLINE interviewee said that the concerns raised *...could be anything from theft, conflict of interest, governance issues....to bullying; often involving poor management styles... (DR-12)*. Another referred to *... a lot of complaints [I] have to deal with, has to do with bullying and harassment (around 40 percent), mismanagement of staff.... [But] also I have had cases of dishonesty and criminal behaviour... (DR-20)*. In terms of the balance between serious and non-serious matters, a STOPLINE interviewee estimated that approximately 60-70 percent related to bullying and harassment *...although it varied between industries...the retail sector appears to have more conflict between people...while around 30-40 percent relate to serious matters such as fraud or mismanagement... (DR-14)*. It was also noted that the whistleblowers' complaints often touched on workplace cultural issues involving basic values and how people work together.

Whistleblowing involving local government mostly came from external sources with approximately 80 percent, according to one interviewee, relating to contracts, customer service, tenders and procurement – for example, that staff are 'on the take'. In one case, an external whistleblower alleged that *...staff in the outdoor area of a council were running their own business ...it had been going on for two years and the supervisor was aware of it...it was inappropriate...but it stopped after a warning was given and reported to Human Resources...(DR-33)*. A smaller number were from whistleblowers within local government.

The experiences of dealing with whistleblowers showed that whistleblowers could come from any level within the work place. For the disclosure recipients and those in the private sector who dealt with whistleblowers, reports could be internal but also external to the organisation, such as from clients or suppliers.

Several interviewees from the hotlines with extensive experience in receiving reports noted that the nature of whistleblowing had changed over the last 10-12 years. In the past, approximately 30 percent of reports related to bullying; 17 percent concerned discrimination and 32 percent involved breach of policies and procedures, with the remainder of 14 percent falling into other categories. There was now a trend away from complaints relating to bullying and harassment to matters involving breaches of policies which it was argued might be due to more Commonwealth legislation relating to conditions of employment.

Many interviewees noted that whistleblowing often became a 'catch all' for any issues arising in the workplace, thus diluting the importance of the concept that originally focussed on serious misconduct and corruption.

## Views about whistleblowers

Interviewees who dealt with whistleblowers held a diverse range of views about the individuals they had encountered.

### **Attitudes toward whistleblowers**

Some of the interviewees held somewhat negative views concerning the whistleblowers they had dealt with *...you get a picture of the whistleblowers... they can be pedantic and want to make sure the right process is followed. If the evidence is not strong, the whistleblower needs to understand that.... may not let go because of the emotional involvement...but because no one has listened to the whistleblower... they need to be told that they have done the right thing.... (DR-36).*

Other interviewees were quite judgmental *... Some whistleblowers become obsessed because of the wrong that had been done.... They were 'nutters' (DR-11).* Another noted that *...few people have clean hands... (DR-13)* and noted that often there were personal reasons why whistleblowers come forward. Sometimes it has to do with performance at work *...it is payback... This interviewee was very sceptical of whistleblowers generally ...there is always another story to be told.* The reasons why they come forward *...is that they want things to be the way they were...want bad things in the workplace fixed... but it's not like what's happened...they want something, want restitution and then the problem is gone...(DR-11).*

Often whistleblowers are seen as *... a trouble maker, they want to claim victim status ... and they don't play the corporate game of looking after the organisation... (DR-14).* There was a view that generally whistleblowers in organisations are not liked as they expose the organisation to criticism, and further that they *...always blame others, not themselves .... (DR-14).* Some whistleblowers, especially those external to councils *...have a gripe...for example, they did not win a tender...a dog owner was charged and felt aggrieved.... (DR-30).* Another interviewee had an overall impression that many whistleblowers *...have a bee in their bonnet...and are not realistic...and according to him...reasonable people would be able to let go...but many whistleblowers don't let go... (DR-12).* Yet another view was that whistleblowers can be quite difficult people to deal with.

### **Labelling**

The label, whistleblower, was commented on by several of those interviewed. One person said *...they are not superheroes...the label puts them on a pedestal... (DR-13)* while another said *...they are just like another witness... (DR-27).* It was noted that the label whistleblower also carried some kudos *...people see themselves as a whistleblower, it confers status...they like it especially if they have won court battles as some have... (DR-25)* However, in some workplaces, such as the police, *... being a whistleblower has many repercussions...you become known and no one wants to work with you....because you are a 'dobber' ... can't change people's attitudes.....(DR-27).*

Overall, in spite of some negative connotations, it would appear for a number of interviewees that whistleblower as a term is good to use for people making reports about wrongdoing; it is evocative, descriptive and is generally understood by the public and confers meaning that is much broader than the narrow definition in the legislation.

### **Aims of reporting**

Others expressed more nuanced perspectives. One experienced investigator acknowledged that the whistleblowers with whom he had dealt all had a genuine belief that they were right in coming forward. He noted that there seemed to be two types: those who come forward because they have been wronged in some way and want revenge; and those who have seen wrongdoing and come forward in the public interest. The latter will say it is your problem to deal with it, not theirs and they just wanted to report it. According to this investigator...*the first group are the most difficult to deal with and to manage in the investigation; as they have a tainted view and often have a prior history...they want to own the process...they want to see what is happening and be kept in the loop..(DR-34).*

The experience of a hotline person was that whistleblowers fall along a continuum...*some report it and then hang up...but the hotline needs more information so that the organisation can fix the concerns. ..at the other extreme there are those who don't let go...the majority [of whistleblowers] are those who are reasonable and genuine...they are aware of the job situation...often have altruistic motivation for calling the hotline and reporting the misconduct that they want to put a stop to...not for vindictive reasons but they want to be fair in reporting it... (DR-12).*

Interviewees also referred to instances in which whistleblowers were motivated out of a desire for revenge of someone in the workplace that they disliked (DR-11). This would constitute an abuse of the protections offered to whistleblowers, with one interviewee observing that...*you have to accept the flaws of the system...(DR-16)*, while another said that he found that union representatives...*may blow the whistle to prove a point in respect of work or safety practices...(DR-14).*

### ***Vexatious and serial whistleblowers***

A number of interviewees had encountered vexatious and serial whistleblowers. One observed that vexatious whistleblowers... *can be very vocal; they may complain too much but they can be right...and should not be dismissed... (DR-25).* Another believed that although whistleblowers do not have all the facts... *they may have first-hand information; piles of documents...should not be dismissed out of hand...could be credible... (DR-13).* In particular, at disclosure coordinator forums it was reported that there is a view that... *the serial complainer can be seen as pests with axes to grind...training is needed to overcome that view.... (DR-36).*

A disclosure coordinator from a local council reported that...*some [whistleblowers] get tarred with the same brush; they have multiple complaints, serial complainers...some with more than 300 letters when the files are checked. They get tagged...then anything they raise gets labelled...then they are not treated properly.* This manager believed that it is very important that the first time a whistleblower reports a complaint ...*that council outlines the reasons why the council can't help...say to the whistleblower that is the best I can do...they are not dills; not fools but they want to get the answer they want...you can't just dismiss them... (DR-36).* He gave an example of a new allegation from a frequent whistleblower complainant which was found to be correct. The manager apologised to the whistleblower and thanked him for bringing it to his attention. This manager also noted that some of the concerns raised by whistleblowers could have been handled differently by councils and that the process itself could be improved.

On the other hand, sometimes whistleblowers were also reported as not being happy about the way their complaint is handled and ...*some won't accept the umpire's decision... (DR-14).* Overall, very



*few whistleblowers are vexatious, less than 5 percent would be mischief making; not necessarily altruistic but they have been wronged... (DR-12).*

## Anonymity

Maintaining anonymity is critically important and is one of the principal ways in which whistleblowers can avoid retaliation and be protected from reprisals. According to the independent hotline interviewees, approximately two thirds of whistleblowers want to remain anonymous but gave their names to the hotlines as a contact point so that they could be contacted if there was a need to ask further questions. As one hotline person said...*there are ways of reporting misconduct...you can make it completely anonymous....but that's hard to do... (DR-20).* Some anonymous whistleblowers, it was noted, had been successful but for the investigation to work, you need information from the whistleblower and that might expose them. As one person said...*they also can inadvertently reveal their identity... (DR-12).*

In many cases, interviewees noted that people in the organisation will know who the whistleblower was or they could work it out. This then led to retaliation ....*then we get complaints about being mistreated; ...shoved to one side...It was acknowledged that ...being a whistleblower you are taking a big risk; has big impact on your life.....in losing anonymity..(DR-16).*

The risk of having one's identity revealed was one of the main impediments to making a disclosure. As one hotline person said, while whistleblowers may believe they are protected, the reality is different, especially according to some disclosure recipients ... *usually in the workplace, people know who you are...you 'get known' and it's not good for the career....[it is] human nature...(DR-25).* As noted above, of the 276 respondents who said that they were unlikely or very unlikely to report corruption relating to procurement in IBAC's recent survey of Victorian suppliers, 36 percent gave the reason that they believed their details would not be kept anonymous (IBAC 2016: 7). In general, however, interviewees from independent hotlines believed that approximately 60 percent of whistleblowers remain anonymous, both to the hotline if they wished, but also to the workplace. According to those interviewed, great care was also taken by integrity bodies in ensuring the anonymity of whistleblowers, while in other organisations, guarantees of anonymity were less assured.

## Managing expectations

A frequent theme identified by those who dealt with whistleblowers was the need to understand and manage the expectations of whistleblowers. One interviewee from an integrity body explained how his agency handled this:...*write to the whistleblower to explain the process ...when there is an outcome they can ask for it be reviewed in terms of what had been done... this is very important to the whistleblower...need to manage the expectations of the whistleblowers...(DR-11).* Often the whistleblower believed that the problem could be solved...*they find it hard to understand ...and to accept that there is no investigation and nothing more is done.... (DR-20).* The importance of managing expectations was explained by one person in the following way:...*The reasons why [whistleblowers] come forward...is that they want things to be the way they were...want bad things in the workplace fixed. They want restitution and then the problem is gone... (DR-33).* Another interviewee said... *whistleblowers want something unachievable...they want to be taken seriously; they want to be listened to and that the process for investigating their complaint is done seriously*

*and with a fair outcome... (DR-34)* Some of the fundamental problems associated with reporting misconduct are that whistleblowers lack knowledge of what can be reported, how reporting is carried out, what protections are available and what the likely outcomes will be. This lack of information has clear effects on their expectations. Disclosure coordinators believed that whistleblowers often have no clear information about who the right person to complain to is, or are reluctant to go through some channels through ignorance or distrust. Hence generally, whistleblowers prefer not to go to Human Resources – instead *...they want to report it confidentially on a one-to-one basis...(DR-20).*

### Stress of reporting

Many interviewees showed a sympathetic understanding of the impact and emotional upheaval that can be associated with whistleblowing. Some acknowledged the considerable pressure that many experience *... the mere fact that they have observed or experienced the misconduct over a long period makes them very nervous, very emotional... (DR-14).* One investigator stated that he *...has seen some 'shockers'....and had a 'box of tissues ready'...* acknowledging that *... it is very stressful for whistleblowers to come forward and they get very emotional but then they can't talk to anyone, not even family because of confidentiality required by the integrity body...* He noted that in some states, whistleblowers can talk to the media *....in fact some whistleblowers wouldn't mind being outed... if the legislation was stronger, there should be the possibility for whistleblowers to speak with their family... (DR-34).*

Other interviewees noted the emotion, anger and levels of stress experienced by whistleblowers. One said that *...there is a lot of emotion... [We] treat each one as important ...give them advice and have them consider the options.... (DR-12).* Another said that *....some [whistleblowers] are angry at the way they have been treated by the organisation...some are petrified and fear being victimised, although that is unknown territory...(DR-20).* Some whistleblowers made repeated calls to the independent hotline *...they are looking for a voice...looking for support...I feel sorry for them but am unable to help them...as there is nothing more the hotline can do other than put it in the report to their employer.....a lost cause for some...although sometimes whistleblowers call back to say...it didn't help but thank you.....(DR-20).*

### Support for whistleblowers

Another important aspect mentioned by those dealing with whistleblowers was concern about the welfare of the whistleblower and the need for organisations to improve the level of support they offered. Blowing the whistle is a life changing experience for many whistleblowers, creating a need for assistance and support. Disclosure coordinators in the public sector noted the need to monitor and regularly check on the whistleblower, although in many cases they lacked training and time necessary to undertake a welfare role effectively. Being a disclosure coordinator, according to some, involved a great deal of responsibility making it less than a desirable role for many. Often coordinators stay in the role for a short time and have limited experience in dealing with whistleblowers and understanding and applying policies and procedures. According to one interviewee *... whistleblowers have so many issues in the first place, it makes it hard...hard for the*

*organisation to accept the complaint and also be responsible for their welfare; [but] they have the ultimate responsibility to look after their employees... (DR-36).*

Nonetheless, interviewees endorsed the need for whistleblowers to be treated properly when they come forward. As one experienced investigator said... *it is very important to look after the whistleblowers...ensure their wellbeing and give them support...Organisations have a responsibility to protect whistleblowers from detrimental action....they should not focus on trying to identify who the whistleblower is... (DR-18).* Some of those interviewed mentioned that their organisation had employee assistance programs which provide anonymous counselling, not only for whistleblowers, but for all staff.

### Avenues of reporting

Interviewees also considered the various avenues available for whistleblowers to report misconduct and the benefits and risks associated with each. Within whistleblowers' workplaces, reporting should normally be made to line managers, disclosure coordinators or independent hotlines engaged by the organisation. Those interviewed generally took the view that reports should not be made to human resources sections within agencies which tend not to be independent from management. One interviewee said ... *going to Human Resources is not a good idea...they look after management; would be stupid to do that...often Human Resources is outsourced too...lots of problems...(DR-33).* Another said in the first instance, *whistleblowers should report internally, a good manager would treat it well...; and perhaps, internal auditors, governance committee, as they are more independent than Human Resources.... (DR-30).* However, if the first response to reporting misconduct internally is denial or simply no response, then there is often escalation and the whistleblower attempts to go elsewhere outside the organisation.

Outside workplaces, reports can be made to Trade Unions, although they were seen as being indifferent or ineffective to whistleblowers' concerns. Making formal disclosures to official anti-corruption bodies such as IBAC in Victoria, is often problematic unless the situation falls within the statutory definition of public interest disclosure. The bulk of whistleblowers who approach such bodies were assessed as not raising public interest disclosures. In one case this led to the whistleblower being subject to detrimental action, and dismissed from his employment. The whistleblower then took the matter to the Fair Work Commission and the Human Rights and Equal Opportunity Commission claiming compensation for discrimination.

Going to the media was mentioned by several interviewees but as one said ...*it depends...* and another person said that whistleblowers often do not want to be in the spotlight. Nonetheless, the media's role was seen as important when reporting misconduct and when integrity bodies and other agencies were found not to be willing to deal with the matter. Persons interviewed gave a number of examples of well-known whistleblowers who had approached the media, leading to acts of retaliation. Other suggested avenues for whistleblowers to have their concerns addressed included the civil courts, the Fair Work Commission, as well as Members of Parliament.

In general, the views held about whistleblowers by the persons interviewed revealed a range of perspectives influenced by their role in each organisation in relation to whistleblowers and their experiences but also, by general knowledge acquired through the media. It was noted that attitudes have changed in the past fifteen years in respect of whistleblowers from being considered a 'dobber'

to now a more accepted, and respected view of those who disclose misconduct. There was also a broad desire for whistleblowers to be treated properly and that support for whistleblowers needs to come from the top down in the organisation.

### Consequences of reporting

The main aim of this study was to ascertain what happened to whistleblowers after they had reported misconduct, whether they were victimised and subject to retaliation and reprisals, and what form such conduct took. A number of those who dealt with whistleblowers said that they really never found out what happened to the whistleblowers they had seen and were unaware if they had been subjected to acts of retaliation or reprisal. As one said...*the disclosure coordinator does not get feedback about that...in the vast majority of cases we would not hear about whether [the whistleblowers] had been targeted or not...* (DR-14). Another noted that... *you find out about it when the whistleblower rings back and reports it; often [the hotline] doesn't get the full story* (DR-12).

Other interviewees cited examples of where whistleblowers had experienced negative consequences of reporting. Some of the consequences that those who dealt with them were aware of included: *...they have been moved, bullied and [excluded from] tasks and treated poorly* (DR-19). Other forms of retaliation included bullying, social isolation, and being subjected to derogatory remarks – sometimes on social media. Others observed whistleblowers not being promoted, not treated properly, and as a result, being forced to resign or dismissed (DR-13). Another disclosure coordinator from a council said *...when whistleblowers' allegations are investigated ...whistleblowers are not treated well...there is no support or guidance... [And] the perpetrators get off scot free...* (DR-33), while another council disclosure coordinator reported that *...whistleblowers employees can be very vulnerable, especially when up against developers [and cited] an example where the developer blew the whistle on an employee as they were getting in the way of the developers plans...and was dobbed in as a protected disclosure...*(DR-25).

