



Protected Disclosures reform

Advising agencies	State Services Commission Te Kawa Mataaho
Decision sought	This analysis has been prepared to inform key policy decisions to strengthen the Protected Disclosures Act 2000 as it relates to the public sector and to clarify and in some respects extend its application to the private sector.
Proposing Ministers	Minister of State Services

Summary: Problem and Proposed Approach

Problem Definition

What problem or opportunity does this proposal seek to address? Why is Government intervention required?

Uncovering serious wrongdoing is an important part of maintaining integrity. Research has found that reporting by employees is the single most important method by which illegal or corrupt activity in the workplace is brought to light. A clear and effective regime that encourages people to speak up about serious wrongdoing is therefore an essential element of a strong integrity framework.

New Zealand was one of the first countries in the world to introduce dedicated legislation to protect people who report concerns of serious wrongdoing – the Protected Disclosures Act 2000 (the Act). The Act's purpose is to promote the public interest by facilitating the disclosure and investigation of serious wrongdoing in public and private sector organisations, and to provide protection for employees who report concerns.

Unlike in many other jurisdictions, the Act applies to both the public and private sectors¹. This is the key strength of New Zealand's system, as some jurisdictions have no protections for the private sector at all, and in other jurisdictions the regime is scattered across multiple pieces of legislation.

The aims of the Act remain sound, but there are four broad problems:

1. Both organisations and disclosers are confused about when to use the Act
2. Disclosers are unclear about how to make a disclosure internally (and some organisations are also unclear about how to respond)
3. It is hard for disclosers to navigate the system for reporting concerns externally

¹ For the purposes of this paper, 'private sector' includes the not-for-profit, community, and voluntary sectors.

4. Disclosers fear 'speaking up' because they lack the confidence in the protections available to them.

The State Services Commission has issued model standards for the State sector which outline the minimum expectations on organisations to promote a 'speak up' culture, develop good processes, and keep people safe from reprisals or other punishment.

However, an approach that relies solely on better communications, guidance and support may not address the problems identified above. Therefore, Government intervention is required to clarify, strengthen, and promote the intent of the Act.

Proposed Approach

How will Government intervention work to bring about the desired change? How is this the best option?

In a public consultation paper issued in 2018 we proposed five different 'packages' as options for change. The five proposed 'packages' of options for change were:

1. Foundational changes to clarify the existing legislation and improve protections
2. Allow people to report concerns externally at any time
3. Introduce dedicated system leadership
4. Introduce monitoring for the public sector
5. Introduce monitoring for the public and private sectors.

All five packages included both legislative and non-legislative change. While non-legislative change, such as guidance and leadership, is critical for driving improvements, the regime's biggest weaknesses cannot be addressed without amending the Act.

Having considered feedback through public consultation, we propose the following:

- Requiring public sector organisations to provide support for disclosers
- Allowing people to report directly to an appropriate authority at any time; conversely, making explicit the ability of that authority to decline a disclosure or refer it back to the discloser's organisation
- Strengthening protection for disclosers by outlining what those receiving disclosures must do, and by being more explicit about the forms that adverse conduct might take
- Extending the interpretation of some aspects of 'serious wrongdoing' in the Act to address the potential for private sector organisations to be involved in unlawful, corrupt, or irregular use of public funds or resources, and to engage in 'oppressive, improperly discriminatory, or grossly negligent' conduct when delivering services on behalf of government. Staff in private organisations should have the opportunity to make protected disclosures regarding such wrongdoing when it involves public funds or public services.

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Section B: Summary of Impacts

Who are the main expected impacted parties and what is the nature of the expected impact?
<p>The main expected impacted parties are:</p> <ul style="list-style-type: none">• Disclosers will benefit from these changes as they would be better informed about who, when, and how they can report 'serious wrongdoing'. The proposals relating to internal procedures for public sector organisations are intended to make feel better supported.• Public and Private sector organisations – these changes may impose a cost on these organisations as they may increase protected disclosures. However, the benefits to organisations partially offset the costs, and once societal benefits are considered this may give an overall benefit to society.• Appropriate Authorities – these changes may increase the number of protected disclosures, but it will be from a low base.

