

Integrity Report

Monitoring Project on IBAC: Protected Disclosures

June 2019

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Definitions

Acronym/Term	Explanation
Assessable disclosure	As defined in section 3 of the PD Act
CMS	IBAC's case management system which is used as a <i>tool</i> to record decision-making by IBAC and facilitate access to relevant information by all IBAC officers involved in assessing whether a disclosure is a protected disclosure and making a determination under section 26(3) of the PD Act
Determination	A determination made by IBAC under section 26(3) of the PD Act
IALA Act	<i>Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019</i>
IBAC	Independent Broad-based Anti-Corruption Commission
Inspectorate	Victorian Inspectorate
Monitoring project	The monitoring project to oversight the performance of IBAC's functions under section 55(1) of the PD Act
Notifying entity	Entities which notify assessable disclosures to IBAC pursuant to sections 21 and 22 of the PD Act and section 169(3) of the <i>Victoria Police Act 2013</i>
Objects of the VI Act	See sections 5(a) and (b) of the VI Act
OPC	Operations and Prevention Committee
PD	Protected disclosure (as defined within section 3 of the PD Act)
PD Act	<i>Protected Disclosure Act 2012</i>

PD assessment tool	The PD assessment checklist that IBAC uses within its CMS to facilitate the assessment of disclosures
Police complaint disclosure	As defined within section 5 of the PD Act
Preliminary Report	The report titled, " <i>Opportunities for improvement in the performance by IBAC of its functions under section 55(1) of the Protected Disclosures Act 2012</i> ", which was provided to IBAC in June 2018
Procedures	Policy, procedure and practices of IBAC
Protected Disclosure	As defined within section 3 of the PD Act
Protected Disclosure Complaint	As defined within section 3 of the PD Act
Purposes of PD Act	See section 1 of the PD Act
VI	Victorian Inspectorate
VI Act	<i>Victorian Inspectorate Act 2011</i>
Victorian Public Sector	The sector comprising all Victorian public bodies and all Victorian public officers.

1 | Overview

1.1 | About the PD Scheme

The Protected Disclosure Scheme (PD Scheme) is a '*whistleblowing-system*' which operates to facilitate the reporting (making a disclosure) of improper conduct by public officials and public bodies within the Victorian Public Sector.

Reporting concerns of improper conduct by Victorian public officials and Victorian public bodies (i.e. '*whistleblowing*') is important in maintaining the integrity of the Victorian Public Sector as it enables *corruption* and other types of improper conduct to be identified, investigated and, where possible, prevented.

The PD Scheme encourages the making of disclosures by providing a number of *protections* to people who make those disclosures. These protections are set out within the *Protected Disclosure Act 2012* (PD Act), which establishes the PD Scheme and provides a legal framework for making a disclosure.

Under the PD Scheme, every Victorian Public Sector body is required to have personnel and procedures to assist and enable persons to make disclosures.

The *Independent Broad-based Anti-corruption Commission* (IBAC) plays a central role within the PD Scheme in that it receives and is notified about the majority of these disclosures, which assists IBAC in its primary role of identifying, investigating, exposing and preventing corrupt conduct and other improper conduct within the Victorian Public Sector.

The PD Scheme is also supported by a number of other entities, including the Inspectorate, who receive disclosures and, where appropriate, notify those disclosures to IBAC for further review and investigation.

1.2 | Role of the Inspectorate

The Inspectorate's main role within the PD Scheme is to:

- receive and, where appropriate, investigate disclosures about IBAC and its officers;
- oversee the performance by IBAC of its functions under the PD Act;
- receive disclosures about other integrity and investigatory bodies and their officers (as provided for under the PD Act) and, where appropriate, notify those disclosures to IBAC for further assessment and investigation; and
- review the protected disclosure procedures of IBAC and other integrity and investigatory bodies.

1.3 | Overview of Monitoring Project

The Victorian Inspectorate (the Inspectorate) has a function under section 11(2)(b) of the *Victorian Inspectorate Act 2011* (VI Act) to oversee IBAC's performance of its functions under the PD Act.

As part of this responsibility, the Inspectorate commenced a monitoring project to oversee the performance by IBAC of its main functions under the PD Act.

These functions, which are found under section 55(1) of the PD Act, include functions to:

- (a) receive assessable disclosures (whether directly or by notification from other entities); and
- (b) to assess those disclosures; and
- (c) to determine whether those disclosures are protected disclosure complaints.

The Inspectorate's oversight of IBAC's performance of these functions is informed by the objects of the Inspectorate, contained within sections 5(a) and (b) of the VI Act. Those objects are to:

- (a) enhance the compliance of IBAC and IBAC personnel with the IBAC Act and other laws; and
- (b) assist in improving the capacity of IBAC and IBAC personnel in the performance of their duties and functions and the exercise of their powers.

The Inspectorate's monitoring project was undertaken in two phases.

Phase 1

In the first phase of the Inspectorate's monitoring project, the Inspectorate reviewed whether IBAC has policies, procedures and practices which enable it to perform its functions under section 55(1) of the PD Act.

In June 2018, the Inspectorate provided IBAC with a preliminary report outlining its initial findings from its review. The preliminary report identified opportunities which IBAC could consider to improve the policies, procedures and practices that it uses to carry out its functions under section 55(1) of the PD Act.

The Inspectorate's preliminary report was titled *Opportunities for improvement in the performance by IBAC of its functions under section 55(1) of the Protected Disclosures Act 2012* (preliminary report).

IBAC responded to the Inspectorate's preliminary report in letters dated 20 July and 21 November of 2018. In its responses, IBAC indicated to the Inspectorate the feedback it would consider adopting within its next review of its policies and procedures.

Phase 2

In the second phase of the Inspectorate's monitoring project, the Inspectorate audited whether IBAC, in performing its functions under section 55(1) of the PD Act, adheres to the policies, procedures and practices that it has developed to carry out those functions.

As part of this audit, the Inspectorate also considered whether IBAC's policies, procedures and practices were carried out in accordance with IBAC's obligations under the PD Act.

