

Protected disclosures: internal policies and procedures

A guide for organisations

If your organisation is looking to encourage an open reporting culture, or is currently grappling with how to handle a protected disclosure by one of your employees about serious wrongdoing in your workplace, the Ombudsman can provide information and guidance.

The [Protected Disclosures Act](#) (or PDA) requires all public sector agencies to have internal procedures for receiving and handling protected disclosures. This includes both central and local government. It is also a good idea for private sector and not-for-profit organisations to have procedures, as they are a key resource for employees wondering what to do if they witness serious wrongdoing.

This guide provides information and advice for organisations developing and reviewing their internal procedures.

State sector organisations should also refer to the Public Service Commission's [Model Standards](#) for 'speaking up'. These set out minimum expectations for reporting of all forms of wrongdoing, not just serious wrongdoing.

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Introduction

The *Protected Disclosures Act 2000* (PDA) is New Zealand's 'whistle-blowing' legislation. It sets out certain procedural requirements for employees wanting to report concerns about serious wrongdoing in their workplace. It encourages disclosures to be made within the organisation first, so that they can be investigated and addressed. It also provides protections so that employees can disclose their concerns in confidence and without fear. The PDA applies to both public and private sector organisations, with some key differences outlined in the guidance below.

There are a number of reasons for an organisation to encourage staff reporting. Employees are best placed to observe or suspect wrongdoing, and are most likely to make accurate reports of wrongdoing that are both substantiated and promote organisational change and improvement.¹

It is also important for the general integrity of all organisations, as well as accountability of the public sector as a whole. By identifying and correcting instances or systemic patterns of serious wrongdoing, organisations can avoid legal and financial consequences, criticism and loss of confidence, as well as general inefficiencies. A 'speak up' culture may also serve to deter wrongdoing in the first place.

This guidance is for public, private and not-for-profit organisations establishing or reviewing their policies and procedures for the receipt and handling of protected disclosures. It outlines key components for best practice policy and procedure, so that organisations can use this to develop practices best suited to their operational environments.

This guidance outlines best practice in relation to 'whistleblowing', derived from international and Australasian research. State Sector organisations should also ensure that they meet the [Public Service Commission's minimum expectations for the reporting of all concerns](#), not just serious wrongdoing.

Why are internal policies and procedures important?

An internal policy is a critical starting point for organisations to demonstrate their commitment to support the reporting of wrongdoing by staff, and proper handling of these matters when they are raised. This commitment should be formally adopted as organisational policy and widely communicated to all staff.

To be effective, useful procedures will need to support the internal policy. It is important that staff are aware of their obligations in relation to reports of wrongdoing, and the process that they should follow when a report is made to them.

¹ Brown, AJ (ed.) 2008, *Whistleblowing in the Australian public sector: Enhancing the theory and practice of internal witness management in public sector organisations*, ANU E Press, Canberra, pp. 42 – 45.

Research has demonstrated the importance of developing effective policies, procedures and practices to ensure clarity and consistency in handling reports of wrongdoing. Under the PDA, appropriate internal procedures are also a legal requirement for public sector organisations.²

Research³ has shown that:

- Organisations with effective procedures are more likely to have staff who are aware of the procedures, have positive attitudes towards reporting wrongdoing, report wrongdoing they believe to be serious, and are treated better by managers and co-workers when they do report.
- Organisations with a high proportion of staff who are aware of their organisation's policies or procedures for reporting wrongdoing are more likely to have a higher rate of reporting, positive staff attitudes towards reporting wrongdoing and higher staff trust that reporting will be looked on positively by management.

An employee can be motivated or supported to report serious wrongdoing, in part, by an organisation's pro-reporting culture and organisational commitment to ethical and accountable conduct. Policies and procedures that emphasise and give effect to that culture of reporting can contribute to this.

Employees do prefer to report internally – procedures can help them, and can also help their supervisors, to whom they are most likely to report in the first instance. Your first response to a whistle-blower is likely to set the tone for how they perceive their treatment throughout the process, and whether they are satisfied by the outcome.

