

Making Whistleblowing Work

Internationally, legally, organisationally

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Whistleblower Protection Rules in G20 Countries: The Next Action Plan

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blueprint for
FREE SPEECH



THE UNIVERSITY OF
MELBOURNE



TRANSPARENCY INTERNATIONAL AUSTRALIA

Affiliate of Transparency International, the global coalition against corruption





Richard M. Bowen III
Citigroup



Brian Hood
Note Printing Australia

James Shelton
Securrency Ltd

PERSONS OF THE YEAR

TIME



The Whistleblowers

CYNTHIA COOPER
OF WORLDCOM

COLEEN ROWLEY
OF THE FBI

SHERRON WATKINS
OF ENRON



9 770818 062996



Toni Hoffman, Intensive Care Unit
Bundaberg Base Hospital, Queensland

2005

2002 / 2003

G20 Anti-Corruption Action Plan 2013-2014 (Los Cabos, 2012)

‘9. The G20 countries that do not already have whistleblower protections will enact and implement **whistleblower** protection rules, drawing on the principles developed in the [Anti-Corruption] Working Group, for which Leaders expressed their support in Cannes and also take specific actions, suitable to the jurisdiction, to ensure that those reporting on corruption, including journalists, can exercise their function without fear of any harassment or threat or of private or government legal action for reporting in good faith.’

G20 Anti-Corruption Working Group Progress Report 2013 Part III (Rev 2)
 Chart 1: Anti-Corruption Treaty and Legislative Framework

Whistleblower Legislation	Arg	Aus	Brz	Can	Chn	Fra	Ger	India	Indo	It	Jpn	Mex	Rus	SAr	SAf	S.Kor	Spa	Tur	UK	US	EU
Protect in the Public Sector	No*	Y	Y	<u>Y*</u>	Y	No*	Y	No*	Y	Y	Y	No	Y	Y*	Y	Y	Y	Y	Y	Y	*
Protect in the Private Sector	No*	Y	No	<u>Y*</u>	Y	*	*	No*	Y	No	Y	No	Y	Y*	Y	Y	No	Y	Y	Y	*

Source: http://en.g20russia.ru/docs/g20_russia/materials.html

#	Criterion Short description	Long description
1	Coverage	Comprehensive coverage of organisations in the sector (e.g. few or no ‘carve-outs’)
2	Wrongdoing	Broad definition of reportable wrongdoing that harms or threatens the public interest (e.g. including corruption, financial misconduct and other legal, regulatory and ethical breaches)
3	Definition of whistleblowers	Broad definition of “ whistleblowers ” whose disclosures are protected (e.g. including employees, contractors, volunteers and other insiders)
4	Reporting channels (internal and regulatory)	Full range of internal (i.e. organisational) and regulatory agency reporting channels
5	External reporting channels (third party / public)	Protection extends to same disclosures made publicly or to third parties (external disclosures e.g. to media, NGOs, labour unions, Parliament members) if justified or necessitated
6	Thresholds	Workable thresholds for protection (e.g. honest and reasonable belief of wrongdoing, including protection for “honest mistakes”; and no protection for knowingly false disclosures or information)
7	Anonymity	Protections extend to disclosures made anonymously (if later identified)
8	Confidentiality	Protections include requirements for confidentiality of disclosures
9	Internal disclosure procedures	Comprehensive requirements for organisations to have internal disclosure procedures (e.g. including requirements to establish reporting channels, to have internal investigation procedures, and to have procedures for protecting internal whistleblowers from point of disclosure)
10	Breadth of retaliation	Protections apply to a wide range of retaliatory actions and detrimental outcomes (e.g. relief from legal liability, protection from prosecution, direct reprisals, adverse employment action...)
11	Remedies	Comprehensive and accessible civil and/or employment remedies for whistleblowers who suffer detrimental action (e.g. compensation rights, injunctive relief; with realistic burden on employers or other reprisors to demonstrate detrimental action was not related to disclosure)
12	Sanctions	Reasonable criminal, and/or disciplinary sanctions against those responsible for retaliation
13	Oversight	Oversight by an independent whistleblower investigation / complaints authority or tribunal
14	Transparency	Requirements for transparency and accountability on use of the legislation (e.g. annual public reporting, and provisions that override confidentiality clauses in employer-employee settlements)

Table 2. G20 countries – public sector laws

Rating **1** Very / quite comprehensive **2** Somewhat / partially comprehensive **3** Absent / not at all comprehensive

	S. Ar	Mex	Tur	Arg	Rus	It	Ger	Brz	Jpn	Indo	S.Af	Fra	Chn	India	Kor	UK	Can	US	Aus	Tot '3'
	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	Pu	
9 Internal disclosure procedures	3	3	3	3	2	3	3	3	3	3	3	3	2	3	3	3	1	2	1	14
7 Anonymity	3	3	3	2	3	3	2	3	3	3	3	3	2	3	3	3	3	1	1	14
5 External reporting channels (third party / public)	3	3	3	3	3	3	3	3	2	3	1	3	3	3	3	2	2	2	2	13
14 Transparency	3	3	3	3	3	3	3	3	3	3	2	2	3	2	1	2	1	1	1	11
13 Oversight	3	2	3	3	3	3	3	3	3	2	3	2	3	1	1	3	1	1	1	11
8 Confidentiality	3	3	2	2	3	1	3	2	3	3	3	3	2	1	1	2	1	1	1	8
12 Sanctions	3	2	2	2	3	3	3	3	3	2	3	2	2	2	1	2	1	1	1	7
11 Remedies	2	3	3	3	3	3	2	3	2	3	1	2	2	2	1	1	1	2	2	7
6 Thresholds	3	3	3	3	3	3	2	2	1	2	2	2	2	1	2	1	1	1	1	6
2 Wrongdoing	3	3	3	3	2	2	3	2	1	2	1	2	1	2	1	1	1	1	1	5
10 Breadth of retaliation	3	3	2	3	3	1	2	2	1	2	2	2	2	1	1	1	1	1	1	4
1 Coverage	3	3	3	3	2	1	1	2	1	2	1	2	1	1	1	2	2	1	2	4
3 Definition of whistleblowers	3	2	2	2	2	3	3	2	2	2	2	2	1	1	1	2	2	1	1	3
4 Reporting channels (internal & regulatory)	3	3	2	2	2	2	2	2	2	2	2	2	2	2	1	1	2	1	1	2



Table 3. G20 countries – private sector laws

Rating 1 Very / quite comprehensive 2 Somewhat / partially comprehensive 3 Absent / not at all comprehensive