What are the likely risks and unintended impacts, how significant are they and how will they be minimised or mitigated?
<p>A larger than expected increase in the number of reported protected disclosures under the Act could be difficult for organisations to manage.</p> <p>The proposed extension to 'serious wrongdoing' may lead to an increase in the number of protected disclosures under the Act. This increase may be difficult for some organisations. However, no concerns have been raised by appropriate authorities to date. Mitigation can be through increased guidance by SSC, the Ombudsman, and some further monitoring.</p>

Identify any significant incompatibility with the Government's 'Expectations for the design of regulatory systems'
<p>Not applicable.</p>

Section C: Evidence certainty and quality assurance

Agency rating of evidence certainty?
Not applicable.

To be completed by quality assurers:

Quality Assurance Reviewing Agency:
Ministry of Justice and the Treasury
Quality Assurance Assessment:
The Panel considers that the RIA meets Cabinet’s quality assurance criteria, with one comment.
Reviewer Comments and Recommendations:
The RIA contains limited quantitative analysis about the number of people who might benefit from the reforms and of the cost to organisations. The RIA notes that this is partly the result of privacy protections, and that the State Services Commission is to do further work on a monitoring regime that provides information on the use of the provisions while protecting privacy. If this work is successful, the Panel would expect future policy proposals to be accompanied by more quantitative analysis.

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Impact Summary: Protected Disclosures Reform

Section 1: General information

Purpose
<p>The State Services Commission (SSC) is solely responsible for the analysis and advice set out in this Regulatory Impact Statement, except as otherwise explicitly indicated.</p> <p>This analysis and advice has been produced for the purpose of informing:</p> <ul style="list-style-type: none">• policy decisions to be taken by or behalf of Cabinet, which will provide the contents of an amendment Bill to be presented to Parliament• members of Parliament about the impact of the amendment Bill.

Key Limitations or Constraints on Analysis
<p>The main limitation and/or constraint on our analysis is the limited data on the number of protected disclosures made to organisations which makes it hard to calculate and estimate the impact these proposed changes will have, especially on the receiving organisations. As shown below, nine appropriate authorities reported a combined total range of between 10 and 50 protected disclosures (PD) in a year.</p> <p>Another constraint that is worthy to note is that due to the limited time, we are unable to do an in-depth research on the cost and benefits of PD from overseas literature and exemplars so that we can estimate the cost and benefits of PD in New Zealand.</p>
Responsible Manager (signature and date):
<p>Hannah Cameron Deputy Commissioner Strategy and Policy State Services Commission</p>

Section 2: Problem definition and objectives

2.1 What is the policy problem or opportunity?

Policy Problem

The Protected Disclosures Act 2000 (the Act) aims to promote the public interest by facilitating the disclosure and investigation of serious wrongdoing in the workplace, and providing protection for employees (including former employees, contractors and volunteers) who report concerns. Disclosures are protected if the information is about 'serious wrongdoing' and the discloser believes on reasonable grounds that the information is true or likely to be true. 'Serious wrongdoing' includes any serious offence; unlawful, corrupt or irregular use of public money or resources; conduct that poses a serious risk to public health and safety; or gross mismanagement by public officials. The protections offered to disclosers include best endeavours to preserve confidentiality and immunity from civil and criminal proceedings.

Effective organisational processes and legal protections for employees who 'blow the whistle' play a key role in uncovering serious misconduct, fraud and corruption in both public and private workplaces. This is critical to maintaining public confidence in the integrity of government and business in New Zealand. International research has found that reporting by employees is the single most important method by which wrongdoing in, or by, and organisation is brought to light.²

However, after 18 years of operation, the Act has not been as effective as it should be in enabling disclosers to come forward and protecting them when they do. The Act requires more from public sector organisations because there is significant public interest in uncovering serious wrongdoing in government. But there is also public interest in ensuring that New Zealand businesses and not-for-profit organisations operate with high integrity. The Act is important to maintaining New Zealand's international reputation for low levels of corruption, which contributes to the country's strong relationships with other nations and stimulates investment in New Zealand's economy.

An investigation into the treatment of disclosers at the Ministry of Transport in 2017³, and a subsequent review of the Act by the State Services Commission, has identified several areas where needs strengthening.