According to one disclosure recipient, where workplaces were located in small communities... *if you were identified as a whistleblower it would be untenable...* (DR-34) with a risk of and real fear of retaliation. *...Sometimes retaliation occurs against the family of the whistleblowers...who are subject to abuse like driving past their house, being a hoon.* While it can be easy to find out who the whistleblower is, it could...*reflect more on the intelligence of management who want to find out who the whistleblower is rather than fix the problem...* (DR-12).

A disclosure recipient said that in his experience... *the whistleblower often gets isolated and there is often 'push back' in the work place. ...But in only very few cases [one] ...has he seen violent mistreatment or assault of the whistleblower...* (DR-34). He noted that... *much depends on the state of mind of the whistleblower...they get very emotionally involved and that can affect their perspective on what is happening.* Another when asked about retaliation, described instances in which there had been missed opportunities for the whistleblower in the work place; missing out on promotion and performance management...*moved out of the area....but it's hard to know because you are getting it from the whistleblowers.* There can be issues about the person who blows the whistle rather than about the alleged misconduct. In these instances often the whistleblower may not be believed...*and HR is often too familiar with the whistleblowers involved when they make allegations...* (DR-33). Another disclosure coordinator wondered... *whether the whistleblower isn't part of the problem when reprisals occur....* (DR-11). Believing the whistleblower when misconduct is

reported was not always the case according to a number of interviewees. Other interviewees questioned the accounts of retaliation provided by whistleblowers, noting that on occasions *...it is very hard to prove... (DR-12).*

It was generally acknowledged by most interviewees how hard it can be for whistleblowers to come forward to report misconduct. Once the complaint has been reported, according to one disclosure recipient *...the next stage is not necessarily independent; the organisation takes action...and whistleblowers may see the results, justifying reporting the matter...but whistleblowers are tagged... (DR-12).* Often whistleblowers were perceived to experience significant impacts in terms of coming forward, reporting misconduct and then having to suffer the consequences of retaliation. One investigator with more than ten years' experience in dealing with whistleblowers said *....not one of all of the whistleblowers he has seen has remained untouched by the experience... (DR-27).* The psychological impact on whistleblowers was noted by some *...it is especially important for the hotline to calm the whistleblowers down...they can be very distressed, crying unable to talk; many are getting treatment, lots of sick leave or extended leave... Many whistleblowers are out of work, others stay until there is an opportunity to move... (DR-12).*

### How organisations respond to whistleblowing

How organisations react to whistleblowing and to the whistleblower can influence greatly the likelihood of the whistleblower doing so again, and can discourage potential whistleblowers from reporting misconduct. Several examples were given of where whistleblowers were subsequently mistreated and harassed - in one case, a whistleblower said firmly *....never again....* Sometimes, whistleblowing only comes to light after the whistleblower has left the organisations, when there is nothing to fear.

Once a report had been made, some organisations focussed more on finding out who the whistleblower was rather than on doing something about the reported misconduct. As one disclosure coordinator noted, there was a *... 'witch hunt' to find out who it was but that is in breach of the Act... (DR-33).* Another said *... initially the whistleblower can make a disclosure but then they change their mind, because they are afraid what might happen and then wish to withdraw it; they don't trust the system...ask yourself the question, would you do it? People don't like confrontation...also have 'paranoia'... (DR-13).* A council disclosure coordinator gave an example of a disclosure, that *... went to the Chief Executive Officer who wanted to find the whistleblower; the whistleblower was then excluded in the work place; people stopped talking to him...it was resolved by moving the whistleblower off site although it was a legitimate complaint that they had reported... (DR-25).* For another interviewee it was acknowledged that *...the whistleblower can be isolated in the workplace...and management don't want to hang out their dirty washing... (DR-24).*

Interviewees stressed that independent hotline personnel make considerable effort to allay the fears of whistleblowers. As one interviewee said *...if there is retribution then that is another matter for disclosure... [Because] whistleblowers are frightened of being identified...but over the ten years [he has been there] has only heard of one or two instances of detrimental action... (DR-20).* He believed that the process they have in place works when they report to the client organisations who also ensure that there will be no retribution against the whistleblowers.

Sympathy for people when they blew the whistle was expressed by some interviewees...*it is very hard [for the whistleblower] because it is natural for people to try and find out who it is...sometimes others have been wrongly accused of being the whistleblowers...(DR-21)*. One person noted that ... *it is better to have whistleblowers out in the open; so no one can mistreat them; but whistleblowers if they want to remain anonymous should be able to do so... (DR-21)*. For that to happen, however, the organisation must be mature with a culture of openness in which concerns can be raised without fear.

A number of specific examples were given of whistleblowers who were badly treated:

#### **Case study 1 – Corruption in prison**

One case arose in the prison sector where the whistleblower lived on site at a prison, and had identified other staff smuggling contraband into the prison for prisoners...*When the whistleblower reported it, the whistleblower suffered assaults for having spoken up. ... There were not good procedures in place at the site to protect the whistleblower...making work impossible for the whistleblower who suffered a great deal... (DR-27)*.

#### **Case study 2 – Hospital fraud**

At a hospital where inappropriate accounting practices had been detected ...*the whistleblower reported this to the manager who then took it to higher management. The whistleblower was called to a meeting where the whistleblower was confronted by the wrongdoers and the whistleblower was asked to repeat the allegations to their faces. The whistleblower refused to do that ...but then the next day the whistleblower's job was changed...now being told to drive a tractor with a trailer and shovel and fill in rabbit holes in the park ...the whistleblower resigned and never came back... (DR-16)*.

### **Management responses to whistleblowing**

Whether whistleblowers are victimised or not, according to one frontline hotline interviewee, comes back to the management of the organisation...*in some place it stirs up an ants nest...and they will try and find out who reported the misconduct...although in the experience of this person he found... that only a few [whistleblowers] say they have been found out...they manage to stay anonymous and hence did not suffer retaliation... (DR-12)*.

It is the workplace culture and organisation that was highlighted by many who dealt with whistleblowers, both in how the reporting of misconduct was handled and how the whistleblower was treated subsequently, and as one person said... *so much depends on the organisation and on the strength of the manager... (DR-19)*. Another made the point that dealing with the whistleblower complaint could often be one of communication styles, the way the issues were handled and how the investigation was dealt with by management. In particular, if the whistleblower complaint is not handled well, it can escalate in the organisation and lead to further problems for the organisation. A culture of defensiveness has to be overcome in organisations for whistleblowers to feel comfortable about reporting wrongdoing and knowing that they will not be mistreated for doing so.

A council disclosure coordinator noted that staff know what is right and what is not right and must have a zero tolerance approach to wrongdoing, but if the organisation tolerates bad behaviour that signals to staff to be wary of reporting it. He gave the example of a staff member being yelled at by a councillor...*highly questionable behaviour...he was not counselled and this will perpetuate his*



*behaviour...the staff were demoralised...but very reluctant to make complaints,... don't want to be in the firing line...they have seen people moved sideways or exit...it is a challenge... (DR-36).* On a more positive note, another example from a council involved a planning dispute where a bribe may have been offered. The disclosure coordinator went to see the Chief Executive Officer with the whistleblower complaint, it was investigated *...found the planning process needs to be improved.....there was no corruption but there was mismanagement. The dispute between the parties went to court...was more powerful that way... (DR-30).*

For persons interviewed in the private sector (and in several councils) it was found that the central contact point for whistleblowing was often senior management; it could be legal counsel, the manager for risk or security or even the Chief Executive Officer. One interviewee described how she met weekly with the Chief Executive Officer who was very supportive...*and would also raise issues with the Chief Financial officer in respect of whistleblower issues... (DR-30).*

For managing whistleblowers well in organisations it was seen as a strong point, with policies and practical procedures have been put in place in recent years for handling whistleblowers, including assisting with their welfare and to ensure there is reporting back to the whistleblower so that they can have closure in the matter.

One investigator noted that...*In terms of the whistleblower who is victimised...there needs to be in the organisation a welfare support process...although it is getting better, it is in the main poorly managed in the public sector because they don't have the support services; although there is now a greater awareness of the welfare needs of whistleblowers....but it is not the Disclosure Coordinators' role but they should have a system in place to handle that...For example, at Victoria Police there is a dedicated service to support people, not necessarily only whistleblowers but they can use that service...(DR-27).*

Furthermore, in respect of public sector disclosure coordinators, a number of concerns were identified by those interviewed about that role. Often it was reported that...*the Disclosure Coordinators don't know what to do...how to handle the whistleblowers...it is a recipe for disaster... they lack focus....don't provide the support the whistleblowers need... (DR-19).* Thus sometimes according to one interviewee... *if the whistleblower isn't anonymous and there is lack of experience by the disclosure coordinators and [internal] investigators, you get whistleblower complaints that 'no one listens'....you find out that no one has spoken to the whistleblower... (DR-27).*

Sometimes the Disclosure Coordinators also have responsibility for Human Resources; the view was expressed by an investigator that it is...*not good to have those two roles in the one person.....Thus if a whistleblower reports misconduct, it is important that it not be dealt with under the Human Resources regime...not appropriate. The [integrity body] has been critical of [Disclosure Coordinators] because the whistleblowers complaint has not been recognised as misconduct and therefore the person was not protected....the whistleblower was identified when they made the disclosure... (DR-19).* Another investigator commented that *...Often the Disclosure Coordinators don't know what to do...how to handle the whistleblowers...it is a recipe for disaster...* It was also noted that some Disclosure Coordinators are not trained to conduct internal investigations, so when they do conduct them, the evidence for the allegations was often found to be inconclusive; although it was noted that IBAC now run courses and provide eLearning.

In terms of conducting investigations of the allegations into whistleblower reports of misconduct, it was found that while they are often done internally across organisations, in other instances, independent investigators may be brought in when a decision was taken to investigate, but that depends on what the misconduct was. In the experience of an investigator...*some whistleblowers may want to control the investigation, for example, who investigators should speak to... that can be very difficult... you have to tell them that they have done their job in reporting [the misconduct], now it's our job...must let us get on with that. It is usually settled once that is cleared up.... (DR-34).* An example was cited where the whistleblower who reported on the misconduct was subject to... *detrimental action ...very poor handling of the whistleblower ...there was a chain of evidence and it was compromised ...lot of emotional distress for the whistleblower.* If the investigation was not appropriately managed, then the whistleblower could come back and complain about detrimental action.

While it was seen as important to provide support for whistleblowers and for them to talk confidentially to someone, this could make it difficult for the investigators, where confidentiality requirements can prevent the whistleblower from speaking to supportive others. The relationship with the investigator also needs to be managed, as well as the expectations of the whistleblower.... *whistleblowers get very emotional, ...very understandable...they stand to lose their career...they have to jump over many barriers when they want to report serious misconduct...but much of what the whistleblower wants to report is not serious...it does not meet the criteria and involves other grievances, maladministration... (DR-18).*

## Outcomes

In general while investigations were being conducted, it was emphasised by interviewees that it is important to keep the whistleblower informed and that they are told of what was happening to the allegations of misconduct and what the outcomes were.

Another aspect was that many whistleblower investigation reports conducted by the integrity bodies have not been made public, (although in their annual reports, when public interest misconduct had been exposed through investigations outcomes maybe briefly reported on e.g. Victorian Ombudsman 2015).

Some investigators were able to comment on the outcomes of whistleblowers investigations, where organisations may take appropriate action. As one investigator said...*sometimes the wrongdoers' employee's job is terminated, and very occasionally the police are called... whistleblowers are satisfied... (DR-20).* One person had *...seen disciplinary actions taken against perpetrators of the misconduct.... [But] the outcomes are not publicised...so the public does not hear about them...but organisations do not want to leave themselves open either... (DR-14).* Another said that they.... *don't want their dirty washing hung out... (DR-13).*

In terms of outcomes of a whistleblower complaint handled by the independent hotline line, the case was kept open until they hear from the client organisation that the matter had been resolved...*that can mean that the client organisation has done something to fix the problem. Only a low proportion are closed....majority [63 percent] are still open but the hotline reports back to whistleblowers to tell them what has happened... (DR-12).* Also regarding the outcomes it was said that it depends, and to whom it can be positive... *to the whistleblowers, to the investigator or to the*



organisation....important that the misconduct does not happen again, actions are taken, more training and not necessarily criminal charges... (DR-14). However, another person said.....you don't read about good outcomes in the public arena...the information also to the whistleblower is very limited; often the whistleblower wants action against the people involved rather than changes for the future....for the integrity body if the allegations are substantiated, that is good. And the whistleblower knows that; also it is good if the whistleblower is not subject to detrimental action, or is given compensation.... (DR-19). Above all, it was emphasised by many interviewees that for whistleblowers the last thing they want is detrimental action but it was perceived that was harder to prevent in smaller organisations. Many interviewees stressed the importance of action being taken against wrongdoers as a result of reporting, without action being taken against the whistleblower..

Good outcomes mentioned included remedial action, fixing the issues, but again these were not publicised that the organisation did well, and that the organisation said that they had supported the whistleblower; that they had set an example and had been thanked for what they did. For outcomes of investigations in serious cases, that could often lead to the perpetrators being disciplined. In many cases they resigned and a number of examples were cited.

According to one person, whistleblowers were ...more likely to get an outcome if the complaint is about public harm and about public money...they are more likely to get a fair hearing....with work place grievances it is very hard to tell... (DR-16). However, if the whistleblower was not happy with the outcome it ...that could be just sour grapes. It also was noted that, in the case of the independent hotline, its ability to investigate is limited...and there can be insufficient or uncompleted investigations by the client organisation [which] ...can lead to increasing frustration for the whistleblower.... (DR-20).

Specific examples were given of whistleblower investigation outcomes in public sector organisations and are included below.

#### **Case study 3 – Sexual misconduct in education**

A whistleblower working in the education sector reported serious misconduct in relation to other employees involving sexual assault and improper relationships. When she formally reported the matter to her manager...the manager told her to withdraw the complaint...they were unhappy [with her] but she refused to take the complaint away; she was determined to sort it out herself. The whistleblower was suspended from work while the false allegations against her were investigated for six months...it was some months after that, that the formal external investigation found that her original allegations were correct...after twelve months...it was found that she had done nothing wrong, even though she had suffered detrimental action. She was subsequently paid substantial compensation but it did not go through the courts...the agency had done the wrong thing and it had showed up serious governance problems. The whistleblower got her job back and got back pay. This example provided the whistleblower with a good outcome but.... because it was a confidential investigation, the outcome was not publicised, so you don't know how the whistleblower fared or whether the people who retaliated against her were disciplined or prosecuted... (DR-27).

#### **Case study 4 – Hospital specialist**

The whistleblower was a medical intern and had a complaint about a supervisory specialist. The hospital looked into the complaint...but the whistleblower had spoken directly to the specialist...subsequently the whistleblower was marked down in assignments and assessments. Then the whistleblower had no job for the following year [the jobs are very competitive], so the whistleblower was victimised...not obviously so but they may have been mistreated. The whistleblower was a difficult person...had a role in clinical training but would not show up for

*interview...was not an easy employee. The complaint was taken very seriously; and [I] believe handled the matter well...there was a good outcome and no one was sacked... (DR-16).*

#### **Case study 5 – University management**

*A university employee in the university was bullied by the supervisor and made a whistleblowing complaint. The university appointed an external investigator who found that both the whistleblower and the supervisor were flawed people; flaws on both sides...but the whistleblower was not a good employee and would not do what was required; was the manager micro managing or not? Was the whistleblower bullied or not? The outcome was that there was a workplace problem. A year later the whistleblower and the manager of the area were moved... (DR-16).*

#### **Case study 6 – Internal investigation**

*In relation to an internal investigation in [local government], it involved a specific unit...there was some merit to the complaint which had been made in writing; the unit had been subject to a review.[The interviewee] found it hard to do the investigation....but the staff were assured about the process; although they were not reassured. As far as she was aware, there had been no retaliation...she believes because it had been dealt with at the highest levels in the organisation. Some of the people involved have been dealt with; and because the Chief Executive Officer knows and also the complaint was against a director and because of the high level involved, he knew he could not retaliate... (DR-30).*

#### **Case study 7 – Retaining employment after whistleblowing**

*In another case where the whistleblower's allegations were substantiated and the agency involved had handled the matter well, the perpetrator of the misconduct was dismissed. But the whistleblower was told that they could not return to that section of the organisation...otherwise there would be mass resignations from other staff if the whistleblower was re-instated. So even though the whistleblower was not in the wrong, the organisation lacked the courage...so the whistleblower called the investigator and explained; this led to the investigator saying to the organisation that he would be willing to put in his report that the whistleblower could not come back to their job...[but] the organisation relented and said the whistleblower was coming back and no one resigned! (DR-27).*

### **Private sector approaches to dealing with whistleblowers**

The experiences with whistleblowers were also obtained from four major private sector organisations who were clients of the independent hotline. Less is known about the way whistleblowers are handled in the private sector, and their perspectives may provide valuable insights for how whistleblowers can be handled better, including in the public sector. Legislative provisions protecting whistleblowers in the private sector were introduced into the Australian Corporations Act (Cth) in 2004 and in the 2007 revised Australian Stock Exchange Principles, which recommended that listed corporations include in their code of conduct reference to the way whistleblowers disclosures are handled. Some private companies including the four detailed in Appendix D, below and some public-sector organisations, use independent hotlines such as STOPline, and others operated by consultancy practices to assist in dealing with the whistleblowers and provide access to their services for their employees.

