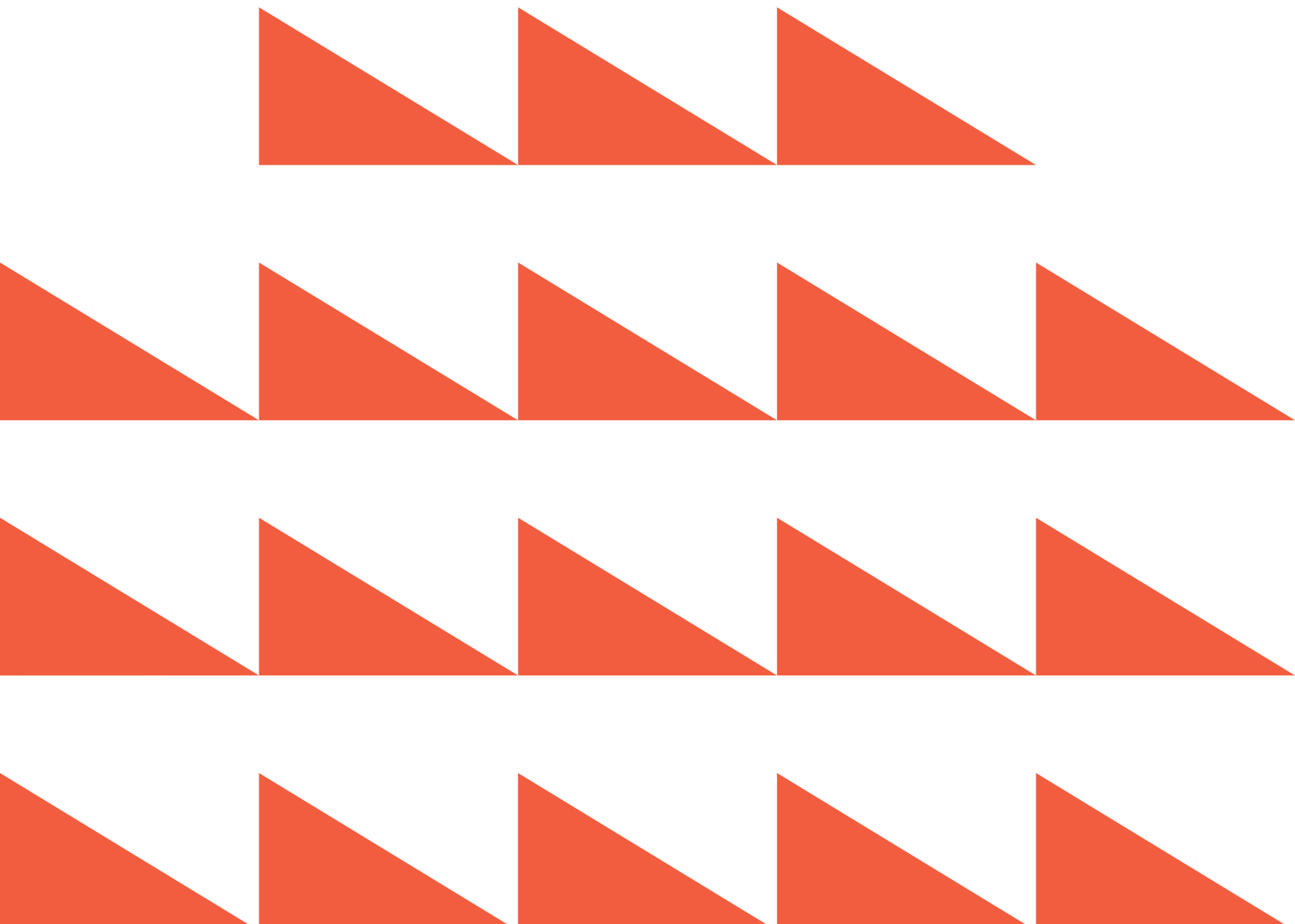


Review of protected disclosure procedures

Section 60 of the *Protected Disclosure Act 2012*

December 2014



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1 Executive summary

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1.1 Conducting the review

In Victoria, public bodies that can receive disclosures are required to establish and publish procedures about making, handling and notifying disclosures. All public bodies are required to establish and publish procedures about protecting people from detrimental action taken in reprisal for making a disclosure.

In 2014, the Independent Broad-based Anti-corruption Commission (IBAC) reviewed the procedures established and implemented by government and local government agencies following the introduction of the *Protected Disclosure Act 2012* (the PD Act).

Under section 60 of the PD Act, IBAC may, at any time, review both the procedures established by a public body under section 58 of the PD Act and their implementation to ensure that they are consistent with the PD Act, the Protected Disclosure Regulations 2013 (PD Regulations) and the guidelines issued by IBAC under section 57 of the PD Act (IBAC guidelines¹).

IBAC also examined whether public bodies had met the requirements of section 59(4) of the PD Act by ensuring that their procedures were readily available to the public and their employees.

One hundred and fourteen public bodies were selected for review.

A review team was established to:

- conduct an initial survey of the review sample
- undertake a desktop review of procedures and other supporting documents
- interview key public body representatives, if considered necessary.

Two types of public bodies are required to develop and implement procedures under section 58 of the PD Act.

The first category consists of those public bodies that can receive disclosures, and make notifications to IBAC of assessable disclosures. These public bodies are required to have procedures for both making and handling protected disclosures and for protecting people against detrimental action taken by their officers. This category consists of nine departments, 11 administrative offices, the Victorian Public Sector Commission and the (then) 79 local councils. All of these public bodies were included in the review sample.

This first category also includes one investigative entity, Victoria Police. Victoria Police is in the unusual position of being subject to IBAC's review, but is the only public body subject to that review which is also an investigative entity. Unlike the other investigative entities, Victoria Police also has specific investigative powers under the *Victoria Police Act 2013* (Victoria Police Act) that they must use for protected disclosure complaints.

The second category consists of public bodies that cannot receive disclosures, but may have disclosures made about them. These bodies are required only to have procedures for protecting people against detrimental action taken by their officers. There are a large number of public bodies in this category, and so it was necessary to select a sample for the purposes of the review. The sample needed to reflect not only the sectors in which these public bodies operate, but also the relative size of the public body and its geographic location.

Since the PD Act provides for a regular review of public bodies, only certain sectors were covered in this first review. Selection was made on the basis of the number of assessable disclosures/complaints received by or notified to IBAC, as well as those sectors from which most queries have been received by IBAC about protected disclosures. On the basis of that information, the selected sectors were:

- universities and TAFE colleges
- water corporations
- public hospitals and health care services
- statutory authorities.

¹ Guidelines for making a handling protected disclosures, Guidelines for protected disclosure welfare management, IBAC, June 2013

1.2 Undertaking the review

All public bodies selected were provided with an online survey to complete. At the same time, they were required to provide a copy of their procedures to IBAC for review.

There was a very high (94%) response rate to the survey – only seven organisations did not complete it. This included three of the 15 selected public bodies and four of the 79 local councils. All 20 departments and administrative offices completed the survey. Only four organisations that can receive disclosures did not respond. Given the high rate of return, this provides a good representative sample of the views of organisations for the purposes of the review.

The review team used a checklist to ensure each procedure document was assessed consistently.

The review team assessed all procedures against the checklist to determine whether the procedures developed were consistent with the PD Act, the PD Regulations and the IBAC guidelines. The survey responses informed the review as to the efforts made by the organisations to implement procedures and to make them readily available to members of the public and their own staff.

As it was considered that sufficient information was obtained by means of the survey and the review of procedures, the review team did not interview survey respondents or organisation representatives. However, during the course of the review, there were email communications and some telephone conversations with some contact officers from organisations, in order to collect further information or to seek clarification in relation to material provided.

1.3 Review findings

1.3.1 Consistency with PD Act, PD Regulations and IBAC guidelines

Of the 114 organisations reviewed, 88 organisations met the requirements of section 60 of the PD Act by developing and implementing protected disclosure procedures that were consistent with the PD Act, PD Regulations and IBAC guidelines.

The review found that 26 organisations had not met the requirements of section 60 of the PD Act because:

- the organisation had not developed a protected disclosure procedure (seven organisations)
- the organisation's procedure contained substantially incorrect information about the organisation's roles and responsibilities under the PD Act
- the organisation's procedure did not include essential information about the PD Act and its operation.

All departments and administrative offices had procedures in place. All but four local councils had procedures in place. Of the selected public bodies, one of each of the TAFEs, hospitals and public sector bodies, had no procedures in place. The water corporations and universities all had procedures in place.

1.3.2 Availability of procedures

The review team assessed organisations' compliance with the requirement under section 59(4) of the PD Act by considering whether:

- the procedure was easy to read and understand for a range of different potential users
- the procedure could be easily located on the organisation's website, or their organisation's intranet.

1 Executive summary

In relation to the first issue, the review team found that the majority of procedures were able to be read and understood by potential users, but there were some common problems that occurred with both the procedures that had met the requirements of section 60 of the PD Act and those that had not. These problems were:

- difficulties in explaining the complex requirements of the PD Act for making and assessing a protected disclosure in simple terms
- confusion as to who the procedures were directed to – potential disclosers or protected disclosure coordinators (PD coordinators) and welfare officers.

To a certain extent, these problems were alleviated in those procedures that were well-structured and organised documents containing useful diagrams and examples, and by the provision of additional explanatory material.

In relation to the second issue, very few procedures were able to be located easily on organisations' websites. Using the term 'protected disclosure' to search for information usually resulted in finding relevant information, but this is not a common term in the community, compared to the use of the terms 'whistleblowing' and 'whistleblower'.

The review found that only those organisations that had addressed both of these two issues were able to ensure that their procedures were readily available to members of the public.

In relation to making information available to their own staff, the review found that organisations had made information available about protected disclosures in a variety of ways, including through their intranet, as well as through specific training courses, awareness sessions, and induction. However, only 30 per cent of organisations had attempted to measure the effectiveness of their methods of communicating the message about protected disclosures.

1.4 Suggested outcomes

There is no penalty under the PD Act for failure to have procedures in place within six months of the introduction of the Act. However, the seven organisations that do not have procedures are depriving their own staff and members of the public of information that would assist them to make a disclosure about that organisation, and thus potentially receive protections under the PD Act. It is therefore suggested that these organisations be required to establish procedures by 31 March 2015.

The 19 organisations with procedures in place that are inconsistent with the legislation or IBAC guidelines will be able to achieve consistency by amending their existing procedures by removing or amending incorrect information and including missing information. There are some good practice models in relation to each type of procedure that these organisations could use.

All organisations would benefit from reviewing their procedures in light of the issues raised in this report. All organisations should consider whether their procedures can be simplified or made more user-friendly, and should ensure that their procedures are made readily available, particularly to members of the public.

2 Conducting the review

2 Conducting the review

2.1 Review scope

The objective of this review was to review the procedures established and implemented by public bodies in the Victorian public sector under the PD Act. This review covers the introduction and implementation by government and local government agencies of new procedures following the commencement of the PD Act in 2013.

Under section 60 of the PD Act, IBAC may at any time review the procedures established by a public body under section 58 of the Act and their implementation to ensure that they are consistent with the PD Act, the PD Regulations and the guidelines issued by IBAC under section 57 of the Act.

As part of the assessment of the implementation of procedures, IBAC also examined whether public bodies had met the requirements of section 59(4) of the PD Act by ensuring that their procedures were readily available to the public, each member, officer and employee of the public body, and, in the case of Victoria Police, each member of Victoria police personnel.

2.2 Review approach

The approach for this review was to conduct an initial survey completed by the review sample, undertake a desktop review of procedures and other supporting documents, interview with key public body representatives, if considered necessary, and report writing.

It was not considered necessary to conduct any interviews, as explained further in section 2.6.

2.3 Review sample

Under section 58 of the PD Act, there are two types of public bodies that are required to develop and implement procedures.

The first category consists of those public bodies that can receive disclosures, and can make notifications to IBAC of assessable disclosures. These public bodies are required to have procedures under both section 58(1) (making and handling protected disclosures) and section 58(5) (procedures for protecting people against detrimental action taken by their officers). This category consists of nine departments, the 11 administrative offices, the Victorian Public Sector Commission (VPSC) and the (then) 79 local councils. All of these public bodies were included in the review sample.