The aims of the Act remain sound, but there are four broad problems which guidance and standards, such as 'Speaking Up'⁴, can only partly mitigate:

- Both organisations and disclosers are confused about when to use the Act
- Disclosers are unclear about how to make a disclosure internally (and some organisations are also unclear about how to respond)
- It is hard for disclosers to navigate the system for reporting concerns externally

2 Griffith University, *Whistling While They Work: Improving managerial responses to whistleblowing in public and private sector organizations*, September 2017. The findings are based on a survey of over 12,000 employees and managers in 38 Australian and New Zealand organizations.

3 State Services Commission, *Media Statement: SSC investigation of whistle blower treatment within the Ministry of Transport*, May 2017. <http://www.ssc.govt.nz/resources/media-statement-ssc-investigation-whistle-blower-treatment-within-ministry-transport/>

4 States Services Commission, *Speaking up in the State services*, April 2019. <http://www.ssc.govt.nz/resources/speaking-state-services/>

- Disclosers fear ‘speaking up’ because they lack the confidence in the protections available to them.

Furthermore, consultations with appropriate authorities showed that very few disclosures were made. Some of these authorities lacked a robust data collection for such disclosures.

Policy Objectives

The objectives for this package are:

- All employees and organisations are familiar with the Act and know when to use it
- Disclosers know who to report to and understand the support that is available to them
- Organisations know what is expected of them and have the skills, competencies and ethos to handle disclosures effectively.
- Disclosers have confidence in the protections available to them and do not fear reprisal.

2.2 Who is affected and how?

These changes seek to change the behaviours of:

- Disclosers – encourage more people to step forward and report ‘serious wrongdoing’, raising public organisations’ transparency and integrity, which increases public confidence in government.
- Public and private organisations – enabling a culture change within these organisations in terms of encouraging, supporting and protecting disclosers. Encourage these organisations to produce internal processes that are clear and responsive. Changes to the definition of ‘serious wrongdoing’ to enable protected disclosures regarding serious wrongdoing by private organisations when it involves public funds or public services
- Appropriate authorities – allowing disclosers to report any ‘serious wrongdoing’ directly to an appropriate authority at any time will assist disclosers who may not want to report concerns internally if they fear their identity may become known, particularly if the ‘serious wrongdoing’ has undermined their confidence in the organisation. Not only that, but this change will encourage appropriate authorities to ensure that they have the capabilities to cater to these disclosures, especially if the rate of disclosures increase after as a direct result of these changes.

The table below illustrates the number of PDs that some appropriate authorities advised they received under the current legislation. We have not been advised which of these were found to be substantiated and are being progressed, for example through the courts. The limited data available is partially due to the constraints of privacy issues around handling high level data and information around these PDs. The cost of PDs cannot be estimated due to the number of variables and individual circumstances of each PD, such as the subject matter of the disclosure made; the individuals concerned, the gravity of the PD, and whether the PD is resolved in a timely manner.

In addition to the reported PDs in the table below, the Human Rights Commission reported 16 complaints of victimisation following protected disclosures since 2013:

Appropriate authority	Number of received PDs
Serious Fraud Office (SFO)	Average 1 – 4 per year
WorkSafe NZ	Estimated 1 or 2 bullying notifications as a result of PD.
New Zealand Police	1 since 2018
Independent Police Conduct Authority (IPCA)	Estimated 6 PDs received over the past 5 years
Office of the Auditor-General (OAG)	2016 – 3 2017 – 3 2018 – 17 (7 related to one issue) 2019 – 4
Crown Law	Estimated 2 – 3 in the last 5 to 10 years.
Parliamentary Commissioner for the Environment	1 received to date
Inspector-General of Intelligence and Security	Low
The Ombudsman	Completed 7 requests for advice and guidance as in 2017/2018 annual report
Health and Disability Commissioner	Approximately 10 complaints which attempted to use the PDA over the 2018 – 2019 year.

2.3 Are there any constraints on the scope for decision making?

There are no known constraints on the scope.

There are connections to ongoing work by State Services Commission and the Office of the Ombudsman:

- *SSC's Acting in the Spirit of Service – Speaking Up, Model Standards:* These model standards outline the State Services Commissioner's minimum expectations for organisations to support staff on speaking up in relation to wrongdoing concerns that could damage the integrity of the State services. They comprise all the key elements for promoting a 'speak up' culture, operating good processes including timely investigations, and keeping people safe from reprisals or other detrimental impacts. These standards are expected of all organisations within the State services.
- *Office of the Ombudsman guidance:* The Office of the Ombudsman has published a new guide for agencies on whistleblowing and has issued guidance on making a protected disclosure.