	Rus	It	Can	S.Ar	India	Mex	Brz	Arg	Aus	Ger	Tur	Indon	Jpn	Chn	Fra	S.Afr	Kor	UK	US	Tot '3'	
	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	Pr	
5 External reporting channels (third party / public)	3	3	3	3	3	3	3	3	3	3	3	3	2	3	3	1	3	2	2	15	
7 Anonymity	3	3	3	3	3	3	3	2	3	2	3	3	3	2	3	3	3	3	3	1	15
9 Internal disclosure procedures	3	3	3	3	2	3	2	3	3	3	3	3	3	2	3	2	3	3	3	2	14
14 Transparency	3	3	3	3	3	3	3	3	3	3	3	3	3	3	2	2	1	2	1	14	
13 Oversight	3	3	3	3	3	2	3	3	3	3	3	2	3	2	2	3	1	3	1	13	
8 Confidentiality	3	3	3	3	3	3	2	2	2	3	2	3	3	2	3	3	1	2	1	11	
12 Sanctions	3	3	3	3	3	2	3	2	3	3	2	2	3	3	2	3	1	2	1	11	
11 Remedies	3	3	3	2	3	3	3	3	2	2	3	3	2	3	2	1	1	1	2	10	
1 Coverage	3	3	3	3	3	3	3	3	2	3	3	2	1	2	2	1	1	2	1	10	
2 Wrongdoing	3	3	3	3	3	3	3	3	3	2	3	2	1	2	2	1	1	1	1	10	
6 Thresholds	3	3	3	3	3	3	3	3	2	2	3	2	1	2	2	2	2	1	1	9	
10 Breadth of retaliation	3	3	2	3	3	3	3	3	3	2	2	2	1	3	2	2	1	1	1	9	
3 Definition of whistleblowers	3	3	3	3	3	3	2	2	3	3	2	2	1	1	2	1	2	1	1	8	
4 Reporting channels (internal & regulatory)	3	2	3	3	3	3	3	2	2	3	2	2	2	2	1	1	2	1	1	7	



Conclusions

1. Whistleblower protection should remain a **key priority area** in G20 leaders' integrity and anti-corruption commitments;

2. High level commitment is needed to address weakness, fragmentation and inefficiency in **corporate governance and private (e.g. financial and corporate) sector** whistleblowing rules, as well as continued work on the public sector laws; and

3. G20 co-operation for more comprehensive whistleblower protection should focus on the three areas of greatest challenge:

- clear rules for when whistleblowing to the **media or other third parties** is justified or necessitated by the circumstances;
- clear rules that encourage whistleblowing by ensuring that **anonymous** disclosures can be made and will be protected; and
- clear rules for defining the **internal disclosure procedures** that can assist organisations to manage whistleblowing, rectify wrongdoing, and prevent costly disputes, reputational damage and liability in the manner best suited to their needs.

State of reform - Australian whistleblowing legislation

Juris	Reform	Original	1. Effective system & oversight	2. Public disclosure	3. Effective remedies
CTH +	2013	1999?	2?	2	1
ACT	2012	1994	2	1	NKTW
VIC	2012	2001	4?	Missing	NKTW
WA	2012	2003	3	2	NKTW
NSW	2010-11	1994	1	3	NKTW
QLD *	2010	1994	2	2	NKTW
TAS	2009	2002	2	Missing	NKTW
NT	--	2008	2	Missing	NKTW
SA *	2014?	1993	Missing	NKTW	NKTW
<i>Corps Act*</i>	2015?	2004	Missing	Missing	NKTW

* Some private sector coverage

+ Not whole public sector covered

NKTW: Not known to work

Whistling While They Work: Enhancing the Theory & Practice of Internal Witness Management in the Australian Public Sector

Australian Government
Commonwealth Ombudsman
Australian Public Service Commission
Charles Sturt University

Queensland Government
Crime & Misconduct Commission
Queensland Ombudsman
Office of Public Service, M&E
Griffith University

Transparency International Australia

Australian Research Council

Western Australian Government
Corruption & Crime Commission
WA Ombudsman
Public Sector Standards Commissioner
Edith Cowan University

New South Wales Government
NSW ICAC
NSW Ombudsman
University of Sydney

Victorian, ACT & NT Govts
Ombudsman Victoria
NT Comr for Public Employment
ACT Chief Minister's Dept
Monash University

General Agencies	Cth	NSW	Qld	WA	
<i>Agency Survey (Procedures)</i>	73	85	83	63	304
<i>Procedures Assessment</i>	56	60	31	28	175
<i>Employee Survey</i>	27	34	32	25	118

Total no. of public servants surveyed – **23,177**
 Total responses – **7,663 (33%)**