This first category also includes the investigative entities, the Victorian Ombudsman (the VO), Victoria Police, and the Victorian Inspectorate (the VI). The VO and the VI are specifically excluded from the scope of IBAC's review under section 60, but Victoria Police is not. Victoria Police is in the unusual position of being subject to IBAC's review, but is the only public body subject to that review which is also an investigative entity. Unlike the other investigative entities, Victoria Police also has specific investigative powers under the (then) *Police Regulation Act 1958* that were incorporated into the Victoria Police Act that they must use for protected disclosure complaints.

The second category consists of public bodies that cannot receive disclosures, but may have disclosures made about them, and that are required only to have procedures under section 58(5). There are a large number of public bodies in this category, and so it was necessary to select a sample for the purposes of the review. The sample needed to reflect not only the sectors in which these public bodies operate, such as education, health, and provision of essential services, but also the relative size of the public body and its geographic location (central Melbourne, suburban, regional).

Since the PD Act provides for a regular review of public bodies, it made sense to cover only certain sectors in this first review. Selection was made on the basis of the number of assessable disclosures/complaints IBAC has received or which have been notified to IBAC, as well as those sectors from which most queries have been received by IBAC about protected disclosures. On the basis of that information, the selected sectors were:

- universities and TAFE colleges
- water corporations
- public hospitals and health care services
- statutory authorities.

The following types of public bodies were chosen as 'selected public bodies':

- three universities (RMIT University (central), Deakin University (regional), LaTrobe University (suburban))
- three TAFE colleges (Kangan TAFE (central), Box Hill Institute of TAFE (suburban), Central Gippsland Institute of TAFE (regional))
- three public hospitals and/or health care services (Gippsland Southern Health Service (regional), Royal Melbourne Hospital (central), Southern Health (suburban))
- three water corporations (Yarra Valley Water (suburban), South East Water (central), Goulburn Valley Water (regional))
- three statutory authorities (VicRoads, WorkSafe, Victorian Commission for Liquor and Gambling Regulation).
- The total number of public bodies included in the review was 114; these are listed in Appendix 1.

2.4 Review tools

Several review tools were used to assist in conducting the review. The first was an online survey using Survey Monkey. It consisted of multiple choice and free text questions. A copy of the survey questions is included in Appendix 2. The survey was divided into seven sections, requiring information from the survey participants in relation to the following:

1. name and size of public body
2. development and introduction of protected disclosure procedures by the public body
3. details about PD coordinators, protected disclosure officers (PD officers) and welfare officers in the public body – including their appointment, roles and responsibilities, and place in the organisation
4. Awareness and training about protected disclosure in the public body – the nature and extent of training provided to PD coordinators, PD officers, welfare officers, supervisors and managers, and employees, and methods by which the public body's leaders enforce messages about protected disclosures
5. implementation of PD procedures within the public body, in particular, the development of any tools and internal processes
6. self-assessment by the public body as to the effectiveness of their policies and procedures, including an opportunity to highlight any particularly good practice and also any areas for improvement in the protected disclosure legislative regime
7. how public bodies have promoted awareness of the PD Act and their organisation's role and responsibilities under the PD Act to both their staff and members of the public.

2 Conducting the review

The second tool was a procedures assessment checklist, used to assess each of the procedures in order to determine their consistency with the PD Act, PD Regulations and the IBAC guidelines. A copy of the checklist is included in Appendix 3. For those organisations that were only required to have procedures to protect persons from detrimental action, the review officers did not complete Part 1 of the checklist.

Parts 1 and 2 of the checklist identified the major features of the legislation and guidance and asked for the review officer to answer three basic questions:

- Did the procedure contain information about each itemised feature of the PD Act and guidelines?
- Was the information provided consistent with the PD Act and guidelines?
- If the information was not consistent, in what way was it not?

Part 3 of the checklist required the review officer to assess the information provided in each procedure about secure processes for receiving and managing protected disclosures, annual reporting requirements and information about training requirements.

Part 4 of the checklist required the review officer to assess the usability of a procedure in terms of how accessible it was to staff and members of the public (for example, website or intranet location), readability in terms of structure, aids to understanding such as diagrams, and language used.

This review was also informed by the results of two projects already conducted by IBAC.

The first was the PD coordinators survey conducted by the IBAC Prevention and Education unit, evaluating IBAC's 2013 information sessions for PD coordinators and PD officers.

The second project reviewed the integrity frameworks of six Victorian local councils. The project concentrated on the following elements of an integrity framework:

- risk management
- management and commitment
- deterrent and prevention measures
- detection measures
- staff education and training.

2.5 Resources allocated to the review

The review was led by Vanessa Twigg, Principal Legal Advisor, Protected Disclosures who was assisted by members of the IBAC Strategic Services division in developing and conducting the survey. The Principal Legal Advisor, Protected Disclosures, and IBAC legal team's legal support officer (the review team) conducted the assessment of all the procedures provided by the organisations.

IBAC's Operations and Prevention Committee approved the project plan for the review, and approved the review report. Progress of the review was oversighted by a steering committee consisting of IBAC's Director Legal, the Managing Lawyer, and the Manager Strategic Policy, Planning and Research. The committee met with the review team on a weekly basis and primarily reviewed the progress of the assessment of procedures and analysis of the results. The committee checked and reviewed deadlines for completion of the various components of the review.

2.6 Review activities

The review commenced in July 2014. Tailored explanation letters were sent to the head of each public body providing an explanation of the review, their organisation's role and a request to participate in the survey and nominate a contact officer for the purposes of the review. The deadline for responding to the survey was 15 August 2014.

All public bodies selected were provided with an online survey to complete. At the same time, they were required to provide a copy of their procedures to IBAC for review.

There was a very high (94%) response rate to the survey. When broken down by organisation type responses were provided by:

- 20 of the 20 (100%) departments and administrative offices
- 75 of the 79 (95%) local councils
- 12 of the 15 (80%) selected public bodies.

Using a checklist to assess procedures enabled the review team to take a consistent approach to each procedure document.

The review team assessed all procedures against the checklist to determine whether the procedures developed were consistent with the PD Act, the PD Regulations and the IBAC guidelines. The survey responses informed the review as to the efforts made by the organisations to implement procedures and to make them readily available to members of the public and their own staff.

The review team conducted the assessment of the procedures from early September until mid-October. After consideration of the assessments and the survey responses, it was determined that it was not necessary to conduct any interviews to support the review. However, the review team did make and receive calls and emails from a number of contact officers from different organisations to seek clarification and collect further information to help to inform the review.

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3 Undertaking the review – surveys

3 Undertaking the review – surveys

The survey respondents were required to provide information that would inform the review about how their procedures were developed, how they had been implemented, and what the organisation had done to make the procedures accessible to their staff and members of the public.

Most of the information obtained by means of the surveys has not been independently verified by the review team. However, by undertaking the assessment of each procedure and its location on the organisation's website, it was possible to measure the accuracy of survey respondents' information about the overall accessibility of their procedures.

3.1 Responses and response rates

Overall, 94 per cent of organisations responded to the survey. This was a very high response rate. Only seven of the 114 organisations did not complete the survey². This included three of the 15 selected public bodies (which only need to have procedures about protecting people from detrimental action) and four of the 79 local councils, which can receive protected disclosures. All 20 departments and administrative offices completed the survey. Given the high rate of return, this provides a good representative sample of the views of organisations for the purposes of the review.

3.2 Survey results

3.2.1 Name and size of organisation

The demographics of the participating organisations vary considerably, and some of these differences appear to have had an impact on the organisation's ability to introduce and implement protected disclosure procedures within their organisation and make them available to their staff and members of the public. However, all of the organisations have access to the internet and websites for use in providing information about protected disclosures.

In the majority of cases, the organisation has its own website, but several organisations, such as the Local Government Investigations and Compliance Inspectorate (Local Government Inspectorate) and the Office of the Chief Parliamentary Counsel, have a dedicated part of another organisation's website. This creates an extra layer of difficulty for such organisations in making their procedures accessible.

The numbers of staff employed in these organisations range from 20 (Office of the Governor) to 17,426 (Victoria Police). Government departments' staffing numbers range from 576 (Department of Treasury and Finance) to 65,000 (Department of Education and Early Childhood Development). Local councils' staff numbers vary from 64 (Borough of Queenscliffe) to approximately 1,400 people. The numbers of staff employed in councils that have the same demographic features appear to be quite consistent. For example, remote regional councils have between 120 and 200 staff; whereas inner city councils have between 900 and 1,300 staff.

These ranges of staff numbers also reflect the coverage of the organisation. Victoria Police and the departments have staff in Melbourne, the suburbs and throughout regional areas; whereas councils cover very specific geographic areas, but vary considerably in population demographics, geographic location, and area (acreage) covered. Those organisations with a number of offices throughout Victoria or large regional areas face challenges in sharing information and providing training for their staff, and also the provision of information to members of the public.

² The organisations were: Box Hill Institute, Central Gippsland Institute of TAFE, the Royal Melbourne Hospital, Banyule City Council, Casey City Council, Wellington Shire Council, and Yarra City Council

3.2.2 Introduction of protected disclosure procedures

The PD Act required all public bodies that were in existence at the time of the commencement of the Act on 10 February 2013, to have new procedures in place within six months, ie. by 10 August 2013. Eighteen survey respondents stated that they did not have procedures in place by that time. Reasons given for this non-compliance included:

- changes in staffing or lack of dedicated staff resources and conflicting work priorities for the person nominated to prepare the procedures
- delay caused by having to have council formal approval of the procedures at a scheduled council meeting that took place after 10 August 2013
- in one case, the organisation was not aware of its obligation to prepare procedures.

However, the majority of organisations had their procedures in place shortly after the 10 August deadline. As identified in section 4.2, a number of organisations still do not have procedures in place or they could not be located by the review team. Several of those organisations did not respond to the survey.

One of the matters being reviewed is whether an organisation’s procedure is consistent with the IBAC guidelines. Of the 106 survey respondents, 105 provided information about how much use they had made of these guidelines.³ Approximately 93 per cent of organisations had made some or a lot of use of IBAC’s guidelines (see Figure 1)⁴. The majority of these organisations had found IBAC’s guidelines either quite useful or extremely useful in preparing their own procedures (see Figure 2)⁵.

Figure 1: Use made of IBAC’s protected disclosure guidelines in preparing their procedures

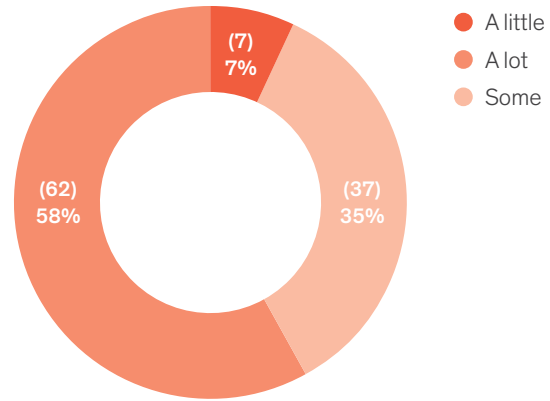
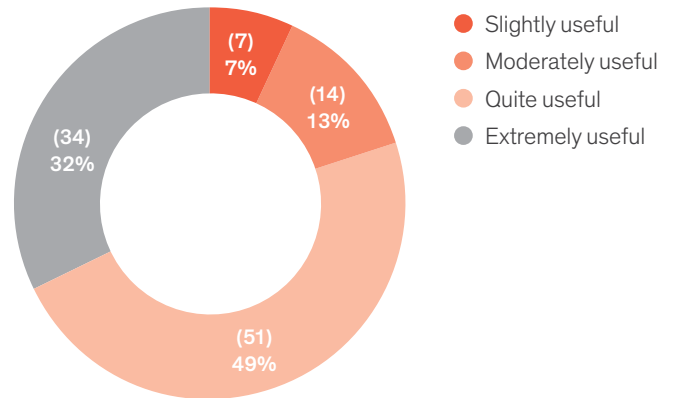


Figure 2: How useful organisation found IBAC’s protected disclosure guidelines in preparing their procedures



³ The total number of respondents varies throughout the report depending on the number of organisations that responded to a specific question. Respondent numbers in relation to specific questions range from 100 to 107 respondents. For questions that were only relevant to organisations that can receive protected disclosures, respondent numbers range from 83 to 95

⁴ Question 2.4

⁵ Question 2.5

3 Undertaking the review – surveys

A large number of survey respondents also made use of procedures provided by other organisations, many from within Victoria (57%), other integrity agencies (12%) and private sector organisations (10%)⁶. This is borne out by the review of the procedures where several ‘template’ models were used as a basis for new procedures.