Section 3: Options identification

3.1 What options have been considered?

Non-legislative work to support the objectives is currently underway through the form of guidance provided by the Ombudsman and the standards (Speaking Up) produced by the SSC.

We held targeted consultation to discuss the problems of the Act itself.

In our Draft Discussions paper issued in 2018, we proposed five cumulative options for strengthening the Act as follows:

Option One: Foundational changes to clarify the existing legislation and improve protections

This option aims to build strong foundations by removing confusion and ensuring organisations have good procedures in place that encourage staff to speak up about potential failings or misconduct in their workplace.

Option Two: Allow people to report concerns externally at any time

This option goes beyond option 1 in making it easier for people to report concerns to an appropriate authority at any time.

Option Three: Introduce dedicated system leadership

This option would create a single port of call, a “one stop shop”, for advice on when, and how, to use the Act.

Option Four: Introduce monitoring for the public sector

This option would add new reporting obligations for public sector organisations to promote transparency and good practice.

Option Five: Introduce monitoring for the private as well as public sector

This option would add new reporting obligations for all organisations to promote transparency and good practice across the board.

3.2 Which of these options is the proposed approach?

The proposed approach to addressing the problem is to amend the Act on the basis of options one and two:

- Foundational changes to clarify the existing legislation and improve protections
- Allow people to report concerns externally at any time.

This package of proposed policy and legislative changes involves making the following changes:

Problem/goal	Current	Proposed	Why	Potential impact
<p>Problem: both organisations and disclosers are confused about when to use the Act</p> <p>Goal: all employees and organisations are familiar with the Act and know when to use it</p>	Definition of 'serious wrongdoing' appears to have gaps	<p>Change: extend the wording and interpretation of serious wrongdoing by a 'public official' to cover non-government organisation staff carrying out government functions</p> <p>Change the definition of 'serious wrongdoing' to cover unlawful, corrupt, or irregular use of public funds or resources, whether in a public or private organisation</p>	<p>Means serious misconduct by private sector staff performing functions on behalf of government is also covered</p> <p>Currently reads as misuse only 'within' a public organisation</p>	This could lead to an increase of protected disclosers received by organisations
	Act unclear about ability for recipients of disclosures to refer or decline them except where passing to another appropriate authority	Add powers for those receiving disclosures to refer the disclosure back to the employing organisation or decline the disclosure for reasons like those in s17 of the Ombudsmen Act and section 71 of the Privacy Act	Addresses concerns that authorities may have to deal with disclosures that do not meet the tests in the Act	
	<p>Problem: disclosers are unclear about how to make a disclosure internally (and some organisations are also unclear about how to respond)</p> <p>Goal: disclosers know who to report to and understand the support that is available to them</p> <p>Goal: organisations know what is expected of them and have the skills, competencies and ethics to handle disclosures effectively</p>	<p>Little clarity in the Act about when it applies and what recipients of disclosures need to do - for example whether the discloser needs to specifically claim protection under the PDA and at what point the confidentiality requirements start</p> <p>Public sector organisations required to have internal procedures, but little clarity about what these need to cover</p>	<p>Change: specifying what those receiving protected disclosures must do</p> <p>Clarify the internal procedure requirements for public sector organisations</p>	
Problem: it is hard for disclosers to navigate	Must make disclosure internally and wait 20	Change: allow people to report serious	Enables disclosers to proceed if they have	Increase in PDs received by

