

Protected Disclosures (Protection of Whistleblowers) Bill

Government Bill

Explanatory note

General policy statement

This Bill replaces the Protected Disclosures Act 2000 (the **Act**). The Bill continues the purpose of the Act, which is to promote the public interest by facilitating the disclosure and investigation of serious wrongdoing in the workplace, and by providing protection for employees and other workers who report concerns. All workplaces are covered, although some provisions apply specifically to public sector organisations and to public funds and functions.

The Bill is informed by reviews and by extensive consultation, including public consultation conducted in late 2018. Public consultation highlighted that while the aims of the Act remain sound, there are 4 broad problems that guidance and standards (such as State Services Commission’s Speaking up standards) cannot fully address without changes to the Act. These problems are—

- 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:
- disclosers fear speaking up because they lack confidence in the protections available to them.

In order to address these problems, the Bill—

- clarifies the definition of serious wrongdoing and extends its application to cover private sector use of public funds and authority:
- enables people to report serious wrongdoing directly to an appropriate authority at any time, provides more clarity about appropriate authorities, and clarifies the ability of those authorities to decline or refer the disclosure:

- strengthens protections for disclosers by specifying what a receiver of a disclosure should do:
- clarifies the internal procedure requirements for public sector organisations and requires them to state how they will provide support in the form of practical assistance and advice to disclosers:
- clarifies the potential forms of adverse conduct disclosers may face.

In addition, the Bill puts the current provisions of the Act into a more accessible form and changes terminology where required to make the scope and intent clearer.

Clarifying definition of serious wrongdoing

The Bill extends the definition of serious wrongdoing to ensure that unlawful, corrupt, or irregular use of public funds or resources is in scope whether it occurs in a public or private organisation and to cover non-government organisations delivering services or exercising authority on behalf of the Government.

Enabling disclosers to make a disclosure directly to an appropriate authority at any time

The Bill enables disclosers to make a disclosure directly to an appropriate authority at any time. The Bill adds a new schedule containing examples of the most likely appropriate authorities and examples of the nature of concerns they deal with.

Strengthening protections for disclosers

The Bill strengthens protections for disclosers by clarifying key steps receivers of disclosures should take on receiving a disclosure. This applies to public and private organisations and to appropriate authorities.

Clarifying receivers' options and obligations

The Bill clarifies that receivers of disclosures may refer the disclosure back to the employing organisation or decide that no action is required. This addresses concerns that recipients may have to deal with disclosures that do not meet the tests in the Act. The Bill clearly sets out what receivers should do.

Clarifying internal procedure requirements for public sector organisations

The Bill requires public sector organisations' internal procedures to describe what is required of those receiving a disclosure and state how practical assistance and advice for disclosers will be provided.

Clarifying the potential forms of retaliation or less favourable treatment disclosers might face

The Bill provides further protections to those making a disclosure by explicitly identifying the forms of retaliation or less favourable treatment that disclosers might face. The Bill makes it clear that things other than dismissal can also be a basis for a personal grievance or Human Rights Commission complaint.

Departmental disclosure statement

The State Services Commission is required to prepare a disclosure statement to assist with the scrutiny of this Bill. The disclosure statement provides access to information about the policy development of the Bill and identifies any significant or unusual legislative features of the Bill.

A copy of the statement can be found at <http://legislation.govt.nz/disclosure.aspx?type=bill&subtype=government&year=2020&no=294>

Regulatory impact assessment

The State Services Commission produced a regulatory impact assessment on 7 October 2019 to help inform the main policy decisions taken by the Government relating to the contents of this Bill.

A copy of this regulatory impact assessment can be found at—

- <https://ssc.govt.nz/assets/SSC-Site-Assets/Proactive-Releases/Regulatory-Impact-Assessment-Protected-Disclosures-Reform.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Clause by clause analysis

This Bill re-enacts the Protected Disclosures Act 2000 (the **Act**), with some changes of policy. The intention is to create an accessible Act that is fit for purpose and easy for non-lawyers to use. Several provisions are revised with no change of legal effect. Their revision is analogous with revision Bills under the Legislation Act 2012. Revision Bills re-enact an older Act in an up-to-date and accessible form.

The following table indicates which clauses of the Bill contain new policy, which clauses include clarifying amendments, and which clauses include revisions with no change of legal effect.

New policy

<i>Clause 10</i>	extended application of the definition of serious wrongdoing
<i>Clause 11(3)</i>	a discloser may disclose to an appropriate authority at any time
<i>Clause 15(3)</i>	a receiver who wishes to refer a disclosure must consult the discloser
<i>Clause 15(5)</i>	if an appropriate authority has referred a disclosure to the organisation concerned, the organisation must report back to the authority
<i>Clause 27(2)(c)(vi)</i>	public sector organisations must provide practical assistance and advice for disclosers

Minor amendments to clarify Parliament's intent or reconcile inconsistencies

<i>Clause 4</i>	clarifying definitions
<i>Clause 9</i>	clarifying the test for protected disclosures

<i>Clause 11(4)</i>	entitling a discloser to protection for confidentially seeking advice about whether or how to make a protected disclosure
<i>Clauses 11 and 13</i> <i>Clause 12</i>	clarifying disclosers' entitlements to protection setting out what receivers should do within 20 working days of receiving a disclosure
<i>Clauses 14 and 15</i> <i>Clause 15(1)</i>	clarifying receivers' options clarifying that the organisation itself may refer the disclosure to an appropriate authority
<i>Clause 16(3)</i>	requiring a receiver who believes it is essential to release a discloser's identifying information to consult the discloser (in some circumstances only if practicable)
<i>Clause 19(4)</i>	clarifying the potential forms of retaliation that are prohibited
<i>Clause 20</i>	including in this Bill (for accessibility) the ban in current section 66 of the Human Rights Act 1993 on less favourable treatment of disclosers
<i>Clause 23</i> <i>Clause 27</i>	clarifying who is an appropriate authority clarifying requirements about the internal procedures of public sector organisations
Revisions with no change of legal effect	
<i>Clause 3</i>	(current section 5)
<i>Clause 6</i>	(current section 4)
<i>Clause 8</i>	(current section 3, definition of employee)
<i>Clause 16</i>	(current section 19(1) and (3))
<i>Clause 17</i>	(current section 19(2))
<i>Clause 21</i>	(current section 18)
<i>Clause 22</i>	(current section 6A(2) and 23)
<i>Clause 25</i>	(current sections 12 and 14)
<i>Clause 26</i>	(current sections 13 and 14)
<i>Clause 27</i>	(current section 11)
<i>Clause 28</i>	(current sections 6B and 19(3))
<i>Clause 29</i>	(current section 6C)
<i>Clause 30</i>	(current section 15)
<i>Clause 31</i>	(current section 15A)
<i>Clause 32</i>	(current section 15B)
<i>Clause 33</i>	(current section 15C)
<i>Clause 34</i>	(current section 15D)
<i>Clause 35</i>	(current section 15E)
<i>Clause 36</i>	(current section 21)
<i>Clause 37</i>	(current section 22)

Clause 1 is the Title clause.