The four private sector case studies in Appendix D provide clear descriptions of how whistleblowing is handled in the absence of specific legislation for the protection of whistleblowers and may provide useful practice models for ensuring anonymity for whistleblowers and minimising retaliation against

them. These case studies show the key role that the independent hotlines play in handling private sector whistleblowers' complaints (it should be noted that the hotlines have client organisations both from the public (about 10 percent) and private sector (90 percent)). Involvement by senior management in the whistleblowing process was also prominent in these examples.

### A whistleblower support group's perspective

A number of the whistleblowers interviewed had set up groups to assist other whistleblowers. Their experience was particularly valuable in that they had come through the experience of whistleblowing and had learned much over a number of years which they then were willing to share with others. Two members of Whistleblowers Australia (WBA) were contacted about the research and the role and work of WBA. The national volunteer organisation was established in 1991 and provides advocacy, advice and support for whistleblowers in addition to providing links to other online contacts such as the *Whistleblower's Handbook* (Martin 2013); the Women's whistleblowers website ([www.womenwhistleblowers.com.au](http://www.womenwhistleblowers.com.au)). Another website has been established specifically for teachers who are, or who want to be whistleblowers ([www.bullies.com.au](http://www.bullies.com.au)). A newsletter is published regularly and meetings are held in New South Wales. They receive more than 100 calls a year from whistleblowers with about half from the public sector and half from the private sector. Some calls are just for information. The volunteer interviewed has been a whistleblower previously and found that if people can speak to someone who had been in that situation before that would be helpful. It was noted that many whistleblowers were alone, had no legal representation and numerous examples were provided of where the whistleblowers had been badly treated after reporting wrongdoing.

According to the frontline interviewee similar proportions of male and female whistleblowers contact WBA, with issues ranging from small to the significant. Previously there were no avenues for whistleblowers, now there are hotlines for big organisations. The interviewee helps whistleblowers... *navigate through the system and advocate; sometimes will accompany a whistleblower to meet with the organisation on the whistleblowers behalf... (DR-21)*. Some of the points emphasised by the WBA's representative is that whistleblowers... *need to band together, such as the Australian Medical Association when public health is at risk. Whistleblowers won't be gagged...have to try and prevent their victimisation...but it needs leadership from the top. The best way forward is to solve the problem but often investigations are not done.....we should support whistleblowers; they should be given an apology... (DR-21)*.

The interviewee described the experience as a whistleblower some years ago by contacting the New South Wales Independent Commission against Corruption. The interviewee had received a response indicating that...*[it] will not be investigated but we will make inquiries....* The barrister said to be patient and the interviewee acknowledged that there have been many good changes for whistleblowers in recent years... *In the early days it was a struggle; it was a big thing being a whistleblower....now there is greater understanding and slowly people are starting to think well of whistleblowers. The laws too are a good thing...with their recognised processes and education... (DR-21)*, although the interviewee expressed reservations.

It was further noted that if there was sufficient substance to the allegations for the Ombudsman, then the whistleblower would be protected, and that should be practical and upfront. The Ombudsman would notify the organisation about the allegations and then would be watching the conduct of the organisation, and reminding the organisation regarding the protection of the whistleblower although that it was suspected has now changed, as there is a greater emphasis on confidentiality and privacy.

The interviewee believed that confidentiality often *doesn't work. Too often the confidentiality has implications...you are put on the pain of death...there is no support... (DR-21)*. In giving broad views about whistleblowers it was noted that... *there can be vexatious allegations but that is not a realistic concern. The whistleblower wants to do the right thing.... the whistleblower does want the allegations to be investigated. The public understands and thanks the whistleblower. The whistleblower has the information they need, and if they are right and it is substantiated, whether it can be established or not....sometimes there is no way of knowing, but the whistleblower wants to see the matter come to a conclusion... (DR-21)*

Asked if whistleblowers spoken to would they do it again next time? The reply was *...Yes mostly. Also doing it in a group is better than doing it alone... was the advice, and whistleblowers need to record the names and evidence, dates and times and when they speak out. ...The big fundamental issues for whistleblowers....it means publicly taking a stand, finally getting the courage to say and do something, but whistleblowing is sanctioned...that is wrong...one should be penalised for doing the wrong thing, but it is the whistleblowers who are.* Comments on the culture in Australia were made.... *It has a language problem... 'dobber' ...not good, universally done, close ranks...why does the mob isolate and punish? If the whistleblower is supported that helps...often it can be very upsetting, weeping...She states that... it is also important for the whistleblower to see that people responsible for the misconduct are dealt with and disciplined, moved for causing grief....[but] often it is the whistleblower who is contained, controlled, punished and ill managed....* The need to encourage whistleblowers to come forward was stressed by the interviewee as disclosures about wrong doing are *... a red flag for management...it takes them out of their comfort zones...and generally they appreciate...so that they can get the work back on track... (DR-21).*

## The whistleblowers and their experiences

The whistleblowers interviewed for this study provided a diverse range of perspectives on the process of reporting and the impact it had on them. In order to show the richness of the information provided, a decision was made not to categorise the information too formally given the small sample size, but rather to provide illustrations of the words used by those interviewed in response to the questions asked. While a number of headings are used to group whistleblowers' experiences, every effort has been taken to include exact quotations to illustrate the nature of the experiences recounted.

Initial analysis of the interview material indicated that the two groups of whistleblowers – from the independent hotline STOpline and from the support line WBA – differed in several ways and, accordingly, their responses are presented separately.

The experiences of the 24 whistleblowers from WBA were generally not recent. Some had blown the whistle more than 10 years ago (n=12), while the others had reported the misconduct less than 10

years ago. Developing a timeline of what had transpired was often difficult as the misconduct may have started in the 1990s, but the reporting, the consequences, and later developments continued well into the 2000s. Some whistleblowers were able to provide clear dates of when they first raised the misconduct informally, and then formally, while others were only able to provide a general indication of when reporting occurred. On occasions, a series of reports were made over time with the same person or with other persons/bodies.

The distinction between 'recent' and 'historical' whistleblowing was, however, important as the whistleblower landscape has changed considerably in Australia over the last twenty years, with whistleblower protection legislation having been introduced, specific whistleblower policies developed and implemented in the public sector, and a growing public awareness and acceptance of the role that whistleblowers play in ensuring that misconduct is reported and, more generally, how whistleblowers contribute to greater accountability and good governance in organisations. While the sample size was too small to determine whether the whistleblowers' experiences differed if the occurred more recently or a long time ago, it remains poignant how the impact of what had happened to whistleblowers lingered on. The recollections of events experienced by whistleblowers more than 10 years ago remained vivid and seemingly unchanged, even though there have been recent developments for the protection of whistleblowers.

In order to illustrate the variety of circumstances in which whistleblowers found themselves, and the responses to reporting what they experienced, four examples are provided – two involving STOPline interviewees; and two involving WBA interviewees.

#### **Case Study 8 – STOPline**

The whistleblower was a woman in her 50s who liked her job as a contractor testing soil samples on site in the outback for a mining company. The workplace according to her had a bullying culture, even though it had policies in place for whistleblowers *...but people kept their mouths shut...have seen men cry*. The misconduct involved falsification of blood alcohol level testing by the manager at the site. It was the practice for everyone to be tested for drug and alcohol but the manager had a drinking problem *...and was avoiding the breath analyser...other staff saw too that there was something wrong with the readings; they were too low...but it was swept under the carpet*. The whistleblower went to her manager and the manager with the drinking problem was also informed. The matter was investigated but the whistleblower was not anonymous. The whistleblower's manager started intimidating and bullying her and others in management joined in *...there were some nasty incidents...* She was told *... she was no longer needed*. The whistleblower spoke to the Work Safe representative who told the whistleblower she did not *...have a leg to stand on*. Subsequently the whistleblower was given menial jobs, and said that no one supported her. She received nasty emails, and was not offered re-deployment. She made a report to STOPline but was disappointed with the response provided and did not call again. She also contacted the union and the ombudsman but to no avail. Her life was made intolerable and she was told she was not welcome at the site and then was transferred to administrative tasks in a warehouse. When interviewed, she was unemployed and said she did not see why she had to lose her job. However, she said she was glad she did it as she had had enough, and felt very strongly that *...someone had to do something....* (STL-13)

#### **Case Study 9 – STOPline**

The whistleblower was a man in his 40s who was a skilled tradesman employed on contract in a national large transport and heavy equipment company. He described how in 2014 *... suddenly he and his four co-workers were sent out without the right equipment, without the right 'ticket' – that*



*you need to do the work. If there was an accident and you do not have the correct licence ...we would be in trouble.....[I] made a number of complaints to the branch manager also responsible for training, about the lack of safety equipment and tools that we needed...they were all aware of the situation...but they all tried to keep quiet and point the finger at those on the bottom of the line....He had checked a few times about an internal investigation into the matter but had heard nothing back. Previously there had been an accident but according to the whistleblower, that ...had been swept under the carpet. Then there was also an incident about the safety of the tools handling massive trucks, very risky... a more senior manager wanted me and the other workers to sign a paper to say it was our fault, that we were not competent... The whistleblower and the others refused to sign, but he added that the other co-workers ... had no choice but to keep their mouths shut...they have children, families...they had to put up with it, if they don't it makes their lives miserable...with bullying and harassment...was not worth it for them. ...The manager walked through the warehouse and started picking on me...to get a rise out of me; he became verbally aggressive, he chucked a tantrum...swore at me and came up very close to me...[I] said not to speak to him like that...(STL-06)*

The whistleblower was dismissed on the spot with his three co-workers, but the next day, he wrote a grievance statement to tell his side of the story and had it documented as he had five witnesses as to what had happened. He said that *...you can't do this to people...there is the workplace policy and the handbook*. He then called STOPline (the company was a client organisation and made the hotline number available to employees). The whistleblower took the case to court for unfair dismissal, and with a lawyer's help, it was settled out of court by compensation payment...*under the circumstances ...it was better than nothing*. After that he was unemployed, he was very upset.....*very stressed...had been unjustly treated...you can't do this to people...*He found out later that others in the company had subsequently resigned...*so nothing had changed there*. And yes, when asked he would do it again...*make the report...I could not live with myself if I didn't report it...but perhaps it would have been better not to have done so*. He believed an improvement to prevent victimisation of whistleblowers would be to conduct an investigation externally and as soon as possible after the incident (STL-06).

### **Case Study 10 – WBA**

The whistleblower was a woman, aged in her 60s who had been working as a nursing educator at a tertiary institution in the early 2000's. Students were in their final year when the incident of wrongdoing occurred and which brought matters to a head.

The issue concerned whether a large cohort of students had met acceptable standards in their course. If they failed to meet the standard, then they should be marked as having failed *...most would pass the mastery learning but there were also assignments involving case studies. The university policy was really about not letting too many students fail. The whistleblower had set the exam and had external markers for the assignments. She found that around 50 percent were failing*. So the whistleblower went to the Head of School to say failing that proportion was unacceptable.

The whistleblower noted that students would feel 'unsafe' and were not suitable to graduate...*they could re-sit the exam for the assignments and she re-marked them and pushed some just over the pass mark but many students were still failing...there was a big kerfuffle...Then the assessment committee met...there was not an opportunity to talk...this led to a letter of complaint from the Head of School about the whistleblower to the Dean, then they took the assignments from students and re-marked them and passed almost all of them...I was dismayed...it was unprofessional...nothing happened after the letter of complaint*. Some students contacted the whistleblower to say they did not want to graduate without having passed the assignments...*the students failing were frightened...reflected badly on them...*

There was also a related issue of performance management. The whistleblower was not on

probation but her performance assessment indicated that she had not met the targets...*I had been busy responding to all the calls about the course, so there was little time for research or publications. I went to the union about this; they were very supportive...also went to HR who let me see the file...it clearly said I was not on probation...*The Head of School was putting the whistleblower down, *and no witnesses were used...she was a pathological bully... very hard to stop.* The whistleblower had gone to the state anti-corruption commission about her concerns which wrote back and recommended going to the Ombudsman *...they only take it on if you have a big problem and also to the union, but they didn't understand the culture...they were unhelpful, they didn't get it....*

The whistleblower retired in 2008 but stayed on as a casual employee at the university. She was still a subject coordinator but she found memories were long. Whistleblowers, according to the interviewee *...stick their neck out...they try and do the right thing...older staff try and do the right thing...other staff watch but no one will do anything...so led a rebellion; the whole school got a petition going, taken to the Vice Chancellor and the Head of School...that changed everything.....was a marked woman...but I had done the right thing...there were repercussions from the University and was replaced as course coordinator ...*(WBA-28).

### Case Study 11 – WBA

The whistleblower was a tertiary qualified and experienced public servant. . At the time she blew the whistle she was working on a program funded by the Federal government and matched with funding coming from a state government.. She noted that in the reports to funding agencies, important issues were left out about the implementation and effectiveness of the program. The reports according to the whistleblower were misrepresenting what was happening. The whistleblower went to the Director General to report her concerns and also to the state's integrity commission and to the Premier.

After blowing the whistle, the whistleblower asked to be moved from the department, because as a whistleblower she needed to be protected. There were...*serious matters about the security, her options were 'to pull her head in' or 'put her head on the block'... had no axe to grind....* At that time there was no whistleblower protective disclosure legislation, although there was a public sector Code of Conduct. The disclosure by the whistleblower was that the program was using the money for job creation by the state government over many years.

Some \$400m had been spent so far with...*500 jobs created within the state ...the program had been going for 14 years but she said....it depends on what you want to achieve...getting dollars for the state from the Federal government or fixing the problem.* The whistleblower went back to the integrity commission but as the legislation stipulated, the complaint needs to be referred back to the agency *...this is your department's problem they said.* According to the whistleblower her boss was misrepresenting to his boss and *...the DG was on a contract and ...no way he could stand up to the Minister... So the public interest disclosure was all irrelevant...*

The reprisals started two and half year after the initial complaint. These involved...*the standard ways.... [she] was inconvenient to the Department and they had no interest in investigating her complaint. Efforts at mediation did not work, the Premier would not act....I was given little work, others were told not to work with her...'muddies the water' they made sure [I] had no job; was not retrenched but [I] 'jumped before being pushed'... after that [I] obtained a contract with private company.* During this time she received no formal support. The union could do very little. She went to the Ombudsman several times but they could not do anything. She had also spoken to the Shadow Minister, who asked questions in Parliament but the Minister refused to answer. She noted the 'sword and the shield' policy...*The whistleblower can't be protected; glib policy...so [instead] I went with the action group for whistleblowers...and also set up a group to advocate for whistleblowers in her state. She believes it is a politicised system; and the function is to keep*

whistleblowers heads down.... *But that is dysfunctional...* The whistleblower believed that what happened to her... *is a classic case of the Minister ignoring the information; having incompetent management and a culture of covering up...the inevitable consequences are not good for the public interest.*

She said that it had been a very stressful time for her. She went to the GP and was on sick leave until she left the department. The whistleblower spoke of the trade-offs you have to make between activism and being obsessed. She believes 'victimisation' is not the best word to describe what happens to whistleblowers - they are not victims and she did not see herself as a victim. And yes the whistleblower said she would do it again.....*even though you know you are going to get shot.* She reflected further that whistleblowers have a bad reputation, so perhaps it is better to keep quiet... *keep it private...but whistleblowers are still standing up. I am a fairly cautious person; and did not realise how bad it could be.* Although the media covered aspects of her experiences, the legislation prevents public sector whistleblowers from going to the media (WBA-50).

### Nature of the misconduct observed by whistleblowers

In order to understand that context in which reprisals against whistleblowers take place, it is important to know the type of misconduct that resulted in whistleblowing occurring. The misconduct reported by whistleblowers fell into two broad categories: that relating to fraud, dishonesty and deception, and that relating to workplace grievances.

#### **Dishonesty**

In the case of STOPline interviewees, four involved dishonesty and eight involved workplace grievances. Examples involving dishonesty included cheating by a colleague in relation to annual leave entitlements, sick leave and overtime... *involving hundreds of dollars...that was not really stealing but was dishonest... Payroll forms were approved by the manager who may have been colluding...something was going on for a long time... (STL-12).* Other examples of fraud related to the sporting sector with dishonesty and deception involving how sporting events were run. Another example concerned the falsification of blood and alcohol testing at a work site, while in another example involved a whistleblower at a tertiary institution who had uncovered child exploitation material on a computer shared with a colleague.

Examples of dishonesty and malpractice reported by WBA interviewees are contained in the following case studies. The types of misconduct are clearly diverse and extend to all types of public and private sector bodies. One unusual case involved a whistleblower who waged a 'battle' against the use of prepared commercial pet food for cats and dogs which could lead to unnecessary diseases and unwanted effects being passed on to animals. He had identified many vested interests in continuing and promoting the use of prepared food in veterinary schools, hence incurring the wrath of his profession (WBA-32).