<p>the system for reporting concerns externally</p> <p>Goal: disclosers know who to report to and understand the support that is available to them</p> <p>Goal: organisations know what is expected of them and have the skills, competencies and ethics to handle disclosures effectively</p>	<p>working days unless certain exceptions apply (e.g. believing CE is involved in the wrongdoing)</p>	<p>wrongdoing directly to an appropriate authority at any time</p>	<p>concerns about internal disclosure</p>	<p>appropriate authorities</p>
	<p>Very large number of potential external 'appropriate authorities' to receive disclosure</p>	<p>Create a new Schedule to the Act, to be amended from time to time by Order in Council, to name the most likely appropriate authorities and specify the nature of disclosure/subject matter</p>	<p>Gives disclosers better information about where to take their disclosure (without removing 'head of any public organisation' option)</p>	
<p>Problem: disclosers fear 'speaking up' because they lack confidence in the protections available to them.</p> <p>Goal: disclosers have confidence in the protections available to them and do not fear reprisal</p>	<p>Act requires public sector organisations to have and publish internal procedures for protected disclosures, but not clear what these must cover</p>	<p>Change: require public sector organisations to state in their published internal procedures how they will support disclosers</p>	<p>Give disclosers in public organisations clarity on what they can expect</p>	<p>Increase in PDs may impact on costs regarding time and effort on receiving organisations</p>
	<p>Act vague on what those receiving disclosures need to do - 'confidentiality' section 19 is vaguely worded apart from the reasons why confidentiality may be overridden</p>	<p>Clarify what all receiving protected disclosures (including appropriate authorities, public and private sector employers) must do</p>	<p>Both the discloser and the person receiving the disclosure are clear about what needs to happen</p>	
	<p>Unclear what actions other than dismissal might be grounds for personal grievance or case to HRC</p>	<p>Clarify the forms that retaliation could take, e.g. by reference to the Health and Safety at Work 'adverse conduct' provisions in the sections covering recourse</p>	<p>Makes it clear that forms of detriment other than dismissal can still be basis for grievance/HRC complaint</p>	

In addition to these proposed legislative changes, the State Services Commission (SSC) will undertake further work, with other agencies as required, to:

- consult on a second tranche of amendments to the Act with a view to further reform beyond 2020
- conduct further research and policy work regarding some of the more complex issues covered by the consultation, to feed into a potential second round of legislative changes
- explore what a 'one stop shop' for protected disclosures could look like
- improving redress for disclosers who are disadvantaged
- extend the definition of serious wrongdoing to cover corrupt or irregular use of public funds and resources by private organisations

extend procedure requirements to the private sector. Allowing disclosers to go

direct to an external authority may reduce the potential benefit in requiring private organisations, possibly above a certain size, to have internal procedures for protected disclosures and to support disclosers. However, it would be worth revisiting this issue once we have more information on the effectiveness of internal procedures in public organisations.

- explore whether to lower the threshold for making a protected disclosure by requiring people to have ‘reasonable grounds to suspect’ serious wrongdoing is being committed, rather than ‘reasonable grounds to believe’.
- build on existing standards and guidance to improve awareness of the Act across the public and private sectors
- test the feasibility and usefulness of establishing reporting and monitoring arrangements, starting with the core public services. At the moment we will consider a light monitoring during this interim period to help us track the changes in PDs made from the proposed changes.

Section 4: Impact Analysis (Proposed approach)

4.1 Summary table of costs and benefits

Affected parties	Comment: nature of cost or benefit (eg ongoing, one-off), evidence and assumption (eg compliance rates), risks	Impact <i>\$m present value, for monetised impacts; high, medium or low for non-monetised impacts</i>
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Additional costs of proposed approach, compared to taking no action

All Public & Private organisations	Organisations may face some costs of implementing more explicit process requirements.	We cannot estimate the cost of PDs as it depends on variables such as the subject matter of disclosures. However, the cost of time for an investigation into a PD could range from 2 hours to months. If it is to go through court, it may take years.
Appropriate Authorities	More costs for processing disclosures assuming that numbers increase.	
Disclosers		N/A
Total Monetised Cost		N/A
Non-monetised costs		Low

Expected benefits of proposed approach, compared to taking no action

All Public & Private organisations	Increase of public confidence in the government, government agencies, and NZ businesses. Requirements for both public sector internal processes and handling of protected disclosures by any organisation will be clearer.	
Disclosers	Disclosers are protected and have more confidence in the protections under the Act and in making a disclosure of serious wrongdoing.	
Total Monetised Benefit		N/A
Non-monetised benefits		High

4.2 What other impacts is this approach likely to have?

Current proposals main risks:

- The heightened awareness surrounding the legislation may trigger more vexatious, trivial, or 'bad faith' disclosures that would not qualify for PD status.
- Some organisations may have difficulty handling increased volumes of disclosures, reducing timeliness and effectiveness in how they are dealt with.