Clause 2 provides that the Bill will come into force on **1 July 2021**.

Part 1

Preliminary provisions

Clause 3 provides that the purpose of the Bill is to promote the public interest by facilitating the disclosure and timely investigation of serious wrongdoing and by protecting those who disclose it.

Clause 4 sets out the definitions of terms used in the Bill. Key terms include: appropriate authority (defined in *clause 23*); discloser (defined in *clause 8*); protected disclosure (defined in *clause 9*); and serious wrongdoing (defined in *clause 10*).

Clause 5 provides that *Schedule 1* sets out transitional, savings, and related provisions. *Schedule 1* provides that the Bill applies to a protected disclosure made after the Bill's commencement (whether the alleged serious wrongdoing occurs before or after then).

Clause 6 provides that the Bill will bind the Crown.

Part 2

Key concepts and what to do

Subpart 1—Key concepts

Clause 7 is an overview provision. It includes a flowchart giving an overview of how the Bill will apply to a discloser. It also gives an overview of the protections under the Bill that a discloser is entitled to.

Clause 8 defines discloser. The term covers people who work (or who have worked) for an organisation. It includes current or former employees, contractors, managers, board members, and volunteers. Contractors could include, for example, people whose work is actually directed by someone other than their employer.

Clause 9 defines protected disclosure. Disclosure of information is a protected disclosure if the discloser reasonably believes that there is, or has been, serious wrongdoing in or by the discloser's organisation. The other requirements are that the discloser discloses information about that in accordance with the Bill, and does not disclose in bad faith.

Clause 10 defines serious wrongdoing. This definition continues the Act's definition with 2 changes. The current definition speaks of unlawful, corrupt, or irregular use of a public sector organisation's funds or resources. The first change is to widen the definition to cover unlawful, corrupt, or irregular use of public funds or public resources. This has the effect of including private sector bodies using public funds or resources. The second change is to catch oppressive, improperly discriminatory, or grossly negligent conduct or gross mismanagement by those performing a statutory function or duty or exercising a statutory power or acting on behalf of a public sector organisation. Currently, that sort of behaviour is caught only if it is by public officials. This change has the effect of including private sector bodies who are fulfilling public functions, duties, or powers.

Subpart 2—What to do (disclosers and receivers)

Clause 11 is the key clause setting out when a discloser is entitled to protection. The clause has the effect of indicating what a discloser should do to disclose serious wrongdoing.

Protection is available if the discloser makes a protected disclosure to their organisation in accordance with internal procedures or, if there are none or if they are not appropriate in the circumstances, to the head or deputy head of the organisation. Protection is also available for a protected disclosure made to an appropriate authority at any time.

Protection is available even if the discloser is mistaken and there is no serious wrongdoing. It is available if they do not refer to the name of the Bill when making the disclosure. And protection is available if a discloser technically fails to comply with the Bill's requirements.

A minor policy clarification entitles the discloser to protection for disclosing to another person if that is on a confidential basis and for the purpose of seeking advice about whether or how to make a protected disclosure. This has the effect of enabling a person to disclose without repercussions to, for example, a lawyer or other adviser or to a spouse or other confidant.

Clause 12 sets out what the receiver of a protected disclosure should do. What a receiver should do is only implicit in the Act.

Clause 13 sets out the discloser's entitlement to disclose to a Minister or an Ombudsman if the discloser believes on reasonable grounds that a receiver has not acted as it should under *clause 12* or addressed the serious wrongdoing. Disclosing to a Minister or an Ombudsman under *clause 13* entitles the discloser to protection under this Bill for the disclosure.

Clauses 14 and 15 set out the receiver's options. The receiver may decide that no action is required or may refer the matter to an appropriate authority.

Part 3 Protections

Clause 16(1) re-enacts section 19(1) of the Act, which requires receivers of protected disclosures to use their best endeavours to keep confidential information that might identify the discloser. *Clause 16(2)* sets out the exceptions to that duty.

Clause 17 re-enacts section 19(2) of the Act, which enables a receiver to refuse an official information request if it might identify a discloser. *Clause 17* reflects section 18 of the Official Information Act 1982 and section 17 of the Local Government Official Information and Meetings Act 1987. Those provisions enable a request to be refused if making available information would be contrary to a specified enactment. Section 52 of the Official Information Act 1982 and section 44 of the Local Government Official Information and Meetings Act 1987 provide that nothing in those Acts

derogates from another Act prohibiting or restricting the making available of information. Those provisions have the effect that a request under those Acts may be refused.

Clause 18 summarises *clauses 19 and 20*, which provide—

- an employer must not retaliate against an employee discloser (*clause 19*); and
- a person must not to treat another less favourably because of a protected disclosure (*clause 20*).

Clause 19 provides that if an employer retaliates or threatens to retaliate against an employee in breach of the obligation not to do so, the employee has a personal grievance under the Employment Relations Act 2000. This re-enacts section 17 of the Act.

Clause 20 re-enacts section 66 of the Human Rights Act 1993. *Clause 20* provides that it is unlawful to treat another person less favourably because that person (or their relative or associate) intends to make, or has made (or has given evidence about) a protected disclosure. *Clause 20* continues, as a form of discrimination under New Zealand law, treating a discloser less favourably. Treating a person less favourably can be the subject of a dispute resolution process under Part 3 of that Act or a proceeding in the Human Rights Review Tribunal or a court under Part 4 of that Act.

Examples of A treating B less favourably are—

- if A is B's employer, A retaliating against B (that is, retaliating within the meaning given in *clause 19*):
- A terminating a contract for services by B, or requiring or causing B to terminate a contract for services (where A would not do so to others):
- A refusing or omitting to employ or engage B on work of any description that is available and for which B is qualified (where A would employ or engage others):
- A refusing or omitting to offer or afford B the same terms of engagement, conditions of work, fringe benefits, or opportunities as are made available to other people of the same or substantially similar qualifications, experience, or skills who are engaged in the same or substantially similar circumstances:
- A subjecting B to any detriment, in circumstances in which A would not subject others to such detriment:
- A refusing or failing to enter into an arrangement (whether commercial or otherwise) with B in circumstances in which A would enter into an arrangement with others:
- A refusing B entry to a club, political party, association, union, or church (or similar) in circumstances in which A would allow others to enter.

Clause 21 re-enacts the immunity from civil, criminal, and disciplinary proceedings in section 18 of the Act. The immunity is given to both disclosers who make protected disclosures and receivers who refer disclosures.

Clause 22 re-enacts sections 6A(2) and 23 of the Act. *Clause 22* provides that there can be no contracting out of the Bill.

Part 4

Appropriate authorities, special rules for certain organisations, the Ombudsmen's role, etc

Subpart 1—Appropriate authorities

Clause 23 defines appropriate authority. Examples of appropriate authorities and examples of the nature of concerns they deal with are provided in *Schedule 2*.