#### **Case study 12 – Communications sector**

Misconduct relating to fraud and deception had been uncovered by two whistleblowers who had been employed by a large private sector communications company, where their role was to assess potential revenue-raising proposals for the company's new products. The whistleblowers were highly qualified business analysts who alleged that there was deceptive reporting and exaggeration concerning the degree of return on investment. This was undertaken in order to support projects



with no or little benefit to the company but which would impact on share values. After reporting their concerns internally to line managers, they were subsequently bullied and harassed. However these whistleblowers took their employment issue to court and obtained significant compensation from the company.

### **Case study 13 – Education sector**

An academic in a tertiary education institution had become a whistleblower when he had observed misconduct involving the use of public money for private purposes.

Another whistleblower at a tertiary institution was responsible for conducting an audit into off-shore teaching providers in Asian countries. She uncovered various dishonest practices that had been going on for a long time....*basically a lot of corruption...students could not work with those qualifications...there were loopholes, higher up in the organisation applicants were accepted for admission but often there were no details about their English ability or whether they had passed English tests... (STL-13).*

A whistleblower based in a state run school had reported dishonest and deceptive conduct by the Principal involving misappropriation of funds from the school.

### **Case study 14 – Health and aged care sectors**

One whistleblower made a public interest disclosure about maladministration at the hospital at which he was employed.

Another whistleblower reported about poor quality of care in a health service which was short-staffed and where a child almost died.

In another case, a whistleblower raised concerns about poor patient care in an emergency department of a hospital.

The mistreatment of elderly residents in nursing homes led one interviewee to become a whistleblower ...*I could have turned a blind eye...but would not have been able to sleep at night, so she spoke up, but as this whistleblower found, the wrongdoer was protected and management turned a blind eye to what she was doing. She further said that other staff who had observed the misconduct...were decent...but they were afraid to speak up, they kept quiet...some staff were cruel and they flourished... (WBA-41).*

### **Workplace grievances**

In relation to workplace grievances, many STOPline whistleblowers reported conduct which was contrary to workplace policies and procedures. One involved unsafe work practices in relation to heavy earthmoving equipment. Another whistleblower's complaint related to the inappropriate appointment of a senior clinician in a health service, bypassing standard procedures and demonstrating favouritism without going through due processes.

A further example illustrated the way in which events had unfolded. Unprofessional behaviour by the whistleblower's manager in relation to patients in a hospital was reported by the whistleblower who was nurse manager of a ward. Junior staff came to her complaining about the unprofessional behaviour towards a patient by the senior nurse manager, asking her, the whistleblower, to do something about it. In this instance, the whistleblower did not go to the union but wanted it dealt

with internally and so she went and spoke to the HR manager who said they would handle it. Afterwards the whistleblower said she was *...picked on by the senior nurse...was left out to dry and humiliated...and when she went to complain to the Director of Nursing, there was a backlash against the whistleblower as the senior nurse had allies in the hospital; which also had a culture rife with bullying, harassment and poor leadership.....I could not stay in the job, I was moved sideways ...I loved that job and was working well ...but she has since left. It seemed so simple for this whistleblower...when you see something bad, you go and report it...do something about it... (STL-15).*

An older whistleblower, since retired, complained about poor management practices in a community health setting which had a negative impact on both staff and patients/clients, as well as co-workers. There were frequent instances of bullying and harassment by the manager and staff did not feel supported in their roles. There was a lack of trust and more a focus on staff timesheet and movements, and a general cultivation of fear through the manager's punitive approach, leading to avoidance of raising matters directly with the manager at team meetings. Again, there was dismay that workplace policies regarding bullying/harassment were not being followed in practice. The impact of this was resignations from the unit by staff at a cost to the organisation and a lack of continuity of care and poor outcomes for clients/patients.

While the above examples would not meet the legislative criteria of serious misconduct, they show how the organisational culture set by management can provide an environment in which more serious misconduct can occur and not be reported. It also creates dissonance between the laudable employment policies in place for organisations and what happens in practice and over long periods of time, as the following case studies further illustrate.

#### **Case study 15 – Mining sector bullying**

This case involved a woman who had been employed in the mining industry. She had worked in a professional capacity for about six months when incidents occurred involving being bullying and sexually harassed which she said was widespread in the organisation. She had been part of a team since 2013...*some were getting preferential treatment...nothing happened...*, so with more bullying in January 2014 she went to her direct supervisor, then to the next supervisor, and then in July 2014 she put in an official complaint. She said that...*HR was sent to talk to me.....but it never happened; then the bully complained about the whistleblower....it was investigated but there was no evidence...HR had been doing the investigation...there were problems in the whole team...., then another complaint but no evidence...then there was a meeting. I was verbally told and given a warning to improve my behaviour. The allegation of bullying again...this went on for five weeks...not taking insubordinate behaviour...I was told to shut my mouth. Months later another meeting was organised between the whistleblower and the person gave her a...right of reply and discussed the allegations...they made smart arse comments to the supervisor, copying the next manager into emails. The official complaint was on a form...but HR had not investigated the complaint properly, had the dates wrong on the form...I was happy to have management investigate it...but HR was not the right avenue, so asked for the next level...I was not happy to stay. The new HR manager was caught out...the company had to understand the legal ramification of what they are doing...The whistleblower finally went to lawyers...there had been no records of the meeting;...it took ages - was all done properly but there was no agreement. She went to the industry Fair Work Commission for unfair dismissal and in any event, they were all retrenched in November 2014 and that was the end of the contract (STL-03).*

#### **Case study 16 – University bullying**

The whistleblower was a woman in her 30s who had been tutoring in a large university in the behavioural and social sciences. She contacted the STOpline (her employer was a client organisation

and made the hotline available to staff) for advice and to report the incident, which initially involved an administrator who had a very violent altercation with her. There was also subsequent abuse and bullying by management against her. She went to the legal officer and also to a counsellor as well as Health and Safety and the Pro-Vice Chancellor...*who all have an obligation to assist*. She later mentioned that the person against whom she made the complaint had travelled to Asia and taken photos of children and wondered whether she should have gone to the police as the university needed to limit its exposure to risk regarding such matters. Afterwards her contract was not renewed.

The university had bullying policies in place but they were not being enforced. For this whistleblower it was not about her work performance but about getting rid of her...*it was swept under the mat... [but] 'flies in the face of the law'*. At the university it was the conduct of the whistleblower that was focussed on...*there was a small group of people who were not happy [with her], there was a high level of anxiety...and people lashed out...* Her supervisor handled the matter but then there was another incident....regarding inappropriate child care by another colleague. She formalised her complaint in writing but then the person accused her of misconduct and that the whistleblower had been 'horrible' to her. She came back and...*the next day there were emails to her supervisor...head of school had invited her to come and discuss her contract...but she had an independent witness....she had been bullied and harassed*. The whistleblower wrote back but was ignored as there was a focus on her work performance and she was found guilty of misconduct and then dismissed. It was also alleged that she marked people unfairly although there had been no evidence presented to support this...*there was no natural justice; no procedural fairness. The independent witness had no complaints but the whistleblower was found 'guilty' ...it was dealt with by the HR manager and who conducted the investigation....the whistleblower then took the head of school to the Fair Work Commission. Although I had no legal advice...there was the code of misconduct*. She lodged a complaint of bullying against the head of the faculty. As a result of her experiences, the whistleblower said she would never work in higher education again (STL-11).

In general it was found that the public sector whistleblowers interviewed, more frequently raised workplace grievance concerns involving bullying and harassment and which violated policies in place than in the private sector. Inappropriate and ineffectual management was also alleged, which could lead to poor services and even place patients or clients in the health and welfare sectors at risk. Similarly, students in the educational institutions were placed at a disadvantage because of the standard of teaching provided.

### Reporting processes used

Whistleblowers working in organisations that were clients of STOPline contacted the independent hotline, sometimes after informally reporting their concerns internally. Whistleblowers indicated that often they had deliberated for a long time about what to do. As one said ...*I found this such a very hard decision to make...I realised I did not feel safe enough to take this further until shortly before leaving [her place of employment for unrelated reasons] due to fear of reprisals...* (STL-14). The decision to make a report was not always clear-cut and many whistleblowers hesitated and tried to consider the implications of what might happen and the extent to which they might be protected before speaking up.

It was noted in many instances that the misconduct observed by the whistleblowers may have been taking place for some time, even years before a whistleblower came forward and reported it.

Sometimes it was only after several incidents had occurred or a 'last straw' trigger was involved that pushed the whistleblower to report the matter.

When finally the decision was made to report misconduct, whistleblowers usually went to their immediate manager to make a report, but this often led to responses which whistleblowers saw as retaliation.

Hotline whistleblowers in the private sector said they spoke to colleagues first but often they responded that they did not want to become involved...*and reported that they were concerned about repercussions on their families if they did anything.* Frequently the co-workers were said to be sympathetic but kept their distance as some had mortgages and families and did not want to risk loss of employment or other negative consequences. As a result, it was often those who had less to lose and who were less vulnerable who made reports than others who were unable to run the risk of reprisals of other negative consequences.

The use of Work Cover and workers' compensation was mentioned by a number of whistleblowers as a way in which compensation could be obtained for unfair dismissal arising from untenable work situations or loss of employment but initially arising out of reporting misconduct.

There were instances where the whistleblowers sought advice from their unions as to what to do. However, numerous whistleblowers said the unions were not helpful, and in some cases were perceived to be in league with management. In one case, a whistleblower in a clinical service was told by the union...*it is usual for staff that raise such an issue to experience attacks on their professional credibility... (STL-13).*

The role of the police was rarely mentioned. In one case police were criticised for not pursuing fraud allegations...*it was going to cost too much to defend so they dropped the case...before speaking to me even though I had witnesses and evidence ... (STL-16).*

Lack of knowledge and understanding about what the proper processes were for whistleblowers to use emerged regularly in interviews with some referring to a frustrating, time-wasting 'merry-go-round' with repeated referrals to different agencies or bodies. One whistleblower said *she did not know where to go...saw the union delegate...they advised to complain to the HR manager...subsequently an investigation was conducted but that was not independent... (STL-12)* and the whistleblower said there were no answers for two years. When asked, the whistleblower was told the report had been completed but no documents were provided to her and no action had been taken to address the matter.

Many whistleblowers became frustrated when they received no answers to their queries ...*I am sick and tired of complaining to Ministers and the Ombudsman without answers...*The option then for some whistleblowers was to turn to the media.

The genuine belief of whistleblowers in reporting misconduct was that management sought feedback yet to their surprise, the reality was the opposite. One whistleblower who had worked in a health service said that the CEO wanted negative feedback, which is like 'diamonds on the soles of our shoes', indicating that employee information even if it was negative would be welcomed in the drive to improve performance in the organisation.

While some whistleblowers wondered about the fairness of the reporting process, as one whistleblower said...*it was difficult to do anything about it...the person was well connected; but it was the right thing to do, to report it* (WBA-55). Other whistleblowers decisively made reports about misconduct, despite the advice of colleagues not to do it.....*they self-censor themselves and keep their head in the sand*.

By reporting misconduct internally in the first instance, whistleblowers especially in the public sector were simply following official policies as required by the organisation. Many whistleblowers thus made internal reports usually to their line manager, but this meant that anonymity could be lost and could lead to victimisation.

Whistleblowers from the public sector also mentioned that they had approached MPs, and even Ministers about their complaint after many attempts to have their concerns listened to internally, and subsequently by other bodies. In many instances they reported that these avenues...*were not helpful...were ignored and the offices of local politicians...have all been unhelpful* (WBA-33).

A highly qualified whistleblower who had been in job for 15 years, reported major discrepancies in the management of a Commonwealth-funded program and was told when she went to the anti-corruption body that it should first be dealt with by the Department. However, this meant that she was not protected, and she reported that the integrity body encouraged her to withdraw the allegation. She also said she received no formal support from her union and the Ombudsman's office. However, this whistleblower said that knowledge of the mismanagement went right up to the head of the Department. She had since left the public sector and is now employed in the private sector.

A whistleblower working in a state health sector had reported conduct in which children were placed at risk. He indicated that while he reported it with a witness present to the relevant health authority, it was not taken seriously and there was no response...*it is just a joke...they assume you are guilty...they are desperate to find you guilty...* (WBA-45). One whistleblower, teaching in a state school, saw misconduct involving deception/dishonesty by the principal which he reported to the Education Department...*but they were not helpful, not interested....therefore there was pressure on us to drop the complaint*. The whistleblower said that the principal had been taken to court as a result of which... *[the whistleblower] lost his job, and free housing...* (WBA-38). He had wanted to remain anonymous but that was not possible.

When a whistleblower from a tertiary institution reported to the head of compliance corrupt practices in relation to off-shore service providers and exam regulators not adhering to standards relating to student performance, she was advised to write to the Pro-Vice Chancellor. She was called to a meeting where the head of business said that her report was not accurate. Subsequently, the head of compliance took...*all work off her...ostensibly for health reasons [she had been diagnosed with a serious illness]. [I] was put off line and that continued for 4 months...* (WBA-46). The whistleblower was aware of the protected disclosure legislation and had also approached the Ombudsman, the Department of Education and the Minister. When she spoke to her manager about the public interest disclosure she was told: *don't do it*. After that she believed she could no longer do her job as bullying had started (about which she had made a formal complaint to the corruption commission) and, after a period of sick leave, decided to leave.

In one instance, where the whistleblower had observed the appointment of a senior male clinician in the health sector to a very senior position without the post being open for internal or external competitive recruitment in her area, she believed it was best to raise her concerns in an open manner. She noted that the appointment was in breach of formal recruitment policies of the organisation, in particular equal opportunity policies, there to avoid nepotism and discrimination and to ensure the best candidates are recruited in the interest of patient care and clinical governance. In response, the senior manager advised her that it was important for him/the organisation to have the flexibility to be able to appoint the right people to senior appointments and that it was common practice in big companies. The whistleblower was *...flabbergasted that the senior manager defended the process in spite of the lack of compliance with approved employment policies and practices*. The whistleblower immediately documented the conversation to keep a record and raised it with union representative and with other staff – some of whom shared her concerns but others responded with *... resigned acceptance...with an air of 'that's just the way things are done around here'*. Not one of her colleagues however was prepared to raise their concerns because *...they had no future plans to leave* (the whistleblower was leaving for family reasons to another location) *and feared the consequences for their future at work...* Shortly before the whistleblower left her job, she emailed a detailed letter of her concerns to the CEO from her new location in another country as she felt uncomfortable about this potential misconduct and the negative consequences for her profession. This example illustrates how the process of reporting can be countered and not lead to any changes in the organisation. It also illustrates how the whistleblower may have avoided negative treatment by speaking out at the moment when she was leaving the organisation any way.

Often the process between reporting the misconduct and obtaining an outcome was long and protracted. At times it took lengthy periods and multiple attempts to obtain relevant files and FOI applications required patience and persistence. The blockages that whistleblowers experienced to have their complaints treated seriously was a frequent occurrence. As one registered nurse said, *...if only someone along the way had said, yes...there are problems, and you have been treated unfairly...let's try and sort it out* (WBA-56); instead she received a 65 page copy of a report against her WorkCover claim and she wondered *...whether management wanted me to be shut up* (WBA-56).

Whistleblowers during the interviews stressed that they initially tried to go through the right channels but that depending on the response they received had to find other avenues. Some whistleblowers reported that from the time they reported *... from that moment ...there are great lengths taken to shut them up...those in higher positions don't want to know...* and in the case of one whistleblower a decision was made *...so the only thing to do is to go public* (WBA-41).

Many whistleblowers reported that they had tried numerous avenues to have attention paid to their concerns and to have them dealt with – these included Ministers and MPs, various regulatory and watchdog bodies set up to oversight particular sectors, ombudsman offices and corruption/integrity commissions, only to be 'fobbed off' as one said or ignored. Often the media was approached as a last resort in order to have the misconduct exposed and action taken to address the misconduct.

### **Consequences of reporting misconduct – retaliation and reprisals**

The types of reprisal and retaliation experienced were varied and could be severe in their impact on the whistleblowers, although none mentioned any form of physical violence or threat thereof. It was not possible to link the nature of the misconduct to the type of retaliation experienced or to its severity given the small sample size and often retaliation could be multi-faceted. It should also be noted that the causal link between the reporting of the misconduct and the disclosure-related retaliation was not able to be directly assessed by the study and could be hidden by convenient processes such as performance management, organisational restructuring or economic circumstances requiring redundancies.

### **Criticism**

Some self-employed whistleblowers reported being questioned about their professional standards and ostracised by colleagues, who were perceived to be protective of each other and defensive against any threat to their professional and financial standing. As one whistleblower said about his profession, they are 'mercenaries', and the profession's regulatory board, according to the whistleblower from the allied health sector, lacked impartiality and a capacity to investigate allegations independently. Other whistleblowers noted that they were criticised for their work performance and the way they went about their jobs, usually by their managers or supervisors.

In a complex case in which a whistleblower had found child exploitation material on a former staff member's university computer, when the complaint was being examined, evidence emerged of a colleague having moved millions of dollars off-shore in order to avoid paying tax in Australia. The whistleblower reported this to the Australian Federal Police who initially protected her identity during the investigation. Subsequently, however, the suspected colleague obtained an intervention order against the whistleblower, who was required to defend the matter at considerable cost to herself. The outcome according to the whistleblower was that the matter would be dropped if she left the state.