In completing its phase 2 review, the Inspectorate analysed its findings from both phases of its monitoring project to provide IBAC with feedback, in the form of this report, on how it may consider improving the performance of its functions under section 55(1) of the PD Act.

The Inspectorate's analysis included consideration of the implementation and operation of IBAC's new case management system (CMS) and consideration of IBAC's responses to the Inspectorate's preliminary report. The Inspectorate notes that IBAC's new CMS is to some extent in a transition stage, as it continues to be further developed and implemented, having been introduced in August 2018.

1.4 | Purpose

The purpose of this report is to provide IBAC with feedback as to how it may consider improving the performance of its functions under section 55(1) of the PD Act.

The purpose of this report, including its publication, is consistent with the Inspectorate's functions under sections 11(2)(b) and (k) of the VI Act and section 56(2) of the PD Act.

2 | Scope of Monitoring Project

2.1 | Project Design

The Inspectorate's monitoring project has been designed to identify opportunities that IBAC may consider to improve the performance of its functions under section 55(1) of the PD Act.

These opportunities for improvement were identified by:

Phase 1: Desktop review

- i. reviewing whether IBAC has policies, procedures and practices that enable it to perform each of its obligations under section 55(1) of the PD Act;
- ii. reviewing whether the policies, procedures and practices that IBAC has developed for the purposes of carrying out its functions under section 55(1) of the PD Act, are consistent with the PD Act and the Purposes of the PD Act, which are provided for under section 1 of the PD Act.

Phase 2: Audit of IBAC's case files

- iii. auditing, from a review of IBAC's case files, whether IBAC adheres to the policies, procedures and practices that it has developed to carry out its functions under section 55(1) of the PD Act; and
- iv. auditing, from a review of IBAC's case files, whether those policies, procedures and practices are carried out in accordance with IBAC's obligations under the PD Act.

Analysis of findings

- v. analysing the findings from the phase 1 desktop review, IBAC's responses to the preliminary report and the findings from the phase 2 audit, to provide feedback on:
 - (a) how IBAC may better meet the Purposes and requirements of the PD Act in carrying out its functions under section 55(1) of the PD Act; and
 - (b) how IBAC may more effectively carry out its functions under section 55(1) of the PD Act.

2.2 | Project Limitations

The Inspectorate acknowledges that the way in which IBAC performs its functions under section 55(1) of the PD Act will soon change with the commencement of the *Integrity and Accountability Legislation Amendment (Public Interest Disclosures, Oversight and Independence) Act 2019* (IALA Act).

Accordingly, rather than providing formal recommendations, the scope of this project is limited to providing IBAC with feedback it may consider to improve the future performance of its functions under section 55(1) of the PD Act.

The Inspectorate also acknowledges that within IBAC's response to its preliminary report, IBAC informed the Inspectorate that it would actively consider some of the feedback that was provided within the preliminary report in IBAC's next periodic review of its policies and procedures. Accordingly, the Inspectorate has not repeated the specific detail of this

feedback within this report. However an outline of this feedback is included within section 5 of this report.

2.3 | Out of Scope

In oversighting the performance of IBAC's functions under section 55(1) of the PD Act, the Inspectorate's monitoring project did not include:

- feedback from external stakeholders about the performance of IBAC's functions under section 55(1) of the PD Act;
- consideration of whether IBAC, pursuant to section 26 of the PD Act, has made a correct assessment and determination as to whether a disclosure is a protected disclosure complaint.

3 | Methodology

The Inspectorate's monitoring project was carried out in two main phases.

Each phase of the Inspectorate's review was used to identify opportunities that IBAC may consider to improve the performance of its functions under section 55(1) of the PD Act.

The methodology undertaken for each phase is discussed below.

3.1 | Desktop Review of Procedures (Phase 1)

In the first phase, the Inspectorate reviewed whether IBAC has policies, procedures and practices that enable it to perform its functions under section 55(1) of the PD Act.

From the findings of this review, the Inspectorate provided IBAC with feedback in the form of a preliminary report, outlining opportunities that IBAC could consider to improve the performance of its functions under section 55(1) of the PD Act.

The methodology for undertaking the Inspectorate's phase 1 review, included the Inspectorate:

Developing a review tool

- i. developing a review tool to undertake the Inspectorate's phase 1 review;

Gathering information

- ii. obtaining a copy of the written policies and procedures that IBAC has established to enable it to perform its functions under section 55(1) of the PD Act;

- iii. obtaining information from IBAC about the practices (i.e. the unwritten procedures) that it uses to enable it to perform its functions under section 55(1) of the PD Act;
- iv. obtaining copies of the information references which IBAC uses and relies upon to enable it to perform its functions under section 55(1) of the PD Act;

Reviewing IBAC's procedures

- v. auditing, through a review-tool created by the Inspectorate, whether IBAC has policies, procedures and practices that enable it to perform each of its obligations under section 55(1) of the PD Act;
- vi. reviewing, through the review-tool created by the Inspectorate, whether IBAC's policies, procedures and practices, including any information references that IBAC relies upon, is consistent with the PD Act and the Purposes of the PD Act;

Consulting with IBAC

- vii. consulting with IBAC about the Inspectorate's preliminary findings from the desktop review; and

Providing IBAC with a preliminary report

- viii. from its findings, providing IBAC with a preliminary report which articulates opportunities that IBAC may consider to improve the performance of its functions under section 55(1) of the PD Act.

3.2 | Audit of IBAC's Case Files (Phase 2)

In the second phase of the Inspectorate's monitoring project, the Inspectorate, from a review of IBAC's case files, audited whether IBAC adheres to the policies, procedures and practices that it has developed to carry out its functions under section 55(1) of the PD Act.

The Inspectorate, as part of this audit, also considered whether IBAC carries out its relevant policies, procedures and practices in accordance with its obligations under the PD Act.