Clause 24 provides that the examples in *Schedule 2* may be amended by Order in Council. However, the responsible Minister must not recommend an Order in Council unless the Minister has consulted the relevant appropriate authority.

Subpart 2—Special rules for intelligence, security, and international relations information

Clause 25 re-enacts sections 12 and 14 of the Act. *Clause 25* provides for special rules for disclosures of intelligence and security information.

Clause 26 re-enacts the special rules in sections 13 and 14 of the Act for disclosures of international relations information.

Subpart 3—Special rules for all public sector organisations

Clause 27 sets out requirements for the internal procedures of public sector organisations. (Internal procedures is defined in *clause 4* as any procedures adopted by, and published within, an organisation about how the organisation receives and deals with information about serious wrongdoing in or by that organisation.)

The requirements are the same as in section 11 of the Act. However, there is an additional requirement added in *clause 27(2)(c)(vi)* that a public sector organisation include a description in its internal procedures about how it will provide practical assistance and advice to disclosers. The nature of this assistance and advice is to be determined by each organisation. However, guidance is provided by the State Services Commission's Speaking up standards. These are model standards outlining expectations on public sector organisations to support the effective reporting and managing of wrongdoing. The requirements about support given in the model standards include the ability to access dedicated and tailored support in addition to Employee Assistance Programmes, local welfare or support services, unions, and service organisations.

Clause 27(3) requires public sector organisations to publish widely (and republish at regular intervals) both information about the existence of the procedures and adequate information about how to use them. This re-enacts current section 11(3) of the Act.

Subpart 4—Ombudsmen's role

Clauses 28 to 35 re-enact the Act's provisions about the role of the Ombudsmen.

Subpart 5—Other protections and privileges

Clause 36 provides that the Bill does not limit any statutory or other protection, privilege, immunity, or defence relating to the disclosure of information. This has the effect of allowing those things to continue to operate as they would do without the enactment of the Bill. *Clause 36* re-enacts section 21 of the Act.

Clause 37 provides that nothing in the Bill authorises a person to disclose information protected by legal professional privilege. A disclosure of information protected by such a privilege is not a protected disclosure. This re-enacts section 22 of the Act.

Subpart 6—Consequential amendments and repeal

Clause 38 provides for consequential amendments made in *Schedule 3*. *Schedule 3* amends—

- the Employment Relations Act 2000 to address the effect of the personal grievance changes made in *clause 19*;
- the Human Rights Act 1993 to re-enact current section 66 of that Act, but only in respect of treating another person less favourably for using their rights under that Act. Current section 66 also includes the requirement not to treat someone less favourably in relation to a protected disclosure, but this has been re-enacted as *clause 20*;
- the Intelligence and Security Act 2017 to amend section 171 of that Act to clarify that the ability to complain under that section is in addition to the ability to make a protected disclosure;
- the Ombudsmen Act 1975 to update references to the current Act to references to the Bill.

Clause 39 repeals the Act.

Comparative table

The following table sets out the provisions of the Act and the corresponding provisions of this Bill. The table is only to assist readers. It is not a definitive or ongoing guide to how the provisions correspond.

Provisions of Act	Provisions of Bill
Section 1	Clause 1
Section 2	Clause 2
Section 3	Clause 4
Section 4	Clause 6
Section 5	Clause 3
Section 6	Clause 9(a) and (b)
Section 6A	Clause 11(4)(b) and (c)
Section 6B	Clause 28
Section 6C	Clause 29
Section 7	Clause 11(2)
Section 8	Clause 11(2)

Provisions of Act	Provisions of Bill
Section 9	Clauses 11 and 12
Section 10	Clause 13
Section 11	Clause 27
Section 12	Clause 25
Section 13	Clause 26
Section 14	Clauses 25 and 26
Section 15	Clause 30
Section 15A	Clause 31
Section 15B	Clause 32
Section 15C	Clause 33
Section 15D	Clause 34
Section 15E	Clause 35
Section 16	Clause 15
Section 17	Clause 19
Section 18	Clause 21
Section 19	Clauses 16 and 28
Section 19A	Clause 11(5)
Section 20	Clause 9(c)
Section 21	Clause 36
Section 22	Clause 37
Section 23	Clause 22
Section 25	Clause 20

Hon Chris Hipkins

Protected Disclosures (Protection of Whistleblowers) Bill

Government Bill

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**Part 3
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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Protected Disclosures (Protection of Whistleblowers) Act **2020**.

2 Commencement

This Act comes into force on **1 July 2021**. 5

Part 1

Preliminary provisions

3 Purpose

The purpose of this Act is to promote the public interest—

(a) by facilitating the disclosure and timely investigation of serious wrongdoing in or by an organisation; and 10

(b) by protecting the people who disclose in accordance with this Act.

Compare: 2000 No 7 s 5

4 Interpretation

In this Act, unless the context otherwise requires,— 15

appropriate authority has the meaning given in **section 23**

classified information has the meaning given to it by section 78AA of the Crimes Act 1961

discloser has the meaning given in **section 8**

environment has the meaning given to it by section 2 of the Environment Act 1986 20

intelligence and security agency has the meaning given to it by section 4 of the Intelligence and Security Act 2017

intelligence and security information means information that—

- (a) is classified information; or
- (b) relates to the activities of an intelligence and security agency 5

internal procedures means any procedures adopted by, and published within, an organisation about how the organisation receives and deals with information about serious wrongdoing in or by that organisation

international relations agency means—

- (a) the Department of the Prime Minister and Cabinet: 10
- (b) the Ministry of Foreign Affairs and Trade:
- (c) the Ministry of Defence:
- (d) the New Zealand Defence Force

international relations information means information that—

- (a) is about the international relations of the Government of New Zealand; 15
and
- (b) is held by an international relations agency; and
- (c) is not classified information; and
- (d) does not relate to the activities of an intelligence and security agency

officer of Parliament means an Ombudsman, the Parliamentary Commissioner for the Environment, or the Controller and Auditor-General 20

Ombudsman means an Ombudsman holding office under the Ombudsmen Act 1975, and includes for the purposes of this Act (except **section 26**)—

- (a) any person holding office under an Ombudsman to whom any of the powers of an Ombudsman have been delegated under section 28 of that Act; and 25
- (b) any person whom the Chief Ombudsman has appointed to perform an Ombudsman's functions under this Act

organisation means a body of persons (including a body comprising 1 employer and 1 or more employees), whether— 30

- (a) corporate or unincorporate:
- (b) in the public sector or in the private sector

protected disclosure has the meaning given in **section 9**

public sector organisation means—

- (a) an organisation named or specified in Schedule 1 of the Ombudsmen Act 1975: 35

- (b) an organisation named in Schedule 1 of the Official Information Act 1982:
 - (c) a local authority or public body named or specified in Schedule 1 of the Local Government Official Information and Meetings Act 1987:
 - (d) the Office of the Clerk of the House of Representatives: 5
 - (e) the Parliamentary Service:
 - (f) an intelligence and security agency:
 - (g) a council-controlled organisation within the meaning of section 6 of the Local Government Act 2002
- receiver** means the receiver of a protected disclosure who is either— 10
- (a) the organisation concerned; or
 - (b) an appropriate authority
- retaliate** has the meaning given in **section 19**
- serious wrongdoing** has the meaning given in **section 10**
- working day** means any day of the week other than— 15
- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign’s birthday, and Waitangi Day; and
 - (b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and
 - (c) a day in the period beginning on 25 December in any year and ending on 15 January (both dates inclusive) in the following year. 20

Compare: 2000 No 7 s 3

5 Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1** have effect according to their terms. 25

6 Act binds the Crown

This Act binds the Crown.