### **Bullying**

Whistleblowers frequently mentioned having experienced bullying which they perceived to be a direct result of reporting misconduct. Associated with the bullying was criticism of work practices and performance. One example concerned a whistleblower in the private sector, who had disclosed concerns about suspected fraud in a company. The whistleblower's concerns were not believed and they were abused and shouted at and subjected to workplace bullying. A formal grievance complaint process was started but the whistleblower's complaint of bullying was transformed into issues about their work performance...*the whole process was very slow, supposed to be 3 weeks process but turned out to be 8 months...was delayed, dragged out and almost made it worse*(WBA-34).. While the bullying investigation was not substantiated, the whistleblowers with the help of a lawyer were able to take it to court and received compensation.

### **Not wanted in the job**

A frequent theme emerging from whistleblowers' accounts is that they were not wanted in the work place after having reported wrongdoing. Thus a STOPline whistleblower reported that *...they wanted to get rid of me...made an issue over performance measures...said they were poor, but I asked, why now?...I liked my job...devoted my life to the work, all done for them and had been recognised as a good competent employee before...but it seemed as if I was being punished...* This whistleblower felt

it was unfair...*the union delegate and the HR manager were on the same side...* Her job was terminated in 2014 and at the time of the interview was unemployed, applying for jobs at a lower level. She said, all she wanted to do was reveal the truth...*I did nothing wrong...I would do it again if she had time over...* (STL-12).

### ***Disadvantaged at work***

Often whistleblowers report that they were overlooked for promotion, pushed down and 'gagged'.

Examples were given where whistleblowers were moved to other positions or excluded from opportunities such as further training or going to conferences. Tasks could be changed to make the job more onerous, less interesting and more menial.

### ***Disciplinary action and complaints against whistleblowers***

For a number of whistleblowers, a consequence of reporting misconduct was that they, themselves, became the subject of complaints, sometimes resulting in disciplinary action being taken against them. In some instances, whistleblowers were dismissed from their employment, leading to substantiated grounds existing for unfair dismissal. When a STOPline whistleblower tried to report concerns about misconduct in relation to particular sporting sector involving nepotism and falsifying documents, and questioning the legality of the governing body's actions, he was treated in a vindictive manner and humiliated and subject to bullying and harassment. The whistleblower himself was further charged with misconduct, fined by the regulators who were supposed to be independent and was disqualified from the sport for 6 months (STL-11).

### ***Legal issues***

In order to deal with unfair treatment or unjustified dismissal following acts of whistleblowing, some whistleblowers commence legal proceedings for compensation. This can, however, entail considerable personal cost and may be fraught with complications. An example was given in which a whistleblower attended a conciliation meeting which... *got nowhere, the lawyer was hopeless at negotiating a settlement...* and the respondent organisation's case *was being run by their uncompromising insurer...which then meant a public hearing*. The whistleblower was given a 'reality' check by his lawyer who said...*employers always have a strong case...breaches of policy in disciplinary and investigative processes don't matter much, and he advised not to push the whistleblower complaint because an unfair dismissal is the only thing that will really influence [the courts]. Due to the large volume of reading matter, preparing witness statements...the cost of the hearing would be about \$15,000...and further if we are to win at the hearing or be made a better offer...the amount that [the whistleblower is] awarded may not cover costs...* (STL-19).

Whistleblowers at times fight back and do win in the courts. In one case, the whistleblower said that *while the whistleblower protection legislation has no teeth...even though the Education Department was responsible; they can't see the wrong if everybody is doing it...it is not an excuse but a really good defence...* and that was how he obtained compensation through the courts (STL-38).

Overall, there was an all-pervasive sense from those interviewed that the protection afforded to whistleblowers was ineffectual and that they were not shielded from retaliation. Despite this, and taking account of the convoluted nature of reporting mechanisms and the experiences they were



subjected to, approximately half of all whistleblowers interviewed said they would report misconduct again if similar circumstances arose.

### Impact of the whistleblower experience

For many whistleblowers, the impact of disclosing illegal behaviour and misconduct were substantial and severe. Stress and ill-health were frequently reported with the whistleblowing experience; a sense of frustration and mounting despair recounted by a number of whistleblowers was evident in the written material provided by whistleblowers as well as during the interviews. What was remarkable was that whistleblowers, who had reported wrongdoing more than 10 years ago, could still recall much of the detail about what had happened to them. There was continuing bitterness and a sense of injustice for a number of whistleblowers about the way they had been treated and which lingered over many years.

Some, whistleblowers, however, were able to move on from the experience. One public sector nurse, for example, said *...she had moved on...and now works in the private sector...[she] has got on with her life...[but] she could have sued them...taken them to the Supreme Court to clear her reputation...but she did not do that and ...she has settled down emotionally now....* (STL-15). She did, however, find out later that the person victimising her had been accused by another of stalking, which was investigated and the person subsequently dismissed. Another whistleblower said that with his dogged determination' he kept going [but] it has cost him a lot of money and has had an impact on his health but it was his 'raison d'être'.

The negative financial impacts were identified by a number of whistleblowers, in particular when they used lawyers and had to take their employers to court to fight the retaliatory actions; defending these was usually in the form of unfair dismissals. As one said, if she had lost the case (she won it) she would have lost her house. Others have said that the cost of legal proceedings was significant. The economic impacts were also considerable when whistleblowers lost their jobs or their business; or their contracts were not renewed or they became unemployed. In terms of their career, some mentioned that they were also not promoted, or that they received poor performance assessments.

Other impacts reported included those on whistleblowers health and wellbeing, with significant emotional and psychological effects. Being under enormous pressure, not being able to sleep was often reported by whistleblowers. One said the advice of her psychologist was that the whistleblower needed to find a way to 'put it all in a box' and put it away so that they can move on (WBA-56). Another reported that it was like a post-traumatic stress syndrome which was associated with depression and anxiety conditions requiring treatment. Many whistleblowers reported suffering from mental health issues, and had sought psychiatric help. Numerous whistleblowers had visited GPs and had been frequently on sick leave, sometimes for months at a time. A number reported that they had had mental breakdowns, requiring them to take leave and see specialists. Many whistleblowers reported that they had been on medication and were receiving counselling.

### The aftermath – changed lives

The experience of being a whistleblower had long term consequences for many of those interviewed and could be transformative. As one said... *you need to retain a balance and to have that, it helps to*

*have a supportive person. In the meantime they have to take the consequences, lose friends and connections, people don't want to be seen with the whistleblower, but it is the right thing to do, and as many whistleblowers said empathically, yes, they would do it again... (WBA-55).* Many whistleblowers reported that the experience has significantly affected and changed their lives. Across all the whistleblowers interviewed none had remained in their original job, they had lost their contracts and employment was not renewed. One whistleblower involved in the teaching profession said now she is no longer teaching - she misses it but is now doing volunteer work in pathology clinics.

One whistleblower who had not been employed since her contract was cut short after reporting misconduct and then being victimised, said....*I trust no one...I have a psychologist who helps me cope...am now a totally different person from before...it has affected me psychologically (WBA-46)*

A number of whistleblowers had written or were writing books about their experiences. As one whistleblower said, *...when I have been feeling down, I started writing about it...and can laugh about it... (WBA-40).* Other whistleblowers have set up their own whistleblower-support groups or joined support groups such as WBA.

Another, who was suing a government department in respect of allegations made against him, said that being a whistleblower...*it just destroys you...horrible people lie about you...get their cronies to write about you...don't do it...the worst thing I ever did...best is just to leave, resign ...it changes your personality...(WBA-45).*

Whistleblowers sometimes said that it would be hard for them to obtain another job; often they were in their 50s and 60s and were prepared to leave the workforce altogether. As one said... *I had all my confidence knocked out of me...suffered badly...was very damaged...my wellbeing was affected...exhausted by the whole process (WBA-34).*

One male teacher said that he had... *learnt so much from having been involved in the court case, he is studying law; especially employment law and in sight he has to pay for it... But could have the knowledge....he said he would come back and... come to get the guys; would get [my] revenge in a fair fight....it makes him angrier and more determined. I feel I have no choice; I have seen and heard ... lost teachers' registration...I can't look the other way...it makes me worse [by not reporting] than the people doing the misconduct; it is just innate... (WBA-38).*

Another reaction from one whistleblower was that the experience had made him fearless and he said now...*would put his name to everything... (STL-06).*

One interviewee who blew the whistle many years ago reflecting back on his experiences said that...*to survive the whistleblower process, to survive the pain and suffering...you need humour, spirituality and support and find solace in writing, and added that being a whistleblower has been very good for me...it has turned me into a totally different person... (WBA-55).*

The practical advice given to whistleblowers after they had reported misconduct to an integrity office was difficult for some whistleblowers to accept. In particular in cases where there was nothing more that could be achieved by investigation, whistleblowers were advised to look to the future, not the past and to let go. Accepting that advice however for many of the whistleblowers interviewed was not easy.

## Discussion

### Retaliation and impact of whistleblowing

This study found that all whistleblowers from both public and private sector organisations reported being treated poorly in a variety of ways after they had observed and reported wrongdoing. Given the self-selected nature of the whistleblowers participating in the study and the bias towards those who believed that they had been subject to victimisation, this was to be expected. Nonetheless, the extent of reprisals and harm experienced by those interviewed was substantial. According to Martin (2013), whistleblowers want protection and justice...*their stories and available research suggest that this is a forlorn hope; very few whistleblowers who have suffered serious reprisals receive formal vindication and fewer still are restored to their previous jobs and career... whistleblowers know what they want but what they want is often not achievable, and hence what they really need, in the face of an unyielding reality is something else...* (Martin 2013: 502). Of particular interest was the fact that many of the individuals who dealt with whistleblowers professionally, said they had little or no knowledge of the negative treatment that whistleblowers had been subjected to...

Generally, the findings showed that the victimisation continued over time and could escalate, depending on what action the whistleblowers took in response, especially those who were able to take matters to court. Often in the unfolding narrative of what happened to the whistleblower, there were persistent attempts by the whistleblowers to have their concerns addressed, repeating their allegations over and over again, and, if there was no initial satisfactory response, to other avenues. The ineffectual nature of the response when whistleblowers reported misconduct was often perceived to be part of the negative treatment of the whistleblower.

The nature of the retaliation was most often described under the broad terms of bullying and harassment. It often involved being badly treated in the workplace, ostracised and isolated, poorly assessed in terms of performance, and occasionally led to whistleblowers being transferred, dismissed or not having contracts renewed. There were examples in which whistleblowers, themselves, were charged or disciplined. In the majority of cases, it was reported that retaliation was by management rather than colleagues, who in many cases watched as silent by-standers, too fearful, according to the whistleblowers, to report the misconduct themselves.

The impact on the whistleblowers after reporting misconduct was profound. It was found that they had often experienced significant emotional and physical impact as well as financial consequences, especially when loss of employment occurred or legal expenses incurred. Many had suffered from stress-related conditions, anxiety and depression and had sought treatment from medical/mental health professionals. Others had been on sick leave, sometimes for long periods. However, once they left their place of employment, either through being forced to resign or being dismissed, it was for many the end of the negative treatment and there was a degree of closure. As some said they had....*moved on...were looking to the future not the past...* Yet for others the impact of the experience remained, they did not let go and the hurt they had suffered was not forgotten and could continue to fester. For many whistleblowers, even years after the whistleblowing event, there was a lingering sense of distress and feelings of frustration and injustice at the way they had been treated. Some continued for many years to fight to have their allegations of wrongdoing properly addressed.

About half of whistleblowers interviewed believed, some strongly continued to do so, that they were right to have reported the misconduct, despite having been victimised.

With hindsight, however, a few expressed ambivalence and indicated doubts about their decision to make a report. As one said...*so it's better to keep quiet, keep it private... [Although] whistleblowers are still standing up...* (WBA-50). In contrast, another whistleblower said...*it destroys you...* [But added fatalistically]... *so be it.....* Many whistleblowers said emphatically that they would do it again if they were confronted with the situation of misconduct.

There was a strong sense among whistleblowers of being morally justified in their actions and genuine in their belief that they were right to report, despite the consequences. At times however, the disclosure recipients suggested that they might be considered 'naïve', too trusting or just 'difficult' to deal with or seen as 'trouble', and that by implication the whistleblowers should not have been surprised by the reactions they provoked, or even that they might have been to blame for what had occurred. Whistleblowers, it was admitted by a number of interviewees did not necessarily have a good reputation, and that reputation emerged during the interviews with some of the persons who dealt with whistleblowers. Whistleblowers were often passionate about reporting the wrongdoing, but then if nothing happened, they were not taken seriously or were not satisfied with the outcome: that could be a 'tricky space' as one investigator said.

Overall there was little identification with the term 'victim' or indeed 'victimisation', even though all whistleblowers had been poorly treated after speaking out.

## Whistleblowing reporting processes

Central to experiencing reprisals following whistleblowing was the availability and effectiveness of anonymity during the reporting process. Both whistleblowers and disclosure recipients were keenly aware that if a whistleblower's identity was revealed, the risk of reprisal and retaliation for reporting was greatly increased.

The first step in reporting was usually to report the matter informally to immediate managers or supervisors in the organisation or, in the case of self-employed professionals, to their professional or regulatory body. However, such internal reporting invariably meant that their identity could become known, making them, potentially, a target for victimisation. In public sector organisations, it is a requirement that whistleblowers first report their concerns internally, following which oversight/integrity bodies can initiate an investigation if the formal criteria for the body to investigate a matter are met.

Reporting internally, however, creates many difficulties for whistleblowers. In many instances Human Resource sections are involved, whose role is not independent from management, and thus less supportive of whistleblowers. Internal reporting also presents risks of disclosure of the identity of the whistleblower which may lead to bullying and harassment after having reported misconduct.

Generally, those interviewed believed that independent hotlines were better able to maintain confidentiality, particularly for those employed in the private sector organisations. Anonymity was also strictly maintained when Ombudsman investigations were undertaken into whistleblowers' allegations of misconduct. However, some private sector interviewees noted that in order to investigate what the whistleblower had alleged, it was often necessary to seek further information,

which could then reveal the identity of the whistleblower. Without the additional information, the complaint could not be fully investigated, but by seeking further details the identity of the whistleblower could be disclosed.

The process for reporting misconduct was for many whistleblowers stressful and problematic. They were unsure or did not know which reporting mechanism or channel was appropriate to use. In approaching one avenue, there could be referrals to others and sometimes more re-referrals. Depending on the nature or seriousness of the misconduct alleged the matter might not fall within the jurisdiction of the agency to which the whistleblower reported. Much time and effort was expended by whistleblowers in finding the 'right' avenue. They were in the main critical of the way they had been treated when they reported misconduct, either because they could not be assisted, or did not have the matter handled in the way that would satisfy the whistleblower. Misconceptions and lack of understanding were also common among whistleblowers about the role, scope and powers of the agency they approached, and hence what they could do about the allegations about wrongdoing. For example, when whistleblowers approached various state corruption commissions, or ombudsman bodies, they were often met with unresponsiveness and a lack of interest in what misconduct the whistleblowers wanted to reveal. This suggests that these bodies may need to clarify their role and scope for dealing with reports of misconduct and communicate that more widely and clearly than at present. This would help to avoid misunderstandings and to prevent waste of time and resources.

Whistleblowers who had reported misconduct to professional regulatory bodies were often critical of the response they received. One found a regulatory body to be 'corrupt and incompetent' while others believed them to be self-serving and protective of the profession, not objective and biased against the whistleblower.

In many cases the reporting process experienced by whistleblowers was described as being as traumatising as the retaliation experiences themselves. Many whistleblowers found the reporting processes challenging and highly frustrating, involving official letters rejecting their concerns, refusals to investigate or lack of action or no response to the whistleblowers who had reported their allegations in good faith. The sense of powerlessness against bureaucratic obfuscation was likened to 'insoluble mazes', that left some whistleblowers feeling an intense lack of power ...*the whistleblower has nothing...defenceless.*

Whistleblowers' perceptions of the responsiveness and effectiveness of reporting mechanisms were in the main generally negative. The disappointment and frustration expressed by whistleblowers when the matters they had raised were met by the lack of action or interest by external bodies caused many to adopt other avenues, such as unions, lawyers, and the media.

The role of unions was frequently mentioned by whistleblowers from both the public and private sectors, and many had gone to seek their advice and support. Some said that unions were not really interested in whistleblower matters, although the unions sometimes helped to refer the whistleblower to lawyers in court cases involving defamation and unfair dismissal proceedings. More often than not, unions were unable to assist in advising whistleblowers and were seen as being generally ineffectual and with no authority to assist them. One whistleblower asserted that the union had high-level links within management; possibly colluding against the whistleblowers ...*they were against us...were not safe...they played tricks and had done a deal with management and had*

*lied to the whistleblowers ...*(WBA-34). Others found also that they were not independent from management.