Case Study Agencies	Volunteered	15	24	28	20	87
	Selected	4	4	4	3	15

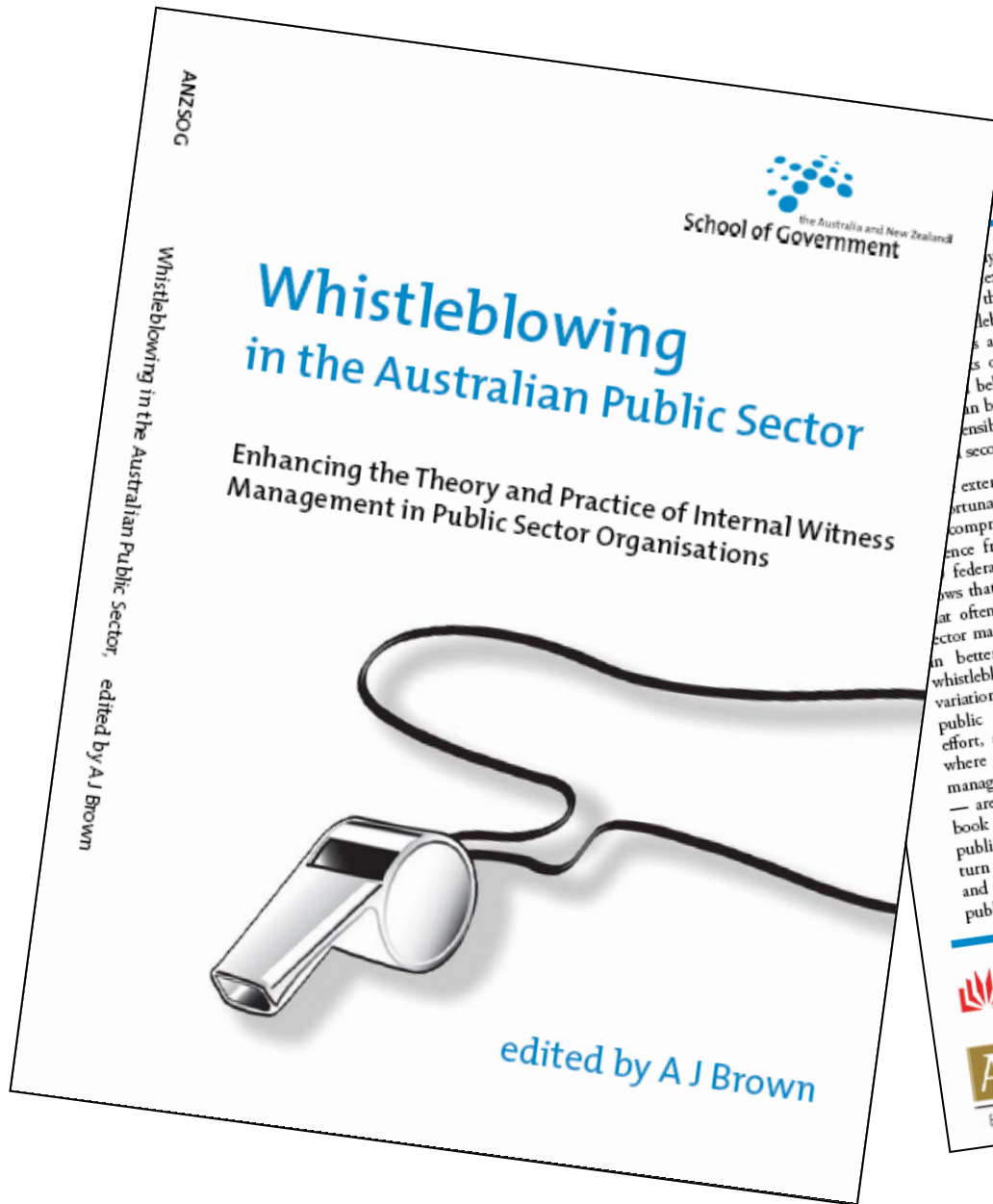
Internal Witness Survey **n=240**

Casehandlers (n=315)
Managers (n=513) **n=828**

Integrity Agencies

Integrity Agency Survey (Practices & Procedures) **n=16**

Integrity Casehandler Survey **n=82**



... challenges in public sector management, few are
... as the management of whistleblowing. Because
... the discovery and rectification of wrongdoing, public
... whistleblowing is widely acknowledged as being positive for
... and for society at large. However, the conflicts and
... is often associated with whistleblowing also support a
... belief that every whistleblower is destined to suffer, and
... can be done to protect them from reprisals. Even if they did
... sensible employees are often seen as unlikely to ever blow the
... second time around.

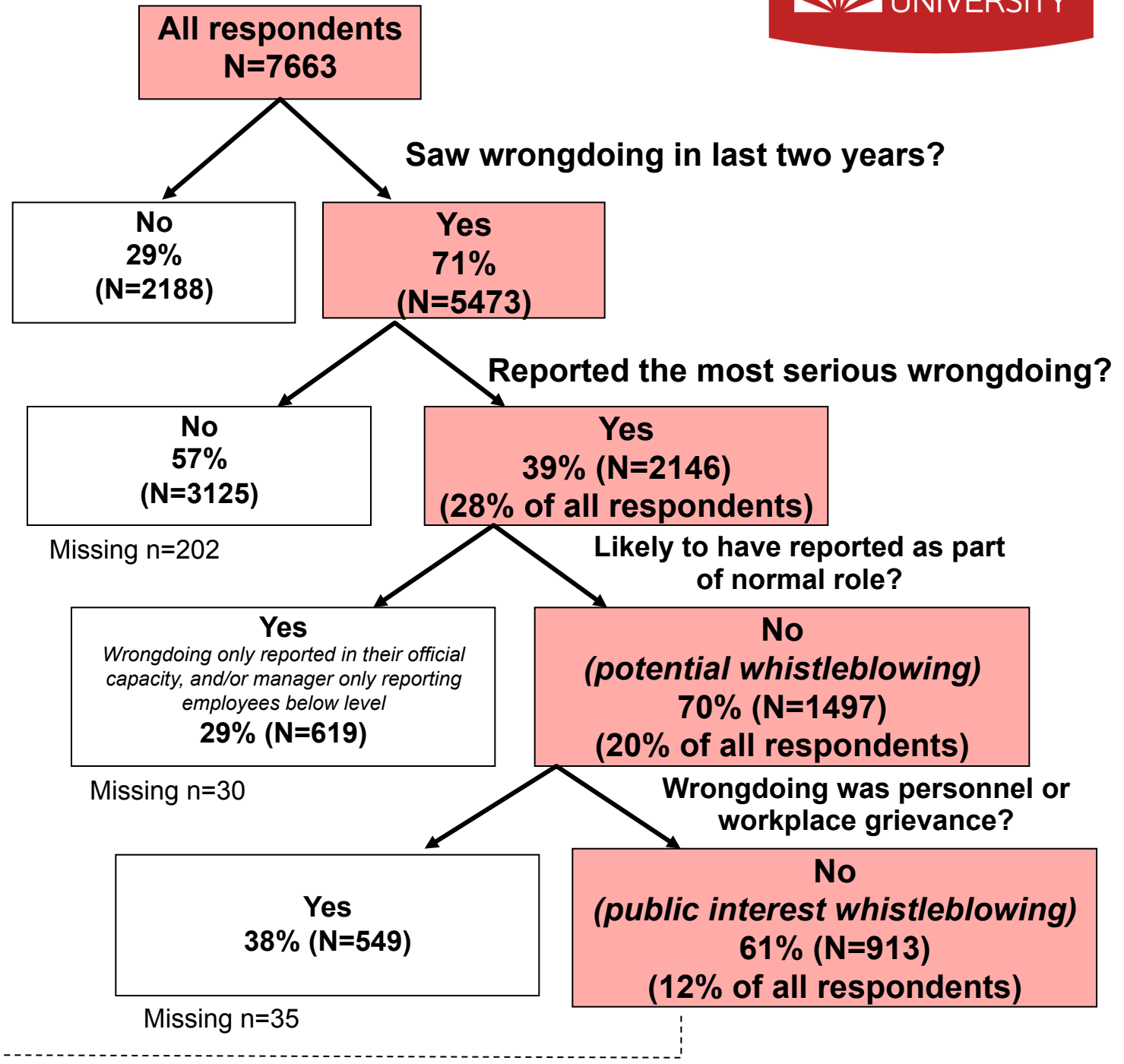
... extensive research in this book reveals a more complex and,
... unfortunately, more positive picture. The product of one of the world's
... comprehensive research projects on whistleblowing,
... evidence from over 8,000 public servants in over
... federal, state and local government agencies
... shows that whistleblowers can and do survive, and
... that often their role is highly valued. Public
... sector managers face significant challenges
... in better managing and protecting
... whistleblowers. There is great
... variation between the many
... public agencies making the
... effort, and the many agencies
... where the outcomes — for
... managers and whistleblowers alike
... — are still likely to be grim. This
... book is compulsory reading for all
... public sector managers who wish to
... turn this negative trend around,
... and for anyone interested in
... public accountability generally.