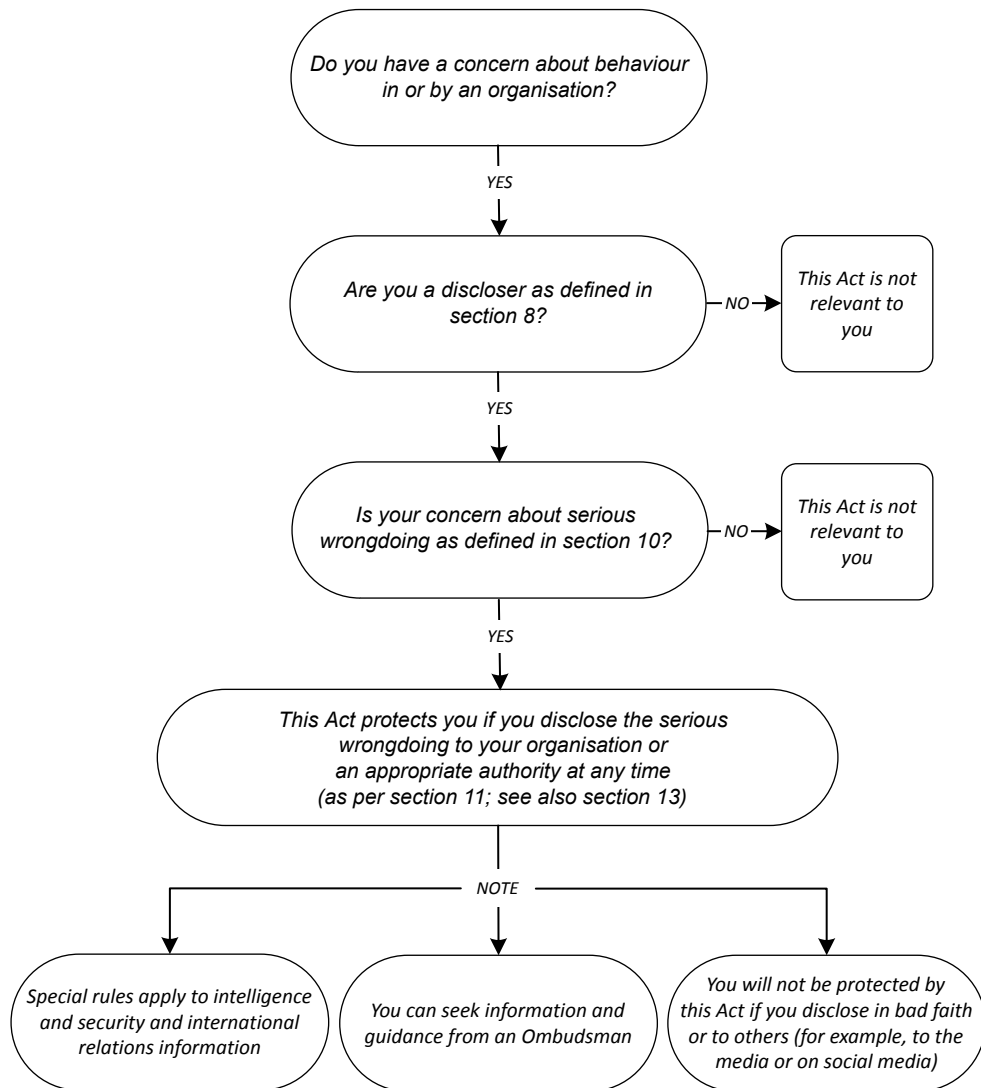
Compare: 2000 No 7 s 4

Part 2 Key concepts and what to do

Subpart 1—Key concepts

7 Overview

- (1) The following flowchart gives an overview of how this Act applies to a discloser: 5



- (2) A discloser is entitled to protection under this Act for a protected disclosure as follows:
- the receiver must keep the discloser's identity confidential (*see* **section 16**); and

- (b) the disclosure must be considered and dealt with in a timely way (*see section 12*); and
 - (c) there can be no retaliation against the discloser's employment (*see section 19*); and
 - (d) the discloser (and their relatives and associates) cannot be treated less favourably (*see section 20*); and 5
 - (e) the discloser has an immunity for the disclosure in court or disciplinary proceedings (*see section 21*); and
 - (f) the organisation cannot contract out of this Act or have internal procedures that are inconsistent with this Act (*see section 22*); and 10
 - (g) a public sector organisation must provide practical assistance and advice to the discloser in relation to serious wrongdoing in or by that organisation (*see section 27*).
- (3) This section is only a guide to the general scheme and effect of this Act.

8 Meaning of discloser 15

In this Act, **discloser**, in relation to an organisation, means an individual who is (or was formerly)—

- (a) an employee;
- (b) a homeworker within the meaning given in section 5 of the Employment Relations Act 2000: 20
- (c) a secondee to the organisation;
- (d) engaged or contracted under a contract for services to do work for the organisation;
- (e) concerned in the management of the organisation (including, for example, a person who is or was a member of the board or governing body of the organisation): 25
- (f) a member of the Armed Forces (in relation to the New Zealand Defence Force);
- (g) a volunteer working for the organisation without reward or expectation of reward for that work. 30

Compare: 2000 No 7 s 3(1)

9 Meaning of protected disclosure

A disclosure of information is a **protected disclosure** if the discloser—

- (a) believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation; and 35
- (b) discloses information about that in accordance with this Act; and
- (c) does not disclose it in bad faith.

Compare: 2000 No 7 ss 6, 20

10 Meaning of serious wrongdoing

In this Act, **serious wrongdoing** includes 1 or more of the following by or in any organisation:

- (a) an unlawful, a corrupt, or an irregular use of public funds or public resources: 5
- (b) an act, an omission, or a course of conduct that is a serious risk to public health, public safety, or the environment:
- (c) an act, an omission, or a course of conduct that is a serious risk to the maintenance of law (including the prevention, investigation, and detection of offences and the right to a fair trial): 10
- (d) an offence:
- (e) an act, an omission, or a course of conduct that is oppressive, improperly discriminatory, grossly negligent, or that is gross mismanagement, by 1 or more of the following:
 - (i) an employee (if the organisation is a public sector organisation): 15
 - (ii) a person performing a statutory function or statutory duty or exercising a statutory power:
 - (iii) a person performing a function or duty or exercising a power on behalf of a public sector organisation.