Many whistleblowers interviewed had contacted lawyers in relation to their employment conditions. A number had been to courts or tribunals regarding unfair dismissal allegations following forced removal from employment after reporting misconduct. As one said, the value of a court win is... *that it is all out in the open; needs to be shared...and that feels good...he was not doing it for personal reasons but the misconduct had to be stopped...* (WBA-38). Fighting matters in the courts as a number of whistleblowers had done however, was often time-consuming and costly. Although lawyers were not always on the side of the whistleblowers, as one whistleblower reported...*lawyers for the government are there to minimise the damage and protect the department...* (WBA-38). Whistleblowers at times seek the services of lawyers, especially those experienced in employment law. As one whistleblower reported...*it took two years...it was settled out of court...* (WBA-41) and she was awarded compensation.

Whistleblowers frequently commented on the role of the media – both in terms of the contact they had and also in the role the media can play in revealing misconduct through whistleblowing. One said that the media can... *help to publish stories...helps with empowerment of the whistleblower*, but in the state where he lived, *...the media were not interested in helping to publish such material ...* (WBA-38). Some expressed frustration when after initial contact; nothing came of the reporting, while others said the media was not interested in printing the story. It was acknowledged that legislation sometimes prevents whistleblowers from going to the media, although many still do so. The media was often identified as a last resort, when whistleblowers failed in their efforts to have their concerns heard through official channels. When little or no response was forthcoming from formal complaint bodies, then as one whistleblower said... *[I] decided to go to the media...was sick of the delays and incompetence of the investigators...* (WBA-41) and several whistleblowers had spoken on investigative programs on television.

## Legislation for protecting whistleblowers

It was apparent from interviews that much of what was reported as misconduct would not fall within the definitions of whistleblowing or protected disclosures in agency legislation. Many reports related to workplace grievances, such as bullying and harassment, or conduct which was contrary to workplace policies. Only a few matters, if any, involved serious criminal conduct involving fraud or breach of legislation that would require reporting in the public interest. Although most of those interviewed classified themselves as ‘whistleblowers’, few would have received the legislative protections that disclosures in the public interest attract and none of the whistleblowers interviewed had received any legislative protection. The result was that most of those who suffered reprisals and retaliation for reporting were outside the protections afforded by legislation.

Previously in Victoria the *Whistleblower Protection Act 2001* (Vic) provided for the reporting of disclosures about improper conduct in the Victorian public sector and also provided protection to persons making disclosures. These disclosures were principally handled by the Victorian Ombudsman. In February 2013 that Act was replaced by the *Protected Disclosure Act 2012* (Vic) which significantly changed the process for how protected disclosures were received, assessed and investigated. Importantly in the new Act public bodies can be held vicariously liable for detrimental action by a person during their employment in reprisal for making a protected disclosure and

includes causing injury, disadvantage or adverse treatment, in relation to the discloser's employment, career, trade or business and includes taking disciplinary action.

The new legislation moved the jurisdiction for handling whistleblowers away from the Victorian Ombudsman's office to the Victorian Independent Broad-based Anti-corruption Commission (IBAC). As one person interviewed noted *...there were problems with the old legislation...then the Ombudsman's Office had no power to take legal action; it could only make recommendations or refer matters to the police. Now IBAC has those powers and can take matters to court...that is a good thing; there are now stronger powers and the investigation by IBAC is independent of departments. It was worse before because it was dependent on departments taking charge of the processes... (WBA-34).*

In practical terms, however, the new legislation has the same threshold for accepting whistleblowers' allegations about misconduct in that it has to be about 'serious corrupt misconduct' as defined by the legislation. In terms of the new legislation, in Victoria, while there is protection for whistleblowers, complaints have to be formally classified as 'protected disclosures'. Thus while that protection is there in the legislation, the barriers to having a report of misconduct accepted as a protected disclosure are considerable. As found in this study, the whistleblowers reports of misconduct that were mentioned by the whistleblowers interviewed do not meet the criteria as defined by the legislation and hence persons making such reports are not able to avail themselves to that formal protection.

Persons interviewed who deal with whistleblowers in this study had a range of comments about the new whistleblowers legislation (which only applies to the public sector). Thus it was stated by an interviewee that, *you can't make people believe that the protection of whistleblowers will happen; the legislation has a degree of unnecessary complexity. IBAC and the Ombudsman have set the boundaries very high; for minor complaints it is below the threshold as not it is not really corruption or serious misconduct... (DR-11).*

More strongly expressed was the view of a disclosure coordinator...*the PIDs [public interest disclosures] are a complete joke, useless...* said one whistleblower who had found out about the process...*it is too long, too involved and complex...*(WBA-46), and because she came under Commonwealth legislation, even though she lived in NSW it meant that there were interjurisdictional complexities.

It was also noted by one interviewee, that in principle the Act is there to protect the whistleblower but in practice he knew of no cases where it had been used, although it is a criminal offence to commit detrimental action. Another disclosure recipient said *...the reality is that the remedies are only operative when something happens. So there is protection but not in the way that people expect. The current Act has the final say.....can still take the matter to court for detrimental action but that has never happened in her experience (DR-27).*

When asked about whistleblower protection, another person said that *... the legislation does not really protect anybody but what it is does is provide a remedy after something has happened...so it serves as a deterrent. Disclosure coordinators who receive the complaints come into action and try and do something to protect the whistleblower; what many do in the first instance is shift the whistleblower, so that they can't be identified as the source of the whistleblower report, but in doing so whistleblower can see that move as being punished.... (DR-19).*

In Victoria, the aim of the *Protected Disclosure Act 2012* (Vic) *...does not make it easy; very complicated processes are involved...if the whistleblower is ex- agency there is no ability to fix the matter... (DR-14)*. While IBAC was specifically set up to include the whistleblower regime and to ensure that all organisations understand and followed the processes, IBAC has a very narrow definition of whistleblowing *...that leads to many practical issues... (DR-11)*. As one disclosure coordinator with a council said *...the legislation is now very confusing...you need to assess the complaint to see if it is a protected disclosure... (DR-12)*. A number of disclosure coordinators from local government noted that many of the whistleblowers complaints do not go on to IBAC as there is a checklist to determine if they meet the criteria, and the complaints he had had *...don't even come close... (DR-36)*. Another public sector interviewee said *...the new legislation makes it more difficult...the criteria [for protected disclosure] are now much higher and harder to meet...it is very confusing (DR-25)*. Some interviewees also referred to the 'merry go around' where whistleblower complaints are referred to IBAC then to the Ombudsman and back again, or vice versa...The new Disclosure Act needs to be improved according to another person interviewed *...the disclosure coordinator needs to be higher in the organisation; needs to have the ear of the CEO, get into their confidence.....* She noted that not all disclosure coordinators can be lumped together *....often they have varying roles and at different levels in the organisation... (DR-11)*. In her view whistleblowers *...need a dedicated person to whom whistleblowers can go to....and they need to be kept in the loop about what is done to look into the allegations.....Most of the matters she deals with are below the threshold of the IBAC criteria....in that case, it is then treated as a complaint...it may then fall into the HR area; it may also be appropriate for the Victorian Ombudsman to handle... (DR-30)*.

The role of policies and procedures in respect of whistleblowing was an important issue for many whistleblowers interviewed, although many noted that policies were often not adhered to. Codes of professional and ethical conduct are important but should be implemented and monitored for compliance. The poor implementation of whistleblowing policies was identified by many of those interviewed – the lack of response or inadequate action, the failure to act on their own policies, lack of independence, transparency and openness in the handling of whistleblower reports was also identified, often in breach policies of the organisation. In one example cited by a whistleblower, the professional body to which the whistleblower belonged has a policy that the professional *...must consider bringing allegations of misconduct to the attention of those charged with the responsibility to investigate them... (DR-30)* yet her experience showed that by doing so it would attract retaliatory responses from management.

One of the difficulties is that although organisations in the public sector, and many in the private sector, do have policies in respect of whistleblowers, often as part of a larger array of policies dealing with proper conduct in the organisation, in practice they were not being followed. Some of those interviewed said that there was often a lack of understanding and knowledge about the policies, or they were simply ignored. Also information available on the website about the policies was not updated. Another difficulty identified was that in the public sector many organisations, such as universities have branches in different states, so that there is no consistency in the whistleblowing legislation, policies and processes across the country which can be problematic. Above all there was a perception among whistleblowers that policies and procedures were ignored and non-compliance was common.

## Private sector approaches



Private sector whistleblowers also reported being victimised, bullied and harassed after reporting misconduct, and they too experienced problems when they approached some avenues such as Human Resources or unions for support. However, in the case of private sector whistleblowers, the use of independent hotlines appeared more satisfactory than reporting using public sector channels, in terms of being able to provide anonymity and support for whistleblowers.

Reports by whistleblowers in the private sector were also dealt with more effectively in order to resolve problems within the organisation that could affect profitability. Interviewees said that there was also less of a culture of defensiveness and a greater sense of leadership in the private sector which sought a broad engaging approach less concerned whether the misconduct reported fitted strict categories and more with what could impact on the organisation, regardless of the nature or severity of the misconduct. That approach was much less evident in the public sector where whistleblowers appeared to be less appreciated and valued. In the public sector, there was greater concern about determining whether or not the whistleblower's allegations fitted precise categories determined by legislation (a 'gate keeper' approach), than in how the whistleblower's reports could assist the organisation to improve or address the concerns revealed.

## The way forward in preventing retaliation

Those interviewed identified a number of ways in which retaliation against whistleblowers could be prevented or minimised.

### Cultural change

At the heart of preventing victimisation is the need to change organisational culture. Several whistleblowers with experience from the UK commented on the nature of Australian workplace culture and how it can victimise whistleblowers (see Sawyer 2004 for an analysis of the Australian whistleblowing culture). By contrast, in the UK there was, according to these whistleblowers, more directness in handling misconduct. One said as a result of his negative experiences that he... *hated this country, hated this nasty place ...* (WBA-45). Another whistleblower said, *there is a culture of not dobbling people in...was it about protecting the mates and about mateship?* Australian culture it was said by another interviewee...*may condone some forms of misconduct and not treat it seriously; there is need to determine what sort of tolerance organisations have for misconduct...it can start small and will grow unless it is cut out...like a virus...* (WBA-55).

### Documentation by whistleblowers

A One disclosure coordinator said that it is important for whistleblowers to keep a diary of the date and time of the events and to document all concerns a strategy also mentioned by others.

Another disclosure coordinator from a council said that many complaints arrive by telephone and when he asks to have it put in writing with the 'how and the why'... *and are never heard from again... many then just 'evaporate'...* (DR-36). He said that it is one thing to make verbal allegations but they need to be documented; he needs facts and evidence of wrongdoing. Often when this disclosure coordinator made some initial enquiries he found there is no substance; and if the whistleblower was not happy, he said they can take it further to the Ombudsman, the MPs or the Minister.

### Taking balanced action

Whistleblowers were advised not to let the misconduct observed or experienced go on for too long but to report it promptly. The problem, however, as shown earlier, is to ensure that whistleblowers report their concerns to the 'right' person. If employees are junior in the organisation and they need the job, it can be particularly hard for them as they may have seen the impact of whistleblowing on others, although there is also the impact on the organisation and colleagues if they do nothing.

Whistleblowers must be vigilant, according to an investigator who offered this advice...*everyday they have to remain objective and not let the complaint consume them...they must remember the whole world is not corrupt...we must encourage whistleblowers to think that...but it can be devastating to their whole lives...they must ask themselves, is it worth losing a family for or worse? Whistleblowers must also not try and own the process and outcome of the investigation...they should be treated as normal witnesses as in a court...what happens to the perpetrators is not their concern.* In this context he stressed that the whistleblowers' expectations need to be managed and make sure that the whistleblower remains objective...*they must be constantly told that...they do not own the process [of investigations into the misconduct]...they have no role to play once the allegations are reported....* (DR-27).

### Provision of counselling and support

There was general concern expressed about the welfare of whistleblowers and the visible impact of the whistleblowing experience. Even after whistleblowers had left the organisation as many had done, it was important that there is an ongoing relationship with the whistleblower which is there for support and their welfare, according to another investigator.

Suggestions were also made regarding the way in which organisations could better handle and support whistleblowers and hence prevent or minimise retaliation and the impact of reporting. Many of those who dealt with whistleblowers identified the need for support services within the organisation including the availability of counselling services to which whistleblowers could be referred, as exist in several organisations where access for whistleblowers was provided anonymously.

### Publicising policies

Much more could be done to promote whistleblowing policies and procedures in organisations, as illustrated by the private sector examples, and some councils which are obliged to have these available on their websites. Having well-publicised policies shows that organisations ...*take the whistleblower seriously...not subject to any unpleasantness; not have them criticised for coming forward...and to visibly try and stop the misconduct that the whistleblower complained about....make sure the CEO is on side... have the support at the highest level ...*(DR-18).

The need for training in whistleblower policies and procedures was also emphasised; as some said, not only for those receiving whistleblower reports but also for those higher in management, so that the value of whistleblower could be appreciated. Specifically, the need to have the support of senior management in handling whistleblowers was of paramount importance. The need to encourage whistleblower should be welcomed by senior managers; it is a 'red flag' although it takes them out of their comfort zones, they should appreciate hearing about what is not working so that it can be fixed. This was found in the private sector examples, but much less frequently in the public sector examples, where turnover of senior managers could be quick, and as one disclosure coordinator

from a council said...*they are not across the new whistleblower legislation. It is one thing for the coordinators to attend training sessions at IBAC but senior management need to be trained too...* (DR-33). A council coordinator indicated that ...*the CEO did not really understand the process of protected disclosure...but it is very important that they should deal with the [reports of misconduct] more effectively...* (DR-15).

### Effective management

In numerous instances, the whistleblowers mentioned the role of management, and that reports of misconduct were often badly handled...*you need good management*. Management in the view of many whistleblowers was problematic. On the one hand, managers said they welcomed feedback to help improve the organisation, and as one CEO in the public sector wrote...*the best of cultures is where everyone speaks openly and freely about concerns and knows that their views will be respected, heard and acted upon by colleagues and managers. It is my ambition that we should be an organisation where all staff speaks with confidence to voice their opinions on improvements...* (DR-14). On the other hand, as whistleblowers discovered when the consequences of reporting misconduct were examined, the reality was far from this ideal.

### Whistleblower support groups

The role and value of the whistleblower support groups such as WBA was stressed by many whistleblowers ...*they were very helpful...amazing...well-meaning...* but one whistleblower wondered whether they have any idea where the whistleblower fits into society ...(WBA-32). Some, however, found the meetings of WBA depressing and stopped attending.

Another suggestion was that there should be two separate agencies, one for protecting the whistleblower and another for receiving reports... (WBA-50). The access to the internet and the web has also greatly increased the availability of information about what happens to whistleblowers, as well as strategies for handling retaliation and other negative experiences. It also allows interactions with other whistleblowers and also has led to the setting up of whistleblower hotlines and advice/support groups. What helped some whistleblowers was the support of family in giving courage to whistleblowers and in providing a sounding board for the frustrating and negative experiences they have gone through.

### Ensuring anonymity

Martin (2013) identified a number of strategies that whistleblowers can use to counter acts of intimidation. These include exposing the attacks, disclosing details of cover-ups, responding to devaluation of the whistleblower in the workplace, and responding to attempts to re-interpret what had occurred. An alternative approach discussed by Martin (2013) is simply to disclose information anonymously, or engage in 'public interest leaking'. This often ensures that reprisals will not occur as long as anonymity is maintained. It also refocuses attention on the acts disclosed rather than on the person making the disclosures. Also of benefit in guarding against reprisals is for whistleblowers to develop knowledge and skills in understanding organisations, collecting information, and preparing well-researched accounts of what occurred. Arguably, these steps are of greater benefit than simple reliance on legislative protections (Martin 26 October 2015, personal communication).

### National responses

Although many whistleblowing procedures operate at a state and territory level in Australia, there is a need for coordinated national responses to address some of the problems identified in this study.

The establishment of a central reporting portal for whistleblowers which is not too narrow and which could act as a clearing house and key referral point would assist in ensuring that whistleblowers know where to go when making reports and that they will be referred to the most appropriate agency to handle the matter. The Australian Cybercrime Online Reporting Network (ACORN 2015) could provide a suitable model for developing such a portal for corruption and whistleblowing generally.

Efforts are needed to harmonise whistleblowing protection legislation throughout Australia and to ensure that all jurisdictions have best-practice approaches implemented to preventing victimisation.

Attempts should also be made to develop consistent reporting and protection policies across both the public and private sectors. The present study found both benefits and problems in each sector that could be examined to ensure that each sector has the most constructive policies to assist whistleblowers and to guard against reprisals.

Consideration needs to be given to how best to deal with workplace grievances that do not amount to serious reportable protected disclosures. As disclosed in the interviews conducted for this study, considerable hardship is experienced by whistleblowers who report less serious forms of misconduct that fall outside the protections of legislation. Alternative approaches should be explored to ensure that victimisation does not result from these highly prevalent forms of whistleblowing.