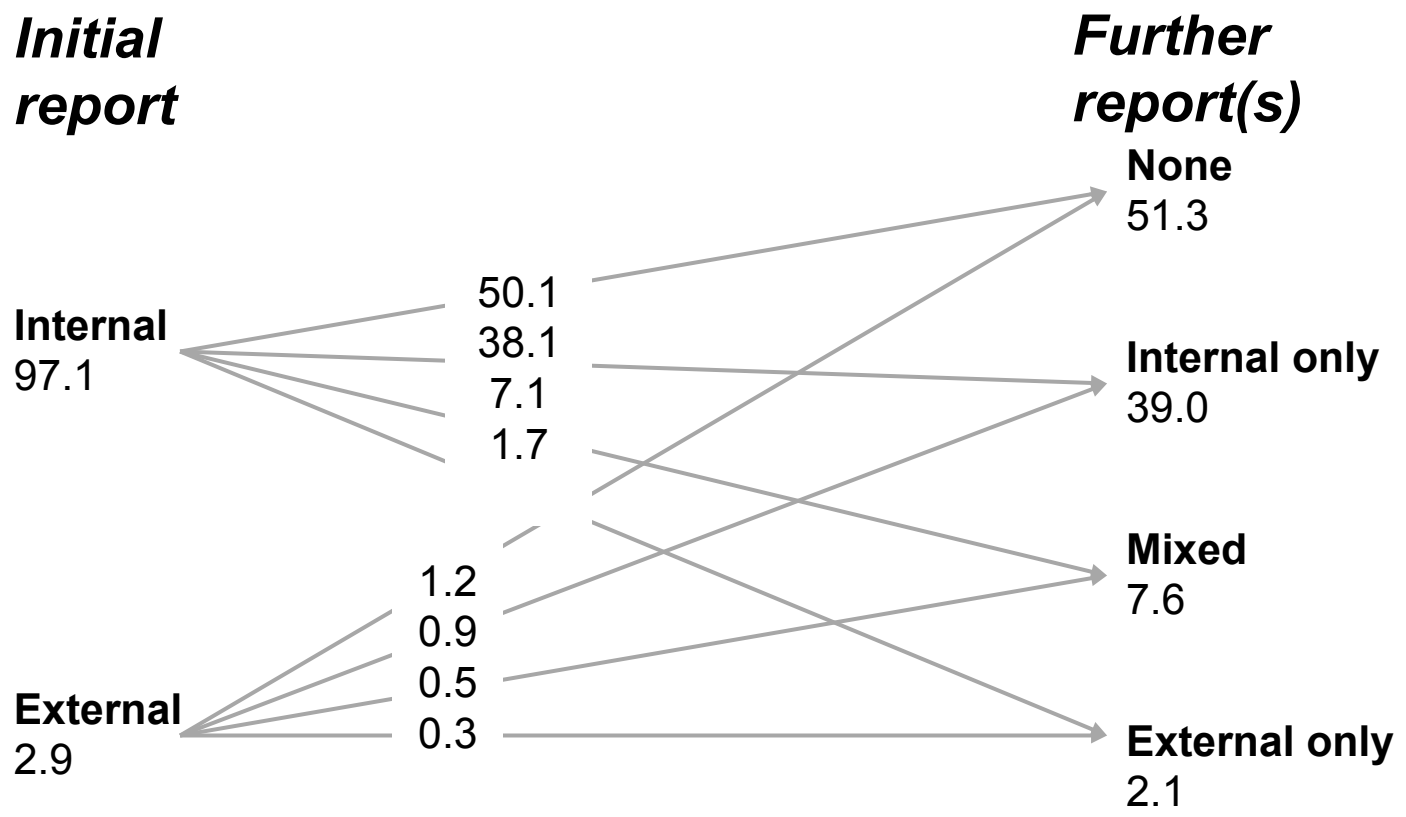


<http://www.griffith.edu.au/whistleblowing>

http://epress.anu.edu.au/whistleblowing_citation.html

Figure 2.1.
An overview of whistleblowing in the Australian public sector





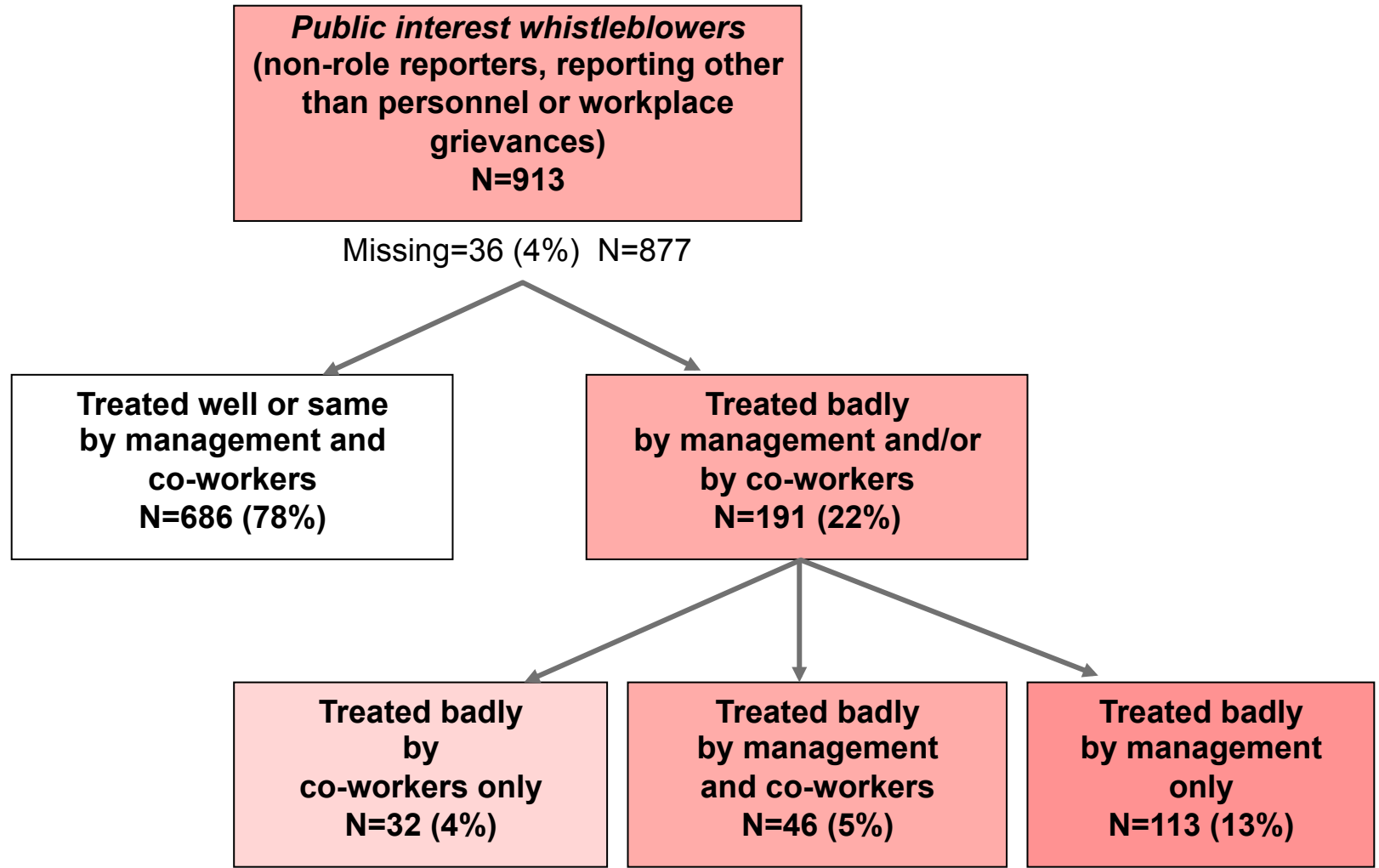
Reporting Paths of Non-Role Public Interest Reporters (%)

Whistling While They Work
Employee Survey, Q28
(n=858)

**Brown (ed) (2008),
Whistleblowing in the Australian Public Sector,
Fig 4.1**

‘Internal’ includes reports to one of the following: **supervisors, senior managers, CEOs, internal ethical standards units, internal audit or fraud units, internal ombudsmen or complaints units, human resource or equity and merit units, internal hotlines and counsellors and peer support officers.**
 ‘Internal only’ includes reports made only to one of more recipients in the ‘Internal’ category.
 ‘External’ includes reports to one of the following: **external hotlines or counselling services, unions, government watchdog agencies, members of parliament and journalists.**
 ‘External only’ includes reports made only to one or more recipients in the ‘External’ category.
 ‘Mixed’ includes reports made to both ‘Internal’ and ‘External’ recipients.