Second tranche of work main risks:

- The requirement of agencies to report the number of PDs they have, if any, could draw unnecessary attention and have a perverse effect. This may drive a 'witch hunt' mentality where people look for who made the disclosure, and may draw untoward scrutiny to organisations, preventing people from making disclosures in the first place.
- Some expressed concern the proposal to have a one stop shop agency that triaged PDs may serve to slow down responses to PDs.

Section 5: Stakeholder views

5.1 What do stakeholders think about the problem and the proposed solution?

Following initial targeted consultation and the release of a Cabinet paper and discussion document, the public consultation process was undertaken between 29 October and 21 December 2018. We received 73 submissions in total and held four workshops with 54 attendees. A summary of submissions and the submissions themselves were publicly released on 2 August 2019 at <http://ssc.govt.nz/resources/consultation-protected-disclosures-act-reform>

The following departments and agencies were consulted on the related Cabinet paper on the first tranche of proposals: Crown Law Office, Departments of Conservation, Corrections, Internal Affairs, Prime Minister and Cabinet, Inland Revenue, Education Review Office, Government Communications Security Bureau, Land Information NZ, Ministries of/for Culture and Heritage, Pacific Peoples, Primary Industries, Women, Environment, Business, Innovation and Employment, Defence, Education, Foreign Affairs

and Trade, Health, Housing and Urban Development, Justice, Social Development, Transport, Oranga Tamariki, Te Puni Kōkiri, Customs Service, NZ Security and Intelligence Service, Serious Fraud Office, Statistics NZ, Pike River Recovery Agency, The Treasury, Parliamentary Counsel Office, Police, NZ Defence Force, Ombudsman.

During the development of the related Cabinet paper, officials also contacted representatives of the Ombudsman, Controller and Auditor-General, Inspector of Intelligence and Security, Human Rights Commission, Parliamentary Commissioner for the Environment, Independent Police Conduct Authority, Health and Disability Commissioner, Financial Markets Authority, Worksafe, Local Government NZ, NZ Society of Local Government Managers and Public Service Association to discuss the proposals.

Feedback from consultees was positive regarding most proposed changes, but some consultees, notably the Ombudsman, Ministry of Justice and the Serious Fraud Office, considered that this package of changes does not go far enough to promote the intent of the Act and were keen to see faster progress on establishing a one stop shop, improving redress, monitoring and reporting. These matters are currently proposed for the second phase of work.

The feedback from the original public consultation on the proposals that we are progressing at this time was:

Option	Consulted Proposals	# of Feedback	Feedback Received: Agree, partial or disagree?	Why?
Option 1: Foundational changes to clarify the existing legislation and improve protections	Our proposal: Providing information and guidance.	We received 60 comments in favour of non-legislative solutions.	Agreed: Most of these comments discussed the need for: <ul style="list-style-type: none"> - Promotion of a speak up culture - Guidance and support for individuals who may wish to speak up about serious wrongdoing, as well as organisations that need to implement the Act - Resources, such as templates and case studies of best practice - Training for organisations - Better leadership on speaking up 	Better information and guidance would raise awareness and make it easier for people to understand and use the Act. Further work: Building on 'Speaking Up' guidance.
	Our proposal: Improve the definition of serious wrongdoing.	We received 48 comments on improving the definition of serious wrongdoing. Overall, there was agreement that the definition should be clearer and easier to understand.	Agreed: There was a broad support for our proposal to include concerns to extend the definition of serious wrongdoing to cover unlawful, corrupt, or irregular use of money or resources in the private and non-for-profit sector.	Changes to the definition of serious wrongdoing would help expose the most serious threats to the public interest by broadening it out to the private and not-for-profit sectors. Further work: On whether corrupt/irregular

