



Making a protected disclosure

A guide to ‘blowing the whistle’

If you’re concerned about serious wrongdoing in your workplace, the Ombudsman is able to provide information and guidance.

The [Protected Disclosures Act](#) (or PDA) is about disclosing serious wrongdoing – sometimes called ‘whistle-blowing’ – and explains the procedures to be followed when making a disclosure, as well as the protections available to those who do make a disclosure.

This guide provides information and guidance on making a protected disclosure.

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What is the Protected Disclosures Act?

The Protected Disclosures Act (PDA) is a law that helps employees to report serious wrongdoing happening in their workplace, without having to worry that detrimental action will be taken against them.

The purpose of the PDA is to promote the public interest by:

- facilitating the disclosure and investigation of serious wrongdoing; and
- protecting employees who make disclosures about serious wrongdoing in their workplace.¹

The PDA applies to employees in both the public and private sector.²

What is serious wrongdoing?

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

Serious wrongdoing includes:

- the unlawful, corrupt or irregular use of funds or resources of a public sector agency;
- conduct that poses a serious risk to public health, safety or the environment;
- conduct that poses a serious risk to the maintenance of the law, including the prevention, investigation and detection of offences, and the right to a fair trial;
- an offence;
- conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.³

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

Public and private sector	Public sector only
Conduct that seriously risks public health, safety or the environment.	Unlawful, corrupt or irregular use of funds or resources

¹ See section 5 of the PDA.

² Including the not-for-profit organisations.

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

Public and private sector	Public sector only
Conduct that seriously risks the maintenance of the law, including the right to a fair trial, and the prevention, investigation and detection of offences.	Conduct by an official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement.
Offences.	

This means that issues like general dissatisfaction with executive leadership or the way an organisation is run, or minor infringements, may not be covered. It is also not intended to cover employment issues that are more properly covered by the [Employment Relations Act](#).

If you are unsure about whether the information you want to disclose relates to serious wrongdoing, you can [contact the Ombudsman](#) for advice.

If what you have witnessed is not serious wrongdoing, you might still want to report it. It is a good idea to have a look at your workplace policies to see if there is one that explains how it will handle staff complaints.

Am I an employee?

To make a protected disclosure, you must be an 'employee' of the organisation (your workplace) you are making the disclosure about.

You're an 'employee' if:

- you receive wages or salary from the organisation;
- you're a former employee of the organisation;
- you're a homemaker (within the meaning of section 5 of the [Employment Relations Act 2000](#));
- you're seconded to the organisation;
- you're an individual contracted to do work for the organisation;
- you're concerned in the management of the organisation;
- the organisation is the New Zealand Defence Force, and you're a member of the Armed Forces; or
- you work for the organisation as a volunteer.⁴

⁴ See the definition of 'employee' in section 3 of the PDA.

When is my disclosure protected?

Your disclosure **will be protected** if:

- the information is about serious wrongdoing in your workplace;
- you believe on reasonable grounds that the information is true or likely to be true; and
- you want the serious wrongdoing to be investigated.⁵

Your disclosure **won't be protected** if:

- you know the allegations are false, or you act in bad faith;⁶ or
- the information you're disclosing is protected by legal professional privilege.⁷

Legal professional privilege means information that is confidential legal advice. It might be emails, memos or reports written by a lawyer in your workplace, or a lawyer who was advising your workplace. It might also be correspondence about a legal action taking place in Court. Sometimes, it can be difficult to spot. You can [contact the Ombudsman](#) for advice about this if you are unsure.

What if I report the information but it does not meet the threshold of 'serious wrongdoing'?

It is important that when you make your disclosure, you believe on reasonable grounds that the information is about serious wrongdoing and is true, or likely to be true.

If you are genuinely mistaken, the PDA will protect you anyway. Section 6(3) of the PDA provides that if an employee makes a disclosure but is mistaken, your workplace must treat it as complying with the PDA, for the purposes of the protections that the Act provides. This means that you should not suffer retaliation simply for making a protected disclosure, even if it turns out that you were mistaken.