Research has also shown that staff are more aware of their internal procedures than they are of any relevant legislation. A survey commissioned by the Chief Ombudsman indicates that individuals who are aware of the PDA are substantially more likely to feel that they will be protected if they report wrongdoing (73%), compared to those who are unaware of the PDA (33%). This presents an opportunity to develop worthwhile and impactful policy, but also indicates a need to ensure that internal policies and procedures reflect the legislation well, and inform employees of their rights and obligations under the PDA. This may well be the only source of information that they consult when wondering whether and how to disclose their concerns about serious wrongdoing.

² Section 11 of the Protected Disclosures Act 2000 (PDA).

³ Brown, AJ, above n 1, pp. 251–257 & Roberts, P, Brown, AJ & Olsen, J 2011, *Whistling while they work: A good-practice guide for managing internal reporting of wrongdoing in public sector organisations*, ANU E Press, Canberra, pp. 27–29.

Legal obligations

Section 11 of the Protected Disclosures Act requires that all public sector organisations have ‘*appropriate internal procedures*’ for receiving and dealing with information about serious wrongdoing.⁴ These procedures must:

- Comply with the principles of natural justice;
- Identify who within an organisation an employee can make a disclosure to;
- Include reference to sections 8 to 10 of the Protected Disclosures Act (these are the provisions setting out the process of first making the disclosure within the organisation, and when an employee may disclose their concerns externally to an appropriate authority); and
- Be published widely within the organisation, and republished at regular intervals.

Although not a legal requirement at this time, private sector organisations will also benefit from having internal PDA policies and procedures, for the same reasons as above. This guidance is equally applicable to private sector organisations.

What is natural justice?

Natural justice is the ‘duty to act fairly’. It has two key aspects:

- Fair process; and
- Ensuring that the decision maker is not biased.

A fair process is one where the complaint is taken seriously, and where both parties are kept informed about the progress of any investigation. A fair process also requires that someone be told about any allegations that have been made against them, and have the opportunity to respond to this.

If an organisation needs to tell someone about allegations that have been made against them in a protected disclosure, they must use their best endeavours to do this while maintaining the confidentiality of the person who made the protected disclosure. However, if it *essential* to disclose identifying information in order to allow the accused person to respond to the allegations, then the organisation may need to do that.

See [Confidentiality](#).

What should internal policy include?

An organisation’s internal PDA policy should provide the guiding principles for how protected disclosures will be encouraged, received and handled. It is important that the policy:

⁴ Section 11 of the Protected Disclosures Act 2000 (PDA).

- Demonstrates a clear organisational commitment to supporting the disclosure of wrongdoing by staff, and to properly handling disclosures.
- Identifies who the policy and supporting procedures apply to ('employees' as well as those receiving a disclosure).
- Defines 'serious wrongdoing'.
- Identifies when an employee may make their protected disclosure externally, to an appropriate authority, Minister or Ombudsman.
- Makes clear the organisation's expectations of how an employee will be treated once they make a disclosure.

Organisational commitment

The ethical climate of an organisation, as well as the efficacy of whistleblowing policies and procedures, can determine how successfully a report of serious-wrongdoing will address issues within the organisation. A culture of trust and reporting, and support at all levels of management, is essential.⁵

An organisation's policy should therefore start with:

- Strong endorsement by the head of the organisation.
- A statement of the organisation's commitment to high standards of ethical and accountable conduct, confirmation that it will not tolerate any form of wrongdoing, and encouragement of reporting as an obligation of an employee.
- Recognition that staff who come forward and report wrongdoing are helping to promote integrity, accountability and good management within the organisation.
- If it is the policy of a public sector agency, reference to the [Code of Conduct for the public Service](#). For any other organisations with staff who are subject to codes of conduct or professional codes of ethics, these should also be referred to.
- Acknowledgement of the organisation's legislative obligations under the PDA to receive and handle protected disclosures while maintaining the confidentiality of the reporting employee and preventing retaliatory conduct.
- An undertaking to staff who do make a report, in particular that:
 - procedures for the handling and investigation of reports of serious wrongdoing will be followed;
 - there is a commitment to maintain confidentiality of the reporter's identity, unless disclosure is permitted by law;

⁵ *Ibid*, pp 18-19.

- reporters will be protected from retaliatory conduct;
 - appropriate action will be taken if wrongdoing is found; and
 - the reporter will be kept informed of the progress and outcome of their report.
- Provision for periodic review and update of the policy.

