



The Protected Disclosures Act helps people report serious wrongdoing in their workplace by protecting them if they 'blow the whistle'.

### What is serious wrongdoing?

- Unlawful, corrupt or irregular use of public money or resources.
- Conduct that poses a serious risk to public health, safety, the environment or maintenance of the law.
- A criminal offence.
- Oppressive, improperly discriminatory or grossly negligent conduct or gross mismanagement by public officials.

### Who can make a disclosure?

To make a protected disclosure, a person must be an employee of the organisation concerned. 'Employee' has a wide definition - for example it can include contractors, volunteers and board members.

Public service employees can make a disclosure about all the types of serious wrongdoing listed above. People in the private and not-for-profit sectors can use the Act to expose information about a criminal offence or activities in their workplace that pose a serious risk to the public, environment or maintenance of the law.

### What protections does the Act provide?

The main protection is confidentiality, which means the person won't be identified.

However, their personal information may need to be revealed in certain circumstances, for example, if it is essential to investigate the allegations.

No civil, criminal, or disciplinary proceedings can be taken against the person for making a protected disclosure.

### When is a disclosure protected?

A disclosure is protected if:

- the information is about serious wrongdoing in the workplace

- the person reasonably believes it to be true or likely to be true
- the person wants the matter investigated
- the person wants the disclosure to be protected.

The disclosure is not protected if the person knows the allegations are false, acts in bad faith or the information is protected by legal professional privilege.

### How does a person make a disclosure?

If someone sees serious wrongdoing at work, they are generally required to follow their workplace procedures and report to someone inside their organisation first.

Every public sector organisation is required to have procedures in place for receiving and handling information about alleged serious wrongdoing.

There are no procedure requirements for the private sector.

The Ombudsman can provide guidance on how to make a disclosure and on any matters relating to the Act.

### Can information about serious wrongdoing be reported outside the workplace?

There are a number of appropriate authorities a person can speak to in certain circumstances. For example, if the matter is urgent or the organisation concerned has not taken any action within 20 days of receiving the complaint. The appropriate authorities are:

- Commissioner of Police.
- Controller and Auditor-General.
- Director of the Serious Fraud Office.
- Inspector-General of Intelligence and Security.
- The Ombudsman.
- Parliamentary Commissioner for the Environment.
- Independent Police Conduct Authority.
- Solicitor-General.
- State Services Commissioner.



- Health and Disability Commissioner.
- Head of every public sector agency.
- Heads of some private sector professional organisations who have disciplinary powers over members.

In the public sector, a disclosure may be escalated to a Minister or the Ombudsman if all other avenues fail. There is no equivalent backstop for the private sector.

### What happens after a person makes a disclosure?

Each organisation and appropriate authority has their own procedures for handling protected disclosures.

There is no legal requirement for an organisation to investigate allegations or report back on the outcome.

In some cases, the Ombudsman has powers to take over investigations in the public sector.

### What happens if a person is mistreated for speaking up?

The Protected Disclosures Act 2000 does not explicitly prohibit a person from being mistreated if their identity becomes known. However, the Human Rights Act 1993 states it is illegal to treat someone less favourably for using their rights under the Protected Disclosures Act.

If someone does suffer harm or retaliation as a result of speaking up, they have the following options available to them:

1. They can raise a personal grievance under the Employment Relations Act against their employer if they believe they were unfairly dismissed or disadvantaged in some way.

Only employees and former employees of an organisation can raise a personal grievance.

The Ministry of Business, Innovation and Employment offers a free mediation service to help resolve the issue.

There are a number of ways the person may be compensated for unfair treatment including reimbursement for lost wages and a payment for hurt or humiliation.

2. They can complain to the Human Rights Commission if they believe they have been treated less favourably than others in similar circumstances. For example, not being selected for a promotion.

Anyone can make a complaint to the Human Rights Commission, including contractors, volunteers or board members.

A free mediation service is provided by the Human Rights Commission.

There are a range of remedies available including compensation for emotional harm.