The methodology for the Inspectorate's audit included:

Developing an audit tool

- i. creating an audit tool to audit whether:
 - (a) IBAC adheres to the policies, procedures and practices that it has developed to carry out its functions under section 55(1) of the PD Act;
 - (b) IBAC carries out its relevant policies, procedures and practices in accordance with IBAC's obligations under the PD Act;
- ii. for the purposes of finalising the audit questions to be included within the audit tool:
 - (a) reviewing IBAC's new CMS that was implemented after the Inspectorate's phase 1 desktop review;
 - (b) reviewing and consulting with IBAC about any new or updated policies, procedures or practices that IBAC has implemented since the Inspectorate's phase 1 review;

Requesting case files from IBAC

- iii. requesting access to the following 75 case files of IBAC relating to determinations that were made under section 26(3) of the PD Act and made after 30 January 2019:

- (a) the first 25 determinations that involved a police complaint disclosure;
- (b) the first 25 determinations that involved an assessable disclosure that was notified to IBAC pursuant to section 21(2) of the PD Act;
- (c) the first 25 determinations that involved a complaint or disclosure that was made directly to IBAC;

NOTE

The Inspectorate requested access to the above range of case files, as they are a representative sample of the main types of assessable disclosures that IBAC is able to receive or be notified of. This allowed the Inspectorate to undertake a more comprehensive audit of IBAC's adherence to its policies, procedures and practices in performing its functions under section 55(1) of the PD Act.

The Inspectorate also confined its request to case files where IBAC had made a determination under section 26(3) of the PD Act after 30 January 2019 to ensure that it was reviewing case files that were created after IBAC had implemented its new CMS. By doing this, the Inspectorate was able to more accurately audit whether IBAC adheres to its current policies, procedures and practices that it has developed to carry out its functions under section 55(1) of the PD Act.

Auditing case files provided by IBAC

- iv. undertaking a quantitative audit of the following case files provided by IBAC, against a series of questions which make up the Inspectorate's audit tool:
 - (a) 40 case files containing determinations for 133 assessable disclosures that were made directly to IBAC (which included 1 police complaint disclosure);
 - (b) 22 case files containing determinations for 50 assessable disclosures that were notified to IBAC under section 21(2) of the PD Act;
 - (c) 3 case files containing determinations for 10 police complaint disclosures that were notified to IBAC under section 22 of the PD Act;
 - (d) 8 case files containing determinations for 8 complaints made to IBAC under section 169(2) of the *Victoria Police Act 2013*;

NOTE

The Inspectorate accepted the case files provided by IBAC as a representative sample and considered that the files provided were sufficient for the purposes of the Inspectorate's phase 2 audit, given that IBAC employs substantially the same processes in relation to the receipt, assessment and determination of the different types of assessable disclosures that it receives or is notified of.

Consultation with IBAC

- v. asking IBAC a series of written qualitative questions to clarify the Inspectorate's findings from its audit of IBAC's case files,

including clarifying issues that could not be tested through the audit process;

- vi. consulting with IBAC about the Inspectorate's findings;

Consideration of sample size

- vii. considering, from the findings of the Inspectorate's audit of IBAC's case files, whether auditing a further sample of IBAC's case files would be necessary to assist with the Inspectorate's analysis; and

NOTE

Given the consistency of the Inspectorate's findings from its first audit of IBAC's case files, the Inspectorate considered that it had sufficient data from the case files it had audited to provide IBAC with appropriate feedback in relation to IBAC's performance of its functions under section 55(1) of the PD Act. Accordingly, the Inspectorate did not audit a further sample of IBAC's case files.

Reporting on findings

- viii. analysing the findings from phase 1 and phase 2 of the Inspectorate's monitoring project, along with the implementation and operation of IBAC's new CMS and IBAC's responses to the Inspectorate's preliminary report, to provide IBAC with feedback, in the form of this report, on how it may consider improving the performance of its functions under section 55(1) of the PD Act.

4 | Results Phase 2 Audit

4.1 | About the Phase 2 Audit

The Inspectorate’s phase 2 audit was designed to:

- i. audit, from a review of IBAC’s case files, whether IBAC adheres to the policies, procedures and practices that it has developed to carry out its functions under section 55(1) of the PD Act; and
- ii. audit whether those policies, procedures and practices are carried out in accordance with IBAC’s obligations under the PD Act.

In developing audit questions to be included within the phase 2 audit tool, the Inspectorate considered:

- i. the main processes that IBAC uses to perform its functions under section 55(1) of the PD Act;
- ii. IBAC’s obligations under the PD Act in relation to its functions under section 55(1) of the PD Act; and
- iii. the operation of IBAC’s new CMS, which was implemented after the Inspectorate had completed its phase 1 review and which continues to be implemented with rectification work and additional functionality.

The results of the Inspectorate’s phase 2 audit are categorised according to the functions that IBAC has under section 55(1) of the PD Act.

4.2 | Case Files Audited

The Victorian Inspectorate audited 73 of IBAC’s case files, which contained a total of 201 different allegations/disclosures. The breakdown of the different types of files reviewed is included in Table A:

TABLE A: TYPES OF FILES AUDITED

TYPE OF DISCLOSURE	IBAC CASE FILES REVIEWED	ALLEGATIONS REVIEWED
Disclosure made directly to IBAC	40	133
Disclosure notified to IBAC under section 21 of the PD Act	22	50
A police complaint disclosure notified to IBAC under section 22 of the PD Act	3	10
A disclosure notified to IBAC pursuant to section 169 of the <i>Victoria Police Act 2013</i>	8	8
Total	73	201

4.3 | Receipt of Disclosures

Table B provides the quantitative results of the Inspectorate’s phase 2 audit with respect to IBAC’s function, under section 55(1)(a) of the PD Act, to receive assessable disclosures, whether directly or by notification from other entities.

The audit questions included within this part of the phase 2 audit considered IBAC’s adherence to the main processes that it takes after receiving an assessable disclosure. These include steps to process the disclosure within IBAC’s case management system (CMS) so that the disclosure is ready to proceed through IBAC’s assessment processes.