Compare: 2000 No 7 s 3(1) 20

Subpart 2—What to do (disclosers and receivers)

11 Discloser’s entitlement to protection

- (1) A discloser is entitled to protection under this Act for a protected disclosure made (in accordance with this section) to their organisation or to an appropriate authority. 25
- (2) A discloser is entitled to protection for a protected disclosure made to their organisation if it is made—
 - (a) in accordance with any internal procedures; or
 - (b) to the head or a deputy head of the organisation if there are no internal procedures; or 30
 - (c) to the head or a deputy head of the organisation if there are internal procedures, but the discloser believes on reasonable grounds that the person who should be the recipient of the disclosure (according to the internal procedures)—
 - (i) is or may be involved in the wrongdoing; or 35
 - (ii) is not an appropriate recipient because of a relationship or association with a person who is or may be involved in the wrongdoing.

- (3) A discloser is entitled to protection for a protected disclosure made to an appropriate authority at any time. (This applies whether or not the discloser has also made the disclosure to their organisation or to another appropriate authority.)
- (4) A discloser is entitled to protection even if— 5
- (a) they are mistaken and there is no serious wrongdoing; or
 - (b) they do not refer to the name of this Act when making the disclosure; or
 - (c) they technically fail to comply with this section or **section 13** (as long as they have substantially complied); or
 - (d) they also make the disclosure to another person, as long as they do so— 10
 - (i) on a confidential basis; and
 - (ii) for the purposes of seeking advice about whether or how to make a protected disclosure in accordance with this Act.
- (5) Another discloser who discloses further information in accordance with this Act in support of a disclosure is also entitled to protection (unless they were required to do so under any enactment, rule of law, or contract for the purposes of investigating the disclosure). 15
- (6) If the disclosure is or includes intelligence and security information or international relations information, this section is subject to **sections 25 and 26**.
Compare: 2000 No 7 ss 6(3), 6A, 7, 8, 9, 19A 20

12 What receiver should do

- (1) Within 20 working days of receiving a protected disclosure, the receiver of the disclosure should—
- Acknowledge receipt*
- (a) acknowledge to the discloser the date the disclosure was received; and 25
- Consider*
- (b) consider the disclosure and whether it warrants investigation; and
- Check*
- (c) check with the discloser whether the disclosure has been made elsewhere (and any outcome); and 30
- Deal with*
- (d) deal with the matter by doing 1 or more of the following:
 - (i) investigating the disclosure:
 - (ii) addressing any serious wrongdoing by acting or recommending action: 35
 - (iii) referring the disclosure under **section 15**:
 - (iv) deciding that no action is required (under **section 14**); and

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Bill	
	<i>Inform discloser (with reasons)</i>
(e)	inform the discloser (with reasons) about what the receiver has done or is doing to deal with the matter.
(2)	However, when it is impractical to complete these actions within 20 working days, the receiver should do the actions described in subsection (1)(a) to (c) within 20 working days and then should—
	<i>Inform discloser</i>
(a)	inform the discloser how long the receiver expects to take to deal with the matter; and
	<i>Update</i>
(b)	appropriately update the discloser about progress; and
	<i>Deal with</i>
(c)	deal with the matter as described in subsection (1)(d) ; and
	<i>Inform discloser (with reasons)</i>
(d)	inform the discloser (with reasons) about what the receiver has done or is doing to deal with the matter.
(3)	This section (and section 15) are guidance only and do not confer a legal right or impose a legal obligation on any person that is enforceable in a court of law.
	Compare: 2000 No 7 s 9
13	Discloser’s entitlement to disclose to Minister or Ombudsman
(1)	This section applies if a discloser believes on reasonable grounds that the receiver of a protected disclosure—
(a)	has not acted as it should under section 12 ; or
(b)	has not dealt with the matter so as to address the serious wrongdoing.
(2)	The discloser is entitled to protection under this Act for a protected disclosure made to—
(a)	a Minister; or
(b)	an Ombudsman (if the receiver was not an Ombudsman) so that the Ombudsman may act under section 15 or 30 .
(3)	However, this section does not apply if the disclosure is or includes intelligence and security information or international relations information (and sections 25 and 26 apply instead).
	Compare: 2000 No 7 s 10
14	Receiver may decide no action is required
(1)	A receiver of a protected disclosure may decide that no action is required.

- (2) Reasons that may be appropriate for deciding that no action is required include that—
- (a) the requirements of **sections 8 to 10** are not met;
 - (b) the length of time between the alleged serious wrongdoing and the disclosure makes an investigation impracticable or undesirable: 5
 - (c) the matter is better addressed by other means.

15 Receiver may refer disclosure

- (1) A receiver that is the organisation concerned may refer the disclosure to an appropriate authority.
- (2) A receiver that is an appropriate authority may refer the disclosure to— 10
- (a) the organisation concerned; or
 - (b) another appropriate authority.
- (3) Before referring a protected disclosure, the receiver must consult the discloser and the intended recipient of a referral.
- (4) The organisation or authority that has received a referral becomes the receiver of the disclosure and this Act applies accordingly. 15
- (5) If an appropriate authority refers a disclosure to the organisation concerned, the organisation must inform the authority about what the organisation has done or is doing to deal with the matter (at the same time as the organisation informs the discloser of that under **section 12**). 20
- (6) A disclosure may be referred on more than 1 occasion.

Compare: 2000 No 7 s 16

Part 3
Protections

Confidentiality 25

16 Confidentiality

- (1) Every receiver of a protected disclosure must use their best endeavours to keep confidential information that might identify the discloser.
- (2) However, a receiver need not keep a discloser's identity confidential if—
- (a) the discloser consents to the release of the identifying information; or 30
 - (b) the release of the identifying information is to a law enforcement or regulatory agency for the purpose of law enforcement; or
 - (c) there are reasonable grounds to believe that the release of the identifying information is essential—
- (i) for the effective investigation of the disclosure; or 35