Who the policy applies to and what can be reported

The most basic requirement for an effective PDA policy is clear and understandable guidance on who can make a protected disclosure, and what they can report. This is key information that an employee will be seeking when first thinking about reporting serious wrongdoing. The policy should:

- Identify who can make a protected disclosure;
- Identify what matters can be reported as a protected disclosure.

Who does the policy apply to?

Organisations should consider including guidance that is more than just a restatement of the relevant legislative provisions. Think about who might consult your policy, and whether you can explain the legislation's coverage in a user-friendly way.

Often policies focus on the organisation's employees, however the organisation should keep in mind that the PDA defines 'employee' more broadly than this. The policy should explain that the PDA also covers disclosures by:

- Former employees;
- Secondees;
- Homeworkers (as defined by section 5 of the Employment Relations Act 2000);
- Contractors;
- Members of the organisation's board or governing body;
- Members of the Armed Forces (the Navy, Army and Air Force); and
- Volunteers.

If your policy includes information about how a disclosure will be handled, it should also make clear that the policy applies to anyone who receives a protected disclosure, or who is responsible or otherwise involved with the handling and investigation of protected disclosures.

What about anonymous disclosures?

The PDA does contemplate that anonymous protected disclosures are permitted. Section 19(3)(a) of the PDA refers to the role of the Ombudsman as including the provision of advice about circumstances in which an anonymous disclosure of information may be made. Organisations should not implement a policy of declining to accept anonymous disclosures of information.

The Public Service Commission also expects public sector agencies to have procedures in place that enable employees to make anonymous reports, regardless of whether they meet the threshold of serious wrongdoing.⁶ All organisations would benefit from considering this.

In many cases, the identity of the person making a disclosure will not need to be known in order for the organisation to make further inquiries and determine whether further action is required. However the Ombudsman does recognise that in some circumstances it will not be possible to pursue an anonymous disclosure, for example where further information is required but cannot be obtained.

Organisations can seek advice from the Ombudsman in the event that they receive an anonymous disclosure.

What can be reported?

Serious wrongdoing has a particular meaning under the PDA. It does not apply to all possible wrongdoing that an employee might see and think about reporting.

Serious wrongdoing includes:

- the unlawful, corrupt or irregular use of funds or resources of a public sector agency;
- conduct that poses a serious risk to public health, safety or the environment;
- conduct that poses a serious risk to the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial;
- an offence;
- conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.⁷

These different types of serious wrongdoing also depend on whether you are working in the public sector or the private sector. These differences are summarised below:

⁶ *Acting in the Spirit of Service – Speaking Up*, Model Standards, Public Service Commission, <https://www.publicservice.govt.nz/resources/speaking-state-services/>.

⁷ See the definition of 'serious wrongdoing' in section 3 of the PDA.

Public and private sector	Public sector only
Conduct that seriously risks public health, safety or the environment.	Unlawful, corrupt or irregular use of funds or resources
Conduct that seriously risks the maintenance of the law, including the right to a fair trial, and the prevention, investigation and detection of offences.	Conduct by an official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.
Offences.	

Organisations should bear in mind that for many employees, using the statutory language as set out in the PDA will be unfamiliar or seem unnecessarily complex. Think about whether you can provide any additional explanation or theoretical examples that will assist potential reporters with understanding whether the information they wish to report is covered by the policy.

The policy should identify that if an employee is uncertain about whether the information they wish to report relates to serious wrongdoing, they can contact the Ombudsman for advice on this or consult the Ombudsman's guidance on making a protected disclosure. Similarly, staff who receive a disclosure can also contact the Ombudsman for advice about whether it relates to serious wrongdoing and what action to take.

Think about how your organisation will respond if an employee purports to make a disclosure, but it is not covered by your PDA policy.

Even if a disclosure is not related to 'serious wrongdoing', it is still a valuable source of information for the organisation, on wrongdoing that may be occurring, or even wider organisational culture issues.

Organisations must be willing to receive and appropriately handle all reports of concern, even those that are not about serious wrongdoing. Your PDA policy should explain to both reporters and recipients what to do in the event that the report does not meet the threshold of serious wrongdoing.