### Participants' suggestions

Finally, those interviewed identified a number of innovative ways in which whistleblowing procedures could be improved to minimise risks of victimisation and to provide support for whistleblowers. These included:

- establishing an annual citation or award for corporate governance where whistleblowers are recognised and thanked;
- providing financial compensation to whistleblowers, such as that provided by Qui Tam procedures in the United States (see Faunce, Urbas & Skillen 2011);
- prosecuting those who retaliate against whistleblowers (one whistleblower questioned if action had ever been taken in Australia);
- changing workplace culture by integrating people with different values and ethical standards, decreasing the risk of conflict and cultural clashes and cultivating ethical competency;
- ensuring that investigations are carried out independently, not by Human Resources, and that whistleblowers are provided with timely feedback of the results of investigations in writing;
- ensuring that grievance procedures exist in all sectors, including sporting groups, to deal with complaints about conduct;
- providing information and knowledge concerning reporting to colleagues and peer groups so that they can offer support and advice to whistleblowers;
- providing independent counsellors or psychologists to guide whistleblowers through the reporting process and to assist them in cases of reprisal or victimisation.

### Concluding remarks

Understanding the retaliation experiences of whistleblowers is important for the development of appropriate policies and legislation that are of practical use and effective to protect and better

support whistleblowers. It is also important that potential whistleblowers are made aware of the policies and procedures that are in place to prevent harm and suffering so that they may be confident that they can, and will, be protected if they come forward to report misconduct.

This study has documented the nature of the retaliation experienced by whistleblowers after they have reported wrongdoing, both through their own narratives and through the perspectives of the people who deal with them. It should, however, be acknowledged that the small number of participants and the self-selected nature of the sample, limits the generalisability of the findings.

Although policies and procedures for the protection of whistleblowers are becoming more widespread in the public sector, in practice they may not to be actively implemented and organisations may lack a willingness to ensure compliance and effective leadership in addressing toxic work cultures. In addition, some policies may not be directly relevant for most whistleblowers, as they are directed at narrowly defined, high-end categories of misconduct and whistleblowing, which would exclude many of those who participated in this study. Different work cultures and practices may also need to be acknowledged in making whistleblower policies and processes practical and effective.

The experiences of retaliation reported both by the whistleblowers themselves and the persons who deal with them, were found to be diverse. Retaliation had consequences both for the whistleblower and also for others in the workplace. While the temporal and causal connections between the retaliation and the reporting of the misconduct could not always be established, whistleblowers were invariably clear about the nature and extent of the relationship.

Whistleblowers participating in this study tended not to view themselves as 'victims' even though they reported acts of retaliation after reporting misconduct. Their focus was very much on reporting the misconduct and having their reports acknowledged and appreciated. In most cases, however, such positive outcomes were absent..

The value of an independent reporting channel or hotline was highlighted by a number of participants, in particular those from the private sector. Anonymity was viewed as a better way to protect individuals from reprisals by placing an independent intermediary between the whistleblower and management. It was generally felt that reporting to human resource sections in organisations was fraught with risk in view of the ambiguous role that human resource personnel have, seeking to share the interests of both whistleblowers and management.

The psychological impact of retaliation was reported to be both serious and significant by those whistleblowers interviewed. This points to the need for effective welfare and support arrangements to be available when whistleblowers come forward. Bullying and harassment, in particular, was seen as a major component of the stress and suffering experienced by those whistleblowers who were interviewed. Remedial action for some whistleblowers was not through whistleblowers' legislation but through civil legal channels of unfair dismissal, work-cover and discrimination in employment.

In developing more effective policies and practices to deal with whistleblowing, a clear distinction needs to be drawn between workplace grievances and dishonesty concerns. Simply applying global whistleblower policies to deal with these vastly different types of misconduct were seen as inappropriate.

In addition, further research is needed to explore a number of issues that were beyond the scope of the present study. These include:

- examining the differences between the experiences of recent whistleblowers and those who made reports more than 10 years ago, to determine if changes in policies and practices in managing whistleblowing have had a positive impact;
- assessing the relationship between the seriousness and type of misconduct that whistleblowers have reported and the severity and duration of the retaliation experienced;
- comparing public and private sector approaches to handling whistleblowing and preventing retaliation;
- understanding the prevalence of retaliation and how cultural issues might affect its extent and impact; and developing good practice models which are appropriate for different types of work-places and settings.

This study has identified a number of practical ways in which the reporting of misconduct by whistleblowers can be improved. Raising awareness of the seriousness of the retaliation that most whistleblowers experience, may lead to policies being implemented that will reduce the likelihood of retaliation and make whistleblowing a less hazardous path for future whistleblowers to follow.

## References

URLs correct at April 2017

Australian Cybercrime Online Reporting Network (ACORN) 2015. *ACORN snapshot*. Canberra: Australian Government. <https://acorn.govspace.gov.au/files/2015/03/ACORN-Infographic-Jan-to-Mar2.pdf>

Brown AJ 2008. *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, Canberra: ANU Press.

Brown AJ, Lewis D, Moberly R and Vandekerckhove W 2014. *International handbook on whistleblowing research* Cheltenham: Edward Elgar Publishing.

De Maria W and Jan C 1997. *Wounded workers*, Brisbane: University of Queensland, Department of Social Work and Social Policy.

Department of Health 2015. *Culture change in the NHS: Applying the lessons of the Francis inquiries*. (Cm 9009) London: Department of Health.

Etienne J 2015. Different ways of blowing the whistle: Explaining variations in decentralized enforcement in the UK and France, *Regulation and Governance*, 9(4): 309-24.

Ethics Resource Centre 2012. *Retaliation: When whistleblowers become victims*. Arlington, VA: Ethics Resource Centre.

[https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjP5pLE7u\\_NAhVKKJQKHx1gDk8QFggbMAA&url=https%3A%2F%2Fwww.bozeman.net%2FSmarty%2Ffiles%2F06%2F06e4d308-32f3-4934-993e-7f64e825d7a3.pdf&usg=AFQjCNHKkqWDR7dxvwXjnjqDConZHN5kJeQ](https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&uact=8&ved=0ahUKEwjP5pLE7u_NAhVKKJQKHx1gDk8QFggbMAA&url=https%3A%2F%2Fwww.bozeman.net%2FSmarty%2Ffiles%2F06%2F06e4d308-32f3-4934-993e-7f64e825d7a3.pdf&usg=AFQjCNHKkqWDR7dxvwXjnjqDConZHN5kJeQ)

Ethics Resource Centre 2009. *Retaliation: When whistleblowers become victims*. Arlington, VA: Ethics Resource Centre.

Ethics Resource Centre 2005. *Inside the Mind of a whistleblower*. Arlington, VA: Ethics Resource Centre. <http://www.ethics.org/nbes/files/reportingFinal.pdf>

Faunce TA, Urbas G and Skillen L 2011. Implementing US-style anti-fraud laws in the Australian pharmaceutical and health care industries, *Medical Journal of Australia*, 194(9): 474-8.

Francis SR 2015. *Freedom to speak up*. London: Skipton House.

Griffith University 2017. Whistling while they work 2. Improving managerial responses to whistleblowing in public and private sector organisations. Brisbane: Griffith University. <http://www.whistlingwhiletheywork.edu.au/>.

Independent Broad-based Anti-corruption Commission 2016. *Perceptions of corruption: Survey of Victorian Government suppliers*, Melbourne: IBAC. <http://www.ibac.vic.gov.au/docs/default-source/research-documents/survey-of-victorian-government-suppliers.pdf?sfvrsn=19>

Kennedy H 2004. Foreword, in Callan, R. & Dehn, G. (eds.), *Whistleblowing around the world: Law Culture and Practice*, Abingdon: Taylor and Francis.

Martin B 2013. *Whistleblowing: A practical guide*, Sparsnas, Sweden: Irene Publishing.

<http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1954&context=lhapapers>

Miceli MP and Near JP 2013. An international comparison of the incidence of public sector whistleblowing and the prediction of retaliation: Australia, Norway, and the US, *Australian Journal of Public Administration*, 72(4): 433-46.

Parliamentary Joint Committee on Corporations and Financial Services 2016. Whistleblower protections in the corporate, public and not-for-profit sectors, Australian Senate: Canberra.



[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Corporations\\_and\\_Financial\\_Services/WhistleblowerProtections](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Corporations_and_Financial_Services/WhistleblowerProtections)

Roberts P, Brown AJ and Olsen J 2011. *Whistling while they work: A good practice guide for managing internal reporting of wrongdoing in public sector organisations*, Canberra: ANU E-Press.

Royal Commission into Institutional Responses to Child Sexual Abuse 2017. Sydney,  
<http://www.childabuseroyalcommission.gov.au/>

Sawyer KR 2004. *Courage without mateship*. Paper presented at the National Conference of Whistleblowers Australia, Melbourne, 28 November.

Smith RG 2008. Coordinating individual and organisational responses to fraud. *Crime, Law and Social Change*, 49(5): 379-96.

Whistleblowers Australia 2016. *Whistleblowers stories*.  
<http://www.whistleblowers.org.au/whistleblowersstories.html>

Wolfe S, Worth M, Dreyfus S and Brown AJ 2014. *Whistleblower Protection Rules in G20 Countries: The Next Action Plan* Public Consultation Draft, Melbourne.

Woodford M 2012. *Exposure: Inside the Olympus scandal – How I went from CEO to whistleblower* London: Portfolio Penguin.

## Appendix A – Consent form

### INFORMATION TO PARTICIPANTS:

We would like to invite you to be a part of a study into the *Victimisation of whistleblowers*.

The aim is to fill major gaps in the knowledge about the extent and nature of victimisation experiences and ways in which whistleblower complaints are handled so that whistleblowers are protected from retaliation.

### CERTIFICATION BY SUBJECT

I.....of .....

certify that I am at least 18 years old\* and that I am voluntarily giving my consent to participate in the study:

Victimisation of whistleblowers by Dr Inez Dussuyer Chief Investigator, Dr Kumi Heenetigala, Dr Russell Smith and Professor Anona Armstrong.

I certify that I have been given a copy of the Information Sheet about this research project, and have read it, and that the objectives of the study, together with any risks and safeguards associated with the procedures listed hereunder to be carried out in the research, have been fully explained to me by the Chief Investigator Dr Inez Dussuyer,

and that I freely consent to participation involving the below mentioned procedures:

- 60 minute interview and/or survey of up to 20 questions

I certify that I have had the opportunity to have any questions answered, that I understand what taking part in this research means for me and that I can withdraw from this study at any time and that this withdrawal will not jeopardise me in any way.

I have been informed that the information I provide will be kept confidential.

Signed:

Date:

Any queries about your participation in this project may be directed to the researchers

Dr Inez Dussuyer Chief Investigator [Inez.dussuyer@vu.edu.vu](mailto:Inez.dussuyer@vu.edu.vu) or Dr Kumi Heenetigala  
[Kumi.heenetigala@vu.edu.au](mailto:Kumi.heenetigala@vu.edu.au)

Tel. \*\*\* \*\*

If you have any queries or complaints about the way you have been treated, you may contact the Ethics Secretary, Victoria University Human Research Ethics Committee, Office for Research, Victoria University, PO Box 14428, Melbourne, VIC, 8001, email [Researchethics@vu.edu.au](mailto:Researchethics@vu.edu.au) or phone \*\*\* \*\*.

## Appendix B – Information for participants

### You are invited to participate

---

This is an Information Sheet for a research project you are being invited to participate in entitled 'Victimisation of whistleblowers'. The Participant Information Sheet has been written to help you decide if you would like to take part in this research. You have responded to an invitation to (a) people who have 'blown the whistle' on misconduct through an investigative agency STOPline or (b) Disclosure coordinators/ whistleblower complaints officers. Participation is voluntary.

The project is being conducted by Professor Anona Armstrong, Dr Inez Dussuyer, Dr Kumi Heenetigala from College of Law and Justice at Victoria University (Melbourne), and Dr Russell Smith from the Australian Institute of Criminology (Canberra).

### Project explanation

---

The project aims: (1) to identify the nature of victimisation experiences of whistleblowers/persons who have reported wrongdoing in their workplace (2) to determine what factors are associated with victimisation and (3) to identify what elements are protective against victimisation when 'blowing the whistle'. The research addresses a knowledge gap in understanding victimisation against whistleblowers and ways in which they can be better protected. Whistleblowers are essential in uncovering wrongdoing and provide an important complement to accountability mechanisms. The research will help identify improvements in policies and procedures designed to protect and prevent victimisation of whistleblowers and ways in which wrongdoing can be safely reported and addressed.

### What will I be asked to do?

---

If you are a whistleblower/complainant/discloser:

- (a) You are invited to participate in the research by agreeing to an interview (about one hour) during which you will be asked a series of questions about your experience as a whistleblower regarding misconduct at your place of work; describing what led up to you 'blowing the whistle'; what happened when you first attempted to report the misconduct, how the matter was handled in your work place and then what happened subsequently. You will also be asked for ways in which the responses to a whistleblower's report could be changed for the better. The interview may be taped with your permission; otherwise, notes will be taken. The tapes will be securely stored at the University and the notes will be destroyed when the analysis is complete.

(b)

If you are a disclosure co-ordinator/ whistleblower complaints officer:

- (c) You are invited to participate in the research as a disclosure coordinator in your organisation regarding reports of misconduct to you, what relevant policies and processes are in place for whistleblowing, how whistleblowing reports are usually made and handled, what actions you/your organisation takes in response and what considerations are taken into account in relation to whistleblowers. You will also be asked about what changes could be made to the reporting process and in responding afterwards to the whistleblower.

### What will I gain from participating?

---

By participating in this research you will be making an important contribution to prevent the victimisation of whistleblowers and help better understand how victimisation can occur so that better ways of handling

whistleblowers who report and make complaints about misconduct can be identified. Your participation in the research is voluntary and you may withdraw at any time.

---

### **How will the information I give be used?**

The information from provided in the interviews and surveys will be kept confidential by the researchers and stored in a locked cabinet in a locked office and password secured computer files at the University. The information obtained will be analysed only by the researchers to identify general themes and factors which contribute to or protect against victimisation. No information which might identify an individual, their colleagues or place of work will be used. The information obtained will be reported on at a general level for a report to the Australian Institute of Criminology.

---

### **What are the potential risks of participating in this project?**

No information that identifies you is required, such as your name, date of birth and address and your anonymity will be protected. In the unlikely event of you feeling distressed, you can be referred to a registered counsellor.

---

### **How will this project be conducted?**

The research will involve two groups. One group involves inviting people who have been whistleblowers to contact the researchers if they wish to participate; the second group involves disclosure coordinators in various public and private organisations. The invitations will be sent to the first group (whistleblowers) as part of a newsletter and to the second group (disclosure coordinators/whistleblower complaints officers) via a letter from STOPline and from the Victorian Ombudsman's office. Persons, who respond to the invitations and want to participate, will then be contacted by the researchers for the:

- Whistleblowers - to organise an interview at a convenient time and date; the location of the interview will be in a secure interview room (Room QF 109) at Victoria University, Queen Street (if this location is not convenient, another mutually suitable venue will be identified or the interview will be conducted by telephone
- Disclosure coordinators - to organise an interview.
- 

The anonymity of persons agreeing to take part in the research will be ensured by using a coded reference number. The list of participant names and contact details will be kept separate from the data collected, in a secure cabinet in a locked office (room QF 109) at the College of Law and Justice, VU (1/256 Queen Street, Melbourne) with only the researchers having access.

### **Who is conducting the study?**

Governance Research Program, College of Law and Justice, Victoria University

Australian Institute of Criminology, in association with STOPline, Riversdale Road, Hawthorn and the Victorian Ombudsman, 456 Collins Street, Melbourne,

Chief Investigator Professor Anona Armstrong and Chief investigator: Dr Inez Dussuyer, Senior Research Fellow, Dr Kumi Heenetigala from College of Law and Justice at Victoria University (Melbourne), and Dr Russell Smith from the Australian Institute of Criminology (Canberra).

Any queries about your participation in this project may be directed to the Chief Investigators listed above and can be contacted on Tel: \*\*\* \*\*\*, email: [Inez.dussuyer@vu.edu.au](mailto:Inez.dussuyer@vu.edu.au), [kumi.heenetigala@vu.edu.au](mailto:kumi.heenetigala@vu.edu.au)

If you have any queries or complaints about the way you have been treated, you may contact the Ethics Secretary, Victoria University Human Research Ethics Committee, Office for Research, Victoria University, PO Box 14428, Melbourne, VIC, 8001, email [researchethics@vu.edu.au](mailto:researchethics@vu.edu.au) or phone \*\*\* \*\*.

# Appendix C – Interview schedules

## Questions for whistleblowers

Date of interview: .....

Mode of interview and venue/location: .....

Code of whistleblower .....

### 1. Opening/background questions

Thank you for agreeing to be interviewed, you had reported an incident of misconduct at the organisation; you were a 'whistleblower', internal witness, made a public interest disclosure.....