4.3.1 Discussion of Results

Audit Questions 1 – 2

The quantitative results for Audit Questions 1–2 demonstrate that IBAC, in every instance reviewed, properly set up an electronic file for each allegation within IBAC’s CMS and included all primary documents relating to the disclosure on the electronic file.

Audit Question 3

For Audit Question 3, the Inspectorate found that 2 out of the 201 allegations that it reviewed were improperly categorised within IBAC’s CMS as notifications made to IBAC under section 21 of the PD Act, when they should have been categorised as notifications made to IBAC under section 22 of the PD Act. This error however did not appear to affect IBAC’s assessment, determination and handling of the 2 allegations/disclosures.

Audit Question 4

For Audit Question 4, the Inspectorate found that of the 201 allegations that it reviewed, in 15 instances, IBAC did not provide the discloser with an acknowledgment letter that it had received their disclosure.

IBAC has advised the Inspectorate that these acknowledgment letters have been sent to the discloser, but, as a result of the continued development and implementation of IBAC’s new CMS, these letters were not properly integrated into the electronic case files that the Inspectorate audited.

TABLE B: AUDIT RESULTS – RECEIPT OF DISCLOSURES

#	AUDIT QUESTION	YES	NO	N/A
1	Was a case setup on IBAC’s CMS for each disclosure?	201	0	0
2	Were all primary documents relating to the disclosure stored in IBAC’s CMS?	201	0	0
3	Was the assessable disclosure properly categorised within IBAC’s CMS?	199	2	0
4	Was an acknowledgement letter sent to the discloser?	97	15	89
5	Was the case assigned to the Team leader for assignment?	201	0	0
6	Did the Team Leader assign the case for assessment?	201	0	0

IBAC was not required to provide the discloser with an acknowledgment letter for 89 of the 201 allegations/disclosures that the Inspectorate reviewed, as these related to disclosures that had been made anonymously or which had been notified to IBAC by a notifying entity.

Audit Questions 5 - 6

The quantitative results for Audit Questions 5 – 6 demonstrate that for all 201 allegations reviewed, IBAC properly assigned the allegation within IBAC's CMS so that it was able to be assessed.

4.3.2 Feedback from Audit

- i. The results contained in Table B demonstrate that IBAC, on the whole, consistently adhered to the main processes that it has developed within its CMS to carry out its function to receive assessable disclosures.
- ii. IBAC may benefit from considering whether it should implement any additional quality control measures within its CMS to ensure that the disclosures it receives or is notified of are appropriately categorised within its system, as improper categorisation has the potential to affect how a disclosure is assessed and handled. The Inspectorate notes that the incorrect categorisation of the two disclosures identified during the audit had no impact on the assessment or handling of those disclosures.

4.4 | Assessment of Disclosures

Table C provides the quantitative results of the Inspectorate's phase 2 audit with respect to IBAC's function, under section 55(1)(b) of the PD Act, to assess the assessable disclosures that it receives whether directly or by notification from other entities.

The audit questions included within this part of the phase 2 audit considered IBAC's adherence to the main processes that it takes in assessing disclosures. These processes include:

- uploading and recording relevant information relating to the disclosure on an electronic file within IBAC's CMS;
- completing a protected disclosure (PD) assessment checklist (tool) within its CMS;
- applying relevant quality control measures in the assessment process; and
- providing relevant reasoning for the assessment decision.

TABLE C: AUDIT RESULTS - ASSESSMENT OF DISCLOSURES

#	AUDIT QUESTION	YES	NO	N/A
7	Was an IBAC case officer allocated (within IBAC's CMS) to make a preliminary assessment about the disclosure?	201	0	0
8	Did the IBAC case officer input into IBAC's CMS, information provided within the disclosure which supports the allegation made by the discloser?	201	0	0
9	Was the category of conduct recorded in IBAC's CMS, with respect to the disclosure, accurate?	201	0	0
10	Did IBAC, in undertaking its PD assessment, complete its PD checklist?	198	3	0
11	Where the disclosure was assessed to be a protected disclosure, was a confidentiality protection notification included for the disclosure within IBAC's CMS?	57	0	144
12	Did the reasoning for the assessment of the disclosure by IBAC's Assessment and Review Team (A&R Team) appear to be accurate?	196	5	0
13	Was the assessment of the disclosure reviewed by a Team Leader and a Manager of IBAC?	201	0	0
14	Did the Team Leader assign the disclosure back to an IBAC case officer for re-assessment?	21	180	0
15	Did the Manager assign the disclosure back to a Team Leader for re-assessment?	8	193	0
16	Did the Deputy Commissioner endorse the recommended assessment made by IBAC's A&R Team?	191	0	10
17	Did the Deputy Commissioner consult with the OPC in making its determination as to whether the disclosure is a protected disclosure complaint?	8	183	10

4.4.1 Discussion of Results

Audit Questions 7 – 9

The quantitative results for Audit Questions 7 – 9 demonstrate IBAC’s adherence to properly allocating officers to assess the disclosure and to properly including and categorising information to facilitate the assessment of the disclosure within IBAC’s CMS.

Audit Question 10

For Audit Question 10, the Inspectorate found that in 3 of the 201 allegations that it reviewed, the PD assessment tool within IBAC’s case management system did not appear to have been used to assess whether the disclosure/allegation was a protected disclosure.

Given that the assessment of whether a disclosure is a protected disclosure is quite complex with many different elements to consider in making the assessment, it is important that IBAC adheres to using its PD assessment checklist (tool) to ensure that all relevant elements for assessment are considered.

Additionally, the completion of the PD assessment tool triggers the confidentiality notification protections within IBAC’s case management system (when a disclosure is assessed to be a protected disclosure). So in better protecting the confidentiality of the discloser and the content of the disclosure, it is important that the PD assessment tool be used and completed.

The Inspectorate notes that IBAC has other confidentiality safeguards in place to protect this confidentiality. Furthermore, the allegations in question were not assessed to be protected disclosures, so there was no impact on confidentiality by not completing or using the PD assessment tool in these instances.