What protections do I have?

When you make a protected disclosure, you will be protected in the following ways:

- Your disclosure must be kept confidential.
- You will be protected from civil and criminal proceedings.

⁵ See section 6 of the PDA.

⁶ See section 20 of the PDA.

⁷ See section 22 of the PDA.

- You will be protected from retaliatory action or disadvantage in your workplace, and can take a personal grievance if this happens.
- You will be protected by the anti-victimisation provisions of the [Human Rights Act 1993](#).

These are explained below, and if you need further advice, you can [contact the Ombudsman](#).

Confidentiality

When you make a protected disclosure, the person you make it to must use their best endeavours not to disclose any information that would identify you, unless one of the exceptions in the Act applies. This is a very strong obligation to keep your identity confidential.

The exceptions are if you consent to the disclosure, or if disclosure is essential:

- to the effective investigation of the allegations;
- to prevent serious risk to public health or safety, or the environment; or
- to comply with the principles of natural justice.⁸

You might be thinking about making an anonymous protected disclosure. If you are, it is important to think about whether your workplace will be able to investigate the information if it does not know who you are, or cannot ask you further questions.

The Ombudsman can provide information and guidance to you and your workplace about the circumstances in which anonymous disclosures can be made under the PDA.

Will I be told if my confidentiality is going to be breached?

The Ombudsman recommends that your workplace speak to you if you have made a protected disclosure and it looks like identifying information will need to be disclosed for one of the specified reasons.

If, when you make your disclosure, you have serious concerns about confidentiality or some other risk to you, it is important to be open about this with your employer.

Providing this information to your workplace can be useful for when they are assessing any risks arising from your disclosure, and when planning action to provide you with support.

Immunity from civil and criminal proceedings

When you make a protected disclosure, you won't be liable to any civil, criminal or disciplinary proceedings for having done so. This applies even if there is a prohibition or restriction on

⁸ See section 19(1) of the PDA. 'Natural justice' is a duty to act fairly. It is the right to a fair process and a fair hearing, free from bias. For example, it might mean that an alleged wrongdoer needs to be provided with more information about the allegations, in order to have the opportunity to respond to the allegations.

disclosing the information (though not where the information being disclosed is protected by legal professional privilege).⁹

An example of this is if your employment agreement states that you cannot disclose confidential information that you receive from a client or customer, or cannot disclose information outside of your workplace. As long as this information is not protected by legal professional privilege, you can disclose it in order to make your protected disclosure. No civil, criminal or disciplinary proceedings can be taken against you because you have disclosed the information.

What if I was involved in the wrongdoing, too?

The protections provided by the PDA only apply to retaliation or detrimental effects that you might experience *because* you made the protected disclosure. This includes immunity from civil and criminal liability for having disclosed what might have been confidential information when you made the protected disclosure.

However, this does not mean that you are protected from civil or criminal liability if you were involved in the wrongdoing, too. Action can still be taken against you for any wrongdoing that you committed.

Personal grievance

If you're an 'employee' within the meaning of the [Employment Relations Act](#), and you believe you've suffered retaliatory action by your employer as a result of making a protected disclosure, you may have a personal grievance because of a claim that:

- you've been unjustifiably dismissed; or
- your employment or conditions of employment have been affected to your disadvantage by some unjustifiable action by your employer.¹⁰

If you think that this has happened and you would like to consider this type of action, it is important to get legal advice early on. The Employment Relations Act has time limits within which you must raise your personal grievance with your employer.

How do I make my protected disclosure?

Depending on your circumstances, there are different ways that you can report serious wrongdoing. Usually, you should follow your workplace's internal procedures for making protected disclosures. In some circumstances, you can make your disclosure to the head of

⁹ See sections 18 and 22 of the PDA.