Around a third (32%) of survey respondents stated that they worked with other organisations in preparing their procedures⁷.

The Department of Justice engaged the Victorian Government Solicitor’s Office (VGSO) to prepare template procedures which were used by all the departments and the majority of the administrative offices.

Comments provided by survey respondents indicated that some engaged external organisations to assist them in setting up their procedures, including law firms Maddocks and Russell Kennedy, and consulting businesses such as FOI Solutions and CT Management. Of the 34 survey respondents who prepared procedures with other organisations, 59 per cent (20 organisations) advised that they used a legal services provider or consulting business⁸.

Some council respondents indicated that they worked with neighbouring councils to develop procedures together, including:

- Latrobe City Council, Frankston City Council and Knox City Council⁹
- Horsham Library, Yarriambiack Shire Council and Hindmarsh Shire Council¹⁰.

Another council respondent, Moira Shire Council, acknowledged that they identified some shortcomings with their procedures and had used procedures from Mitchell Shire Council and Baw Baw Shire Council as a comparison¹¹.

Other respondents used information obtained during IBAC presentations conducted in May/June 2013 in Melbourne and some regional areas. Information from other interstate integrity agencies, Queensland Crime and Corruption Commission and NSW Independent Commission Against Corruption was also used by at least one council¹².

3.2.3 Persons dealing with protected disclosures

One hundred and two of 105 respondents (96%) stated that they have a PD coordinator. The majority (88%) perform the PD coordinator function in addition to other duties, while 12 per cent employ a dedicated PD coordinator¹³. These organisations consisted of 11 local councils and Victoria Police, however, only Victoria Police appears to have a truly dedicated PD coordinator, as the job titles of the 11 dedicated council PD coordinators suggest that they are managers or supervisors of Human Resources (HR), Corporate Services, and Governance business units.

Similarly, in organisations where the PD coordinator role was an additional duty, the people providing services as PD coordinators were often the managers of Corporate Services or HR, or in-house legal counsel. Some organisations gave this function to their manager, risk and compliance¹⁴, or governance, and others gave the PD functions to staff who managed complaints and Freedom of Information requests¹⁵. Five organisations stated that their Chief Executive Officer (CEO) was also the PD coordinator. This could be a problem if a disclosure was being made against the CEO.

⁶ Question 2.6

⁷ Question 2.7

⁸ Question 2.7

⁹ La Trobe City Council survey response

¹⁰ Yarriambiack Shire Council survey response

¹¹ Moira Shire Council survey response

¹² Wodonga Shire Council survey response

¹³ Questions 3.1 and 3.2, note that 11 organisations advised that they employ a full-time dedicated PD coordinator and one advised that they employ a part-time dedicated PD coordinator

¹⁴ Eg. La Trobe City Council

¹⁵ Eg. VicRoads

Only 38 organisations had any reference to the PD coordinator role in the position description for the person currently responsible for that function (including 28 local councils, eight departments or administrative offices and two selected public bodies)¹⁶.

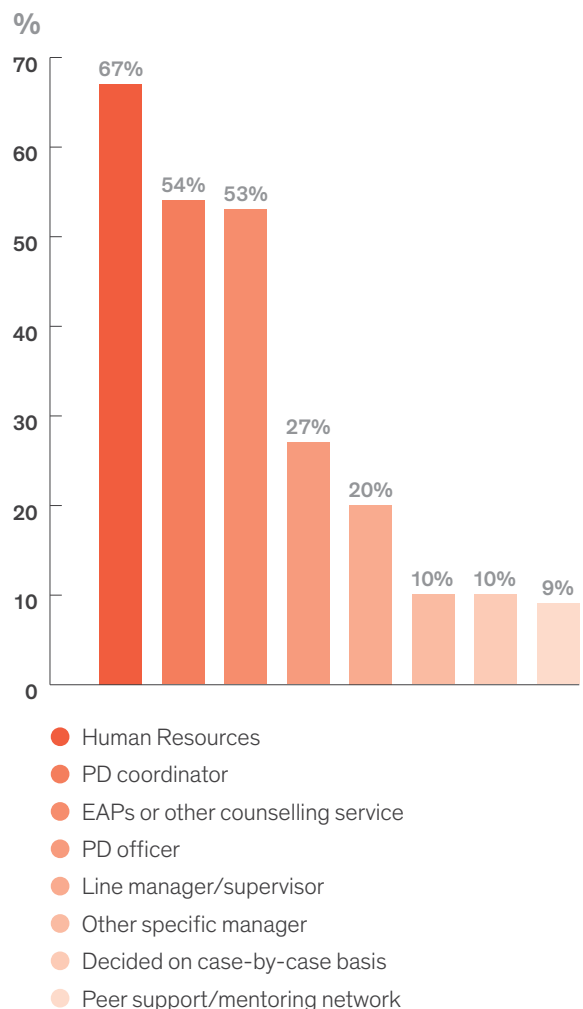
Of the 102 organisations that have a PD coordinator, 40 per cent do not have any other protected disclosure officers, while a further 24 per cent have only one other person who could handle reports of wrongdoing in their organisation¹⁷.

The survey also asked organisations to indicate who in the organisation is responsible for providing welfare assistance for disclosers, and allowed organisations to select multiple options. In response, the 105 organisations who responded to this question identified a range of officers in the organisation (see Figure 3).

The majority of organisations use their HR department (67%), PD coordinator (54%) and/or an employee assistance or counselling service (53%) to provide welfare services. The people or units used to provide welfare services for disclosers were also largely the same persons or units who looked after people who become the target of detrimental action¹⁸.

Welfare services for persons who were the subject of the disclosure also tend to be provided by HR (72%), or an employee assistance or counselling service (55%)¹⁹.

Figure 3: Person or unit responsible for the welfare of the discloser



¹⁶ Question 3.5

¹⁷ Question 3.4

¹⁸ Question 3.7, 97 per cent of organisations advised that the person or unit responsible for providing welfare assistance for persons who are the target of detrimental action is the same as the person or unit who assists disclosers

¹⁹ Question 3.8

3 Undertaking the review – surveys

3.2.4 Awareness and training about protected disclosures

Organisations were asked to provide information about the training provided in relation to protected disclosures, namely, who provided the training and to whom it was provided, allowing for multiple options.

Fifty-two of the 83 respondents (63%) advised that their PD coordinators attended formal, targeted training provided by IBAC in May/June 2013. The next most popular types of training for PD coordinators were informal on-the-job training (52%) and formal training provided by external consultants (31%). In addition, a number of organisations noted that they attended other IBAC forums at which protected disclosures were discussed and/or accessed information on IBAC's website.

A number of organisations stated that their PD coordinator received multiple forms of training, including 16 who attended IBAC training and received on-the-job training, and 11 who attended IBAC training and training provided by external consultants.

Seven organisations had not provided any training for PD coordinators. Two of these organisations were selected public bodies that could not receive disclosures (Monash Health and La Trobe University), one was a department (EPA) and the remaining four were local councils (West Wimmera, Moira, Gannawarra and Frankston councils)²⁰.

Organisations ensured that PD coordinators received training in a number of ways:

- including it on an annual compliance/governance training program
- checking on IBAC training opportunities
- as part of induction or handover from one officer to another.

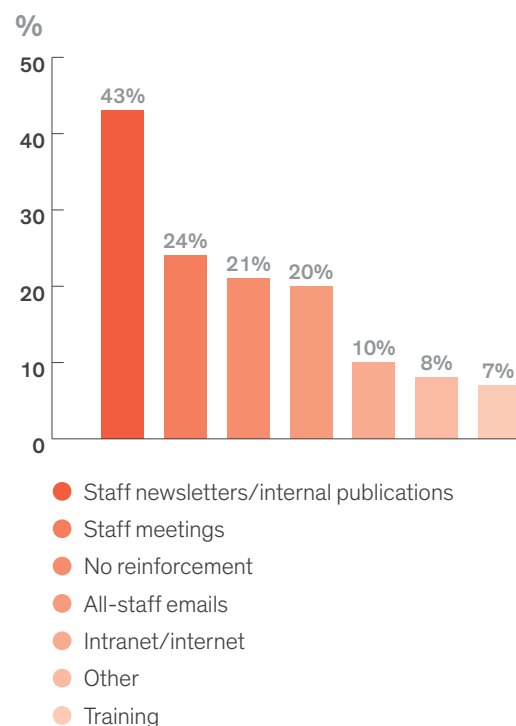
In terms of protected disclosure training for managers and supervisors, 34 per cent of respondents advised that they provided informal/on-the-job training about protected disclosures, 30 per cent advised that they provided formal training in-house, and 25 per cent advised that no training had been conducted for managers and supervisors.

In terms of protected disclosure training for general staff, 35 per cent of organisations advised that they had not provided training on this topic to their staff at all, while 32 per cent advised that they provided formal training in-house²¹.

In relation to training staff and managers about managing welfare of disclosers or a person who might be the target of detrimental action, 40 per cent of organisations advised that no training was conducted (including 29 local councils, seven departments or administrative offices and five public bodies), formal training in-house was provided for a smaller proportion (17%), and informal/on the job training on this topic was similar to training given about protected disclosures specifically (31%)²².

Organisations were asked to provide information about the ways in which messages about protected disclosures were reinforced by their senior management. As shown in Figure 4, staff newsletters or internal publications were the most popular channels for reinforcing protected disclosure messages (43%) followed by staff meetings (24%). However, around one-fifth of organisations (21%) advised that their organisation's leaders did not reinforce protected disclosure messages in any way (including 16 local councils, four departments or administrative offices and two public bodies).

Figure 4: Methods of reinforcing messages about protected disclosures used by organisations



²⁰ Question 4.1

²¹ Question 4.5

²² Question 4.6

Figure 5: Provision of tools to assist PD officers to assess possible protected disclosures received by the organisation

	Local councils		Departments and administrative offices		Selected public bodies	
	Count	%	Count	%	Count	%
Yes, tools are available to help assess possible protected disclosures	37	51	4	21	1	8
No tools are available	35	48	15	79	1	8
Not applicable, not an organisation that can receive disclosures	1	1	0	0	10	83
Total	73		19		12	

3.2.5 Implementation of protected disclosure procedures

As shown in Figure 5, half of the local councils and a fifth of the departments and administrative offices stated that they have tools to assist their PD officers in the assessment of protected disclosures. While they do not have the authority to receive protected disclosures, one of the selected public bodies involved in the survey advised that it has tools to help its coordinator assess protected disclosures²³. One local council also advised that it did not think it was an organisation that could receive disclosures in response to this question²⁴.

The most common tools developed were: checklists, decision trees, flow charts (prepared in-house or by external providers), and specialised complaint forms. All of these tools complemented the procedures already developed by the organisation.

In one case, Mildura Rural City Council has a number of user-friendly documents – a fact sheet, a notification checklist, protected disclosure checklist and a protected disclosure complaint form, as well as a protected disclosure policy, but it does not have a protected disclosure procedure²⁵. In another example, the City of Greater Geelong developed a brochure on protected disclosures that was distributed to all staff with their payment summaries in July 2013. They also made this brochure available at all customer service centres for community information²⁶. Brimbank Council conducted training on protected disclosures that had included a quiz²⁷.

²³ Bendigo Kangan Institute

²⁴ Hume City Council

²⁵ Mildura Rural City Council survey response to question 5.1 and information provided to IBAC via email (TRIM IN/14/8671)

²⁶ City of Greater Geelong survey response to question 5.1

²⁷ Brimbank City Council survey response to question 5.1

3 Undertaking the review – surveys

When the organisations that can receive disclosures were considered separately (local councils, departments and administrative offices), 57 of 92 respondents (63%) advised that their organisation completes written assessments for all reports of wrongdoing that could constitute an assessable disclosure.²⁸

Overall, 25 per cent of organisations advised that they have developed or introduced tools to assist managers and staff to provide welfare support to disclosers or persons who are the target of detrimental action, far less than the 50 per cent of organisations who had developed assessment tools. When broken down by type of organisation, 33 per cent of the selected public bodies, 26 per cent of departments and administrative offices and 23 per cent of local councils advised that they had developed or introduced welfare ‘tools’.²⁹

The City of Stonnington’s response indicated that they used the same tools as they would do for any bullying situation. They considered that ‘confidentiality is paramount which is why [Human Resources] is involved’, and also saw such training as part of respect in the workplace training³⁰. Several organisations took a similar approach; using their existing employee assistance program to provide support³¹.