The Inspectorate also notes that whilst IBAC’s PD assessment tool was not used in 3 instances, IBAC’s practice for assessing disclosures includes multiple stages of review to ensure that assessments are made correctly. The Inspectorate, however, still maintains the view that the use of IBAC’s PD assessment tool is important in ensuring that all relevant elements for assessment are considered.

IBAC has advised the Inspectorate that in addressing these issues, it will make its PD assessment tool a mandatory requirement within its CMS.

Audit Question 11

The quantitative results for Audit Question 11 demonstrate that the confidentiality protection notifications within IBAC’s CMS were properly provided for each of the 57 allegations reviewed that were assessed to be a protected disclosure.

Audit Question 12

For Audit Question 12, the Inspectorate found that in 5 of the 201 allegations that it reviewed, IBAC’s Assessment & Review Team did not record accurate reasoning for its PD assessment.

In each of the 5 instances, IBAC’s reasoning failed to specify section 9(1)(b) of the PD Act as one of the reasons for assessing that the disclosure was not a protected disclosure.

The Inspectorate is of the view that this is a simple oversight by IBAC given it has included section 9(1)(b) of the PD Act within its reasoning for the assessment of similar allegations.

IBAC has also advised the Inspectorate that it will address this issue.

The Inspectorate also notes that this oversight had no impact on the assessment or handling of those disclosures.

Audit Questions 13 – 15

The quantitative results for Audit Questions 13 – 15 demonstrate that, in every instance reviewed, the assessment of each allegation was actively reviewed by both the Team Leader and Manager of IBAC’s Assessment & Review Team. Additionally, the instances where the Manager and Team Leader have assigned the allegation back for re-assessment demonstrate the multiple levels of quality control that IBAC applies to the assessment of disclosures.

Audit Questions 16 – 17

For Audit Question 16, the Inspectorate found that IBAC’s Deputy Commissioner endorsed the assessment recommendation made by IBAC’s Assessment & Review Team in 191 of the 201 allegations that it reviewed. The remaining 10 allegations did not require endorsement by the Deputy Commissioner or consultation with the Operations & Prevention Committee (OPC) as they were allegations which were either withdrawn by the discloser or which fell outside of IBAC’s jurisdiction. The assessment of these allegations was endorsed by IBAC’s manager of Assessment & Review.

This, to some extent, demonstrates the effectiveness of IBAC’s assessment processes and the quality control measures that it uses to ensure that disclosures are assessed appropriately.

The quantitative results for Audit Question 17 demonstrate IBAC’s use of the OPC as a further avenue of quality control in the assessment of more serious or complex disclosures.

4.4.2 Feedback from Audit

IBAC may improve the performance of its function to assess the assessable disclosures that it receives or is notified of, by:

- i. ensuring that IBAC’s PD assessment tool is a mandatory requirement for the assessment of assessable disclosures within IBAC’s CMS;
- ii. ensuring that the auto-generated reasoning that IBAC’s PD assessment tool provides, includes consideration of section 9(1)(b) of the PD Act as one of the reasons for assessing that a disclosure is not a protected disclosure.

The Inspectorate agrees that IBAC, in preparing to undertake the above, will address the issues identified in Part 4.4.1 relating to the assessment of disclosures.

4.5 | Determination of Disclosures

Table D provides the quantitative results of the Inspectorate’s phase 2 audit with respect to IBAC’s function, under section 55(1)(c) of the PD Act, to determine whether the assessable disclosures that it receives, or is notified of, are protected disclosure complaints.

The audit questions included within this part of the phase 2 audit considered IBAC’s adherence to the main processes that it has developed with respect to its determination function under section 55(1)(c) of the PD Act.

TABLE D: AUDIT RESULTS - DETERMINATION OF DISCLOSURES

#	AUDIT QUESTION	YES	NO	N/A
18	Did IBAC make a determination with respect to the disclosure within 45 days from the date of receiving the disclosure?	181	20	0
19	Where IBAC determined the disclosure to be a protected disclosure complaint, did IBAC provide the discloser with written advice about its determination in accordance with s.28 PD Act?	49	8	144
20	Did IBAC's written advice to the discloser about its determination (pursuant to s.28 PD Act) appear to be provided to the discloser within a reasonable time?	42	15	144
21	Where the disclosure was notified to IBAC under s.21 or s.22 PD Act, did IBAC advise the notifying entity of its determination in writing (pursuant to s.27(2)(a) PD Act)?	51	9	141
22	Did IBAC's written advice of its determination to the notifying entity (pursuant to s.27(2)(a) PD Act), appear to be provided to the notifying entity within a reasonable time?	47	13	141
23	Where IBAC determined that the disclosure was NOT a protected disclosure complaint, did IBAC provide the discloser with written advice about its determination in accordance with s.29 PD Act?	90	21	90
24	Did IBAC's written advice of its determination to the discloser (pursuant to s.29 PD Act) appear to be provided to the discloser within a reasonable time?	109	2	90

4.5.1 Discussion of Results

Audit Question 18

For Audit Question 18, the Inspectorate found that 181 of the 201 allegations that it reviewed were determined within 45 days of receiving the disclosure. This figure was consistent with IBAC's target of determining 90% of the disclosures that it receives within 45 days from the date it received the disclosure.

Audit Questions 19 - 20

For Audit Question 19, the Inspectorate found that IBAC had provided the discloser with written advice that it had determined their disclosure to be a protected disclosure complaint in 49 out of the 57 instances that it was required to do so pursuant to section 28 of the PD Act.

In respect of the 8 instances where the Inspectorate found that IBAC had not provided the discloser with written advice of its determination, IBAC advised the Inspectorate that, in each of these instances, the required written advice had been provided to the discloser, but, as a result of the continued development and implementation of IBAC's new CMS, the written advice had not yet been properly integrated into the electronic case files that the Inspectorate audited.

The quantitative results for Audit Question 19, along with the additional advice that IBAC has provided with respect to this audit question, demonstrates that IBAC consistently meets its obligation to provide the discloser with written advice that their disclosure has been determined to be a protected disclosure complaint.