- (ii) to prevent serious risk to public health or public safety or the environment; or
- (iii) to comply with the principles of natural justice.
- (3) Before releasing identifying information for a reason described in **subsection (2)(c)**,— 5
- (a) if the release is for the reason described in **subsection (2)(c)(i) or (iii)**, the receiver must consult the discloser about the release; or
- (b) if the release is for the reason described in **subsection (2)(c)(ii)**, the receiver must, if practicable, consult the discloser about the release.
- (4) Anyone may seek information and guidance from an Ombudsman about the duty of confidentiality in this section. 10
- (5) *See section 25* for special rules relating to intelligence and security information.
- Compare: 2000 No 7 s 19(1), (3)
- 17 Protecting confidentiality by withholding official information** 15
- (1) A receiver may refuse a request for information under the Official Information Act 1982 or the Local Government Official Information and Meetings Act 1987 as contrary to this Act if the information might identify the discloser of a protected disclosure.
- (2) However, a receiver may not withhold information from a law enforcement or regulatory agency seeking the information for the purpose of law enforcement. 20
- Compare: 2000 No 7 s 19(2)
- Obligation not to retaliate or treat less favourably*
- 18 Obligation not to retaliate or treat less favourably**
- (1) Employers must not retaliate against a discloser who is an employee: *see section 19.* 25
- (2) A person must not treat another less favourably because of a protected disclosure: *see section 20.*
- 19 No retaliation by employer**
- (1) An employer must not retaliate, or threaten to retaliate, against an employee because the employee intends to make or has made a protected disclosure. 30
- (2) If an employer retaliates, or threatens to retaliate, against an employee in breach of **subsection (1)**, the employee has a personal grievance under **section 103(1)(k)** of the Employment Relations Act 2000.
- (3) Part 9 of that Act applies accordingly. 35
- (4) For the purposes of this section and **section 20**,—

employee has the meaning given in section 6 of the Employment Relations Act 2000

retaliate means—

- (a) doing any of the following:
 - (i) dismissing the employee: 5
 - (ii) refusing or omitting to offer or afford to the employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available to other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances: 10
 - (iii) subjecting the employee to any detriment (including any detrimental effect on the employee's employment, job performance, or job satisfaction) in circumstances in which other employees employed by the employer in work of that description are not or would not be subjected to such detriment: 15
 - (iv) retiring the employee, or requiring or causing the employee to retire or resign:
- (b) organising to do anything described in **paragraph (a)**. 20

Compare: 2000 No 7 s 17

20 No victimisation

- (1) A person (**A**) must not treat, or threaten to treat, another person (**B**) less favourably than A would treat other persons in the same or substantially similar circumstances because—
 - (a) B (or a relative or associate of B)— 25
 - (i) intends to make, or has made, a protected disclosure under this Act; or
 - (ii) has encouraged another person to make a protected disclosure; or
 - (iii) has given information or evidence in relation to any complaint, investigation, or proceeding arising out of a protected disclosure; or 30
 - (b) A believes or suspects that B (or a relative or associate of B) intends to do, or has done, anything described in **paragraph (a)**.
- (2) **Subsection (1)** is not breached if B knowingly made a false allegation or otherwise acted in bad faith. 35
- (3) A breach of **subsection (1)** is unlawful under **section 66** of the Human Rights Act 1993.

Compare: 1993 No 82 s 66

*No retaliation in court or disciplinary proceedings***21 Immunity from civil, criminal, and disciplinary proceedings**

- (1) Neither a discloser who makes a protected disclosure nor a receiver who refers a protected disclosure under **section 15** is liable to any civil, criminal, or disciplinary proceeding because of making or referring the disclosure. 5
- (2) **Subsection (1)** applies despite any prohibition of or restriction on the disclosure of information under any legislation, rule of law, agreement, contract, internal procedure, oath, or practice.
- Compare: 2000 No 7 s 18

No contracting out 10**22 No contracting out**

- (1) This Act applies despite any agreement, contract, or internal procedure.
- (2) A provision in any agreement, contract, or internal procedure has no effect if it apparently requires a person to do any of the following:
- (a) not to disclose serious wrongdoing that is or could be a protected disclosure: 15
- (b) to withdraw a protected disclosure:
- (c) to abandon a protected disclosure:
- (d) to make a disclosure of serious wrongdoing in a way that is inconsistent with this Act. 20
- Compare: 2000 No 7 ss 6A(2), 23

Part 4**Appropriate authorities, special rules for certain organisations, the Ombudsmen's role, etc**

Subpart 1—Appropriate authorities 25

23 Meaning of appropriate authority

- (1) In this Act, **appropriate authority**, without limiting the meaning of that term,—
- (a) includes the head of any public sector organisation; and
- (b) includes any officer of Parliament; and 30
- (c) includes (as examples) the persons or bodies listed in the second column of **Schedule 2**; and
- (d) includes the membership body of a particular profession, trade, or calling with the power to discipline its members; but
- (e) does not include— 35

- (i) a Minister; or
 - (ii) a member of Parliament.
- (2) However,—
- (a) the **appropriate authority** for intelligence and security information is the Inspector-General of Intelligence and Security only; and 5
 - (b) the **appropriate authority** for international relations information is an Ombudsman only.

Compare: 2000 No 7 ss 3(1), 12(2)(b), 13(2)(a)

24 Schedule 2 may be amended by Order in Council

- (1) The Governor-General, by Order in Council made on the recommendation of the Minister responsible for the administration of this Act, may amend **Schedule 2** by doing either or both of the following: 10
- (a) adding, deleting, or amending the name of an appropriate authority;
 - (b) adding, deleting, or amending a description of the nature of concerns.
- (2) The Minister must not recommend that an order be made under **subsection (1)** unless the Minister has consulted the relevant appropriate authority. 15

Subpart 2—Special rules for intelligence, security, and international relations information

25 Special rules for intelligence and security information

- (1) A person may only disclose intelligence and security information to someone who holds an appropriate security clearance and is authorised to have access to the information. 20
- (2) A discloser who has made, or is considering making, a protected disclosure that is or includes intelligence and security information may seek information and guidance from the Inspector-General of Intelligence and Security only (and not from an Ombudsman). 25
- (3) A person must not disclose intelligence and security information to—
- (a) an Ombudsman; or
 - (b) any Minister except for the Prime Minister or the Minister responsible for an intelligence and security agency. 30
- (4) An intelligence and security agency, and any other public sector organisation that holds or has access to intelligence and security information, must—
- (a) have internal procedures that reflect the rules in **subsections (1) to (3)**; and
 - (b) comply with **sections 12, 16 and 27** in a way that is consistent with this section (in relation to intelligence and security information). 35

(5) The Inspector-General of Intelligence and Security may disclose intelligence and security information disclosed or referred under this Act only in accordance with subpart 1 of Part 6 of the Intelligence and Security Act 2017.

(6) This section overrides **sections 13 and 16(4)**.

Compare: 2000 No 7 ss 12, 14

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26 Special rules for international relations information

(1) An international relations agency must—

(a) have internal procedures that reflect **subsection (3)**; and

(b) comply with **section 27(2)(c)** in a way that is consistent with this section.

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(2) The Ombudsman may disclose international relations information only in accordance with the Ombudsmen Act 1975.

(3) Despite **section 13(2)(a)**, the only Minister a discloser may disclose international relations information to is the Prime Minister or the Minister responsible for foreign affairs or trade.

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Compare: 2000 No 7 ss 13, 14

Subpart 3—Special rules for all public sector organisations

27 Public sector organisations must have internal procedures

(1) Every public sector organisation must have appropriate internal procedures.