Figure 5.1. Treatment by management and co-workers (%)



What is 'good' treatment?

'This incident has done nothing for my career in this organisation as I have tended to just stay in low-key positions and away from the stress of finding fraud again. Basically, I have withdrawn and taken on interests outside my work that involve me in more interesting projects and life experiences. Yet my experience could have been a lot worse, such as, conspiracy within the organisation or management not taking it seriously. It [was] the biggest fraud this organisation has experienced. Part of me is proud to have had the courage to report it, part of me doesn't want to know about it.'

- 'Successful' whistleblower, Internal Witness Survey

Table 5.16 Respondents' feelings as a result of whistleblowing (mean)^a

	(a) All public interest non-role reporters Mean (n = 144)	(b) Treated well/same by management and co-workers Mean (n = 47)
Factor 1 'Feelings about others'		
Mean response for combined items a-e (1-5 scale): ^b	1.78	2.60
a. Decreased... Increased trust in organisation	1.38	2.42
b. Powerlessness Powerfulness	1.95	2.58
c. Betrayal Support	1.81	2.62
d. Persecution Affirmation	2.03	2.96
e. Frustration Satisfaction	1.72	2.48
Factor 2 'Emotions about self'		
Mean response for combined items f-i (1-5 scale): ^b	1.99	2.62
f. More stress Less stress	1.67	2.40
g. Anxiety Confidence	1.87	2.47
h. Increased... Decreased mood swings	2.23	2.62
i. Withdrawal from... Connection with others	2.18	3.00
Factor 3 'Individual worth'		
Mean response for combined items j-k (1-5 scale): ^b	2.51	3.13
j. Decreased... Increased self-worth	2.57	3.21
k. Decreased... Increased self-esteem	2.44	3.04

^a Items were ordered differently in the internal witness survey. They are presented here as suggested by a factor analysis that produced three distinct factors. All three scales are reliable (Cronbach's alpha 0.9 or better).

^b Responses to the paired terms were indicated on a five-point scale, with the left-hand term in each pair scoring 1 and the right-hand term scoring 5.

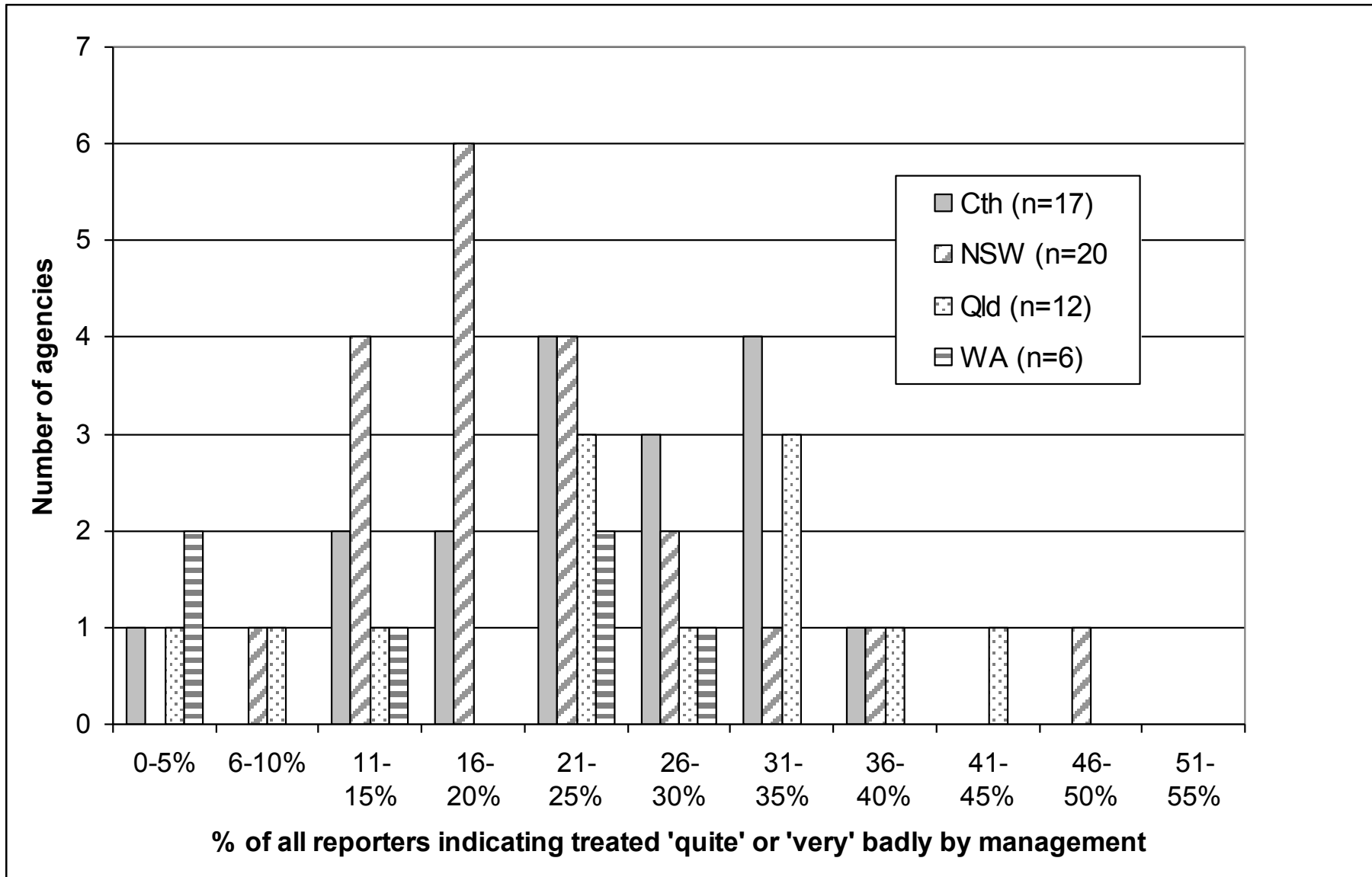
Source: Internal witness survey (public interest non-role reporters, n = 144).

How do whistleblowers survive?

- Still with difficulty
- Better chances where:
 - Wrongdoing is less serious & more provable
 - Fewer people & no superiors involved
 - Expectations realistic (but there is proven difficulty with accurately predicting support from managers)
- Support is crucial, but currently usually informal networks & self-organised
- Real prospects for improving the situation, and real obligation on agencies to do so.

Figure 5.2. Proportion of reporters indicating bad treatment by management (%)

(n=55 agencies)



A Key Metric: How many *don't* report?