This may be as simple as referring to the appropriate procedure elsewhere in the organisation. However, keep in mind that the employee may still be concerned about reprisal conduct. How the organisation handles this will provide a clear signal to other employees about whether or not they are safe to raise both serious wrongdoing and lesser concerns.

If in doubt, employees should feel safe to report the information within their organisation.

Organisations should include links to any other relevant policies or procedures, such as a code of conduct or a grievance/complaints policy. This information will be relevant to employees

who consult the PDA policy but determine that their information does not relate to ‘serious wrongdoing’.

Reporting outside of the organisation

An employee can make their disclosure externally to an appropriate authority (including the Ombudsman) in certain circumstances. This may occur where the employee believes on reasonable grounds:

- That the head of the organisation is, or may be, involved in the wrongdoing; or
- Reporting to an appropriate authority is justified due to the urgency of the matter to which the disclosure relates, or some other exceptional circumstance; or
- That no action or recommended action has been taken within 20 working days of the employee making the report according to the organisation’s procedures, or to the head of the organisation.

Disclosures may also be made to a Minister of the Crown or an Ombudsman, in certain circumstances:⁸

- The employee has already made substantially the same disclosure in accordance with the organisation’s internal procedures, to the head of the organisation, or to an appropriate authority; and
- The employee believes on reasonable grounds, that the person or appropriate authority to whom the disclosure was made:
 - Has decided not to investigate the matter; or
 - Has decided to investigate but has not made progress within a reasonable period of time; or
 - Has investigated but not taken or recommended any action.

An organisation’s internal policy should advise employees of the circumstances in which they can make their disclosure externally. Public sector organisations are required by the PDA to include this information in their internal procedures.⁹

An organisation may also wish to advise employees that they will not be protected under the PDA in the event that they make their disclosure to media. The PDA does not provide for media as a separate reporting avenue, nor as an appropriate authority to which a disclosure can be made. This means that the civil and criminal immunity afforded by sections 18 and 22 of the PDA would not apply, and there is a risk that disclosure to media could result in a breach of employment obligations, or in fact amount to a criminal offence.

⁸ Section 10 of the PDA.

⁹ Section 11 of the PDA.

What should internal procedures include?

Operating in concert with an organisation's policy, internal procedures should:

- Set out the 'mechanics' of:
 - How a disclosure can be made, and who it can be made to.
 - How and when a disclosure should be acknowledged, and the requirements of ongoing communication.
 - Practical steps for maintaining confidentiality and preventing reprisal conduct or other detrimental effects.
- Identify sources of information and guidance.
- Identify support services available for an employee who makes a disclosure.

Who can receive a protected disclosure

The policy and procedures should provide clear advice to employees on who they can report to, and how.

For public sector organisations, it is a legal requirement that internal procedures identify the persons within the organisation to whom a disclosure can be made. It is best practice that private and not-for-profit organisations include this information, too.

Procedures will need to cover a number of reporting alternatives, reflective of the fact that the PDA allows for both internal and external reporting, depending on the circumstances. In the first instance, the PDA requires employees to make their disclosure in accordance with the organisation's procedure. Alternatively, an employee can make their disclosure directly to the head of an organisation, if any of the following applies:¹⁰

- The organisation does not have internal procedures for receiving and dealing with disclosures; or
- The employee believes, on reasonable grounds, that the person they are required by the procedures to report to is or may be involved with the wrongdoing; or
- The employee believes, on reasonable grounds, that it is not appropriate to report to the person identified in the procedures, because of their relationship or association with the alleged wrongdoer.

There are also circumstances in which an employee can make the report directly to an appropriate authority, Minister of the Crown, or Ombudsman (see [above](#)).

¹⁰ Section 8 of the PDA.

The overwhelming majority of employees who report serious wrongdoing make that report within their organisation and to a line manager in the first instance.¹¹ It is therefore best if an organisation's procedures can reflect this preference. This also emphasises the importance of an organisation's procedures identifying who within the organisation can receive a protected disclosure, and how to contact the head of the organisation in the event that the disclosure needs to be made directly to them.