(2) The internal procedures must—

20

(a) comply with the principles of natural justice; and

(b) identify who in the organisation a protected disclosure of serious wrongdoing in or by that organisation may be made to; and

(c) include, in relation to a protected disclosure of serious wrongdoing in or by that organisation, —

25

(i) a reference to the requirement in **section 19** that the organisation not retaliate, or threaten to retaliate, against the discloser; and

(ii) a reference to the requirement in **section 20** that the organisation not treat, or threaten to treat, the discloser less favourably than others; and

30

(iii) a reference to the requirement in **section 12** that the organisation consider and deal with the disclosure within 20 working days (unless it is impractical to complete this within 20 working days); and

(iv) a description of how the organisation will consider the disclosure; and

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- (v) a description of the circumstances in which the disclosure may be referred under **section 15**; and
 - (vi) a description of how the organisation will provide practical assistance and advice to disclosers (for example, by having a support person assess any risks to the discloser); and 5
 - (vii) a description of how the organisation will meet the duty of confidentiality in **section 16**.
- (3) The organisation must publish widely (and republish at regular intervals)—
- (a) information about the existence of the internal procedures; and
 - (b) adequate information on how to use the procedures. 10

Compare: 2000 No 7 s 11

Subpart 4—Ombudsmen’s role

28 Role of Ombudsmen in providing information and guidance

- (1) An Ombudsman may provide information and guidance to any person on any matter about this Act (either after a request or at the Ombudsman’s discretion). 15
- (2) If a discloser notifies the Ombudsmen that the discloser has made, or is considering making, a protected disclosure, an Ombudsman must provide information and guidance to the discloser about the following (as relevant):
- (a) which disclosures are protected under this Act:
 - (b) the persons to whom information may be disclosed under this Act: 20
 - (c) how to disclose information in accordance with **section 11** in order to be entitled to protection under this Act:
 - (d) a summary of the role of each appropriate authority:
 - (e) the protections available under this Act and under the Human Rights Act 1993: 25
 - (f) how a disclosure may be referred under **section 15**.
- (3) An Ombudsman may—
- (a) provide information and guidance to organisations and disclosers about the circumstances in which anonymous protected disclosures may be made; and 30
 - (b) otherwise provide advice and assistance to organisations and other persons about the duty of confidentiality in **section 16**.
- (4) This section does not apply to a disclosure of intelligence and security information (and **section 25** applies instead).

Compare: 2000 No 7 ss 6B, 19(3)

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29 Information about internal procedures

- (1) For the purpose of this Act, an Ombudsman may request 1 or more of the following from an organisation:
- (a) information about whether the organisation has established and published internal procedures; and 5
 - (b) a copy of those procedures; and
 - (c) information about how those procedures operate.
- (2) However, the Inspector-General of Intelligence and Security, and not an Ombudsman, has the power described in **subsection (1)** in relation to an intelligence and security agency. 10
- (3) An organisation is not required to comply with a request made under **subsection (1)** if it is not a public sector organisation.

Compare: 2000 No 7 s 6C

30 Ombudsmen may escalate protected disclosure to Minister or investigate disclosure 15

- (1) An Ombudsman may, with the consent of a discloser who has made a protected disclosure in accordance with this Act to an organisation or another appropriate authority,—
- (a) refer the disclosure to a Minister if the Ombudsman considers, after consulting that Minister, that the receiver of the disclosure— 20
 - (i) has not acted as it should under **section 12**; or
 - (ii) has not dealt with the matter so as to address the serious wrongdoing; or
 - (b) investigate the disclosure if the disclosure relates to a public sector organisation and the Ombudsman considers that the receiver of the disclosure— 25
 - (i) has not acted as it should under **section 12**; or
 - (ii) has not dealt with the matter so as to address the serious wrongdoing.
- (2) **Subsection (1)** does not authorise an Ombudsman to act under that subsection if the disclosure relates to the Office of the Parliamentary Commissioner for the Environment. 30
- (3) The Ombudsman must promptly notify a referral to any person that the Ombudsman understands may be investigating the disclosure.
- (4) A disclosure may be referred on more than 1 occasion. 35
- (5) This section does not apply to intelligence and security information (and **section 25** applies instead).

- (6) In relation to international relations information, an Ombudsman must comply with this section in a way that is consistent with **section 26**.

Compare: 2000 No 7 s 15

31 Ombudsmen may take over some investigations or investigate together with public sector organisation 5

- (1) This section applies to a protected disclosure relating to serious wrongdoing in or by a public sector organisation.
- (2) An Ombudsman may take over an investigation of a disclosure from a public sector organisation, or investigate a disclosure together with a public sector organisation, if— 10
- (a) the Ombudsman considers that the organisation—
 - (i) has not acted as it should under **section 12**; or
 - (ii) has not dealt with the matter so as to address the serious wrongdoing; and
 - (b) the discloser who made the disclosure consents; and 15
 - (c) in the case of an investigation together with a public sector organisation, the public sector organisation consents to the Ombudsman acting under this section.
- (3) However, **subsection (1)** does not apply to a disclosure— 20
- (a) relating to the Office of the Parliamentary Commissioner for the Environment; or
 - (b) of intelligence and security information (and **section 25** applies instead).

Compare: 2000 No 7 s 15A

32 Ombudsmen may review and guide investigations by public sector organisations 25

- (1) An Ombudsman may review and guide an investigation of a protected disclosure by a public sector organisation (either at the organisation's request or at the Ombudsman's discretion).
- (2) However, **subsection (1)** does not apply to a disclosure— 30
- (a) relating to the Office of the Parliamentary Commissioner for the Environment; or
 - (b) of intelligence and security information (and **section 25** applies instead).
- (3) **Subsection (1)** does not authorise an Ombudsman to issue a direction to a public sector organisation requiring it to act in a particular manner in relation to an investigation. 35

Compare: 2000 No 7 s 15B

33 Ombudsmen may receive reports on investigations and include information in annual report

- (1) The Ombudsmen may receive reports on the following investigations:
- (a) investigations referred under **section 30**:
 - (b) investigations in which an Ombudsman has acted under **section 31**: 5
 - (c) investigations in relation to which an Ombudsman has otherwise provided information or guidance under this Act.
- (2) The Ombudsmen may include in their annual report under section 29 of the Ombudsmen Act 1975 information about all or any of the following (for the period covered by the report): 10
- (a) current guidance issued by the Ombudsmen about this Act:
 - (b) the number and types of information and guidance inquiries made to the Ombudsmen about the matters in this Act:
 - (c) the number of protected disclosures made to the Ombudsmen:
 - (d) the number of investigations undertaken or taken over by the Ombudsmen: 15
 - (e) the number of investigations referred under **section 30**:
 - (f) the outcome of the matters referred to in **paragraphs (b) to (e)** (if known by the Ombudsmen). 20
- Compare: 2000 No 7 s 15C 20

34 Chief Ombudsman may appoint persons to perform Ombudsman's functions under this Act

The Chief Ombudsman may, by notice, appoint a person to perform an Ombudsman's functions under this Act.

