

The Protected Disclosures Act 2000

The Protected Disclosures Act came into force on 1 January 2001. The new law protects people who raise allegations of serious wrongdoing within their organisations – "whistleblowing".

Below are some questions and answers as they relate to the Act and its implications on people working in the public sector.

What is the Act trying to achieve?

The purpose of this Act is to promote the public interest by facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation, and by protecting employees who make disclosures of information about serious wrongdoing in or by an organisation.

In other words, it is to protect people who raise allegations of serious wrongdoing within their organisations.

What kinds of disclosures does the Act cover?

An employee of an organisation may disclose information in the manner provided by the Act if the information is about serious wrongdoing in or by that organisation and the employee has reasonable grounds to believe that the information is true or likely to be true.

The employee must want the disclosure to be protected and be disclosing the information so that the serious wrongdoing can be investigated.

What is 'serious wrongdoing'?

The Act defines serious wrong doing as any of the following types of wrongdoing:

- (a) an unlawful, corrupt, or irregular use of [funds or resources of a public sector organisation]; or
- (b) an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or
- (c) an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the prevention, investigation, and detection of offences and the right to a fair trial; or
- (d) an act, omission, or course of conduct that constitutes an offence; or
- (e) an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.

The wrongdoing can have occurred before or after the legislation was enacted.

Who does the Act cover?

The Act covers employees in organisations whether in the public sector or in the private sector.

How do I make a disclosure?

The starting point is your organisation's internal procedures for making a disclosure. Every public sector organisation is required by law to have an internal procedure for dealing with information about serious wrongdoing by the organisation or any person within the organisation. These procedures are required to be available widely within the organisation and will mostly be on the intranet or contained with policy documents.

If you cannot find the procedure, contact your PSA organiser and we will get hold of a copy of the procedure for you. If there are no internal procedures, a disclosure may be made to the head or deputy head of an organisation.

What if a person involved in the internal procedure is involved or associated with the wrongdoing?

If you have reasonable grounds to believe that a person involved in the internal procedure or associated with a person involved in the internal procedure could be involved in the wrongdoing, the disclosure can be made to the head or deputy head of the organisation.

Note: there are special rules relating to procedures for intelligence and security agencies, DPMC, MFAT, the Ministry of Defence and the New Zealand Defence Force.

What if the head of my organisation could be involved in the disclosure or the disclosure is urgent?

If you have reasonable grounds to believe that the head of your organisation could be involved in the serious wrongdoing or you need to urgently make the disclosure, you may make the disclosure to another appropriate authority including an Ombudsman or a Minister of the Crown.

What if I make my disclosure and nothing happens?

If there has been no action or recommended action after 20 days, you can make the disclosure to another appropriate authority including an Ombudsman or a Minister of the Crown.

How can I get guidance or more information about a making a protected disclosure?

The Office of the Ombudsman can provide further information and guidance about whether a proposed disclosure is protected by the Act and the appropriate person to make the disclosure to. The Ombudsman can also provide information about guidance about the protections and remedies available to a person if the disclosure leads to victimisation of the person making the disclosure.

What happens if my employer disciplines or dismisses me as a result of the protected disclosure?

If an employee consider that they have suffered unjustified action causing disadvantage or unjustified dismissal they can raise a personal grievance under the Employment Relations Act 2000 providing that this is done within 90 days of the action occurring or coming to the notice of the employee.

Can I be liable for civil or criminal action regarding the disclosure?

No. You have immunity from civil and criminal proceedings.

Is my confidentiality protected when I make a protected disclosure?

A person who has had a protected disclosure made to them must use their best endeavours not to disclose information that might identify the person. However there are three exceptions to this.

The first is where the person who has received the disclosure reasonably believes that identifying information is necessary to the effective investigation of the allegations.

The second is where disclosure is essential to prevent serious risk to public health or public safety or the environment.

The third is where it is essential to the principles of natural justice. The principles of natural justice include giving a person who has had allegations made against them, the specific nature of the allegations which can include the complainant's identity. The courts have laid down some exceptions to this however, for example a teacher student or doctor patient relationship have been considered good reasons to justify withholding the complaints identity.

What happens if a false disclosure is made?

The protections conferred by The Protected Disclosures Act do not apply where the person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith.

Where can I go to for further information?

As outlined above, the first reference point should be your organisation's internal protected disclosures policy. You can also contact the Office of the Ombudsman - <http://www.ombudsmen.govt.nz>. Or contact your PSA organiser.