Survey respondents who can receive disclosures were also asked whether there had been any differences in the number of assessments they were receiving under the PD Act as compared to the *Whistleblowers Protection Act 2002* (WP Act). Seventy-one per cent of survey respondents indicated that they were making about the same number of assessments, while four per cent were making more assessments and 14 per cent of organisations had made fewer assessments.³² Monash City Council advised that they had only ever received one disclosure under the WP Act³³, while other organisations, such as Maroondah City Council and Mildura Rural City Council, indicated that they had never received any disclosures under the WP Act and had not received any so far under the PD Act³⁴.

3.2.6 Effectiveness of the protected disclosure procedures

Organisations were asked to assess the effectiveness of their policies and procedures by rating how well they had assisted the organisation in receiving and assessing a protected disclosure³⁵, or in providing welfare to people who are the target of detrimental action³⁶. They were also required to provide a free text response as to why they had given such a rating.

²⁸ Question 5.2

²⁹ Question 5.4

³⁰ City of Stonnington survey response to questions 4.6 and 5.4

³¹ Darebin City Council, Department of Treasury and Finance response to question 5.4

³² Question 5.3

³³ Maribyrnong City Council, Wyndham City Council and South Gippsland Shire Council survey response to question 6.1

³⁴ Survey responses to question

³⁵ Question 6.1

³⁶ Question 6.2

Sixty-two per cent of survey respondents considered that their policies and procedures had helped them to some degree (either a lot, some, or a little) in receiving and assessing protected disclosures and 30 per cent considered that their policies and procedures did not assist them at all³⁷. In additional comments, the majority of respondents noted that their policies and procedures had not yet been tested on the basis that the organisation had not received any disclosures (more than 50 organisations). Of those who considered that their policies and procedures had helped to some degree, reasons included that their procedures were clear, comprehensive and assisted with the task of assessing potential protected disclosures³⁸.

Fifty-nine per cent of survey respondents considered that their welfare policies and procedures had helped them to some degree (either a lot, some, or a little), while the remaining 41 per cent of respondents considered their procedures to be of no help at all³⁹.

Survey respondents provided similar reasons as to why their welfare procedures were or were not useful. Many organisations had not had to deal with any welfare issues or cases of detrimental action.

One council stated that their procedures had been of a lot of assistance to them in dealing with welfare issues because 'unfortunately the discloser can be their own enemy disclosing their issues to other parties who are involved then you have to try and limit any possible effect from their behavior'⁴⁰ [sic].

Survey respondents were also asked to nominate whether there was any aspect of their procedures that they considered to be good practice or particularly innovative.⁴¹ Respondents nominated the following practices:

- Ballarat City Council indicated that it has some wellness and HR support services that are considered to be leading HR practice in staff welfare – EAP counselling 24/7, allowing staff to access a counsellor of their choice, assistance to relocate staff to another worksite or modification of duties⁴²
- Brimbank City Council has developed an e-learning module (scripted and developed in-house) for all staff/major service contractors (both a general version, and a version for supervisors and above that covers how to take a disclosure)⁴³
- City of Manningham has provided greater awareness training for leaders in their organisation⁴⁴
- The Department of Justice's guidelines have been used as the basis of guidelines throughout the public sector⁴⁵
- The Department of State Development, Business and Innovation (DSDBI) drew on the expertise of IBAC to increase knowledge within its organisation⁴⁶.

Survey respondents were also asked to provide any recommendations for improving the PD Act, PD Regulations or IBAC guidelines. This material will assist IBAC in reviewing its own materials.

In order to identify problems that organisations may have had in developing or implementing procedures, survey respondents were asked to nominate whether they considered there were any major obstacles they had faced in achieving necessary improvements.

³⁷ The remaining eight per cent (who were all public authorities) advised that the question is not applicable, as they are not an organisation that can receive disclosures

³⁸ Moonee Valley City Council, Hobsons Bay City Council survey responses to Question 6.1

³⁹ Question 6.2

⁴⁰ City of Stonnington survey response to Question 6.2

⁴¹ Question 6.

⁴² Ballarat City Council survey response to Question 6.3

⁴³ Brimbank City Council survey response to Question 6.3

⁴⁴ City of Manningham survey response to Question 6.3

⁴⁵ Department of Justice survey response to Question 6.3

⁴⁶ DSDBI survey response to Question 6.3

3 Undertaking the review – surveys

Survey respondents could choose any or all of four options or nominate another obstacle not provided in the list. The majority of the 103 respondents who answered this question (69%) stated that there were no major obstacles, 17 per cent agreed with the proposition that they had had difficulties in understanding the PD Act, PD Regulations or the IBAC guidelines, and four per cent stated that they had a lack of confidence in the protections available to disclosers under the PD Act⁴⁷. Seventeen respondents provided information about additional obstacles, eight of which noted that resourcing was an issue. Some of these responses were:

- the challenge of devoting resources to an issue which is important but does not need an immediate response – from a rural council that has not yet received any disclosures⁴⁸
- a lack of a dedicated full-time resource – the Department of Human Services (DHS) and Department of Health nominated that the PD coordinator is the sole person responsible for promoting protected disclosures and awareness. This person works for Department of Health and is one staff member (providing services to 14,500 staff) who performs that function as part of a wider role⁴⁹
- Indigo Shire Council is a small council (approximately 130 full-time employees) and indicated that it was difficult to meet all governance requirements and there was one person managing multiple roles⁵⁰
- Victoria Police have complexities in dealing with protected disclosures that can be made under both the PD Act and the Victoria Police Act, as well as being the only organisation in Victoria that can investigate protected disclosure complaints against itself⁵¹
- there is a poor level of understanding amongst Victorian public sector employees about what the term ‘protected disclosure’ means. By contrast, the term ‘whistleblower’ is more generally understood.⁵²

3.2.7 Promoting awareness of the PD Act

The final section of the survey assessed each organisation’s compliance with the requirements of section 59(4) of the PD Act to make their procedures readily available to staff, clients and members of the public, and to give the organisations an opportunity to examine how effective their means of communication have been.

Three organisations advised that they have not made the procedures available to staff.⁵³ Of the 103 organisations that have, the most popular choices of media to make procedures readily available to staff by organisations were promotion through the organisation’s intranet (79%), new or updated internal policies and procedures (77%), and other internal communications such as newsletters, emails, frequently asked questions (FAQs) (57%)⁵⁴. Other communication methods included conversations in team meetings⁵⁵, briefings by managers when the procedures had changed⁵⁶, a general awareness session at a senior leadership meeting, and directors and councillors’ training provided with the assistance of an IBAC training officer⁵⁷.

⁴⁷ Question 6.5

⁴⁸ Mount Alexander Shire Council survey response Question 6.5

⁴⁹ DHS survey response Question 6.5

⁵⁰ Indigo Shire Council survey response Question 6.5

⁵¹ Victoria Police survey response Question 6.5

⁵² Office of Living Victoria survey response Question 6.5

⁵³ One further organisation did not respond to this question

⁵⁴ Question 7.1

⁵⁵ South Gippsland Shire Council survey response Question 7.1

⁵⁶ Wodonga City Council survey response Question 7.1

⁵⁷ Yarra Ranges Shire Council survey response Question 7.1

A large number of organisations made new starters aware of protected disclosures by providing information in information packages, and through induction training.⁵⁸

Five organisations advised that they have not made the procedures available to clients and other members of the public.⁵⁹ Of the 100 organisations that have, the most popular method of making information available to the organisations' clients and other members of the public was through the production of web resources (98%). Other methods included newsletters, FAQs, details in annual reports and details in contracts with contractors and tenderers.⁶⁰

In a recent report from the Commonwealth Ombudsman about complaint management by Commonwealth government agencies, the following comment was made about accessibility of information provided on a website:

Information on a website on how to complain was the most common method of providing information about complaints. Although a useful tool and increasingly the first point of reference for finding any information, internet access is still not universal. For example, although a recent study found that although 82% of Australians aged between 50 and 74 have access to the internet, this figure drops to 60.5% for people aged 70-74.⁶¹

The majority of organisations advised that they had not yet measured the effectiveness of their communication methods (80 organisations). Of those who had, methods included surveys, online or phone polls (nine organisations), internet or intranet visit statistics (14 organisations), direct feedback (three organisations), numbers of enquiries received (one organisation), or activity of their 'hotline' (one organisation).

The majority of organisations claimed that they had updated their website to remove references to the 'Whistleblowers Protection Act' and the term 'public interest disclosure'.⁶² However, the review officers found in their assessment of organisations' procedures that even if references to these two terms had been removed from PD procedures, other related procedures, such as complaints handling procedures and councillor code of conduct procedures (local council) still contained references to the WP Act. In addition, some procedures that had been adapted from the organisation's former whistleblower procedures still made reference to 'public interest disclosures' and other requirements of the previous legislation, such as time limits on assessing a disclosure (45 days under the WP Act, compared to 28 days under the PD Act).

⁵⁸ Question 7.5(1)

⁵⁹ A further two organisations did not respond to this question.

⁶⁰ Question 7.5(1)

⁶¹ *Complaint management by government agencies: an investigation into the management of complaints by Commonwealth and ACT Government*, Commonwealth and ACT Ombudsman, October 2014, page 17

⁶² Question 7.2 and 7.3

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4 Undertaking the review – procedures assessments

4 Undertaking the review – procedures assessments

Using the checklist, the major criteria against which the review officers assessed each procedure were:

1. Definitions of key terms and practical examples of each:
 - a. improper conduct (corrupt conduct and specified conduct)
 - b. detrimental action
2. How to make a disclosure that meets all the requirements of Part 2 of the PD Act to be a protected disclosure
3. Processing a disclosure:
 - a. receiving and receipting
 - b. assessment and creation of records about the assessment
 - c. referral to IBAC
 - d. communication with the discloser and IBAC
4. Protected disclosure coordinator or officers – contact details, role and responsibilities
5. Confidentiality obligations on:
 - a. an organisation
 - b. a discloser
 - c. protected disclosure coordinators and protected disclosure officers
 - d. when do they apply?
 - e. to whom do they apply or not apply?
6. Protections available to a discloser
7. Protections available to a public officer
8. Welfare obligations of an organisation:
 - a. when they arise (for an organisation that cannot receive disclosures)
 - b. towards an employee discloser, or cooperator
 - c. towards a member of the public who is a discloser, or cooperator
 - d. towards the subject of the disclosure
9. Security processes and procedures for information relating to protected disclosures:
 - a. receiving and receipting disclosures
 - b. storing records
10. Reporting obligations
11. Education of staff and the public
12. Interaction with IBAC and other investigating entities
13. Accessibility of information about protected disclosures

For those organisations that were only required to have procedures to protect persons from detrimental action, the review officers did not consider criterion 3 above.

After undertaking the assessment of each organisation's procedures, the review team found that the majority of organisations had developed and implemented procedures that were consistent with the PD Act, PD Regulations and IBAC guidelines.

Fifteen organisations were given a 'gold star' rating for their procedures, on the basis that each of these procedures demonstrated some aspect of 'best practice'. They were:

- City of Ballarat
- Banyule City Council
- Brimbank City Council
- City of Greater Dandenong
- DSDBI
- Hindmarsh Shire Council
- Horsham Rural City Council
- Manningham City Council
- Maribyrnong City Council
- Melbourne City Council
- Mitchell Shire Council
- Mornington Peninsula Shire Council
- Northern Grampians Shire Council
- Rural City of Wangaratta
- Whitehorse City Council.

Eighty-eight organisations were found to have met the consistency requirements of section 60 of the PD Act. However, there were a number of issues identified relating to those organisations that, if addressed, would improve these organisations' procedures.

Victoria Police was assessed separately because of its unique status as both an investigating entity and the only public body that can investigate the conduct of its own employees. Victoria Police was found to have developed and implemented procedures consistent with all its legislative requirements, but it needs to refine its external and internal procedures in order to make them truly accessible to all people who might need to use them.

Twenty-six organisations were assessed as not developing procedures consistent with the legislation and IBAC guidelines. There were three main reasons for the negative assessment:

- the organisation had not developed a protected disclosure procedure
- the organisation's procedure contained substantially incorrect information about the organisation's role and responsibilities under the PD Act
- the organisation's procedure did not include essential information about the PD Act and its operation.