For Audit Question 20, the Inspectorate found that IBAC advised the discloser of its determination within a *reasonable time* after making its determination in 42 out of the 57 instances that it was required to provide written advice to the discloser under section 28 of the PD Act.

In consultation with IBAC, it was informally agreed that, under section 28(2)(b) of the PD Act, a *reasonable time* for IBAC to provide the discloser with written advice that it had determined their disclosure to be a protected disclosure complaint was 10 business days after the date of making that determination. Accordingly, this standard has been used in evaluating IBAC's performance for Audit Question 20.

Whilst IBAC generally provides the discloser with written advice of its determination within a *reasonable time* (74% were within 10 days), IBAC may benefit from developing additional processes to better meet its obligations under section 28 of the PD Act, including the formalisation of performance measures and standards to improve the performance of its obligations under this section.

Audit Questions 21 - 22

For Audit Question 21, the Inspectorate found that IBAC had advised the notifying entity of its determination in writing in 51 out of the 60 instances that it was required to do so pursuant to section 27(2)(a) of the PD Act.

Please note that the Inspectorate did not include notifications made to IBAC under section 169 of the *Victoria Police Act 2013* for Audit Questions 21 and 22, as section 27 of the PD Act did not require IBAC to advise the notifying entity of its determination for these types of notifications.

In respect of the 9 instances where the Inspectorate had found that IBAC had not provided the notifying entity with written advice of its determination, IBAC advised the Inspectorate that, in each of these instances, the required written advice had been provided to the notifying entity, but, as a result of the continued development and implementation of IBAC's new CMS, the written advice had not yet been properly

integrated into the electronic case files that the Inspectorate audited.

The quantitative results for Audit Question 21, along with the additional advice that IBAC has provided with respect to this audit question, demonstrate that IBAC consistently meets its obligation to advise the notifying entity of its determination.

For Audit Question 22, the Inspectorate found that IBAC advised the notifying entity of its determination within a *reasonable time* after making its determination, in 47 out of the 60 instances that it was required to do so under section 27 of the PD Act.

In consultation with IBAC, it was informally agreed that, under section 27(2)(b) of the PD Act, a *reasonable time* for IBAC to advise the notifying entity of its determination was 10 business days after the date of making its determination. Accordingly, this standard has been used in evaluating IBAC's performance for Audit Question 22.

Whilst the quantitative results for Audit Question 22 demonstrate that IBAC generally provides the notifying entity with written advice of its determination within a *reasonable time* (78% were within 10 days), IBAC may benefit from developing additional processes to better meet its obligations under section 27 of the PD Act, including the formalisation of performance measures and standards to improve the performance of its obligation under this section.

Audit Questions 23 - 24

For Audit Question 23, the Inspectorate found that IBAC had provided the discloser with written advice that it had determined that their disclosure was not a protected disclosure complaint in 90 out of the 111 instances that it was required to do so, pursuant to section 29 of the PD Act.

In respect of the 21 instances where the Inspectorate found that IBAC had not provided the discloser with the required written advice of its determination, IBAC advised the Inspectorate that in 19 out of these 21 instances, the required written advice was provided to the discloser, but, as a result of the continued development and implementation of IBAC's new CMS, the written advice had not yet been properly integrated into the electronic case files that the Inspectorate audited.

For the remaining 2 instances where IBAC had not provided the discloser with written advice of its determination, IBAC advised that in one of these instances it had subsequently sent out its advice to the discloser and for the other instance it had delayed sending the discloser its written advice after receiving further information from the discloser.

For Audit Question 23, there were 90 instances where IBAC was not required to provide the discloser with a written advice of its determination under section 29 of the PD Act. These instances related to disclosures that were anonymously received, disclosures which were withdrawn by the discloser, disclosures which fell outside of IBAC's jurisdiction and disclosures which had been determined to be protected disclosure complaints. Additionally, IBAC was not required to advise the discloser of its determinations under section 29 of the PD Act with respect to notifications made to IBAC under section 169 of the *Victoria Police Act 2013*.

The quantitative results for Audit Question 23, along with the additional advice that IBAC has provided with respect to this audit question, demonstrate that IBAC is generally very consistent in meeting its obligation, under section 29 of the PD Act, to provide the discloser with written advice that their disclosure is not a protected disclosure complaint.

For Audit Question 24, the Inspectorate found that IBAC advised the discloser of its determination within a *reasonable time* after making its determination in 109 out of the 111 instances that it was required to do so under section 29 of the PD Act.

In consultation with IBAC it was informally agreed that, under section 29(2)(b) of the PD Act, a *reasonable time* for IBAC to advise the discloser of its determination, was 10 business days after the date of making its determination. Accordingly, this standard has been used in evaluating IBAC's performance for Audit Question 24.

The quantitative results for Audit Question 24 demonstrate that IBAC is very consistent in meeting its obligation to provide the discloser with written advice that their disclosure is not protected disclosure complaint (98% were advised within a *reasonable time*).

The findings for Audit Questions 23 and 24 indicate that IBAC may still benefit from developing additional processes to better meet its obligations under section 29 of the PD Act, including the formalisation of performance measures and standards to improve the performance of its obligation under this section. It is important that all disclosers are provided written advice when their disclosure is determined not to be a protected disclosure complaint.

4.5.2 Feedback from Audit

i. The results contained in Table D demonstrate that IBAC, on the whole, consistently adheres to the main processes that it has developed within its CMS to carry out its function to determine whether assessable disclosures that it receives are protected disclosure complaints.

- ii. IBAC has met its performance objective of determining 90% of the assessable disclosures that it receives or that it has been notified of, within 45 days.
- iii. IBAC may benefit from developing formal performance measures and accountability systems similar to its performance objective outlined above, to ensure that:
 - (a) for 100% of the assessable disclosures that it receives or is notified of, it advises the discloser of its determination (when required); and
 - (b) for at least 90% of the assessable disclosures that it receives or is notified of, it advises the discloser and notifying entity (where relevant) of its determination within 10 business days after making its determination.