Organisations should identify which positions have specific roles and responsibilities under the internal policy, and these should be reflected in any supporting procedures as well as position descriptions. Ideally, there will be alternative reporting lines within an organisation, so that no employee has only one individual to whom they may report, particularly if that individual is their direct line manager.

How to make a protected disclosure

The PDA requires that internal procedures set out how a protected disclosure will be received and handled. The procedures should also refer to the mechanics of actually *making* the report. For example:

- Is there a specific email address that employees can send their disclosure to?
- Can disclosures be made by telephone and in person?
- Is there a preferred template or form for employees to complete?
- How can an anonymous disclosure be made?

Employees may also be seeking guidance on the level of information or 'evidence' they are required to submit when making a disclosure. Research conducted by the Ombudsman shows that 55 percent of respondents would most likely report concerns about serious wrongdoing to their manager. It may be useful for organisations to specify basic information that will be required in order to take initial action on the report. For example, this might require approximate dates, the name and title of the alleged wrongdoer, and a description of the alleged wrongdoing.

Organisations should be cautious to avoid setting an evidential threshold that must be met in order to receive or act on a protected disclosure. This could be a disincentive to reporting, and promote a reluctant approach amongst staff who receive disclosures. Further information can always be sought after receipt of the initial disclosure.

What will happen once a disclosure is made

An organisation's policy should include a commitment that the person making the disclosure will be kept informed of the progress and outcome of their disclosure, alongside a commitment to maintaining up-to-date procedures, which set out key steps for both the employee and the staff member handling the disclosure.

¹¹ Above, n 3, pp. 45.

Procedures should include:

- How and when employees can expect to receive an acknowledgement of their disclosure;
- Where reports should be recorded by the recipient of the disclosure, in order to keep them confidential;
- Who within the organisation will ordinarily be informed of a protected disclosure having been made;
- How and when the organisation will undertake an assessment of the disclosure to determine whether it falls within the definition of serious wrongdoing;
- How frequently the employee will be updated on the actions being taken in response to their disclosure;
- How the organisation will assess and implement any protective measures for the employee (see below, [Support for Reporters](#)); and
- How the organisation will maintain confidentiality of the employee's identity, and what will happen in the event that potentially identifying information is to be released.

A common concern of employees who have made a protected disclosure is that they were not advised of what to expect after making the disclosure, did not know the process that was being followed by the organisation, and were not kept informed either throughout the investigation of their disclosure or at the outcome.

Detailed, but sufficiently flexible, procedures can provide a useful and reassuring source of information to employees who have made a disclosure, and to those who must receive and handle disclosures. Procedures should encourage the appropriate consideration of all disclosures received by the organisation, as well as adequate reporting to the employee on the outcome of their disclosure, bearing in mind that disclosures may be reported to an appropriate authority or Minister of the Crown, where it appears that the organisation is taking insufficient action on a disclosure.

What if the disclosure is not actually covered by the PDA?

If an employee of an organisation believes on reasonable grounds that the information they have disclosed is about serious wrongdoing, but they are mistaken, the information must be treated as complying with section 6(1)(a) of the PDA, for the purposes of the protections conferred by the Act.

This means that even if mistaken about the information relating to serious wrongdoing, or mistaken as to what the information reveals, an employee is still protected by the confidentiality provisions of the PDA, as well as the personal grievance and anti-victimisation provisions.

Even if an employee's disclosure is not covered by the PDA, the concerns that they have raised should still be considered under the organisation's usual procedures. This is important to the organisation's commitment to fostering a 'speak up' culture.

It is important that an organisation's policy makes this clear, and that it is understood by all employees, including those who may receive or handle disclosures.

Protections available to employees

An organisation's policy should also provide an adequate explanation of, or reference to, the protections provided by the PDA. These are:

- Confidentiality;
- Immunity from civil and criminal proceedings, notwithstanding any prohibition or restriction on the disclosure of the information they have revealed (unless that information is protected by legal professional privilege);
- The ability of an employee to take personal grievance proceedings in the event that they are unjustifiably dismissed, or their conditions of employment are detrimentally affected, because of making the protected disclosure; and
- Application of the anti-victimisation provisions of the *Human Rights Act 1993*.

Organisations may wish to make clear that the protections will not be available to employees that make false allegations or otherwise act in bad faith.