4 Undertaking the review – procedures assessments

4.1 Procedures consistent with the PD Act, PD Regulations and IBAC guidelines

4.1.1 Best practice models

The 15 organisations whose procedures were given 'gold star' ratings, although the majority were local councils, represented a range of organisational types: a department, an inner city council, inner and outer suburban city councils, regional councils close to Melbourne, rural city councils, and shire councils at some distance from Melbourne. Their procedures were not all based on one particular model, but there were some good practices common to a number of these organisations, such as:

- the content of the procedure was very comprehensive and covered all the essential information specified in the checklist⁶³
- the structure and content of the procedure was heavily influenced by the IBAC guidelines but the procedure had been given a strong 'local' flavour⁶⁴
- the procedure had a good logical structure with useful headings and sub-headings and was simply written⁶⁵
- the procedure or other materials developed made use of diagrams and examples⁶⁶
- organisations had developed additional materials to accompany the procedures – fact sheets, brochures, pre-formatted complaint and assessment forms⁶⁷
- some, but not all, organisations had updated related policies and procedures, such as codes of conduct, and complaint handling procedures to make references to the PD Act⁶⁸
- some organisations had put hyperlinks in the procedure on the website and these could be used to direct a person to a particular webpage⁶⁹

- DSDBI had used a template developed by the VGSO, but corrected a number of errors in the model and had customised it to meet its needs
- Mitchell Shire Council had used its experience of having a protected disclosure complaint investigation conducted into its staff to inform and refine its procedures.

4.1.2 Procedures using template models

Although there were a number of problems that related to the use of templates, overall, the use of templates provided a consistency in content of procedures for similar organisations, ensured that all essential information was included in procedures and provided opportunities for like organisations to work together on developing and settling their procedures.

There were three primary template models used. The most widely used template was developed by the VGSO for the Department of Justice (DOJ). DOJ distributed this template to all departments and administrative offices for their use. The majority of the departments and administrative offices used the template without adaption; some, notably DSDBI made significant changes to the template procedure.

Another template and flowcharts had been developed by the company FOI Solutions, and was used predominantly by local councils. The VGSO and FOI Solutions templates were used by more than half of the survey respondents.

Information obtained during a presentation to water corporations in 2013 and the survey responses revealed that South East Water's Audit & Customer Advocacy Manager⁷⁰, had developed a template procedure which he distributed through the Institute of Water Administration Governance Special Interest Group. The three water corporations reviewed had all shared ideas in developing their procedures.

⁶³ Eg. Whitehorse City Council

⁶⁴ Eg. City of Greater Dandenong

⁶⁵ Eg. Maribyrnong City Council

⁶⁶ Eg. Northern Grampians Shire Council

⁶⁷ Eg. Mornington Peninsula Shire Council, Hindmarsh Shire Council

⁶⁸ Eg. Brimbank City Council, Horsham Rural City Council

⁶⁹ Eg. Brimbank City Council and Banyule City Council

⁷⁰ Mr John Robertson

The review officers identified some incorrect information in both the VGSO and FOI Solutions template procedures, and this had the potential to, and in fact did, infect most of the procedures using the templates without adaptation. In relation to the VGSO model, the DSDBI version corrected the errors in the original template, and could therefore serve as a 'best practice' model for other procedures based on that template.

In addition, both of these template models drew heavily on the form and content of the IBAC guidelines. This had the effect of making these procedures very long and complicated. Although they were well-structured and contained informative headings, the review officers considered that they might be too complicated for a member of the public wanting to make a disclosure about a public body and to be fully informed about the protections available under the PD Act, as well as their obligations.

Another consequence of relying upon IBAC guidelines, which are general-purpose documents for all public bodies covered by the PD Act, was that the template procedures contained information not relevant to the organisation that had used them. For example, the legislated ability to transfer staff under section 51 of the PD Act is only provided for public service bodies, not for local councils. The review team also found information in some procedures about making a disclosure to the VI about IBAC officers' conduct, or the referral of disclosures to Victoria Police, that can only receive protected disclosure complaints referrals about members of their own organisation.

4.1.3 Victoria Police protected disclosure procedures

Victoria Police procedures were generally consistent with the PD Act, PD Regulations and the IBAC guidelines, and also the protected disclosure provisions of the Victoria Police Act. However, there were specific issues with Victoria Police procedures caused by the complicated legislative regime imposed upon that organisation.

Victoria Police can receive disclosures about itself, either under the PD Act or the Victoria Police Act, from either a member of the public or a member of Victoria Police personnel. Members of the public and public service staff employed by Victoria Police can only make a disclosure to Victoria Police in accordance with the provisions of the PD Act; but a Victoria Police officer may make a disclosure to Victoria Police either under the PD Act or the Victoria Police Act. It is very unlikely that a Victoria Police officer discloser will nominate under which Act he or she is making the disclosure, so Victoria Police receiving the disclosure will need to make that decision.

In addition, if a disclosure is being made by a Victoria Police officer about police personnel misconduct (more serious than police personnel conduct), the officer is under a mandatory obligation to report this to a more senior Victoria Police officer or IBAC. Such a disclosure is not assessed under the provisions of the PD Act, but under the Victoria Police Act. If it meets the requirements of the Victoria Police Act then it is a deemed protected disclosure.

Unlike other investigating entities, IBAC, VO and the VI, or any other public body, Victoria Police investigates protected disclosure complaints about itself, upon referral from IBAC. Unlike the other investigating entities, Victoria Police has specific investigative powers under Part 10 of the Victoria Police Act for investigating protected disclosure complaints; other investigating entities can use their ordinary investigatory powers.

4 Undertaking the review – procedures assessments

These complexities make it very difficult for Victoria Police to compile protected disclosure procedures. Victoria Police has developed 'external' procedures for their website and included specific procedures in the *Victoria Police Manual*. This review has focused primarily on the external procedures, since they have a broader application.

These procedures are very long and complicated. They cover disclosures that can be made under either the PD Act or the Victoria Police Act, made by members of the public or members of Victoria Police personnel (both police officers and Victoria Police public service employees), and where Victoria Police is required to make an assessment under one of the two Acts. Although the information contained in the procedures is consistent with legislative requirements and IBAC guidelines, it is not very easy for a particular category of discloser to see the information that might relate to their type of disclosure. These issues have been discussed with Victoria Police and suggestions have been made to Victoria Police about creating several different versions of the procedures each directed at a particular type of discloser.

4.2 Organisations with no procedures in place or procedures inconsistent with legislation or IBAC guidelines

The review revealed that 26 out of 114 organisations had not developed procedures consistent with the legislation and IBAC guidelines, for the reasons set out below.

4.2.1 Organisations with no procedures in place

Seven organisations did not provide a copy of their procedures and it was not possible to locate or identify any such procedures through a search of their respective websites. Four of these organisations were local councils: Bass Coast Shire Council⁷¹, Mildura Rural City Council⁷², Moira Shire Council⁷³ and Strathbogie Shire Council⁷⁴, that are required to have procedures in relation to both making and handling protected disclosures and protecting people from detrimental action. The other three organisations were selected public bodies, required only to develop procedures to protect people from detrimental action, and were: Central Gippsland Institute of TAFE (now called Federation Training)⁷⁵, Royal Melbourne Hospital,⁷⁶ and VicRoads⁷⁷.

Bass Coast Shire Council indicated on their website that they would have new procedures in place by 10 August 2013, but there were no procedures as at September 2014. The review team contacted all of these organisations by email at least once after the initial letter had been sent in order to give them an opportunity to respond to the survey and to provide copies of their procedures. VicRoads did complete the survey and provided a range of documents to IBAC, but none of them was a copy of their procedures.

⁷¹ Their survey response states that they have a new procedure and it was in place by 10 August 2013, but it was not provided to IBAC or located during a search of their website

⁷² Survey states that the council completed its procedures by 10 August 2013. They appear to have a policy document and some useful other material, but no procedure document

⁷³ Survey confirms they have not developed their procedures as yet, but not entirely clear why not yet done

⁷⁴ Survey states that they have a draft policy as of October 2013. Reason given – 'need to get council approval'

⁷⁵ No response to survey or request for documents

⁷⁶ No response to survey or request for documents

⁷⁷ Survey response states that there is a procedure, but it is not located on their website. Several requests for a copy of procedures produced no response

4.2.2 Procedures adapted from existing WP Act procedures or interstate model procedures

Six organisations had procedures that stated that their organisation could conduct its own investigation into protected disclosure complaints.

There were a number of problems identified in procedures that had clearly been adapted from existing procedures developed under the WP Act, or from interstate information. IBAC had also considered adapting the VO guidelines when drafting its own guidelines, but had found that there were too many differences between the two Acts to make this process effective or efficient, and there was a high risk of incorrect information being included.

This in fact was what occurred. One of the fundamental differences between the WP Act and the PD Act is that there are only four investigating entities who can investigate a protected disclosure complaint. Under the WP Act, the majority of public bodies could be required to investigate a protected disclosure complaint upon referral from the VO. Six procedures provided for IBAC to refer a protected disclosure complaint back to the organisation for investigation.

This was considered to be a major error with those procedures since it would give the wrong impression to a potential discloser about investigation into their disclosure. It may be that a potential discloser, in particular, would be deterred from making a disclosure because it might be investigated by their own organisation (if an employee) or the public body that is providing services to them, or has a contract with them or their business.

Other incorrect information relating to the WP Act includes:

- an organisation has 45 days to assess a disclosure (section 28(1) WP Act) (PD Act provides for only 28 days)
- an organisation having decided that a disclosure is not a protected disclosure must advise the discloser that he or she may request the organisation to refer the disclosure to IBAC for a determination as to whether it is a protected disclosure (section 30(1)(b) WP Act – adaptation) (PD Act does not provide for this)
- some references are made to ‘public interest disclosures’ instead of ‘protected disclosures’.

4 Undertaking the review – procedures assessments

Figure 6: Excerpt from the Yarra City Council annual report 2013-2014

Council employees have the right to report alleged unethical practices within their organisation without fear of repercussion. This was re-affirmed in February 2013 when the state government's *Protected Disclosures Act 2012* (PDA) came into operation. Close adherence to the PDA is a fundamental component of Council's ongoing commitment to operate in an open and accountable fashion.

Protected disclosure events in 2013–14	No.
Disclosures made to Council	0
Disclosures referred by the Independent Broad-based Anti-corruption Commission or the Ombudsman to Council	1
Disclosures substantiated by Council and the action taken to address them	1
Disclosures Council has dismissed or declined to investigate during the year	0
Disclosures referred by Council to IBAC	0

Such procedures are also often wrong about what a public body is required to include in its annual report. Under section 70 of the PD Act, organisations that can receive disclosures are only required to provide information about how to access the procedures established by that organisation, and to report on how many disclosures they have notified to IBAC. A number of organisations have continued to report the statistics required under the WP Act. The City of Yarra's *Annual Report 2013-2014* has been brought to IBAC's attention recently (see Figure 6)⁷⁸.

The second item in Yarra Council's list of protected disclosure events in fact refers to a disclosure that was referred by IBAC to the VO for investigation and then the results were disclosed to the council so that appropriate action could be taken, rather than a referral made directly to the council.

Despite containing incorrect information, such procedures can quite easily be amended so as to become consistent with the PD Act and IBAC guidelines.

4.2.3 Procedures with significant omissions

The remainder of the 26 organisations were those whose procedures failed to contain any information about many of the criteria specified in the assessment checklists.

Many of these procedures were very brief, even if they were only required to be procedures about protecting a person from detrimental action.

The types of errors and omissions are discussed in more detail below.

⁷⁸ City of Yarra, *Annual Report 2013-2014*, page 61

4.3 Common errors or omissions in procedures

In both the procedures assessed as consistent with section 60 of the PD Act and those assessed as not being consistent, there were common errors and omissions identified. This problem was exacerbated by organisations' adoption, with minimal changes, of procedures based on templates with errors and omissions.

A number of organisations' procedures did not contain a glossary of key terms (thus not meeting criterion 1). However, those organisations were determined to be consistent if they had definitions throughout their procedures, particularly definitions of improper conduct and detrimental action.

The following errors or omissions were identified in 10 or more procedures assessed.

Errors

- Procedures incorrectly state that the discloser is bound by the confidentiality provisions in sections 52 to 54 of the PD Act, or fail to make clear that the discloser is not bound by those provisions.
- A number of procedures state that detrimental action can be taken by the discloser (this is not possible under the PD Act, section 45).
- Procedures contain information that does not apply to that type of organisation.