5 | Opportunities for Improvement

This section outlines opportunities that IBAC may consider to improve the performance of its functions under section 55(1) of the PD Act.

These opportunities are provided in the form of the following types of feedback:

- i. **feedback from the preliminary report** which IBAC has agreed to consider during the next review of its policies and procedures;
- ii. **feedback from the phase 2 audit;**
- iii. **additional feedback** which updates and consolidates the remaining feedback provided within the preliminary report and which is informed by consideration of the findings from each phase of the Inspectorate's monitoring project, consideration of the implementation and operation of IBAC's new CMS and consideration of IBAC's responses to the Inspectorate's preliminary report.

The opportunities for improvement included within this section have also been categorised according to the specific function that they relate to under section 55(1) of the PD Act.

5.1 | Receipt of Disclosures

5.1.1 Feedback from Preliminary Report

In improving the performance of its function to receive assessable disclosures, IBAC has agreed that, during the next review of its policies and procedures, it will consider:

- i. creating written procedures that clarify and articulate IBAC's internal processes for receiving *oral* disclosures that are made in person to IBAC, including procedures to clarify:
 - (a) what information and advice IBAC officers should provide to disclosers who make oral disclosures over the phone to IBAC or in person at IBAC's offices;
 - (b) which IBAC officers have the responsibility to receive oral disclosures made over the phone or in person at IBAC's offices;
- ii. creating written procedures to clarify and articulate IBAC's internal processes for receiving *written* disclosures and notifications which are:
 - delivered personally to the offices of IBAC;
 - posted to the offices of IBAC;
 - e-mailed to an IBAC officer;including, articulating:
 - (a) what information and advice should be provided to the discloser; and
 - (b) which IBAC officers have the responsibility for receiving the disclosure;
- iii. including, as suggested within the Inspectorate's preliminary report, the following information within the information resources that IBAC provides to disclosers:
 - (a) that disclosures may be made orally, either in person at IBAC's offices or over the phone to IBAC;

- (b) that oral disclosures to IBAC must be made *in private*;
- (c) how oral disclosures may be made in private to IBAC in accordance with Regulation 5 of the *Protected Disclosure Regulations 2013*;
- (d) the contact details for access to services for people who are hearing or speech impaired or who require an interpreter;
- (e) that written disclosures may be delivered personally to IBAC's office address;
- (f) the e-mail address to send a written disclosure to IBAC;
- (g) clarification about the applicability of the protections provided to the discloser under Part 6 of PD Act where a disclosure has been determined not to be a protected disclosure complaint; and
- (h) updated information about which entities IBAC is able to receive disclosures about.

5.1.2 Feedback from Phase 2 Audit

IBAC may improve the performance of its function to receive assessable disclosures by considering whether it should implement any additional quality control measures within its CMS to ensure that the disclosures it receives or is notified of are appropriately categorised within its CMS, as improper categorisation has the potential to affect how a disclosure is assessed and handled.

5.1.3 Additional Feedback

In addition to the feedback provided within sections 5.1.1 and 5.1.2 above, IBAC may consider improving the performance of its function to receive assessable disclosures by:

- i. creating written procedures to clarify and ensure adherence to IBAC's practices for

protecting the confidentiality and, where appropriate, the anonymity of disclosers that make an oral disclosure in person at IBAC's offices.

NOTE

In providing the above feedback the Inspectorate considered that, whilst IBAC may not receive many oral disclosures made in person at IBAC's offices, it is important that IBAC has written procedures to ensure that when it does receive these types of disclosures, IBAC's practices are clear and consistently followed.

- ii. including, within its internal written procedures for receiving oral disclosures over the phone, that IBAC officers should advise the discloser how to make their disclosure in *private* in accordance with Regulation 5 of the *Protected Disclosure Regulations 2013*; and
- iii. developing additional procedures to minimise the general risk of e-mail correspondence from IBAC, that relates to an assessable disclosure, being sent to the wrong person.

The Inspectorate notes that this was not identified as an issue during the phase 2 audit.

5.2 | Assessment of Disclosures

5.2.1 Feedback from Preliminary Report

In improving the performance of IBAC's function to assess the assessable disclosures that it receives or is notified of, IBAC has agreed that, during the next review of its policies and procedures, it will consider:

- i. providing greater reasoning and analysis within its CMS to substantiate and support its assessment of whether a disclosure is a protected disclosure;

NOTE

The Inspectorate notes from the results of its phase 2 audit that greater reasoning and analysis is now included within IBAC's new case management system to help substantiate IBAC's assessment recommendations and decisions.

- ii. including within its PD assessment tool, the exceptions, provided under sections 43(2) – (3) of the PD Act, in relation to assessing whether the disclosed conduct constitutes 'detrimental action in contravention of section 45 of the PD Act'; and
- iii. updating and correcting its written procedures and information references as suggested within the Inspectorate's preliminary report.

5.2.2 Feedback from Phase 2 Audit

IBAC may improve the performance of its function to assess the assessable disclosures that it receives or is notified of, by:

- i. ensuring that the use of IBAC's PD assessment tool will be a mandatory requirement for the assessment of assessable disclosures within IBAC's CMS;

- ii. ensuring that the auto-generated reasoning that IBAC's PD assessment tool provides, includes consideration of section 9(1)(b) of the PD Act as one of the reasons for assessing that the disclosure is not a protected disclosure.

NOTE

IBAC has advised the Inspectorate that it is preparing to address the feedback provided within section 5.2.2 of this report.

5.2.3 Additional Feedback

In addition to the feedback provided within sections 5.2.1 and 5.2.2 above, IBAC may consider improving the performance of its function to assess the assessable disclosures that it receives or is notified of, by:

- i. ensuring that after IBAC's PD assessment tool has generated an assessment recommendation, each of the responses to the assessment questions contained within the tool are reviewable within IBAC's CMS.