Confidentiality

Section 19 of the PDA requires that any person who receives or is referred a protected disclosure must use their best endeavours not to disclose information that would identify the person who has made the disclosure.

There are limited exceptions to this obligation:¹²

¹² Section 19(1) of the PDA.

- Where the person who made the protected disclosure has consented to disclosure of their identity in writing; or
- The organisation reasonably believes that disclosure of identifying information is *essential* for one of the following reasons:
 - For effective investigation of the allegations;
 - To prevent serious risk to public health or safety, or to the environment; or
 - To comply with the principles of natural justice.

Confidentiality under the PDA is not a simple matter. The PDA sets a high threshold for when identifying information may be disclosed: it must be *essential* to disclose the particular information, for one of the above reasons. A decision to disclose information that identifies or risks identifying the employee who made the disclosure should not be made lightly. Careful consideration is required, and the responsible decision maker should consider legal seeking advice on this point.

Internal procedures should supplement the policy commitment to confidentiality, by providing practical guidance for staff on how the organisation goes about maintaining confidentiality, and the precise responsibilities and actions required of staff who receive or handle disclosures. For example, will communications or documents pertaining to the disclosure routinely omit the discloser's name and position, or will a pseudonym be employed?

In the event that an organisation determines disclosure of identifying information is essential for one of the above reasons, the organisation should first communicate with the employee who has made the disclosure, in order to obtain their views on the proposed disclosure, and to provide them with sufficient notice that they might be identified. From some employees, their potential identification will affect their willingness to continue with, and cooperate with, any action on the protected disclosure.

Internal procedures should expressly provide for communication to be undertaken, and should encourage staff to obtain legal advice prior to the disclosure of any potentially identifying information. Staff should also be encouraged to discuss openly with employees who have made a disclosure, whether there might be any issues with maintaining confidentiality, as well as any additional protections that could be put in place to mitigate the consequential effects of identification, where it becomes essential to disclose identifying information.

Overall, these conversations with the disclosing employee should:

- Be honest and realistic about any difficulties with maintaining confidentiality, as well as reasons why the organisation considers it essential to disclose identifying information (for example, if it will assist with investigation).
- Take place early on in the process, close in time to when the disclosure is made.
- Continue throughout the process of handling and addressing the disclosure, as circumstances and risks change.

Organisations may also wish to refer to the effect of section 19(2) of the PDA, which states that a request for official information that might identify a person who has made a protected disclosure may be refused as contrary to the PDA.¹³

Support for reporters

Research has shown that employees who report serious wrongdoing are at real risk of suffering some form of retaliation within the workplace. Australian research suggests up to 22 per cent of employees who reported wrongdoing perceived themselves as having been mistreated as a result of making the disclosure.¹⁴ Even where retaliatory conduct does not occur, most employees are likely to experience stress after making a disclosure. Some 43 per cent of whistleblowers report suffering 'extreme' stress, with 62 per cent experiencing some increase in stress.¹⁵

Employers have responsibilities and obligations under the *Health and Safety at Work Act 2015* to ensure the health and safety of their workers, the definition of which includes both physical and mental health. It is therefore important that organisations take steps to identify, assess and mitigate the risk of detriment to an employee who makes a disclosure, and also provide support to them following the disclosure.

In addition to this, one of the factors influencing employees' willingness to report serious wrongdoing is their experience of organisational support in the past, and observed behaviours towards other whistleblowers.¹⁶

Internal policies should provide a clear commitment to preventing retaliatory conduct and other detrimental effects when an employee makes a disclosure. Procedures should identify available supports to employees who have made, or are considering making, a disclosure. These supports should include:

- Employee assistance programmes, or other external wellbeing assistance;
- The provision of peer support to the employee (by an individual not involved in investigating the disclosure); and
- Identification of an appropriately senior contact within the organisation, to whom the employee can escalate any concerns or issues.

Procedures should supplement this commitment and available support by providing for some form of risk assessment and ongoing monitoring to ensure that risks do not eventuate, to account for risks that may not arise until action commences on the disclosure, and to implement support services as required.

¹³ Section 17(c)(i) of the Local Government Official Information and Meetings Act 1987, section 18(c)(i) Official Information Act 1982.