¹⁰ See section 17 of the PDA and section 103(1)(a) and (b) of the Employment Relations Act.

your workplace, or externally to what is called an ‘appropriate authority’. This is explained below.

When making your protected disclosure, you should disclose the information that you honestly believe shows the wrongdoing that you are alleging. Think about what documents or evidence you can provide to support this. Try to keep your disclosure clear and factual. You might be feeling stressed or worried, but it is important to try and avoid emotional or speculative language.

Internal procedures

The first thing to do is find out whether your workplace has internal procedures for making protected disclosures.

Public sector organisations are required to establish internal procedures for receiving and dealing with information about serious wrongdoing.¹¹

If your workplace has internal procedures, you are generally required to make your disclosure in accordance with those procedures (read on to learn about the exceptions to this rule).¹²

Things to look for in these procedures:

- Who should you make the disclosure to?
- How should you make the disclosure? For example, does it have to be in writing, or sent to a particular email address?
- What information do you need to provide?

Your workplace should acknowledge that it has received your disclosure, and let you know what is going to happen next.

If you are concerned about the way that your workplace is handling your disclosure, you can [contact the Ombudsman](#) for advice.

Disclosure to the head of your workplace

You can make your disclosure to the head of your workplace if:

- your workplace doesn’t have any internal procedures for receiving and dealing with information about serious wrongdoing; or
- you believe on reasonable grounds that the person you’re required to report the wrongdoing to in accordance with the internal procedures is or may be involved in the wrongdoing; or

¹¹ See section 11 of the PDA.

¹² See section 7 of the PDA.

- you believe on reasonable grounds that it's not appropriate to report the wrongdoing to that person because of their relationship or association with the alleged wrongdoer.¹³

The head of your workplace will usually be the Chief Executive, but they might also have a different title, such as 'commissioner', or 'secretary'.

Disclosure to an appropriate authority

You can make your disclosure to an [appropriate authority](#), including the Ombudsman, if you believe on reasonable grounds:

- that the head of your workplace is or may be involved in the serious wrongdoing;
- it is justified because of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or
- you've already made the disclosure within your workplace, but there's been no action or recommended action within 20 working days.¹⁴

There are a number of appropriate authorities. If you are unsure which one to approach, you can [contact the Ombudsman](#) for advice.

Disclosure to a Minister or Ombudsman

You can make your disclosure to a Minister or Ombudsman if:

- you've already made substantially the same disclosure in accordance with your workplace's internal procedures, or to the head of your workplace, or to an appropriate authority; and
- you believe on reasonable grounds that the person or authority to whom you made your disclosure:
 - has decided not to investigate the matter;
 - has decided to investigate but has not made progress with the investigation within a reasonable period of time; or
 - has investigated but not taken or recommended any action.¹⁵

Although you can make a disclosure to the Ombudsman if you work in the private sector, the Ombudsman's options for dealing with that disclosure are restricted to referring it to an appropriate authority or Minister. The Ombudsman cannot investigate the conduct of a private sector organisation.

¹³ See section 8 of the PDA.

¹⁴ See section 9 of the PDA.

¹⁵ See section 10 of the PDA.

If your disclosure is about a public sector organisation, there is a range of [things that the Ombudsman can do](#).

Special rules for international relations and intelligence and security organisations

Some disclosures can only be made to particular appropriate authorities.

If your disclosure relates to an intelligence and security agency, then you should only go to the [Inspector-General of Intelligence and Security](#).¹⁶

If your disclosure relates to the international relations of the Government, or to intelligence and security matters, within:

- the Department of the Prime Minister and Cabinet;
- the Ministry of Foreign Affairs and Trade;
- the Ministry of Defence; or
- the New Zealand Defence Force,

Then the only appropriate authority that can receive your disclosure is the Ombudsman.¹⁷

Appropriate authorities

You'll find information about appropriate authorities and their particular areas of responsibility in [Appendix 1](#). It's sensible to approach the authority whose responsibilities relate most closely to the subject matter of your concern.