NOTE

Adopting this feedback will enable IBAC to provide greater quality control over the assessment recommendations that are generated after completing its PD assessment tool, as it will allow review of whether each assessment question within the assessment tool has been appropriately answered.

Currently, to review the assessment recommendation generated, IBAC officers have to input their own responses within the tool to identify whether it generates the same recommendation.

- ii. ensuring that IBAC officers appropriately answer the PD assessment question which relates to section 4(2)(da) of the PD Act, by ensuring that the assessment question is phrased in such a way that it requires and reminds the IBAC officer to consider, as part of their response to that assessment question, whether the conduct of the *first person* resulted in them or their associate *obtaining a benefit* as prescribed under the PD Act;
- iii. providing IBAC officers with further guidance, information and examples (collectively “assessment materials”), as suggested within the Inspectorate’s preliminary report, to assist those officers with their assessments obligations under section 26 of the PD Act, and

NOTE

The Inspectorate notes that the content of the assessment materials that it has suggested IBAC should provide its case officers will soon need to be updated to reflect the changes in the assessment of disclosures under the IALA Act.

- iv. providing IBAC officers with further guidance, information and examples in the form of a reference document which they can rely upon when making an assessment that a disclosure is not a protected disclosure on the basis that it is not a *revelation*.

NOTE

IBAC has informed the Inspectorate of its general practice for assessing that a disclosure is not a protected disclosure on the basis that it is not a *revelation*, however there appears to be no reference document which IBAC officers can easily rely upon to assist officers with their assessment.

In drafting its guidance relating to the assessment of whether a disclosure is a *revelation*, IBAC may also wish to consider as part of its assessment, whether the discloser had a *reasonable belief* that their disclosure was a revelation at the time of making their disclosure, so that disclosers that make their disclosure in good faith thinking that their disclosure is a revelation, receive the relevant protections provided for under the PD Act if their disclosure in all other circumstances qualifies to be a protected disclosure.

5.3 | Determination of Disclosures

5.3.1 Feedback from Preliminary Report

The Inspectorate did not provide IBAC with any feedback within its preliminary report, relating to its function to determine whether the assessable disclosures that it receives or is notified of are protected disclosure complaints.

5.3.2 Feedback from Phase 2 Audit

IBAC may improve the performance of its function to determine whether the assessable disclosures that it receives or is notified of are protected disclosure complaints, by developing formal performance measures and accountability systems to ensure that:

- i. for at least 90% of the assessable disclosures that it receives or is notified of, it advises the discloser and notifying entity (where relevant) of its determination within 10 business days after making its determination;
- ii. for 100% of the assessable disclosures that it receives or is notified of, it advises the discloser of its determination (when required).

5.3.3 Additional Feedback

The Inspectorate has no additional feedback to provide.

6 | Response to Feedback

Before finalising this report, the Inspectorate provided IBAC with an opportunity to review the report and to respond to the feedback and findings provided within it.

IBAC provided its response to the report by way of a letter to the Inspectorate on 27 June 2019.

The Inspectorate has considered this response in finalising this report.

Where a difference in opinion remains with respect to the findings and feedback provided within the report, these differences of opinion have been noted below.

Additionally, the Inspectorate also includes IBAC's response to Section 5 of this report within Annexure A of this report.

6.1 | IBAC's Response

IBAC, in its letter to the Inspectorate of 27 June 2019, advised the Inspectorate that:

- i. it would be appropriate for the Inspectorate to include reference to its new CMS not being fully implemented as a project limitation within section 2.2 of the report;
- ii. the listed opportunities for improvement, within section 5 of the report, be expressed in less prescriptive terms, to facilitate a more flexible and practical uptake by IBAC of identified opportunities that have been agreed.

6.2 | The Inspectorate's Reply

In replying to IBAC's response outlined in section 6.1 above, the Inspectorate makes the following comments:

- i. the Inspectorate has not included the continued implementation and development of IBAC's new CMS as a project limitation, as the Inspectorate's findings, feedback and phase 2 audit results take into account IBAC's continued development and implementation of its new CMS and expressly state where results of the audit have been affected by this continued implementation and development; and
- ii. the Inspectorate has chosen to include the details of the opportunities for improvement that it has suggested within section 5 of this report as the opportunities for improvement are not intended to be prescriptive. Rather, they represent suggestions which IBAC may consider to improve the performance of its functions under section 55(1) of the PD Act. Additionally, the inclusion of the feedback provided within section 5, is unlikely to have any adverse effect in relation to encouraging potential disclosers to make their disclosure to IBAC.

Annexure A

IBAC's Response to Section 5 – Opportunities for Improvement

Opportunities for Improvement identified in pages 20-24 of the Draft Report.	IBAC accepts/rejects/partially accepts	Comments
5.1 Receipt of disclosures	Partially accepts	<p>IBAC is currently working on draft procedures and guidance for A&R Officers to assist in all aspects of case assessment, including the handling and assessment of protected disclosure complaints.</p> <p>Guidance in relation to the receipt, management and handling of Protected Disclosers will be implemented by 1 January 2020 in order to reflect the requirements of the PID legislation.</p> <p>IBAC will also give consideration to the information that is made available on its website as part of its preparation for the implementation of the PID Act.</p>
5.2.1 Assessment of disclosures	Partially accepts	See above. IBAC contends that not each part of the PD Act needs to be replicated within the PD Assessment tool and that improved written guidance may address the issues identified.
5.2.2	Accepts	IBAC is currently making changes to its PD Assessment tool as part of the consolidation phase of CMS, which will address these points.
5.2.3	Partially accepts	<ul style="list-style-type: none"> a) It is not clear whether this functionality is available in CMS. IBAC will explore this further. b) IBAC does not consider it appropriate to replicate the entirety of the PD Act within

		<p>its assessment tool. However, the tool will need to be amended to ensure compliance with the PID changes. These questions can be considered in preparation for implementation of PID changes.</p> <p>c) IBAC agrees that improved guidance for A&R staff will assist in enhancing effectiveness in assessing assessable disclosures.</p>
5.3 Determination of Disclosures	Accepts	



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