Compare: 2000 No 7 s 15D 25

35 Ombudsmen's functions and powers

- (1) The functions and powers of Ombudsmen under the Ombudsmen Act 1975, including the function of each Ombudsman to investigate a matter of their own motion under section 13(3) of that Act, are not limited by this Act.
- (2) The Ombudsmen have the same powers in relation to investigating a protected disclosure made under this Act as Ombudsmen have in relation to a complaint under the Ombudsmen Act 1975, but are not bound to investigate a protected disclosure. 30
- (3) Sections 19, 20, and 30 of the Ombudsmen Act 1975 apply, with all necessary modifications, to allow an Ombudsman to obtain information, documents, papers, or things that would in the Ombudsman's opinion assist the Ombudsmen to act under this Act in relation to a public sector organisation. 35

Compare: 2000 No 7 s 15E

Subpart 5—Other protections and privileges

36 Other protections not limited

This Act does not limit any statutory or other protection, privilege, immunity, or defence relating to the disclosure of information.

Compare: 2000 No 7 s 21

5

37 Legal professional privilege

(1) Nothing in this Act authorises a person to disclose information protected by legal professional privilege.

(2) A disclosure of such information is not a protected disclosure.

Compare: 2000 No 7 s 22

10

Subpart 6—Consequential amendments and repeal

38 Consequential amendments

Amend the Acts specified in **Schedule 3** as set out in that schedule.

39 Repeal of Protected Disclosures Act 2000

The Protected Disclosures Act 2000 (2000 No 7) is repealed.

15

Schedule 1
Transitional, savings, and related provisions

s 5

Part 1
Provisions relating to this Act as enacted

5

1 Disclosure made after commencement of this Act

(1) This Act applies to a protected disclosure made after the commencement of this Act (whether the alleged serious wrongdoing occurs before or after then).

(2) If substantially the same disclosure was also made under the Protected Disclosures Act 2000, **sections 11 to 15** apply with all necessary modifications.

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2 Disclosure made before commencement of this Act

The Protected Disclosures Act 2000 continues to apply to a protected disclosure made under that Act before the commencement of this Act.

Schedule 2

Examples of concerns and examples of appropriate authorities

s 23

Nature of concerns	Appropriate authority
Anticompetitive conduct	Commerce Commission
Banks (registered banks)	Reserve Bank of New Zealand
Charities	Department of Internal Affairs
	Solicitor-General
Consumer protection	Commerce Commission
Crime	Commissioner of Police
	Director of the Serious Fraud Office
Education service	Ministry of Education
	Education Review Office
Energy safety	WorkSafe
Environment	Ministry for the Environment
	Department of Conservation
Financial reporting (private sector—issuers and large companies)	Financial Markets Authority
Financial reporting (public sector)	Controller and Auditor-General
Health	Ministry of Health
	Health and Disability Commissioner
Insurers (licensed insurers)	Reserve Bank of New Zealand
Intelligence and security or classified information	Inspector-General of Intelligence and Security only (<i>see section 25</i>)
	Ombudsman only (<i>see section 26</i>)
International relations	Ombudsman
Local Government	Controller and Auditor-General
	Department of Internal Affairs
Police	Commissioner of Police
	Independent Police Conduct Authority
Professional or trade conduct	Ministry of Business, Innovation, and Employment
	Solicitor-General
Prosecutions	Ombudsman
Public sector	Controller and Auditor-General
	Commerce Commission
Sector regulation	State Services Commission
State services	The Treasury (for State-owned enterprises, Crown companies, and organisations named or described in Schedule 4 of the Public Finance Act 1989)
	Ministry of Transport
Transport and transport safety issues	Ombudsman
Whistleblowing and protected disclosures	Ministry of Business, Innovation, and Employment
Work health and safety	

Nature of concerns

Appropriate authority
WorkSafe

Schedule 3 Consequential amendments

s 38

Employment Relations Act 2000 (2000 No 24)

In section 67B(3), replace “(j)” with “(k)”. 5

After section 103(1)(j), insert:

- (k) that the employer has retaliated, or threatened to retaliate, against the employee in breach of **section 19** of the Protected Disclosures (Protection of Whistleblowers) Act **2020** (because the employee has made a protected disclosure). 10

After section 110A, insert:

110B Retaliation against whistleblower

- (1) For the purposes of this Part, **retaliate** has the meaning given to it by **section 19** of the Protected Disclosures (Protection of Whistleblowers) Act **2020**. 15
- (2) An employer may be found to have retaliated, or threatened to retaliate, only if the protected disclosure was a substantial reason for the employer’s relevant actions or omissions. 15
- (3) The burden of proof is on the employer to prove, on the balance of probabilities, that the disclosure was not a substantial reason for the employer’s actions or omissions. 20

In section 111, replace “and **adverse conduct for prohibited health and safety reason**” with “**adverse conduct for prohibited health and safety reason, and retaliate**”.

In section 111, replace “and 110A” with “110A, and **110B**”.

Human Rights Act 1993 (1993 No 82) 25

Replace section 66 with:

66 Victimisation of whistleblower or person making use of rights prohibited

- (1) It is unlawful for any person (A) to treat, or threaten to treat, another person (B) less favourably than A would treat other persons in the same or substantially similar circumstances because— 30
- (a) B (or a relative or associate of B)—
- (i) intends to make use of their rights under this Act; or
- (ii) has made use of their rights, or promoted the rights of another person, under this Act; or
- (iii) has given information or evidence in relation to any complaint, investigation, or proceeding under this Act; or 35

Human Rights Act 1993 (1993 No 82)—*continued*

- (iv) has declined to do an act that would contravene this Act; or
- (v) has otherwise done anything under or by reference to this Act; or
- (b) A believes or suspects that B (or a relative or associate of B) intends to do, or has done, anything mentioned in **paragraph (a)**.
- (2) It is not unlawful for any person to treat, or threaten to treat, another person less favourably because that other person knowingly made a false allegation or otherwise acted in bad faith. 5
- (3) It is unlawful for any person to breach **section 20(1)** of the Protected Disclosures (Protection of Whistleblowers) Act **2020** (which requires people to treat whistleblowers, and their relatives and associates, no less favourably than others). 10

Intelligence and Security Act 2017 (2017 No 10)

After section 171(4), insert:

- (5) The ability to complain under this section is in addition to the ability to make a protected disclosure under the Protected Disclosures (Protection of Whistleblowers) Act **2020**. 15

Ombudsmen Act 1975 (1975 No 9)

In section 15(1) and (2), replace “Protected Disclosures Act 2000” with “Protected Disclosures (Protection of Whistleblowers) Act **2020**”.

In section 26(1)(a) and (b), (3), and (4), replace “Protected Disclosures Act 2000” with “Protected Disclosures (Protection of Whistleblowers) Act **2020**”. 20

In section 29, replace “Protected Disclosures Act 2000” with “Protected Disclosures (Protection of Whistleblowers) Act **2020**”.