				<p>use of private funds/resources needs to be covered (most should be covered under 'offence'?).</p> <p>To lower the threshold for making a protected disclosure by requiring people to have 'reasonable grounds to suspect' serious wrongdoing is being committed, rather than 'reasonable grounds to believe'.</p>
<p>Our proposal: Strengthen obligations for organisations.</p>	<p>We received 65 comments that discussed strengthening obligations for organisations.</p> <p>We also received 25 comments supporting our proposal that organisations could be legally required to take action and investigate information about alleged wrongdoing and report back to the whistle-blower on the outcome. Two opposed this proposal, 9 comments argued to exempt small to medium enterprises, and 3 discussed excluding voluntary organisations.</p>	<p>Agreed: clarify what should be in public organisations' procedures.</p> <p>There was a broad support for our proposal for public organisations to have an obligation:</p> <ul style="list-style-type: none"> - To have procedures and what these covers. - To take action and investigate. 	<p>Requiring all organisations to have fit-for-purpose procedures in place for handling disclosures and proactively supporting whistle-blowers would make it easier for people to raise issues without fear of retaliation.</p> <p>Further work: On whether requiring procedures for private organisations adds value in light of the ability to go directly to an appropriate authority.</p>	
<p>Our proposal: Enhancing protections for people who 'speak up' and making path to potential compensation for victimisation clearer.</p>	<p>We received 68 comments that discussed the need to strengthen protections for people who speak up.</p>	<p>Agreed: There was support for our proposal to list forms of retaliatory action in the Act. We heard that:</p> <ul style="list-style-type: none"> - The Health and Safety at Work Act could be used to inform a list of retaliatory action. - Oppressive behaviour should be included in the list of retaliatory action – should not be limited to tangible 	<p>Requiring all organisations to provide support for disclosers, clarifying the link to other relevant legislations, and providing a list of forms of retaliation, will enhance and strengthen protections for people who</p>	

			<p>impacts like dismissal.</p> <ul style="list-style-type: none"> - Require organisations to provide support to disclosers. 	<p>Speak up.</p> <p>Further work: On potential to require private sector organisations to support disclosers.</p>
	<p>Our proposal: Clarifying the list of appropriate authorities people can report to.</p>	<p>We received 20 comments about our proposal to remove 'the head of every public sector organisation' as an appropriate authority under the Act. Six of these comments supported the proposal while 2 comments opposed it.</p>	<p>Disagreed: the removal of the head of public sector organisations.</p> <p>Agreed: List key authorities in a Schedule to the Act.</p>	<p>Keeping backstop of head of public sector organisations, ensures that there are no unintended consequences - no 'wrong doors'.</p> <p>Changing the list of appropriate authorities would ensure there is a clear link between the types of wrongdoing the Act is committed to exposing and the organisations with the responsibility to address them.</p>
	<p>Our proposal: Clarifying the path to compensation in the event of retaliation.</p>	<p>We received very little feedback about this proposal. However, we received 6 comments stating that the compensation provisions themselves should be stronger - rather than just making the path to compensation clearer.</p>	<p>Modified: clarifying forms of compensation in the event of retaliation.</p>	<p>The package that we propose is based on the measures that received a high level of support in public consultation. At this stage we do not propose to pursue some of the measures that could be onerous for the private sector such as creation of new remedies or pathways to compensation for disclosers beyond those available through the Employment Relations Act and Human Rights Act.</p>
<p>Option 2: Allow people to report concerns to an appropriate</p>	<p>Our proposal: Reporting directly to an appropriate authority.</p>	<p>We received 43 comments that discussed our proposal. 23 expressed explicit support, and 4 opposed.</p>	<p>Agreed: to allow disclosers to report concerns to an appropriate authority at any time.</p>	<p>People would be able to report to an appropriate authority at any time, if internal procedures is better placed to</p>

e authority at any time.				investigate the alleged wrongdoing.
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The feedback from the original public consultation will feed into the second tranche of work is as follows:

2nd Tranche: Feedback We Received

Options	# of feedback	Feedback Received	Why?
Options 3: Introduce dedicated system leadership	We received 81 comments about the proposal to establish stronger oversight through a 'one-stop-shop'. The vast majority were in favour of the proposal - about 50 comments compared to 3 against.	<p>Agreed: Establish an oversight body 'one-stop-shop' for PDs.</p> <p>Consultees told us about the functions they would like the body to carry out. Some of the commonly discussed functions included:</p> <ul style="list-style-type: none"> - Review and investigate protected disclosures - Provide advice to individuals with concerns about wrongdoing - Collect and publicly report information about protected disclosures - Intervene or impose sanctions where organisations fail to comply with the Act - Direct whistle-blowers to the suitable appropriate authority - Provide resources for organisations and individuals - Assist organisations to put good procedures in place. <p>Consultees also said that the organisation best suited to perform these functions would be:</p> <ul style="list-style-type: none"> - The Ombudsman, after receiving additional funding to take on these new functions - A new organisation specifically for whistleblowing - Different organisations for the public and private sectors. <p>We heard that the body should be independent, accessible, and resourced with well-trained staff. Consultee also told us that the legislation should be very clear on its function and mandate, particularly in relation to other bodies. Although there was significant support for this proposal, people also highlighted the risk that an</p>	<p>Increasing oversight would help to ensure all organisations have good procedures in place.</p> <p>The oversight body, or bodies, would provide advice, support and information to make it easier for people to navigate the system and ensure that concerns are directed to the right organisation the first time.</p>