It's okay if you do not make your disclosure to the right appropriate authority, as disclosures can be [referred](#) between appropriate authorities in certain circumstances. If you're not sure which authority to approach, you can ask the Ombudsman for information and guidance.

The Ombudsman is also an appropriate authority. Read on to learn more about [what the Ombudsman can do](#) under the PDA.

Referral of protected disclosures between appropriate authorities

A protected disclosure may be referred from one appropriate authority to another if the receiving authority considers that the disclosure can be '*more suitably and conveniently investigated*' by the other authority.

¹⁶ See section 12 of the PDA.

¹⁷ See section 13 of the PDA.

If the authority decides to refer your disclosure to another, they must let you know promptly. The authority's decision to refer your disclosure will not affect your protections under the PDA.

What can the Ombudsman do?

The Ombudsman's role is to provide information and guidance when you are thinking about making a protected disclosure. As an 'appropriate authority' the Ombudsman can also receive, refer, and investigate protected disclosures in certain circumstances.

Information and guidance

You can tell the Ombudsman that you have made or are thinking about making a protected disclosure. If you do this, the Ombudsman must provide you with information and guidance about:

- What is serious wrongdoing, and the kinds of disclosures that are protected under the PDA;
- how to make a protected disclosure, and who to disclose it to;
- the role of each [appropriate authority](#);
- the [protections and remedies](#) available to you;
- how your disclosure might be referred from one appropriate authority to another.

Receiving protected disclosures

The Ombudsman is also an 'appropriate authority' who can receive your protected disclosure in certain circumstances.

You can make a protected disclosure to the Ombudsman if you believe on reasonable grounds:

- that the head of your workplace is or may be involved in the serious wrongdoing; or
- there is urgency or some other exceptional circumstances; or
- you've made the disclosure in accordance with your workplace's internal procedures, but there's been no action or recommended action within 20 working days.¹⁸

You can also make a protected disclosure to the Ombudsman if you've already made it within your workplace, or to the head of your workplace, or to another appropriate authority, but you believe on reasonable grounds that they:

- have decided not to investigate the matter; or

¹⁸ See section 9 of the PDA.

- have decided to investigate but have not made progress with the investigation within a reasonable period of time; or
- have investigated but not taken or recommended any action.¹⁹

If your disclosure is about an intelligence and security agency, the Ombudsman cannot receive it. A disclosure like that can only be made to the [Inspector-General of Intelligence and Security](#).

What will the Ombudsman do with a protected disclosure?

When the Ombudsman receives your disclosure they will consider whether it is protected by the PDA.

For instance:

- Are you an [‘employee’](#)?
- Does your disclosure relate to [‘serious wrongdoing’](#) in your workplace?
- Have you followed the [procedures](#) set out in the Act?

If your disclosure is not protected, the Ombudsman will provide you with advice and information about how you can pursue your concerns. All the information you have provided to the Ombudsman will stay confidential.

Even if your disclosure is not protected, it might be a matter that the Ombudsman can investigate under their [general powers](#) in the [Ombudsmen Act 1975](#), and consideration will be given to this as well.

If your disclosure is protected, the Ombudsman will consider what the best course of action is to address the matter, and will let you know what is happening.

This could include referring the protected disclosure to another appropriate authority or Minister. This may be because another appropriate authority can more suitably and conveniently investigate the disclosure and / or because the Ombudsman doesn't have the power to look into the matter themselves.

The Ombudsman could investigate your protected disclosure where that is warranted. However, the Ombudsman can only investigate serious wrongdoing in or by **public sector organisations**.

What else can the Ombudsman do?

There might be other reasons that you need some information or guidance during the process of making a protected disclosure. For example:

- You may have been told that your disclosure is not protected.

¹⁹ See section 10 of the PDA.