Figure 2.4. Inaction rates (very/extremely serious)

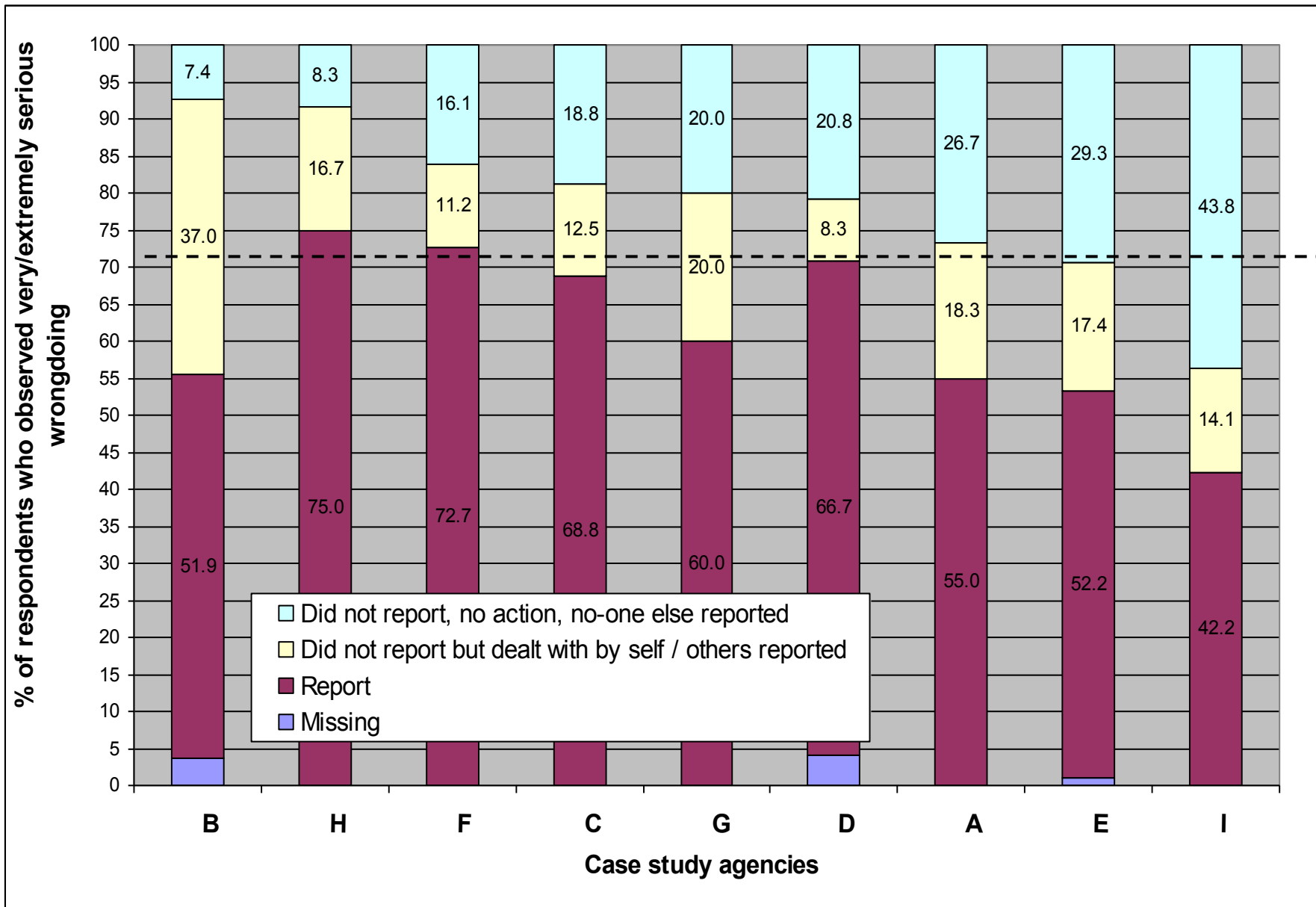
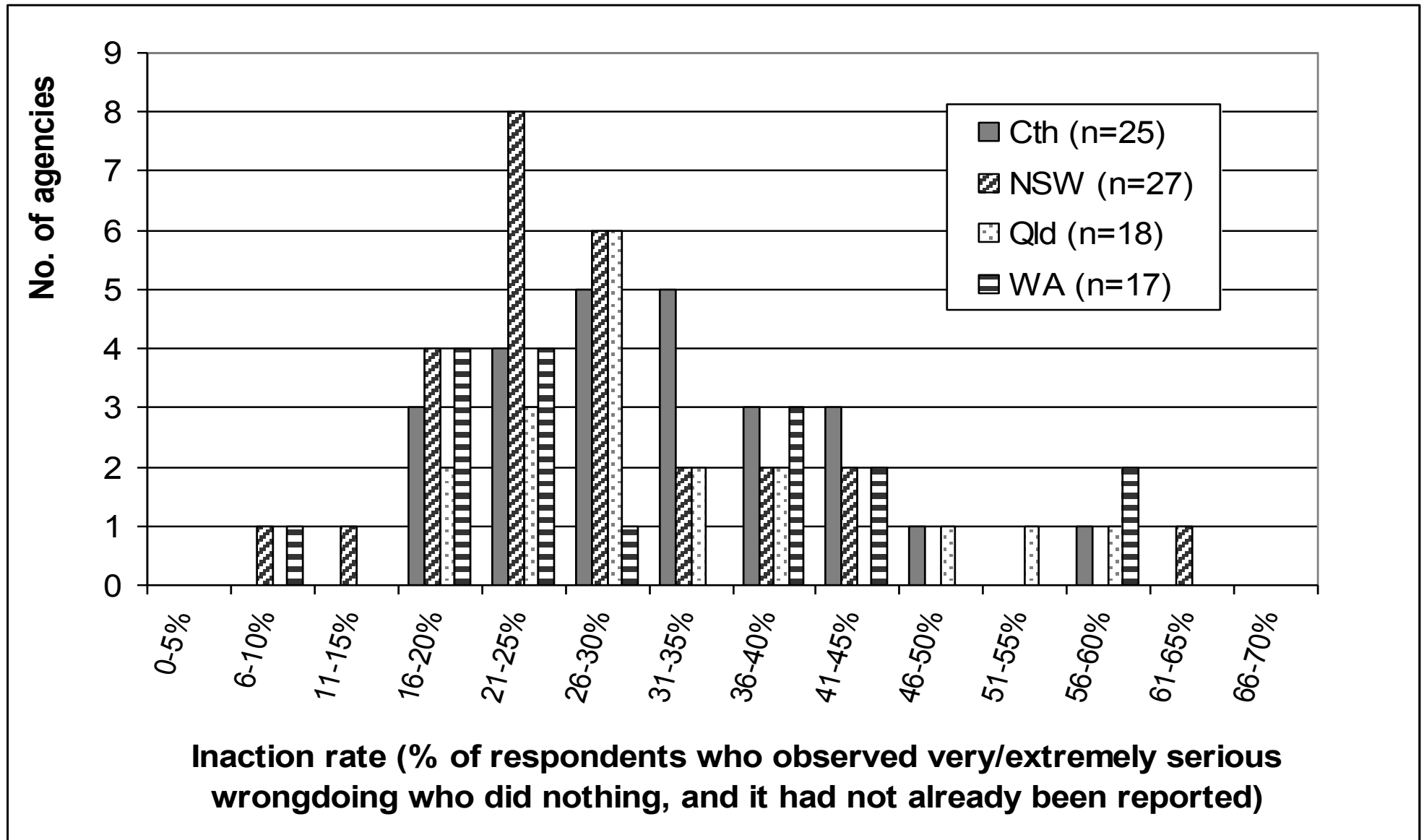