		external body could undermine efforts by organisations to create speak-up cultures.	
Option 4: Introduce monitoring for the public sector	We received 32 comments that discussed reporting requirements for the public sector. Of these, 12 expressed explicit support and 2 were in opposition.	Agreed: Monitoring and reporting within the Public Service. We heard that: - Monitoring data should be high-level, rather than detailed - The data should be collected and reported through existing mechanisms, such as MBIE's Mediation Services and agencies' annual reports - The data collected be collected by the Ombudsman, SSC, the new oversight body, or an appropriate authority.	Increase transparency and provide a fuller picture of what is happening across the public sector. This would help identify areas for improvement. Help incentivise good practice in the public sector.
Option 5: Introduce monitoring for the public and private sectors	We received 36 comments that discussed our proposal to introduce monitoring and reporting requirements for all organisations - including the private and not-for-profit sectors. Of these, 11 expressed explicit support and 2 were in opposition. There were 4 comments that opposed the inclusion of small to medium enterprises in this requirement.	Agreed: Introduce monitoring and reporting requirements for all organisations. We heard that: - Monitoring data should be high-level, rather than detailed - The data should be collected and reported through existing mechanisms, such as MBIE's Mediation Services and agencies' annual reports - The findings should be published every 6 months Disagreed: Expanding the scope of the Act beyond employees. We received 18 comments about the need to expand the definition of who can make a protected disclosure. We heard that: - The Act should not only protect employees, but also other vulnerable groups of people. Some of the groups mentioned were victims of domestic abuse, new or temporary migrants, and people who receive government benefits - The Act should cover any individuals with information. Disagreed: Expanding the definition of 'serious wrongdoing'	Increase transparency and provide a fuller picture of what is happening across the whole system. This would help identify areas for improvement. Help incentivise good practice across all organisations. At this stage we have no plans to progress proposals that would fundamentally affect the scope and nature of the Act such as expanding the definition of those who can make protected disclosures to cover people other than employees, such as victims of domestic abuse, immigrants, people who receive government benefits, auditors, or suppliers; protecting disclosures made direct to media; or providing financial rewards where a disclosure results in a successful prosecution.

		<p>Consultees told us that the definition could be expanded to include a number of additional situations, such as conflicts of interest, receipt of gifts or favours by contractors, non-compliance with a company's own policies, negatively impacting Treaty of Waitangi partnerships, exploitation of new or temporary migrants, serious contraventions of financial markets regulations, and serious statutory breaches not already covered by the definition.</p> <p>Disagreed: Rewards should be introduced for whistle-blowers who are proven correct.</p>	
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Section 6: Implementation and operation

6.1 How will the new arrangements be given effect?

We propose amending the Protected Disclosures Act 2000 to give effect to the proposed approach.

SSC is responsible administering the Act. The State Services Commissioner's guidance will be updated to reflect amendments. The Office of the Ombudsman will also update their guidance to reflect the changes. Both organisations will also be working to promote awareness of the Act.

The new arrangements will come into effect following commencement of the amendment to the Act. Our timeline is to have an amendment Bill in Parliament by mid-2020.

As the additional requirements on organisations are expected to be modest, we cannot identify implementation risk at this stage.

Section 7: Monitoring, evaluation and review

7.1 How will the impact of the new arrangements be monitored?

We will be exploring a pilot of monitoring volumes from the public service to test whether there is merit in implementing a reporting regime. This will also inform our understanding of whether these new arrangements have met their objectives. We will consider undertaking light monitoring to see if the number of PDs has increased resulting from the proposed changes which then will guide and inform us on the second tranche of work.

We will also be continuing work to promote the Speaking Up standards and will be seeking regular feedback from public sector organisations and other appropriate authorities on how the changes are operating.

7.2 When and how will the new arrangements be reviewed?

SSC will keep the arrangements under review on an ongoing basis.