

Meaning of ‘appropriate authority’

Protected Disclosures (Protection of Whistleblowers) Act 2022

This guide provides information and guidance for disclosers about the meaning of an ‘appropriate authority’ and who a protected disclosure may be made to.

The [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#) (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.

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What is the Protected Disclosures Act?

The [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#) (PDA) is a law that helps people to report serious wrongdoing they reasonably believe is happening in their workplace, without having to worry that action will be taken against them.

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

- facilitating the disclosure and timely investigation of serious wrongdoing; and
- protecting people who make disclosures in accordance with the PDA.

The PDA applies to employees in both the public sector and private sector, including the not for profit sector.

A protected disclosure may be made internally, via your organisation's internal procedures or to the head or deputy head of your organisation. If you do not wish to disclose your concerns internally, you are able to disclose to an **appropriate authority** at any time.

What is an appropriate authority?

An *appropriate authority* includes:

- The head of any public sector (government) organisation.
- Any officer of Parliament (the Ombudsman, the Controller and Auditor-General, the Parliamentary Commissioner for the Environment).
- The membership body of a particular profession, trade or calling with the power to discipline its members. Examples include, but are not limited to:
 - The Law Society (for concerns about lawyers)
 - The Social Workers Registration Board (for concerns about social workers)
 - The Medical Council (for concerns about doctors)
 - The Real Estate Authority (for concerns about real estate agents)
 - The Teaching Council (for concerns about teachers)

An appropriate authority does **not** include a Minister or a member of Parliament.

Why disclose to an appropriate authority?

The purpose of allowing people to report their concerns to an external authority, if they wish, is to provide an alternative option to raising their concerns internally. A person may have various reasons for not wanting to disclose internally, such as:

- their concerns relate to the conduct of senior staff members; and

- lack of confidence in how their organisation may respond.

A person may have already made a protected disclosure internally and may not feel that their organisation has addressed their concerns about serious wrongdoing. This is another reason a person may choose to make a protected disclosure to an appropriate authority.

Which appropriate authority should I disclose to?

The PDA provides a [list](#) of different types of concerns, and the various likely appropriate authorities for the particular subject matter. Please find below some examples of concerns and who you may choose to disclose them to, based on the appropriate authority's area of subject matter expertise.

Examples

If your concerns relate to health and safety at work, you may wish to disclose to WorkSafe New Zealand.

If your concerns relate to expenditure by public sector organisations, you may wish to disclose to the Office of the Auditor-General.

If your concerns relate to bullying, harassment or racism, you may wish to disclose to the Human Rights Commission.

In addition to subject matter expertise, there are other considerations as to who may be the appropriate authority for particular concerns, such as:

- **Involvement** with the organisation your concerns relate to - such as an organisation who oversees the function of the organisation you have concerns about, or provides funding to, or pays for the services of, the organisation your concerns relate to.

Examples

If your concerns may relate to the conduct of a charity you may wish to disclose to the Department of Internal Affairs, who are the regulator of charities. Alternatively, you may wish to disclose to the funding provider – for instance, a health-related charity may receive funding from Te Whatu Ora, and you may choose to disclose to Te Whatu Ora.

If your concerns relate to the conduct of a school, you may wish to disclose to the Ministry of Education.

- **Jurisdiction** (legal power) to investigate the concerns raised. The Ombudsman, for instance, only has jurisdiction to investigate public sector organisations, and does not have jurisdiction to investigate private sector organisations.

Examples

If your concerns relate to financial crime at a private sector organisation, the New Zealand Police would have the jurisdiction to investigate these concerns.

If your concerns relate to health and safety at a private sector organisation, you may choose to disclose to WorkSafe New Zealand.

If your concerns relate to privacy of individuals or security of personal information, you may disclose to the Privacy Commissioner.

For most disclosures, it does not matter if you are mistaken and you disclose to the ‘wrong’ authority, as they are able to refer your disclosure to another appropriate authority if needed. However, there are exceptions to this, depending on the types of concerns you wish to disclose:

- Concerns related to **intelligence and security information** must be disclosed to the Inspector-General of Intelligence and Security.
- Concerns related to **international relations** must be disclosed to the Ombudsman.

What can I disclose to the Ombudsman?

You are able to disclose **any concerns** (except for intelligence and security information) to the Ombudsman at any time. Please note, however, that the Ombudsman may refer your disclosure to another appropriate authority where the Ombudsman considers them to be best placed to consider the concerns that you raise.

Before referring your disclosure, the Ombudsman would speak to you about this. The Ombudsman would also speak to the appropriate authority to understand if they would accept the referral. While the Ombudsman endeavours to complete this consultation process without delay, please note that this process takes time.

What do I do if I do not know who to disclose to?

To see more examples of different types of concerns, and who the appropriate authority may be, see [Appendix 1 – key appropriate authorities](#), and [Schedule 2](#) of the PDA for further examples.

If you are not sure who you should raise your concerns with, please reach out to the Ombudsman for confidential advice.

How do I disclose to an appropriate authority?

Check the appropriate authority’s website to see if they have published information on how to make a protected disclosure to them. This information may be in their ‘complaints’ section of

their website. If you cannot find this information publicised, you may wish to get in touch with their enquiries team to ask about the process for making a protected disclosure. Appropriate authorities are likely to have a 0800 number you can call them on, as well as a general-contact email address.

If you are having any difficulty finding this information, please do not hesitate to reach out to the Ombudsman for confidential advice.

Other Ombudsman guidance about the PDA

The Ombudsman has published four other protected disclosures guides on its website:

- [Making a protected disclosure – a guide to ‘blowing the whistle’](#)
- [Checklist – Am I ready to make a protected disclosure?](#)
- [Protected disclosures – guidance on internal policies and procedures](#)
- [Checklist – Protecting whistle-blower confidentiality](#)

Appendix 1. Key appropriate authorities

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 a 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 a 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 a disclosure relates to intelligence and security information, the only appropriate authority is the Inspector-General of Intelligence and Security (IGIS), and not the Ombudsman.¹ An

¹ Section 23(2)(b).

Ombudsman also cannot provide advice or guidance on such matters, and such advice or guidance should be sought from IGIS.²

If a disclosure includes intelligence and security information, and that disclosure also relates to serious wrongdoing by or within IGIS, the disclosure should be made to the Prime Minister.³

www.igis.govt.nz

Parliamentary Commissioner for the Environment

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

If a 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 a 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

² Section 25 of the PDA. The Act states that anyone who has made, or is considering making a protected disclosure of this type, may seek information and guidance from IGIS, and not from an Ombudsman. If IGIS fails to respond appropriately, the discloser may escalate the matter to either: the Minister responsible for an intelligence and security agency; or the Prime Minister.

³ Section 25.

Public Service Commission

The Public Service Commission provides leadership through a range of activities including statutory functions and powers under the Public Service Act 2020. 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 public service which are promulgated in a code of conduct for state servants.

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

www.publicservice.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 a 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.