- You might not have been told about what your workplace is doing to respond to your disclosure, or it might have been some time since you were last updated.
- You may have concerns about how the investigation is being conducted.
- Your confidentiality may have been breached, and you might have suffered as a result of this.
- There may be ongoing reprisal conduct against you.

If you have any of these concerns, the Ombudsman can provide you with advice and information about how to pursue them. Even if you are in the private sector, the Ombudsman will seek to give you information about where you can go to address these issues.

If your protected disclosure is about the public sector, then the Ombudsman might be able to look into your concerns about what has happened, or investigate them where warranted.

How does the Ombudsman protect confidentiality?

The Ombudsman has a small team of staff authorised to deal with protected disclosures, including requests for information and guidance, and substantive protected disclosures. No one else within the Ombudsman's office can access or view this information.

The information that you provide when contacting the Ombudsman about a protected disclosure is not used when considering complaints made by other individuals. If we think that information you have provided is relevant to another matter that the Ombudsman is investigating or considering, we will discuss this with you.

Before taking any action on your concerns, or contacting the workplace that your disclosure relates to, we will talk to you about whether you have concerns about being identified, or whether the information you have provided might identify you if disclosed.

How to contact the Ombudsman

You can ask us for information and guidance, or contact us for the purpose of making a protected disclosure, through our website, or by email, phone or letter. Your enquiries will be treated in confidence, and dealt with by our specialist staff.

Our contact details are as follows:

The Ombudsman
PO Box 10152
Wellington 6143
Phone: 0800 802 602
Email: info@ombudsman.parliament.nz
Web: www.ombudsman.parliament.nz

Ready to make a protected disclosure?

If you think you are ready to make a disclosure about serious wrongdoing that you have witnessed in your workplace, or you are wondering whether you need further advice, take a look at our checklist in the Protected disclosures part of our website.

If you're still unsure or thinking it over, take a look at our detailed checklist – *Am I ready to make a protected disclosure?* Or, [contact the Ombudsman](#) for confidential assistance.

Appendix 1. Appropriate Authorities – contact details

Commissioner of Police

The role of the New Zealand Police is to serve the community by reducing the incidence and effects of crime, detecting and apprehending offenders, maintaining law and order and enhancing public safety.

If you think that your disclosure relates to criminal offending, you might want to talk to Police in the first instance.

www.police.govt.nz

Controller and Auditor-General

The role of the Controller and Auditor-General is to assist Parliament to strengthen the effectiveness, efficiency and accountability of public sector organisations, including local government organisations.

The Controller and Auditor-General is independent of the Government, and has the power to make inquiries and report to Parliament.

Some of the matters that the Controller and Auditor-General considers include: conflicts of interest relating to financial gain; procurement; fiscal matters; and public sector management.

www.oag.govt.nz

Director of the Serious Fraud Office (SFO)

The SFO is responsible for complex or serious fraud investigations and prosecutions. This doesn't include more common dishonesty offences, which are a Police matter.

If your disclosure relates to potentially significant fraudulent activities, you may want to talk to the SFO in the first instance.

www.sfo.govt.nz

Inspector-General of Intelligence and Security

The role of the Inspector-General is to assist the Minister responsible for the New Zealand Security Intelligence Service (NZSIS) and the Government Communications Security Bureau (GCSB) in the oversight and review of those intelligence agencies.

If your disclosure relates to serious wrongdoing in the intelligence and security agencies, then you **must** make it to the Inspector-General of Intelligence and Security.

www.igis.govt.nz

Ombudsman

The Ombudsman is an Officer of Parliament with a number of roles, including:

- investigating public sector administration (acts, decisions and omissions made within the public sector);
- investigating and reviewing decisions on official information requests;
- providing advice and guidance on the PDA, and receiving protected disclosures;
- monitoring places of detention (including prisons, court cells, immigration detention facilities, health and disability places of detention, child care and protection and youth justice facilities);
- monitoring implementation of the United Nations Convention on the Rights of Persons with Disabilities.

