



Review of public sector bodies' compliance with elements of the Protected Disclosure Act

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Protected disclosures play an important role in Victoria's integrity system, providing key information to help identify wrongdoing and risks to public service delivery. It is important people know how to make a disclosure and what protections they are entitled to.

The Independent Broad-based Anti-corruption Commission (IBAC) recently reviewed state and local government bodies' compliance with key elements of the *Protected Disclosure Act 2012* (the PD Act). In particular, the review looked at procedures for protected disclosures and how these are made available to people by public sector bodies.

The review found that while most bodies surveyed had procedures in place, some did not. There was also variance in how easy these procedures were to read, use and access. This raises concerns that people may not be aware how to make a disclosure about improper conduct in the public sector and the protections they may be entitled to.

About the review

Under the PD Act, all public bodies in Victoria are required to establish and publish procedures about protecting people from detrimental action for making a disclosure. In addition, public bodies in Victoria that can receive disclosures are required to establish and publish procedures about making, handling and notifying disclosures. The PD Act required public bodies to have these in place by August 2013.

In late 2014, IBAC undertook a review of public sector bodies to ensure their procedures were consistent with guidelines issued by IBAC around making and handling protected disclosures, the PD Act, and the Protected Disclosure Regulations 2013 (PD Regulations). The review also examined whether public bodies' procedures were readily available to employees and the general public.

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

- public bodies that can receive disclosures, and make notifications to IBAC of assessable disclosures. These bodies are required to have procedures for making and handling protected disclosures and for protecting people against detrimental action taken by their officers
- public bodies that cannot receive disclosures, but may have disclosures made about them. These bodies are only required to have procedures for protecting people against detrimental action taken by their officers.

In total, 114 public bodies were selected for review. This included nine departments, 11 administrative offices, the Victorian Public Sector Commission and the (then) 79 local councils. Of public bodies that cannot receive disclosures, IBAC selected a sample of bodies from four sectors for review, including universities and TAFE colleges, water corporations, public hospitals and health care services and statutory authorities.

Victoria Police is the only public body subject to IBAC's review which is also an investigative entity. Victoria Police also has specific investigative powers under the *Victoria Police Act 2013* that they must use for protected disclosure complaints.

There was a 94 per cent response rate to the survey, providing a good representative sample. All 20 departments and administrative offices completed the survey. Seven organisations did not complete it, including three of the 15 selected public bodies and four of the 79 local councils. Therefore, only four organisations that can receive disclosures did not respond.

Respondents were asked to complete an online survey and provide a copy of their procedures and other supporting documents to IBAC for review. Their responses provided information about the efforts made to implement procedures and to make them readily available to members of the public and their staff.

IBAC assessed all procedures against a checklist to determine whether the procedures developed were consistent with the PD Act, the PD Regulations and IBAC guidelines.

Findings

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.

Twenty-six organisations did not meet the requirements of the 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 procedure in place. The water corporations and universities all had procedures in place.

Availability of procedures

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

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

While the review considered the majority of procedures were able to be read and understood by potential users, common issues included:

- 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 and welfare officers.

Procedures that were well-structured, contained useful diagrams and examples, and which provided additional explanatory material, were considered the easiest to read and understand.

Very few procedures could be easily found on organisation websites. Relevant information could usually be found by using the term 'protected disclosure', however this is not a common term in the community compared to 'whistleblowing' and 'whistleblower'.

Only those organisations that had easy-to-understand procedures which could also be readily located, were able to ensure that their procedures were readily available to members of the public.

Information about protected disclosures was made available to staff in a variety of ways, including through their intranet, specific training courses, awareness sessions, and induction.

Less than a third (30 per cent) of organisations had attempted to measure the effectiveness of their communication about protected disclosures.

Recommendations

While there is no penalty for failure to have procedures in place within six months of the introduction of the PD Act, the seven organisations that do not have procedures are depriving staff and members of the public of information about making a disclosure and the protections available. IBAC recommends these organisations establish procedures by 31 March 2015.

The 19 organisations with procedures in place that are inconsistent with the legislation or IBAC guidelines can achieve consistency by amending their existing procedures to include correct and missing information. There are some good-practice models in relation to each type of procedure that these organisations could use.

All public sector bodies would benefit from reviewing their procedures in light of the issues raised in the review and should consider:

- whether their procedures can be simplified or made more user-friendly
- how these procedures are made readily available, particularly to members of the public.

A full report on the 2014 review of protected disclosure procedures is available on the IBAC website www.ibac.vic.gov.au

Level 1, North Tower
459 Collins Street,
Melbourne VIC 3000
GPO Box 24234,
Melbourne, VIC 3001

T 1300 735 135
F (03) 8635 6444

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IBAC also has a broad oversight role in relation to police personnel misconduct and an important education function to proactively assist public sector agencies to improve their systems and processes to prevent corrupt conduct.

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