- Explain the ethics process/informed consent and participant information sheet
  - (Estimate age of whistleblower, gender, ethnicity)
  - Works/worked in Public/private organisation/large/small
  - Length of employment; intend to stay for two years or less/three years or more
  - Assess level/influential position/power in the organisation
  - Assess level/seniority in the organisational structure
  - Some background about whistleblower/work – qualifications/professional category/area
  - Assess whistleblower financial security/Job security, contractual at the time of reporting....and now
- ### 2. Allegations/disclosures most recent regarding misconduct/wrongdoing at workplace/sector
- Can you tell us about what the (most recent) incident involving wrong doing/misconduct in the organisation was which you reported
  - When did it occur/over what period – last 2 years or before
  - What sort of behaviour/conduct was involved/describe nature of the misconduct (assess misconduct for material gain, conflict of interest, improper/unprofessional behaviour, defective administration, waste/mismanagement of resources, perverting justice/accountability),
  - Person(s) against whom allegations made/position and level in the organisation
  - Relative seriousness of the misconduct/harm to people or environment/organisation would get into trouble
  - Had you observed similar incidents in the past/what happened/can you tell us about them
  - Others witnessing the misconduct/wrongdoing
  - Whistleblower felt had to do something about it/ethics/standards in the workplace
  - Decision to report– motives (in good faith/not arising out of self-interest/public interest)
  - Reasons for decision to report/not report
- ### 3. Reporting misconduct/wrongdoing and responses
- How did you go about reporting the allegations in the first instance
  - Where and to whom (position of the person/relationship) in the organisation internally or externally /did you know the person before you reported
  - Was it by email, phone, face to face, write a letter, use of hotline, consider media



- How many times did you report..... secondary subsequent reporting to higher management
  - Have you heard of a 'Disclosure Coordinator' in your organisation/ did you know who is responsible for receiving these reports in the organisation/existing role
  - Did you report it anonymously or was your name with the allegations
  - Seek advice from anyone before reporting/from whom and why – what was their reaction
  - Reported initially to someone they already knew in the organisation/direct supervisor/relationship
  - Needed to report several times..... why
  - After reporting, what happened then.....
  - Was there an investigation/who by/internal/external
  - How well does whistleblower think the allegations investigated
  - Were the allegations/disclosures substantiated after investigation
  - Any decisions made after the investigation/what were the outcomes
  - Was whistleblower notified of investigation outcome
4. Retaliation/victimisation/detrimental action/ experienced by whistleblower
- What impact has the experience of reporting of the misconduct had on your life/work
  - Describe ways/when/how/who by...../formal informal, direct/indirect/preventable/unavoidable
  - Evidence of retaliation/traceable for detrimental action
  - Assess the seriousness of harm to whistleblower and duration
  - Had any impact on workplace moral/colleagues/whistleblower commitment to the organisation
  - Any actions taken/consequences following retaliation and by whom
  - How were the reprisals handled and by whom
  - Did the whistleblower feel the organisation would provide protection from retaliation
  - How could what happened to you after reporting the misconduct be better dealt with/preferred outcome for whistleblower
  - Whistleblower was able/not able to count of the support of management/colleagues
5. Concluding questions and suggestions for what would be better
- Perception of direct supervisors ethical commitment /willingness to address the whistleblower issues
  - Importance of anonymity/sacrifice anonymity/Did you ask to be anonymous when you reported it
  - Whistleblower suggestions for practical remedies to prevent retaliation– what would be better
  - Extent to which organisational values align with whistleblowers own values
  - Role of internal disclosure coordinators or role of person receiving allegations
  - Role of external oversight/monitoring body/understanding and knowledge thereof
  - Reporting outside the organisation as first/last preference
  - Extent to which whistleblower felt secure and supported/best experience in the organisation
  - Organisation has/has no commitment to ethical behaviour/has strong/weak overall culture
  - Extent of whistleblower trust in senior management

- Organisation has/has no policies for encouragement of reporting, advice/hotline line, disclosure coordinator
- Organisation has/has no discipline systems for misconduct
- Financial situation of the organisation
- Whistleblower had/had no good network within the organisation/well connected and personal support
- Degree and nature of support within the organisation/outside support
- Whistleblower felt able to question decisions of management without fear of retaliation  
Internal support and protection/well integrated
- Any remedial actions taken as a result of whistleblower reporting by the organisation to prevent this happening in the future
- Whistleblower suggestions for practical remedies – what would be better
- Effectiveness of support – ways in which it could be improved
- If you had to do it over again, what would you do.....
- what would you advise someone else who wanted to report wrongdoing
- What ways could whistleblowers be better protected.....; what other options are worth considering to prevent what you experienced; how would this work.....
- Any other comments/suggestions for this research to take into consideration.

Thank you for your participation

## Questions for disclosure coordinators/whistleblowers complaints officers

- Who has responsibility for policies and procedures on confidential reporting/whistleblowing about misconduct or wrongdoings
- Who can use these procedures
- What advice does your organisation provide for whistleblowers/people who want to make a confidential disclosure
- Who investigates the complaints/allegations made?
- Who offers the complainant/whistleblower feedback on the progress and outcome of the investigation
- How are staff in your organisation made aware of the policies and procedures relating to confidential disclosures
- In the last 12 months, how many staff have made a disclosure; and what types of concerns were raised
- What were the most frequent types of concerns (from AJ Brown):
- Misconduct for material gain e.g. theft, fraud, bribery, private use of organisation's resources
- -Conflict of interest e.g. failure to declare financial interest, improper involvement of family business
- Improper/unprofessional behaviour e.g. rudeness or mistreatment of staff, inappropriate sexual relations, misuse of confidential information, personal misconduct
- -Defective administration e.g. failure in duty of care, negligence, incompetence, uncorrected mistakes, breach of administrative law or procedures, danger to public health or safety
- - waste/mismanagement of resources e.g. poor budget control, inadequate record keeping, bad grants or purchases
- - perverting justice or accountability e.g. making false statements, misleading the public, fabricating evidence, hindering investigations, cover-ups
- - poor personnel practices e.g. unfair dismissal, breaches of merit and equity policies/procedures, favouritism, breaches of workplace health and safety, workplace discrimination.
- To what extent are you satisfied with the existing policies and procedures
- To what extent are you satisfied with monitoring the investigation; the outcomes of allegations
- How satisfied do you believe the persons making the disclosures are with policies and procedures; and what happened in their specific case
- Your role in the provision of information about how to report an allegation or complaint about wrongdoing
- Degree of availability in your organisation of advice, face to face, telephone hotline about the policies/procedures relating to whistleblowing
- What is your role/nature of involvement in resolving workplace disputes?
- How satisfied are you with the current arrangements in your organisation for raising concerns about suspected wrongdoings

- How common is whistleblowing (different types?) in your organisation, according to statistics, to staff?
- How important is whistleblowing in your organisation, what proportion of misconduct comes to light through whistleblowing, how serious are the types of misconduct alleged to be?
- What factors lead to whistleblowing in your organisation
- What do whistleblowers experience in the course of reporting misconduct?
- How common is retaliation against whistleblowers in your organisation and what forms do they take?
- What internal policies and programs do you have to protect whistleblowers
- What outcomes from whistleblower reports can you describe?
- What changes in current arrangements would be effective in prevent retaliation against whistleblowers
- What external factors impact on the experiences of whistleblowers?

Thank you for your participation

## Appendix D – Private sector case studies

### Private Sector Case study 1 – Communications sector

Two persons from a major communications company were interviewed; one was a senior manager in investigations, the other was compliance manager. Most whistleblowers (50-100 per year) at this company are handled through the hotline, (mostly internal or former staff). As the company is a client of the independent hotline line, whistleblowers usually remained anonymous to the company as they could go directly to the hotline and have the matter addressed there. The Chief Executive Officer, the Chief Financial Officer and the Company Secretary were all kept informed and received regular reports about whistleblower issues. The company openly advertised its policy and raised awareness of staff of who initially to speak to about wrongdoing, or how to make reports to managers higher in the organisation, if it related to a matter involving their immediate supervisor.

Two broad categories of whistleblowers were identified: those relating to Human Resources matters...*these are generally about poor management, bullying or harassment, discrimination or about recruitment/promotion issues....*(DR-37). These matters are handled through the central Human Resources team. The other type involve more serious matters and may involve serious misconduct such as theft, fraud and other criminal conduct as well as inappropriate use of the telecommunications system, or conflicts of interest in relation to suppliers and contractors. Most whistleblowers' complaints were anonymous; although it was rare for whistleblowers to be fully anonymous. It was noted that is useful to have the names of the whistleblowers as more information may be needed from the whistleblowers about the allegations.

At the company there was a whistleblower oversight committee that looked at all *whistleblowers' complaints, there are no criteria for excluding any. There is a monthly review chaired by the Company Secretary, with Legal Counsel, security and business.... and HR attending. At that meeting it is decided which whistleblower reports to investigate, also the reports of whistleblower investigation come back to the committee with recommendations...*(DR-38). Whistleblower reporting is a standing item at Executive meetings, and the Chief Executive Officer and Human Resources Managers access whistleblower reports on a bi-monthly basis. There is considerable whistleblower educational awareness training via the internet.

It was reported that *...In terms of retaliation, the organisation was very conscious of the need to protect whistleblowers, it being the first priority. If there is a risk to the whistleblower then we would advise the chair of the committee out of cycle, it is very rare but the policies about misconduct are very clear on retaliation against whistleblowers; if it occurs the perpetrator may be subject to suspension...*(DR-37).

In the interviewee's experience there appears to be very little retaliation...*may investigate and make discrete enquiries; may only be about 1-4 individuals...can do that in the guise of an audit which is done a lot to avoid the whistleblower from being identified...*(DR-38). The hotline, when they have been in contact with the whistleblower, will then send in a report but remove the name and anonymise the complaint. If the allegations are substantiated, then recommendations are made for improvements for enhancing performance and the report will contain remedial action if required.

Dealing with whistleblowers it was said...*is not difficult, although they may think that they have the world's biggest problem; they can be highly emotional...and it may take some time for them to come forward. You need to work calmly with them; keep them calm...sometimes they will write it all down (8-10 pages or 2 lines); it is important to empathise with them, there often also non work related matters that may impact. Some whistleblowers are not happy with the outcome...they may expect the person for the misconduct to be disciplined ... (DR-38).*

The company also has an employee support program which provides anonymous counselling and whistleblowers may be referred to use that. It was estimated that more than 50 percent of the whistleblower allegations would be substantiated and one of 20 would be valuable to the organisation. In the opinion of the persons interviewed whistleblowers... *need something like the independent hotline....very important to have that independence from the organisation; then there are the internal governance arrangements and since 2003 an independent senior committee to monitor. The company's whistleblower policy has been bedded down in the last 5 years... (DR-37 and DR-38) The interviewees believed it had to be done properly and not just pay lip service to dealing with whistleblowers ... .... The oversight committee worked well and with Human Resources...the key is to provide independence... (DR-37 and DR-38).*

Their whistleblowing policy states that...*we encourage our people across the [company name] to take action if they have any concerns about unethical, illegal or improper behaviour. We have a whistleblowing policy and anonymous confidential whistleblowing service that provided appropriate protection for our people and members of the public to report their concern. Our process is supported by an independent service provider specialising in handling sensitive reports and disclosures. You can contact the independent service provided via email, by calling them on [telephone number] or sending mail to [name of person]...*

## Private Sector Case study 2 – Manufacturing sector

The interviewee (DR-22) was head of risk management and security services for a large national manufacturing corporation. He handled whistleblower reports directly if they come to him internally through the general complaints line (also available to the public). It is also possible for whistleblowers to externally report directly to the independent hotline. He noted that in other companies, whistleblowers might go to Human Resources but he said they are not independent, which is problematic. It helps that the whistleblower remains anonymous; but you need to be able to prove what they said was true. The interviewee believed that the whistleblower should be able to go to the audit committee or governance officer which is more independent than the line manager or Human Resources. Complaints can be about improper conduct and range from theft or fraud to bullying and harassment. The company has a combined policy that includes whistleblowing and misconduct; what to do, when and what the process is, and explains how the company deals with it. He gave two examples to illustrate how the process operates.

### Example A – Accounting fraud

Misconduct was reported by a whistleblower about keeping the accounts; the fraud was substantial and the company was able to substantiate what the whistleblower had discovered by going into the accounts electronically, locating where the issue was without having to reveal the identity of the

whistleblower. It was confirmed what the whistleblower had alleged was correct and corrective action was taken.

### Example B – Time theft

'Time theft' was reported by a whistleblower in which employees were paid for work when they were not there. This was done by using someone else's swipe identity card to clock in and out. It was important for the whistleblower to remain anonymous; otherwise the whistleblower would have been subject to threats for having revealed the scam. He himself had been bullied into taking part. Upon investigation the allegation was found to be substantiated; those involved were dismissed but the whistleblower was given immunity and remained with the company. The company learned from this and made changes to its system for clocking employees in/out, now replaced by a digital scanning system.

### Private Sector Case study 3 – National corporation

The person interviewed was based in New South Wales and was Group Risk and Security Manager of a large national corporation. He said he would handle about 13-16 whistleblower matters per year with most internal but some external, such as from suppliers. There are three ways in which whistleblowers are handled in his company; they can go directly to the independent hotline and remain anonymous to the company; they can come directly to a company's designated disclosure coordinator if it is obviously a Human Resources matter, and it can also go to him as the Risk and Security Manager who would coordinate an investigation if it involves dishonest conduct.

The range of misconduct alleged by whistleblowers included sexual harassment, bullying, fraud and dishonesty as well as misuse of the company's resources. The initial task upon receipt of a whistleblower complaint is to assess it, which can then lead to a formal external investigation or else, Human Resources is allocated to investigate, although it is separate from the Human Resources unit the employee deals with.

The strength of this company's approach to whistle blowing according to the interviewee was the capacity for the whistleblower to remain anonymous. The approach is driven by senior levels in the company and they have a role in the investigation. The complaint is treated seriously and the focus is not on trying to find out who the whistleblower is *...they are not interested in the identity of the whistleblower making the complaint but more in the process of assessing the allegations, and if corrective action is required....it is very much a process driven issue...there has been the odd case where the response is to find the source of the allegations...but in those cases, staff are reminded that if such action occurs...[disciplinary action will follow]...efforts are made to minimise the victimisation of the whistleblowers...and [in his experience] there have not been any detrimental actions...(DR-24).*

He noted that the company had made recent changes to the approach adopted to whistleblower *...between 2009-2012 there had been little activity in the program...there were questions about how effective the program in place was...there was not much advertising to staff...after that there was a cultural change and the company started to roll out a more proactive approach...and started to see an increased use of the program and getting more whistleblowers coming forward; it was supported by management...(DR-24).* He said that as a result of the new approach, with posters up in the workplace, increasing awareness, there are better responses now.

He noted that many of the concerns raised are work place related and a lot are unsubstantiated. He added that the approach would not happen without top-level support. He said the use of the independent hotline was helpful if the whistleblowers wanted to remain anonymous; as they were also in a position to give feedback to the whistleblower from the company, thereby protecting anonymity. The key according to the interviewee is that the whistleblower is provided with support within the resources available. He said senior management is learning from the program...*it is seen as good public policy. It is not good business if there is misconduct in the organisation...not good for the company...* (DR-24)

## Private Sector Case study 4 – Retail sector

The person interviewed was a senior manager of group investigations and security in a major Australian retail company. His area was part of the finance division with a link to internal audit and he reported to the audit committee. He had to deal with more than 100 retail whistleblower matters in his time there. Most complaints come to him from the independent hotline of which his company is a client (they act as a go-between) or else are referred to him by company executives. The main areas of misconduct reported to him include theft, fraud and corruption; most retail whistleblowers are internal. He noted that if it is a workplace grievance he would handle it in conjunction with Human Resources, otherwise he and his staff would handle it directly. Annually, a report is prepared for senior management about whistleblowers and is drawn off the database information provided by the hotline. Sometimes actions are taken as a result of whistleblower concerns but *...if the claims are not substantiated, it gets very complex and at what point can we say we are finished with the investigation?...*(DR-23).

When he had whistleblowers come to him and say they wanted to report something...in his experience... *they are usually well intentioned; some will say 'I have done my bit, now over to you'.....*but he noted...*the whistleblowers can't see the whole picture...*He gave the example of an employee new to the area coming to him about seeing a truck make a delivery ... *he was doing it in good faith...once investigated you find that there was a legitimate explanation for the delivery and the whistleblower was given feedback that all is fine.* About whistleblower victimisation, he could not comment although he noted that you need to ensure the whistleblower is not adversely impacted...*they might be moved in the workplace by mutual consent...there is scope to move people around.* This can be done so as to protect the whistleblowers' anonymity during an investigation. In general, whistleblowers can be equally male or female, usually older than 40 years and have been with the company for some time; *...they are more mature and have longer to understand the organisation...they are also more likely to come from management than non-management staff...* (DR-23)

About the term whistleblower, when he conducts an assessment of the allegations, in his view...*when does someone become a whistleblower? At what point is that to become formalised? Some people decide they want to be called a whistleblower...we need better clarity on the definition...* Some whistleblowers concerns are at the lower end of the scale...*some of the disputes between staff, where one party has an ongoing discrimination action against another...it is not so much the fact that the person is a whistleblower but because there is an underlying matter, such as sex discrimination...* Generally, investigations are handled internally, unless external expertise is required. Sometimes, the whistleblower simply reports the misconduct and wants no further involvement. He uses the whistleblower information as intelligence...*in some cases you get results...sometimes you*



*can't find enough information...sometimes it can be frustrating...you can go no further but I would keep an eye on things...(DR-23).*