Omissions

- The majority of procedures made no reference to the protections under section 67 of the PD Act for public officers.
- Confidentiality restrictions on disclosure of IBAC's decision to investigate.
- Information about what happens to an assessable disclosure once referred to IBAC for assessment and what IBAC or another investigating entity might do with it.
- Providing assistance to IBAC or other investigating entity.
- Information for disclosers on their inability to withdraw a complaint if already notified to IBAC.
- Nominating some, but not all of the protections available to a discloser.
- Inadequate information about welfare protections for a discloser.

The effect of these errors and omissions in procedures is to limit the correct information available to a potential discloser about the following essential information that he or she needs to know, including:

- confidentiality obligations imposed on him/her and the distinction between those and the obligations imposed on an organisation
- the full range of protections available to a discloser
- what happens to the disclosure once it has been initially assessed by an organisation
- possible offences that might be committed by a discloser, particularly breaches of confidentiality in relation to certain decisions of IBAC
- welfare services that can be provided.

Senior management, managers, supervisors and staff in organisations need to be clear about the confidentiality obligations imposed upon them and the exceptions to confidentiality requirements that enable them to provide information and assistance to an investigating entity investigating a protected disclosure complaint. In addition, the public officers' protection provision permits a public officer to disclose information in circumstances that would normally be a criminal offence, provided the officer does so in good faith and in accordance with the provisions of the PD Act.

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5 Undertaking the review – making procedures readily available

5 Undertaking the review – making procedures readily available

The review team assessed how effectively the procedures had been made available in two ways:

- Is the procedure easy to read and understand for potential users?
- Could the procedure be easily located on the organisation's website?

Information on this topic was obtained through the survey responses and website searches by the review team. The survey questions under the heading 'Promoting awareness of the Protected Disclosure Act and your organisation's role and responsibilities' sought information from organisations about how they had promoted awareness of their procedures to both the public and their own staff.⁷⁹ The results were analysed and conclusions drawn from those results. That information is in sections 3.2.4 and 3.2.7.

5.1 Readability of the procedures

The review team considered the following types of potential users:

- a person (employee or a member of the public) wanting to make a disclosure
- a manager, supervisor or employee of an organisation who wanted to make sure that they were not engaging in detrimental action against a discloser
- a PD coordinator or officer receiving or assessing a disclosure
- a welfare officer providing welfare support to a discloser or other person who is the target of detrimental action.

The procedures assessed varied considerably in terms of 'readability'. There were very long and complicated procedures that were still very readable because they were well structured and the topics were covered in a logical order. The use of headings and diagrams made searching such procedures for relevant information quite effective. The DSDBI procedure provided a good example of a useful information tool (see Figure 7).

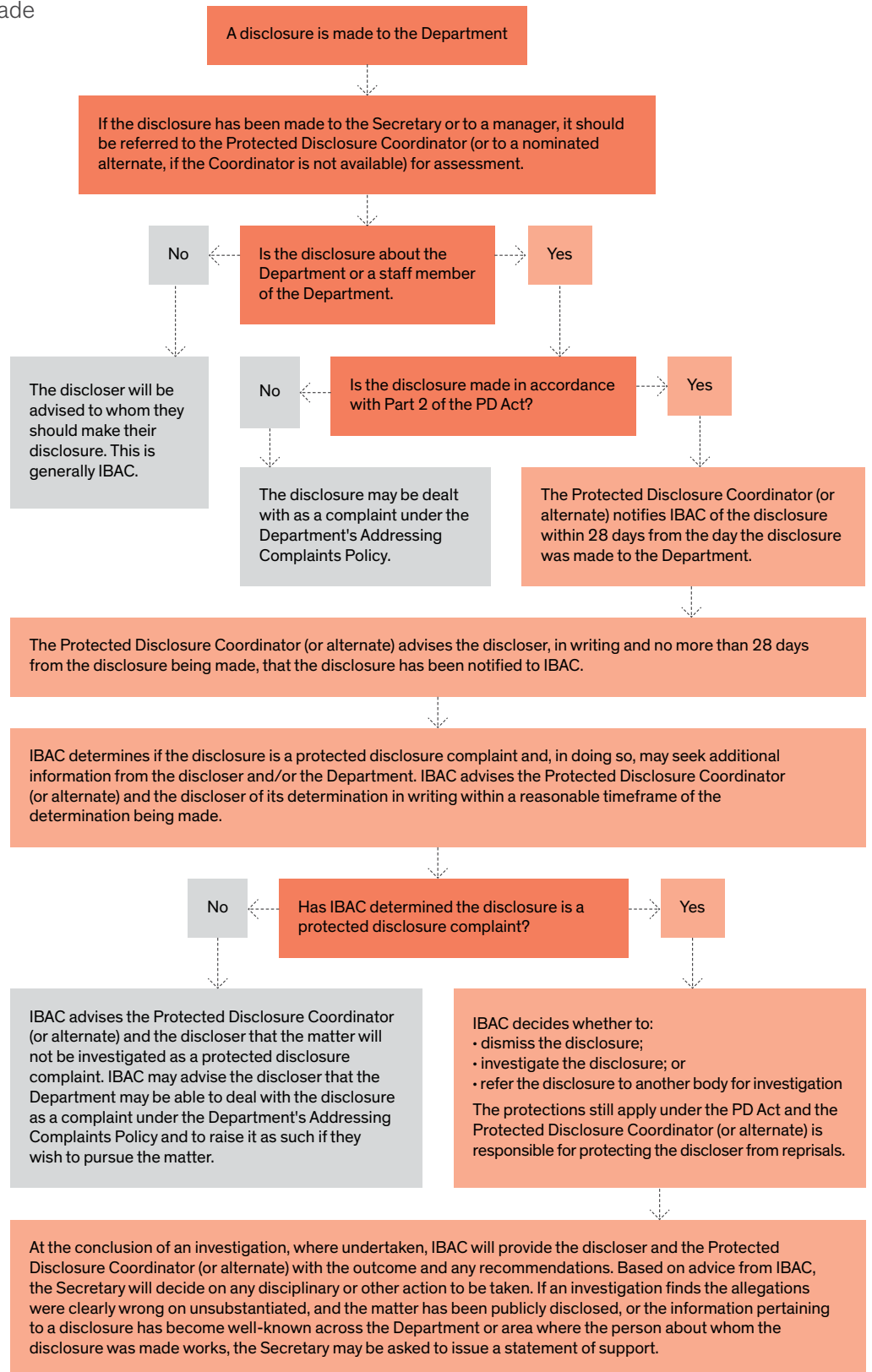
A number of organisations that had to have procedures under both sections 58(1) and 58(5) followed the model of IBAC guidelines and had two sets of procedures. Splitting them up did lead to some duplication between procedures but did clearly divide up the two topic areas.

Other procedures were readable because of their simplicity. They were short but yet contained all essential information. Some procedures made extensive cross-references to the IBAC guidelines and had links to them on their website, rather than including all the detail in their own procedures.

⁷⁹ Questions 7.1 to 7.7

Figure 7: Excerpt from DSDBI procedure: Assessment and notification flow chart

Flow chart for disclosures made directly to the Department



5 Undertaking the review – making procedures readily available

However, following the style and format of the IBAC guidelines, as the majority of procedures do, means that the procedures appear largely to be directed to PD coordinators and officers, rather than to potential disclosers. It is often quite difficult to identify the intended reader. As explained in section 4.1.3, the Victoria Police procedure is particularly complicated.

The procedures contain information about how to make a disclosure, but often lack detailed information about the rights and obligations of a discloser. Virtually no procedure provides the following important information for a discloser:

- a discloser is not bound by the confidentiality obligations in sections 52–54 of the PD Act
- a discloser must not disclose that their disclosure has been notified to IBAC for assessment, or that it has been assessed as a protected disclosure complaint (section 74(1) and (2) of the PD Act)
- a discloser must not disclose that their disclosure is to be investigated by IBAC or referred to another investigating entity (section 184 of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act)).

Organisations may wish to consider developing other material to complement their procedures, such as targeted information sheets and brochures, or pre-formatted disclosure forms that include a checklist of the legislative requirements that a disclosure must satisfy to be a protected disclosure under Part 2 of the PD Act.

5.2 Accessibility of protected disclosure information

The review officers viewed each organisation's website, identified the location of references to the PD Act and procedures, and assessed how difficult or easy it was to locate this information. They took screen-shots of website locations and stored that data. Some organisations also supplied information about the location of PD procedures on their intranet, and this information was also considered by the review officers.

A lot of the information on the websites provided a useful summary of the PD Act, and provided contact details for PD coordinators within the organisation and often for IBAC and the Victorian Ombudsman. The primary issue is, however, finding this information. The Department of Premier and Cabinet placed a reference to 'Protected Disclosures' on their home page; this is the exception. The information is prominently placed and the reader's eye is drawn to it.

Other good examples of placement were demonstrated by a few organisations that had placed information about protected disclosures on the same page as information about how to make a complaint, an FOI request, or a privacy complaint.

More often than not, however, the procedures are located under sections such as Our Organisation, Governance, and Policies and Procedures. Often the only way of finding such material is to undertake a search using the term 'protected disclosure'. Survey respondents commented that this term is not in common use in either workplaces or in the public arena; the term 'whistleblower' is much more familiar. This view is borne out by the number of newspaper and journal articles that use that term, although it is not used in any Australian protected disclosure legislation.

This means that the location of such material on organisations' websites has effectively 'hidden' their protected disclosure information and procedures from view.

This is consistent with the findings of the Commonwealth Ombudsman's report on complaints. Community sector representatives who attended the Commonwealth Ombudsman's stakeholder meetings expressed a view that too many agencies rely solely on their website to communicate to their clients that they have a right to complain and the process for making a complaint.⁸⁰ The Commonwealth Ombudsman applied ratings on accessibility to 110 agency websites, a similar number to the agencies reviewed by IBAC.

They found that of the 110 agency websites:

- 47 were given a 'high' rating – complaint information was three clicks or less from the home page following a clearly labelled trail
- 25 were given a 'medium' rating – complaint information was more than three clicks away from the home page or could only be found through the search function
- 38 were given a 'low' rating – information on how to make a complaint was not on the website, or could not be found through the search function.⁸¹

It is suggested that organisations review the location of this information with a view to finding a more prominent location, and using some key words to assist a searcher. One example of a good website for finding useful information about protected disclosure is the website of the Northern Territory Commissioner for Public Interest Disclosures, located at blowthewhistle.nt.gov.au.

In relation to the accessibility of information to their own staff, organisations provided information in their survey responses about making procedures and other information about protected disclosures available to their staff and some organisations provided screen shots showing the location of their procedures on their intranet.

The survey responses are discussed in more detail in 3.2.7, but the basic methods of making the information available to staff were: promotion through the organisation's intranet; the introduction of new or updated internal policies and procedures; as well as via internal communications such as newsletters, emails, FAQs, conversations in team meetings, and managers' briefings, and general awareness sessions at senior leadership meetings.

⁸⁰ *Complaint management by government agencies: an investigation into the management of complaints by Commonwealth and ACT Government*, Commonwealth and ACT Ombudsman, October 2014, page 21

⁸¹ *Complaint management by government agencies: an investigation into the management of complaints by Commonwealth and ACT Government*, Commonwealth and ACT Ombudsman, October 2014, page 22

5 Undertaking the review – making procedures readily available

A large number of organisations made new starters aware of protected disclosures by providing information in information packages, and through induction training.

Given that there was only limited data provided by organisations about the location of procedures on their intranets, it is not possible to determine whether most organisations had ensured that they had made their procedures readily available to their staff on their intranets. The limited information that was provided showed that those organisations had largely included the procedure information in sections of their intranet sites that related to organisational policies and procedures. For staff in an organisation this would be considered to be a logical location to search for such information.

The survey responses and additional information provided by some organisations suggest that organisations have generally undertaken a range of actions to make sure that their staff are aware of the PD Act and their rights to make a protected disclosure, as well as providing information and training to those people responsible for managing protected disclosures in their organisation. However, the effectiveness of organisations' initiatives is largely untested: only 30 per cent of organisations had made any effort to measure the effectiveness of their communications with staff and members of the public (see 3.2.6).