¹⁴ Above, n 2, pp. 60 – 61.

¹⁵ *Ibid.*

¹⁶ *Ibid.*, pp. 75 – 76.

Organisational procedures should also refer to the role of the Ombudsman in providing information and guidance to employees who have made a disclosure. This extends to the ability of an employee, in the case of a public sector agency, to complain to the Ombudsman about the handling of their protected disclosure.

Seeking further advice

An organisation's procedures should also identify sources of further advice for both employees considering making a disclosure, and staff who have received a disclosure. Referenced sources should be both internal and external. For example:

- Within the organisation, identification of individuals who can provide guidance. This might include both technical and procedural advice on the receipt and handling of disclosures within the organisation, as well as advice on available support and what to do about any reprisal conduct or detriment that may be occurring.
- Reference to the Ombudsman's statutory role in providing information and guidance to both organisations handling protected disclosures, and confidential assistance service for employees who are considering making, or who have made disclosures. Advice can be sought from the Ombudsman in a number of ways:

Telephone: 0800 802 602
Email: info@ombudsman.parliament.nz
Post: PO Box 10152, Wellington 6143

- Links to external information, such as that produced by the Ombudsman and the Public Service Commission. In particular:
 - The Ombudsman's [Guide to Making Protected Disclosures](#).
 - The Public Service Commission's [Speaking Up Standards](#), which should also be consulted in respect of the 'continuum' of speak-up culture. The standards set out how organisations should go about seeking *all* feedback and concern, not just protected disclosures.

Communicating and embedding your policy and procedures

The PDA requires that public sector organisations publish their internal procedures widely, and republish them at '*regular intervals*'.¹⁷ Private and not-for-profit organisations should also seek to have their policies and procedures well known and accessible within the workplace.

Organisations can achieve the effective communication of their policies and procedures in a number of key ways:

¹⁷ Section 11 of the PDA.

- Promotion of the policy and procedures by senior management, including in staff communications and newsletters, or Chief Executive updates.
- Leadership commitment to, and promotion of, a general culture of openness and speaking up.
- Visibility of the policy and procedures within workspaces. For example, on posters, noticeboards or payslips.
- Periodic discussion within staff meetings.
- Where possible, positive reinforcement and reporting on the outcomes of concerns that have been raised within the organisation.

There are a number of additional steps that should also be taken:

- Ensure that policies and procedures are user-friendly, and understood by all staff. Consider the various audiences within your organisation, and take into account any communication needs of particular staff members.
- Keep all internal policies and procedures consistent. Cross-reference and link them to one another where relevant, including to external documents such as codes of conduct and ethics. A public sector's PDA policy and procedures are likely to be just one in a suite of policies aimed at encouraging and supporting employees to 'speak up'. There may be areas of commonality, and if an organisation's 'speaking up' policies are robust and comprehensive, the PDA procedures may simply supplement this overarching commitment and approach to the reporting of *all* concerns.
- Regular review, in particular of procedures, to ensure that they remain up-to-date. Once procedures appear to be out of step with current organisational process or structure, there is a risk that the underlying policy and aims of the procedures will also be seen as no longer relevant.
- Ensure that employees can easily find and access the policy and procedures without the need to consult other colleagues. This can be a deterrent where identification and reprisal are a concern.
- Organisations should aim for their policy and procedures (or at least summarised process information) to be available on their public website. This is important given that the definition of 'employee' under the PDA extends to former employees and contractors, parties who otherwise might need to contact individuals within the organisation for a copy of this information.

We have a policy and procedures – we’re sorted, right?

The fact that an organisation has both policies and procedures relating to the PDA is not sufficient alone to encourage and protect employees who are concerned about serious wrongdoing.

For many organisations, what will also be required is culture change.

- Regular discussion and reinforcement of the organisation’s commitments by the Chief Executive and senior management.
- Tailored, regular training, provided in some form to *all* employees;
- Regular communications reinforcing the policy and procedures;
- When you do receive a protected disclosure, as well as lesser reports of concern or just feedback, handle it well. Employees will be watching, and an organisation’s culture will be impacted if those concerns are perceived to be poorly handled.