Fig 2.4
p.49


Range of inaction rates by jurisdiction



AS 8004—2003
(Incorporating Amendment No. 1)

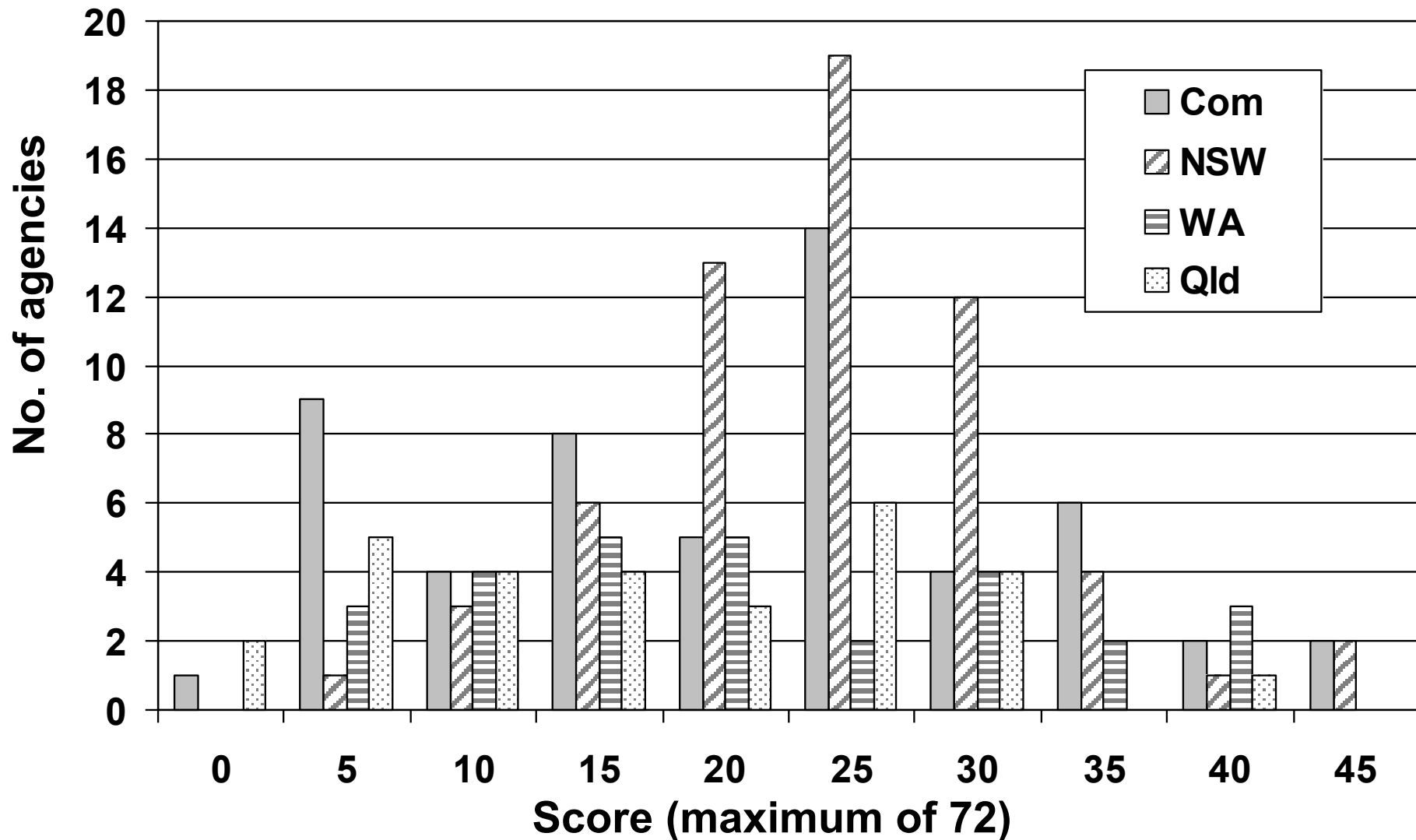
Australian Standard™

Whistleblower Protection Programs for Entities

 Standards Australia

**Only 5 out of 175
federal and state
agencies had
'reasonably strong'
procedures
measured against
the Standard**

**Comprehensiveness
of procedures by jurisdiction
(n=175 agencies)**



Designing research to be operationalised

Whistling While They Work – Australia

Overall ranking of case study agency performance

Agency	Agency rankings														
	B	A	M	P	N	E	C	F	D	O	L	G	K	H	I
Procedures comprehensiveness	2	1	10	8	12	3	15	6	14	5	11	13	-	7	9
Indicator Survey1 results:															
1. Attitudes to reporting	2	1	9	12	6	3	10	5	4	11	14	13	8	15	7
2. Awareness of legislation	4	2	1	7	3	6	11	13	5	8	9	10	15	14	12
3. Awareness of policies	5	1	2	10	6	3	4	7	9	12	8	13	15	14	11
4. Whistleblowing propensity	3	1	2	6	8	4	5	7	9	10	13	11	14	15	12
5. Trust in organisational response	3	2	4	1	11	7	12	8	15	6	5	9	13	10	14
6. Inaction rate (serious)	1	13	6	4	7	14	8	5	10	12	3	9	11	2	15
7. Knowledge of investigation	7	5	9	1	2	4	11	12	3	6	13	10	8	15	14
8. Treatment following report	1	6	7	3	5	11	2	9	14	10	13	4	8	12	15
Sum of ranks	26	31	40	44	48	52	63	66	69	75	78	79	92	97	100
Overall ranking	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

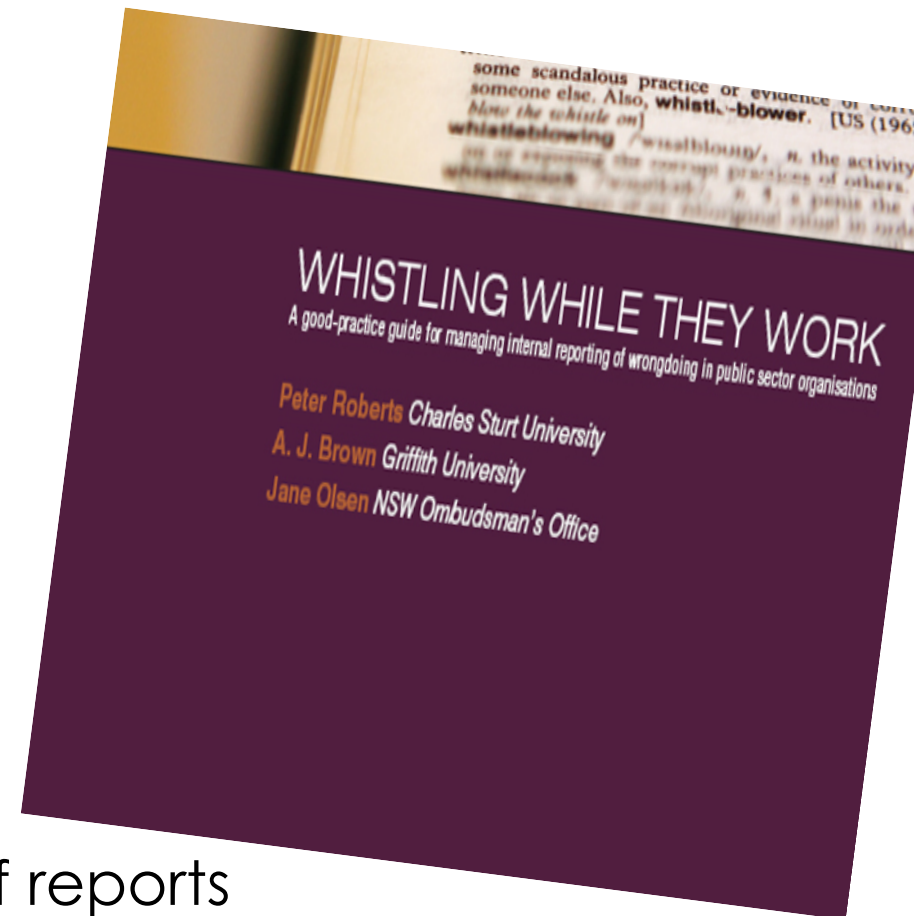
Whistling While They Work - A good practice guide for managing internal reporting of wrongdoing in public sector organisations