6 Review findings

6 Review findings

6.1 Consistency with PD Act, PD Regulations and IBAC guidelines

The review found that 88 of the 114 organisations reviewed met the requirements of section 60 of the PD Act by developing and implementing protected disclosure procedures that were consistent with the PD Act, PD Regulations and IBAC guidelines.

The review found that 26 organisations had not met the requirements of section 60 of the PD Act because:

- the organisation had not developed a protected disclosure procedure (seven organisations)
- the organisation's procedure contained substantially incorrect information about the organisation's roles and responsibilities under the PD Act
- the organisation's procedure did not include essential information about the PD Act and its operation.

All departments and administrative offices had procedures in place. All but four local councils had procedures in place. Of the selected public bodies, one of each of TAFEs, hospitals and public sector bodies, had no procedures in place. The water corporations and universities all had procedures in place.

6.2 Availability of procedures

The review team assessed organisations' compliance with the requirement under section 59(4) of the PD Act by considering:

- whether the procedure was easy to read and understand for a range of different potential users
- whether the procedure could be easily located on the organisation's website or intranet.

In relation to the first issue, the review team found that the majority of procedures were able to be read and understood by potential users, but there were some common problems that occurred with both the procedures that had met the requirements of section 60 of the PD Act and those that had not. These problems were:

- difficulties in explaining the complex requirements of the PD Act for making and assessing a protected disclosure in simple terms
- confusion as to who the procedures were directed to – potential disclosers or PD coordinators and welfare officers.

To a certain extent, these problems were alleviated in those procedures that were well-structured and organised documents containing useful diagrams and examples, and by the provision of additional explanatory material.

In relation to the second issue, very few procedures were able to be located easily on organisations' websites. Using the term 'protected disclosure' to search for information usually resulted in finding relevant information, but this is not a common term in the community, compared to the use of the terms 'whistleblowing' and 'whistleblower'.

The review found that only those organisations that had addressed both of these two issues were able to ensure that their procedures were readily available to members of the public.

In relation to making information available to their own staff, the review found that organisations had made information available about protected disclosures in a variety of ways, including through their intranet, as well as through specific training courses, awareness sessions, and induction. However, only 30 per cent of organisations had attempted to measure the effectiveness of their methods of communicating the message about protected disclosures.

7 Suggested outcomes

7 Suggested outcomes

There is no penalty under the PD Act for failure to have procedures in place within six months of the introduction of the Act. However, the seven organisations that do not have procedures are depriving their staff and members of the public of information that would assist them to make a disclosure about that organisation, and thus potentially receive protections under the PD Act. It is therefore suggested that these organisations be required to establish procedures by 31 March 2015.

The 19 organisations with procedures in place that are inconsistent with the legislation or IBAC guidelines will be able to achieve consistency by amending their existing procedures by removing or amending incorrect information and including missing information. There are some good practice models in relation to each type of procedure that these organisations could use.

All organisations would benefit from reviewing their procedures in light of the issues identified in this report. All organisations should consider whether or not their procedures can be simplified or made more user-friendly, and should ensure that their procedures are made readily available, particularly to members of the public.

8 Appendices

8 Appendix 1 – Public bodies reviewed

No.	Public bodies
Selected public bodies	
1.	Box Hill Institute
2.	Central Gippsland Institute of TAFE
3.	Deakin University
4.	Gippsland Southern Health Service
5.	Goulburn Valley Water
6.	Kangan Institute
7.	LaTrobe University
8.	Monash Health (formerly Southern Health)
9.	RMIT University
10.	South East Water
11.	The Royal Melbourne Hospital
12.	Vic Roads
13.	Victorian Commission for Liquor and Gambling Regulation
14.	Victorian WorkCover Authority
15.	Yarra Valley Water
Councils	
16.	Alpine Shire Council
17.	Ararat Rural City Council
18.	Ballarat City Council
19.	Banyule City Council
20.	Bass Coast Shire Council
21.	Baw Baw Shire Council
22.	Bayside City Council
23.	Benalla Rural City Council
24.	Boroondara City Council
25.	Borough of Queenscliffe
26.	Brimbank City Council
27.	Buloke Shire Council
28.	Campaspe Shire Council
29.	Cardinia Shire Council
30.	Casey City Council
31.	Central Goldfields Shire Council
32.	Colac Otway Shire Council
33.	Corangamite Shire Council
34.	Darebin City Council
35.	East Gippsland Shire Council
36.	Frankston City Council
37.	Gannawarra Shire Council
38.	Glen Eira City Council
39.	Glenelg Shire Council
40.	Golden Plains Shire Council
41.	Greater Bendigo City Council
42.	Greater Dandenong City Council
43.	Greater Geelong City Council
44.	Greater Shepparton City Council

45.	Hepburn Shire Council	69.	Mornington Peninsula Shire Council
46.	Hindmarsh Shire Council	70.	Mount Alexander Shire Council
47.	Hobsons Bay City Council	71.	Moyne Shire Council
48.	Horsham Rural City Council	72.	Murrindindi Shire Council
49.	Hume City Council	73.	Nillumbik Shire Council
50.	Indigo Shire Council	74.	Northern Grampians Shire Council
51.	Kingston City Council	75.	Port Phillip City Council
52.	Knox City Council	76.	Pyrenees Shire Council
53.	Latrobe City Council	77.	South Gippsland Shire Council
54.	Loddon Shire Council	78.	Southern Grampians Shire Council
55.	Macedon Ranges Shire Council	79.	Stonnington City Council
56.	Manningham City Council	80.	Strathbogie Shire Council
57.	Mansfield Shire Council	81.	Surf Coast Shire Council
58.	Maribyrnong City Council	82.	Swan Hill Rural City Council
59.	Maroondah City Council	83.	Towong Shire Council
60.	Melbourne City Council	84.	Wangaratta Rural City Council
61.	Melton City Council	85.	Warrnambool City Council
62.	Mildura Rural City Council	86.	Wellington Shire Council
63.	Mitchell Shire Council	87.	West Wimmera Shire Council
64.	Moira Shire Council	88.	Whitehorse City Council
65.	Monash City Council	89.	Whittlesea City Council
66.	Moonee Valley City Council	90.	Wodonga City Council
67.	Moorabool Shire Council	91.	Wyndham City Council
68.	Moreland City Council	92.	Yarra City Council

8 Appendix 1 – Public bodies reviewed

93.	Yarra Ranges Shire Council	103.	Department of Treasury and Finance
94.	Yarriambiack Shire Council	104.	Environmental Protection Authority
Departments and administrative offices (also includes VPSC & Victoria Police)		105.	Local Government Investigations & Compliance Inspectorate
95.	Department of Education and Early Childhood Development	106.	Office of Living Victoria
96.	Department of Environment and Primary Industries	107.	Office of the Chief Parliamentary Council
97.	Department of Health	108.	Office of the Governor
98.	Department of Human Services	109.	Office of the Victorian Government Architect
99.	Department of Justice	110.	Public Record Office Victoria
100.	Department of Premier and Cabinet	111.	Regional Rail Link Authority
101.	Department of State Development, Business and Innovation	112.	Victoria Police
102.	Department of Transport, Planning and Local Infrastructure	113.	Victorian Government Solicitors Office
		114.	Victorian Public Sector Commission

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8 Appendix 2 – Survey questions

Completing the survey

Thank you for taking part in the protected disclosures survey of public bodies on behalf of your organisation.

Completing the survey

Please complete the whole survey – it will take about 30 minutes. If you don't have time to finish the survey in one sitting, you can stop and resume the survey later by closing the browser and clicking on the link sent to you via email.

1. Your organisation

*1.1 what is the name of your organisation?

*1.2 how many employees does it have?

2. Introduction of protected disclosure procedures

*2.1 Does your organisation have the following types of procedures in place? Please select all that apply.

- Procedures for facilitating the making and handling of protected disclosures and notifications to IBAC (only for entities that can receive protected disclosures)
- Procedures for the purpose of protecting people from detrimental action (for all public bodies)
- No

If not, why not?

- Only required by law to have procedures to protect people from detrimental action

Other reason (please specify)

*2.2 Did you have these procedures in place by 10 August 2013?

- Yes
- No

* Why were the procedures not in place by 10 August 2013?

*2.3 Please provide the URL or web address for your procedures

*2.4 What use, if any, did you make of IBAC's protected disclosure guidelines in preparing your organisation's procedures?

- A lot
- Some
- A little
- None

*2.5 How useful did you find IBAC's protected disclosure guidelines in preparing your organisation's procedures?

- Extremely useful
- Quite useful
- Moderately useful
- Slightly useful
- Not at all useful

* Why have you given this rating to IBAC's guidelines? We welcome feedback

*2.6 What other sources of information did you use to prepare your organisation's procedures? Tick as many as apply.

- Procedures of another organisation in Victoria
- Procedures of another organisation outside Victoria
- Information from other integrity agencies
- Information from private sector organisations
- None
- Other (please specify)

* If other sources of information were used, what information did you use and from which agencies?

*Compulsory.

2.7 Did you work with any other organisation in preparing your organisation's procedures?

- Yes
- No

What organisation did you prepare your procedures with?

- Another public body
- A complaint/disclosure handling service (eg. Stopline)
- Other (please specify)

What did you do together?

3. Protected disclosure coordinator and officers and welfare support officers

*3.1 Does your organisation have a protected disclosure coordinator (PD coordinator)?

- Yes
- No

* If not, why not?

- Not an entity that can receive disclosures
- Other (please specify)

*3.2 Where does the function sit in your organisation?

- Full-time dedicated position
- Part-time dedicated position
- Function done in addition to other duties
- Other (please specify)

*3.3 what is the substantive position/title of the PD coordinator?

*3.4 Excluding the principal officer and PD coordinator, how many people are nominated as officers who can handle reports of wrongdoing in your organisation (ie. as PD disclosure officers)

- 0
- 1
- 2
- 3 or more

3.5 Do the position descriptions of the PD coordinator and PD officers refer to their role in relation to protected disclosures?

- Yes
- No

*3.6 Who in your organisation is responsible for providing welfare assistance for disclosers? Please select all that apply.

- Human Resources
- Employee assistance program or other general assistance or counselling service
- PD coordinator
- PD officer
- Line manager/supervisor
- Peer support/mentoring network
- Our organisation does not provide support to disclosers and persons who are the target of detrimental action
- Other (please specify)

*3.7 Who in your organisation is responsible for providing welfare assistance for persons who are the target of detrimental action?

- Same persons as those who assist disclosers
- Other (please specify)

*3.8 Who in your organisation is responsible for providing welfare assistance for staff who are the subject of any allegations? Please select all that apply.

- Human Resources
- Employee assistance program or other general assistance or counselling service
- PD coordinator
- PD officer
- Line manager/supervisor
- Peer support/mentoring network
- Our organisation does not provide support to disclosers and persons who are the subject of any allegations
- Other (please specify)

*Compulsory.

8 Appendix 2 – Protected disclosure survey of public bodies

4. Awareness and training about protected disclosures in your organisation

*4.1 What protected disclosure specific training has been provided to the PD coordinator?

- Formal training – provided by IBAC
- Formal training – provided by internal staff
- Formal training – provided by external consultants/training providers
- Informal/on-the-job training
- None conducted
- We don't have a PD coordinator
- Other (please specify)

*4.2 Including the PD coordinator, how many PD officers have received training?

- 0
- 1
- 2
- 3 or more
- Do not have PD officers

*4.3 What protected disclosure specific training has been provided to supervisors/managers across your organisation?

- Formal training – provided by internal staff
- Formal training – provided by external consultants/training providers
- Informal/on-the-job training
- None conducted
- Other (please specify)

*4.5 What protected disclosure specific training has been provided to staff across your organisation?

- Formal training – provided by internal staff
- Formal training – provided by external consultants/training providers
- Informal/on-the-job training
- None conducted
- Other (please specify)

*4.6 What training has been given to your managers and staff about managing the welfare of disclosers and persons who may be the target of detrimental action?

- Formal training – provided by internal staff
- Formal training – provided by external consultants/training providers
- Informal/on-the-job training
- None conducted
- Other (please specify)

4.7 How are your organisation's leaders reinforcing messages about protected disclosures within your organisation?

- All-staff emails
- Staff newsletters or other internal publications
- Making protected disclosures a topic at staff meetings
- No reinforcement of protected disclosure messages
- Other (please specify)

5. Implementation of protected disclosure procedures in your organisation

*5.1 Have you developed/provided any tools to assist your PD officers to assess possible protected disclosures received by your organisation?