The Ombudsman is independent of the Government, and has the power to investigate and report to Parliament.

If your disclosure relates to general concerns about the actions of a government agency, you may wish to contact the Ombudsman.

If you need advice or information about making a protected disclosure, you should contact the Ombudsman.

www.ombudsman.parliament.nz

Parliamentary Commissioner for the Environment

The Parliamentary Commissioner for the Environment has wide-ranging powers to investigate environmental concerns.

If your disclosure relates to environmental concerns, you may wish to contact the Parliamentary Commissioner for the Environment.

www.pce.parliament.nz

Independent Police Conduct Authority (IPCA)

The IPCA's role is to consider complaints of misconduct or neglect of duty by any member of the Police, or concerning any practice, policy or procedure of the Police affecting the person or body of persons making the complaint in a personal capacity.

If your disclosure is about Police, you should go to IPCA in the first instance.

www.ipca.govt.nz

Solicitor-General

The Solicitor-General is the Chief Executive of the Crown Law Office.

The Crown Law Office provides legal advice and representation services to the government in matters affecting the executive government, particularly in the areas of criminal, public and administrative law.

The Crown Law Office is not an investigatory body. In practice, while the Solicitor-General may be well placed to co-ordinate a response, most protected disclosures will be referred to another more appropriate agency.

www.crownlaw.govt.nz

State Services Commissioner (SSC)

The State Services Commissioner provides leadership through a range of activities including statutory functions and powers under the [State Sector Act 1988](#). These functions include appointing and developing public service chief executives, and advising the government on the performance of public service departments and agencies. The Commissioner sets the minimum standards of integrity and conduct for the state services which are promulgated in a code of conduct for state servants.

If your disclosure is about the integrity and conduct of the public sector, especially Chief Executives, you may wish to contact SSC.

www.ssc.govt.nz

Health and Disability Commissioner

The role of the Health and Disability Commissioner (HDC) is to investigate complaints about persons or bodies that provide health care or disability services. The Commissioner can make public statements and publish reports on any matter affecting the rights of health and disability consumers and can bring matters that impact on the public interest, particularly public safety, to the attention of any appropriate persons.

If your disclosure relates to health care or disability services, you should contact HDC in the first instance.

www.hdc.org.nz

Other appropriate authorities

In addition to the authorities listed above, every head of a public sector organisation is an appropriate authority. Some of them have the power to investigate.

Private sector bodies having disciplinary powers over members of a profession or calling are also appropriate authorities.

If you're not sure which authority to approach, you can [contact the Ombudsman](#) for information and guidance.

Appendix 2. Can I make a protected disclosure?

This checklist will assist employees who are considering making a protected disclosure, or wondering whether they need more information and guidance. It is intended to identify things that an employee should think about before making the decision to disclose information about serious wrongdoing.

The basics

- Am I an [employee](#)?
- Does the information I have relate to [serious wrongdoing](#)?
- [Will I be protected](#)?
- Am I worried about any [particular detrimental effects](#) when I make my disclosure? Should I tell my workplace this when I make my disclosure?
- Do I want to make an [anonymous disclosure](#)?
- [Contact the Ombudsman](#) for information and guidance, or to confirm that these requirements are met.

Making the protected disclosure

- Check [internal workplace procedures](#) – who do I need to report to?
- Is this person involved in the serious wrongdoing, or do they have a relationship with the wrongdoer? If so, I will need to [report to the head of my workplace](#).
- Can I [report my disclosure outside of my workplace](#)?
- I'm confused about where to go - [contact the Ombudsman](#) for information and guidance.

I've made my disclosure – now what?

- My workplace has said that [my disclosure is not protected](#) – what do I do? [Contact the Ombudsman](#).
- I've been waiting for more than a month now, should I [report outside of my workplace](#)?
- [I've got concerns](#) about how this is turning out – what should I do? [Contact the Ombudsman](#).