Peter Roberts, A. J. Brown & Jane Olsen, 2011

http://epress.anu.edu.au/whistling_citation.html

Elements of an organisational whistleblowing program:

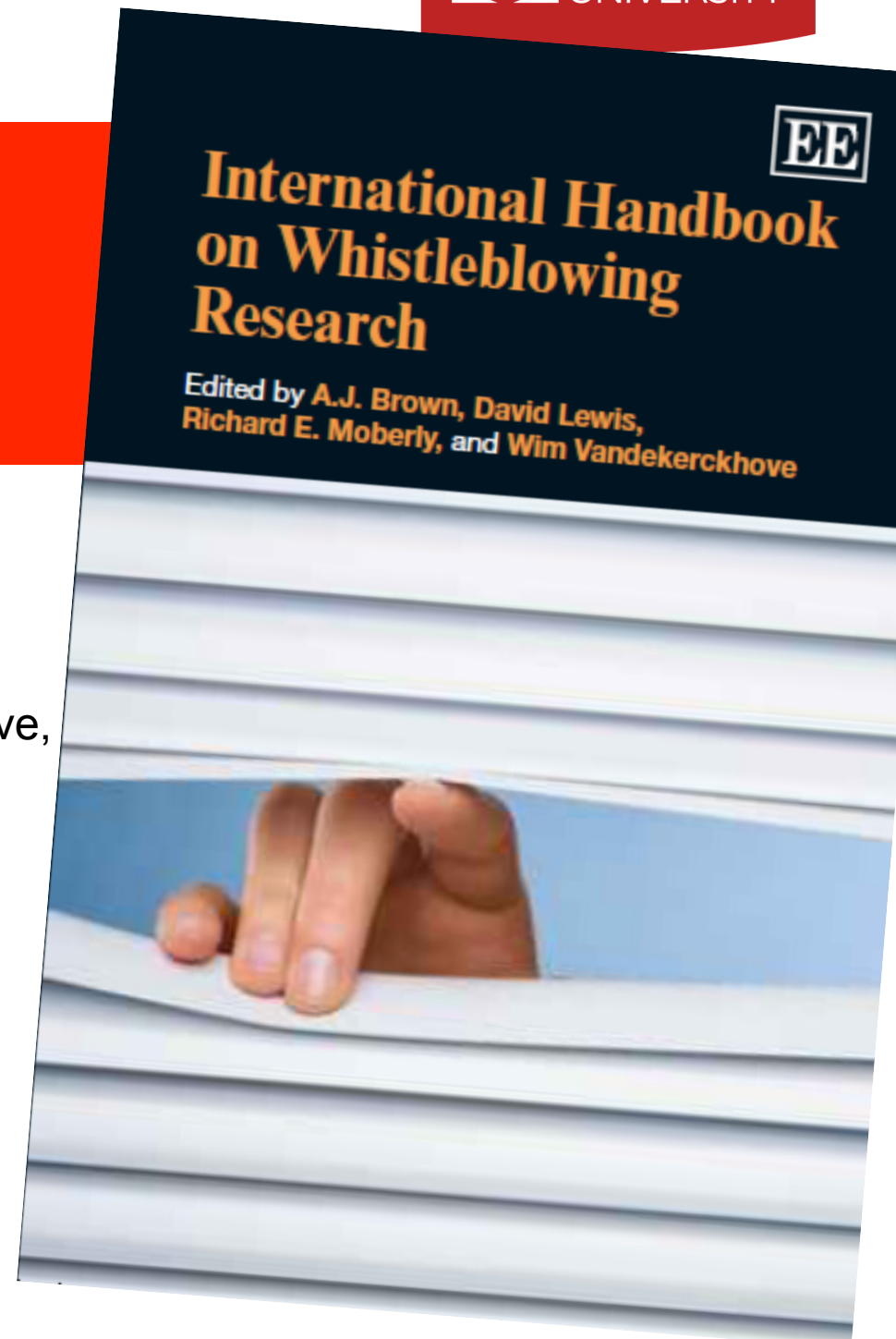
1. Organisational commitment
2. Encouragement of reporting
3. Assessment and investigation of reports
4. Internal witness support and protection
5. An integrated organisational approach



From whistleblowing behaviour...
To organisational outcomes...
To managerial responsiveness
to whistleblowing

Vandekerckhove, W., Brown, A.J., & Tsahuridu, E. (2014, in press), 'Managerial responsiveness to whistleblowing: expanding the research horizon' in Brown, A.J., Lewis, D., Moberly, R. & Vandekerckhove, W. (eds), *International Handbook on Whistleblowing Research*, Edward Elgar, Cheltenham.

[Ajzen, I. 1991. 'The Theory of Planned Behavior.' *Organizational Behavior & Human Decision Processes*, December, 50(2): 179–211.]



WWTW#2 - Research Needs & Aims?

1. Provide **reliable indicators** of organisational and jurisdictional success (or challenges) in managing employee reporting of wrongdoing
2. Begin to provide efficient **longitudinal data** on performance;
3. Extend across **jurisdictions and sectors** for better comparative lessons;
4. Extend focus to new questions – shift focus clearly onto **organisational rather than individual** behaviour in responses to perceived wrongdoing and its reporting:

Managerial responsiveness:

- The **range of ways in which managers respond** to whistleblowing,
- The criteria that should be used to **evaluate the appropriateness of those responses**, and
- The **attributes, predictors and factors that may determine or influence** those responses; including individual, contextual and regulatory factors.

Proposed target no. of organisations for surveys

		Australia	NZ	UK?	Canada?	Total
'Core'	Public	10	5	10?	?	25
	Private	10	5	10?	?	25
		20	10	20?	?	50
'Additional'	Public	Unlimited (cost recovery for survey admin & analysis)				
	Private					

From whistleblowing behaviour...
To organisational outcomes...
To managerial responsiveness
to whistleblowing

Vandekerckhove, W., Brown, A.J., & Tsahuridu, E. (2014, in press), 'Managerial responsiveness to whistleblowing: expanding the research horizon' in Brown, A.J., Lewis, D., Moberly, R. & Vandekerckhove, W. (eds), *International Handbook on Whistleblowing Research*, Edward Elgar, Cheltenham.

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