- Not applicable, not an organisation that can receive disclosures
- Yes
- No

* What are the tools you developed or provided?

5.2 Is a written assessment completed for all reports of wrongdoing that could constitute an assessable disclosure?

- Yes
- No
- Not applicable, not an organisation that can receive disclosures

*Compulsory.

*5.3 Compared to assessments made under the *Whistleblowers Protection Act 2001*, under the Protected Disclosure Act are you making:

- More assessments
- Fewer assessments
- About the same number of assessments
- Not applicable, no longer an organisation that can receive disclosures

*5.4 Have you developed or provided any tools to assist your managers and staff to provided welfare support to disclosers or persons who are the target of detrimental action in your organisation?

- Yes
- No

What tools have you developed?

6. How effective are your protected disclosure policies and procedures?

*6.1 How well have your policies and procedures helped your organisation to receive and assess potential protected disclosures?

- A lot
- Some
- A little
- None
- Not applicable, not an organisation that can receive disclosures

* Why have you given this rating to your policies and procedures?

*6.2 How well have your policies and procedures helped your organisation to manager the welfare of disclosures and those persons who are the target of detrimental action?

- A lot
- Some
- A little
- None

* Why have you given this rating to your policies and procedures?

6.3 Is there any aspect of your organisation's management of protected disclosures and those persons associated with protected disclosures that you consider to be leading practice or particularly innovative?

6.4 Is there any aspect of the Act or Regulations or IBAC's Guidelines that you think could be improved?

6.5 Are there any major obstacles to achieving necessary improvements? Tick all that apply.

- Barriers to reporting
- Lack of confidence in the protections available under the PD Act
- Difficulties in understanding the PD Act, Regulations, IBAC guidelines
- None that I am aware of
- Other (please specify)

7. Promoting awareness of the PD Act and your organisation's role and response.

*7.1 How have you made protected disclosure procedures (either procedures relating to assessing protected disclosures or providing welfare support) available to all your staff? Please select all that apply.

- Promoted the procedures through your organisation's intranet for staff
- Introduced or updated internal policies and procedures
- Promoted information through internal communications – newsletters, emails, FAQs, etc
- Have not made the procedures available to all staff
- Other (please specify)

*7.2 Have you updated your organisations website to remove references to the previous Act, the Whistleblowers Protection Act?

- Yes
- No
- Don't know

8 Appendix 2 – Protected disclosure survey of public bodies

*7.3 Have you updated your organisation's website to remove references to the term 'public interest disclosure' instead of 'protected disclosure'?

- Yes
- No
- Don't know

7.4 Have you updated your organisation's policies to remove references to the Whistleblowers Protection Act and the term 'public interest disclosure'?

- Yes
- No
- Don't know

*7.5 How do you make prospective job applicants and new starters aware of your organisation's obligations under the Protected Disclosure Act?

*7.6 How do you make information available to your clients and other members of the public about the Protected Disclosure Act and where to make protected disclosures? Please select all that apply.

- Produced web resources
- Promoted information through external communications – newsletters, social media, FAQs, etc
- Have not made the procedures available to members of the public
- Other (please specify)

*7.7 What tools do you measure the effectiveness of these methods of communication?

Surveys – however conducted, on-line, phone poll, etc

- Collection of internet/intranet visit statistics
- None
- Other (please specify)

Have you remembered to email the following information to IBAC?

Thank you again for taking part in the protected disclosures survey on public bodies on behalf of your organisation. Before we finish, please confirm that the following items have been provided to Vanessa Twigg

URL links directing us to the following documents on your organisation's public website and/or internal intranet to help us understand where this information is held

- Procedures for making and handling protected disclosures (for entities that can receive disclosures only)
- Procedures for protecting employees from detrimental action (all public bodies)
- Any related procedures

Copies of the following items so that we can see the content (this material may be provided in the form of PDFs, word documents or screen shots):

- The documents listed above
- Any additional guidance material used by your Protected Disclosure Coordinators and Officers in assessing and handling protected disclosures
- Any guidance material used by your organisation to assist in managing the welfare of disclosures and protecting your staff from any detrimental action

*Compulsory.

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8 Appendix 3 – PD procedures review checklist template

Protected disclosures policies – checklist

Name	
Date checklist completed	
Organisation	
Type of body	
Documents provided	

	Area of assessment	Checklist completed?
1	Making and handling protected disclosures	
2	Protected disclosure/welfare management	
3	Additional matters	
4	Accessibility and aesthetics	

Part 1: Making and handling protected disclosures procedures

Scope and purpose of protected disclosures

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Reference to commitment to supporting disclosures and importance of reporting			
What is a disclosure? (p 6 IBAC guidelines)			
What is not a disclosure? (p 7 IBAC guidelines and section 20 PD Act)			
How to make a disclosure (eg. verbal, written, anonymous) (p 8 IBAC guidelines, PD Regulations)			
To whom in an organisation can a disclosure be made? (p 9 IBAC guidelines)			
Who can make a disclosure? (any natural person, not a company)			
About whom can a disclosure be made? (public body, public officer, p 10 IBAC guidelines)			
To which entities can a disclosure be made? (p 11–12 IBAC guidelines)			

8 Appendix 3 – PD procedures review checklist template

Definitions

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Glossary of terms (p 29 IBAC guidelines)			
'Detrimental Action' definition (section 3, 43 PD Act) – legitimate management action may not be detrimental action (section 44 PD Act)			
'Improper conduct' definition (corrupt conduct and specified conduct) (section 4 PD Act)			

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
<p>Offences by disclosers:</p> <p>Remains liable for own conduct even though this conduct has been disclosed (section 42 PD Act)</p> <p>Make false disclosure, provide false further information (section 72 PD Act)</p> <p>Falsely claim disclosure is PD or PDC (section 73 PD Act)</p> <p>Disclosure that matter has been notified to IBAC (section 74(1) PD Act)</p> <p>Disclosure that matter has been determined to be a PDC (section 74(2) PD Act)</p> <p>Disclosure that IBAC has decided to investigate or refer PDC (section 184 IBAC Act)</p>			
<p>Offences by public officers:</p> <p>Take or threaten detrimental action (section 45 PD Act)</p>			
<p>Confidentiality requirements for organisation and those with knowledge of the disclosure (not discloser) (sections 52, 53, 54 PD Act)</p>			

8 Appendix 3 – PD procedures review checklist template

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
<p>Confidentiality obligations on a discloser:</p> <p>confidentiality provisions do not apply to discloser (section 40 PD Act)</p> <p>disclosers not covered by sections 52 and 53 of PD Act.</p>			
<p>Civil and criminal penalties under the PD Act (p 30 IBAC guidelines):</p> <p>Criminal (sections 45, 52, 53 PD Act)</p> <p>Civil (sections 46, 47 PD Act)</p>			
<p>Information about the protections for persons making the disclosure</p> <p>Not subject to criminal/civil liability for making disclosure (section 39 PD Act)</p> <p>Protection from defamation (section 41 PD Act)</p> <p>Protection from detrimental action (section 45 PD Act)</p>			
<p>Protections for public officers (section 76 PD Act)</p>			

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Information for supervisors and managers about requirement to forward a disclosure to the protected disclosure coordinator			
Information for all staff on how to refer an enquiry to the protected disclosure coordinator			
The selection of a person identified as the protected disclosure coordinator) and their roles and responsibilities			
PD coordinator and officer contact details			
Content of a disclosure (what should be in a disclosure)			
How to document the receipt of a disclosure			
How to assess a disclosure			
Information for disclosers about alternative external bodies to which they can make a disclosure			
Information for disclosers about inability to withdraw a disclosure if it is notified to IBAC and determined to be a protected disclosure complaint			

8 Appendix 3 – PD procedures review checklist template

Notifying IBAC and IBAC response

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Information about time limits for notifying IBAC of an assessable disclosure (28 days after receipt) (section 21(2) PD Act)			
Information about what IBAC can do and does do with an assessable disclosure? (sections 26–29 PD Act, section 58 IBAC Act)			
Information about providing assistance to IBAC or investigating entity re their investigations?			
Information about confidentiality restrictions on organisation and other people about IBAC's decision to investigate or refer (section 184 IBAC Act)			

Part 2: Protected disclosures – welfare management procedures

Scope and purpose of protected disclosures

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Reference to commitment to supporting disclosures and importance of reporting			
What is a disclosure? (p 6 IBAC guidelines)			
What is not a disclosure? (p 7 IBAC guidelines and section 20 PD Act)			
How to make a disclosure (eg. verbal, written, anonymous) (p 8 IBAC guidelines, PD Regulations)			
To whom in an organisation can a disclosure be made? (p 9 IBAC guidelines)			
Who can make a disclosure? (any natural person, not a company)			
About whom can a disclosure be made? (public body, public officer, p 10 IBAC guidelines)			
To which entities can a disclosure be made? (pp 11–12 IBAC guidelines)			

8 Appendix 3 – PD procedures review checklist template

Definitions

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
<p>'Detrimental Action' definition (section 3, 43 PD Act) – legitimate management action may not be detrimental action (section 44 PD Act)</p>			
<p>'Improper conduct' definition (corrupt conduct and specified conduct) (section 4 PD Act)</p>			
<p>Offences by disclosers:</p> <p>Remains liable for own conduct even though this conduct has been disclosed (section 42 PD Act)</p> <p>Make false disclosure, provide false further information (section 72 PD Act)</p> <p>Falsely claim disclosure is PD or PDC (section 73 PD Act)</p> <p>Disclosure that matter has been notified to IBAC (section 74(1) PD Act)</p> <p>Disclosure that matter has been determined to be a PDC (section 74(2) PD Act)</p> <p>Disclosure that IBAC has decided to investigate or refer PDC (section 184 IBAC Act)</p>			

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
<p>Offences by public officers: Take or threaten detrimental action (section 45 PD Act)</p>			
<p>Confidentiality requirements for organisation and those with knowledge of the disclosure (not discloser) (sections 52, 53, 54 PD Act)</p>			
<p>Confidentiality obligations on a discloser: confidentiality provisions do not apply to discloser (section 40 PD Act) disclosers not covered by sections 52 and 53 of PD Act</p>			
<p>Civil and criminal penalties under the PD Act (p 30 IBAC guidelines): Criminal (sections 45, 52, 53 PD Act) Civil (section 46, 47 PD Act)</p>			
<p>Information about the protections for persons making the disclosure Not subject to criminal/civil liability for making disclosure (section 39 PD Act) Protection from defamation (section 41 PD Act) Protection from detrimental action (section 45 PD Act)</p>			

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Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Protections for public officers (section 76 PD Act)			

Welfare management

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Appointment of a welfare manager			
Welfare manager contact details			
Welfare services contact details			
Welfare processes to be used			
Provision for welfare of not just discloser, but also witnesses, cooperators and the person subject of the disclosure			
Are there processes for relocating a discloser or any reference to such a process (public service bodies only, not local councils)?			

What IBAC does

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Information about what IBAC does with a PD?			
Information about what IBAC can do and does do with an assessable disclosure? (sections 26–29 PD Act, section 58 IBAC Act)			
Information about providing assistance to IBAC or investigating entity re their investigations?			
Information about confidentiality restrictions on organisation and other people about IBAC's decision to investigate or refer (section 184 IBAC Act)			

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Part 3: Additional matters

Security

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
A secure process for receiving verbal or written disclosures			
Establishing and managing a secure filing system?			
A secure information management and reporting system for the receipt, storage, assessment and notification of protected disclosures including:			
An internal reporting structure			
Identification of the roles and responsibilities of those in the reporting structure			

Reporting and education

Criteria	In policy (Y/N)	Consistent with guidelines (Y/N)	Why not?
Collating and reporting statistics on disclosures?			
Education and training for selected personnel in receipt, handling, assessing and notifying of disclosures and welfare management?			

Part 4: Accessibility and aesthetics of procedure documents

Criteria	Comment
Easily located physically and electronically for both members of the public and employees (refer to URL link information)	
Format – clear logical structure and organisation, headings, diagrams	
Style – use of simple language to explain concepts, precise and concise writing	
Usability assessment	<ul style="list-style-type: none"> <input type="radio"/> Extremely useable <input type="radio"/> Quite useable <input type="radio"/> Moderately useable <input type="radio"/> Slightly useable <input type="radio"/> Not at all useable

Further comments:

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