Training

Training on protected disclosures should be provided to all staff when they commence work for the organisation (induction/orientation). This training might also cover wider expectations that concerns about lesser wrongdoing should be raised. At a minimum, training should cover:

- The organisation’s commitment to supporting, and encouragement of, the reporting of serious wrongdoing;
- Where internal policy and procedure can be accessed;
- How internal policy and procedure operate;
- Confidentiality and unacceptable reprisal conduct; and
- For management staff, the obligation to support employees who make a report, and to foster a professional environment in which reporting is encouraged and valued.

An organisation should also consider how best to provide specialist training and support to those staff members who will be receiving and handling protected disclosures. This might include:

- Specific training on legislative and organisational procedural requirements for handling protected disclosures, including confidentiality requirements and risk management.
- Nominated advisors for those receiving protected disclosures, who can be approached for confidential legal advice.

Appendix 1. Checklist

Best practice PDA policy and procedures

This checklist will assist organisations assessing their existing policy and procedures, as well as those planning new ones. It is intended to help identify areas for improvement, so that policies and procedures represent best practice as opposed to bare compliance with the provisions of the PDA.

Protected Disclosures policies and procedures should include:

<input type="checkbox"/>	Identification of the PDA as the relevant legislation.
<input type="checkbox"/>	Strong statement of organisational commitment to supporting the disclosure of wrongdoing by staff, and to properly handling disclosures.
<input type="checkbox"/>	Recognition that employees who report wrongdoing are helping to promote integrity, accountability and good management within the organisation, and that reporting is highly valued.
<input type="checkbox"/>	Commitment to the proper handling of disclosures, including regular updates, risk management, and support.
<input type="checkbox"/>	Information about who the policy and procedures apply to – who can make a disclosure?
<input type="checkbox"/>	Adequate explanation of what is ‘serious wrongdoing’, and the need for the employee to believe on reasonable grounds that the information they are disclosing is true, or likely to be true.
<input type="checkbox"/>	Explanation of the protections afforded by the PDA.
<input type="checkbox"/>	Reference to other relevant policies, in particular those relating to less serious forms of concerns or wrongdoing.
<input type="checkbox"/>	Reference to the PDA’s process for making a disclosure (i.e. to the organisation in the first instance, in accordance with internal procedure, and then externally).
<input type="checkbox"/>	Identification and explanation of internal and external reporting paths, and the circumstances in which an employee can report wrongdoing externally.
<input type="checkbox"/>	Identification of the roles within the organisation to whom a disclosure can be made.
<input type="checkbox"/>	Responsibilities of staff to whom a disclosure is made, actions that must be taken.
<input type="checkbox"/>	Advice on the practical steps that should be taken to make the disclosure (whether it should be in writing, where it should be directed, what to do if making the disclosure anonymously).

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<input type="checkbox"/>	Strong commitment to confidentiality, and an outline of the steps that will be taken to protect confidentiality, as well as steps that must be taken before any identifying information is disclosed.
<input type="checkbox"/>	Information about how the employee will be supported, and any risk assessments and ongoing monitoring.
<input type="checkbox"/>	What the employee should do in the event that they need support or are concerned about reprisal conduct or other detrimental effects.
<input type="checkbox"/>	Provision for regular review and updates of the policy and procedures.
<input type="checkbox"/>	Advice on where staff who may be thinking of making a disclosure can seek further information.
<input type="checkbox"/>	Written in plain English, suitable for all audiences within the organisation.
<input type="checkbox"/>	Reference to the Ombudsman's guidance for employees.
<input type="checkbox"/>	For public sector organisations, reference to the SSC's Model Standards on speaking up.

Embedding your PDA policy and procedures

<input type="checkbox"/>	Leadership and promotion of the PDA and 'speak up culture'.
<input type="checkbox"/>	Visible and explicit statements about the organisation's commitment to receiving concerns about serious wrongdoing in the workplace.
<input type="checkbox"/>	Policy and procedures are readily accessible to all employees, including former employees.
<input type="checkbox"/>	Training is provided to all staff, with specialist training provided to those who receive and handle protected disclosures.
<input type="checkbox"/>	Regular review and update, and re-communication of the policy and procedures.

Acknowledgement

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