



Protected Disclosures Act 2000

Public Act 2000 No 7
Date of assent 3 April 2000
Commencement see section 2

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The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Protected Disclosures Act 2000.

2 Commencement

This Act comes into force on 1 January 2001.

3 Interpretation

In this Act, unless the context otherwise requires,—

appropriate authority, without limiting the meaning of that term,—

(a) includes—

(i) the Commissioner of Police:

(ii) the Controller and Auditor-General:

(iii) the Director of the Serious Fraud Office:

(iv) the Inspector-General of Intelligence and Security:

(v) an Ombudsman:

(vi) the Parliamentary Commissioner for the Environment:

(vii) the Police Complaints Authority:

(viii) the Solicitor-General:

(ix) the State Services Commissioner:

(x) the Health and Disability Commissioner; and

(b) includes the head of every public sector organisation, whether or not mentioned in paragraph (a); and

(c) includes a private sector body which comprises members of a particular profession or calling and which has power to discipline its members; but

(d) does not include—

(i) a Minister of the Crown; or

(ii) a member of Parliament

employee, in relation to an organisation, includes—

(a) a former employee:

(b) a homemaker within the meaning of section 2 of the Employment Contracts Act 1991:

(c) a person seconded to the organisation:

(d) an individual who is engaged or contracted under a contract for services to do work for the organisation:

- (e) a person concerned in the management of the organisation:
- (f) in relation to the New Zealand Defence Force, a member of the Armed Forces

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

intelligence and security agency has the meaning given to it by section 2(1) of the Inspector-General of Intelligence and Security Act 1996

Ombudsman means an Ombudsman holding office under the Ombudsmen Act 1975; and includes for the purposes of this Act except section 13—

- (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
- (b) any person whom an Ombudsman has appointed to perform an Ombudsman's functions under this Act

organisation means a body of persons, whether corporate or unincorporate, and whether in the public sector or in the private sector; and includes a body of persons comprising 1 employer and 1 or more employees

protected disclosure of information has the meaning given to it by section 6(2)

public funds or public resources includes—

- (a) public money and public stores within the meaning of the Public Finance Act 1977:
- (b) money and stores of a Government agency, or of a local authority, within the meaning of the Public Finance Act 1977:
- (c) money and stores of—
 - (i) a Crown entity within the meaning of the Public Finance Act 1989:
 - (ii) a State enterprise within the meaning of the State-Owned Enterprises Act 1986:
 - (iii) a local authority trading enterprise within the meaning of section 594B(1) of the Local Government Act 1974:
 - (iv) an airport company within the meaning of the Airport Authorities Act 1966:
 - (v) a port company within the meaning of the Port Companies Act 1988:

- (vi) any energy company within the meaning of the Energy Companies Act 1992, including any company or other entity that is deemed, by section 78 or section 81 of that Act, to be an energy company for the purposes of sections 36, 37, 39 to 46, 85, 87, and 88 of that Act:
- (vii) any energy supply operation to which section OC 2 of the Income Tax Act 1994 applies:
- (viii) the New Zealand Local Government Association Limited:
- (ix) any company or any other organisation (as defined in section 594B(2) of the Local Government Act 1974) of which the New Zealand Local Government Association Limited has control directly or indirectly by any means whatsoever

public official means a person who—

- (a) is an employee of a public sector organisation; or
- (b) is concerned in the management of a public sector organisation

public sector organisation means—

- (a) an organisation named or specified in the First Schedule of the Ombudsmen Act 1975:
- (b) an organisation named in the First Schedule of the Official Information Act 1982:
- (c) a local authority or public body named or specified in the First Schedule of the Local Government Official Information and Meetings Act 1987:
- (d) the Office of the Clerk of the House of Representatives:
- (e) the Parliamentary Service:
- (f) an intelligence and security agency:
- (g) a local authority trading enterprise within the meaning of section 594B(1) of the Local Government Act 1974

serious wrongdoing includes any serious wrongdoing of any of the following types:

- (a) an unlawful, corrupt, or irregular use of public funds or public resources; or
- (b) an act, omission, or course of conduct that constitutes a serious risk to public health or public safety or the environment; or
- (c) an act, omission, or course of conduct that constitutes a serious risk to the maintenance of law, including the

prevention, investigation, and detection of offences and the right to a fair trial; or

- (d) an act, omission, or course of conduct that constitutes an offence; or
- (e) an act, omission, or course of conduct by a public official that is oppressive, improperly discriminatory, or grossly negligent, or that constitutes gross mismanagement,—

whether the wrongdoing occurs before or after the commencement of this Act

working day means any day of the week other than—

- (a) Saturday, Sunday, Good Friday, Easter Monday, Anzac Day, Labour Day, the Sovereign's birthday, and Waitangi Day; and
- (b) a day in the period beginning on 25 December in any year and ending on 15 January (both dates inclusive) in the following year.

4 Act binds the Crown

This Act binds the Crown.

5 Purpose of Act

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

- (a) by facilitating the disclosure and investigation of matters of serious wrongdoing in or by an organisation; and
- (b) by protecting employees who, in accordance with this Act, make disclosures of information about serious wrongdoing in or by an organisation.

Protected disclosures

6 Disclosures to which Act applies

- (1) An employee of an organisation may disclose information in the manner provided by this Act if—
 - (a) the information is about serious wrongdoing in or by that organisation; and
 - (b) the employee believes on reasonable grounds that the information is true or likely to be true; and
 - (c) the employee wishes to disclose the information so that the serious wrongdoing can be investigated; and
 - (d) the employee wishes the disclosure to be protected.

- (2) Any disclosure made in accordance with subsection (1) is a protected disclosure of information for the purposes of this Act.

7 Disclosure must be made in accordance with internal procedures

- (1) An employee must disclose information in the manner provided by internal procedures established by and published in the organisation, or the relevant part of the organisation, for receiving and dealing with information about serious wrongdoing.
- (2) This section is subject to sections 12 to 14.

8 Disclosure may be made to head of organisation in certain circumstances

- (1) A disclosure of information may be made to the head or a deputy head of the organisation if—
 - (a) the organisation has no internal procedures established and published for receiving and dealing with information about serious wrongdoing; or
 - (b) the employee making the disclosure believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedures is or may be involved in the serious wrongdoing alleged in the disclosure; or
 - (c) the employee making the disclosure believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedures is, by reason of any relationship or association with a person who is or may be involved in the serious wrongdoing alleged in the disclosure, not a person to whom it is appropriate to make the disclosure.
- (2) This section is subject to sections 12 to 14.

9 Disclosure may be made to appropriate authority in certain circumstances

- (1) A disclosure of information may be made to an appropriate authority if the employee making the disclosure believes on reasonable grounds—
 - (a) that the head of the organisation is or may be involved in the serious wrongdoing alleged in the disclosure; or

- (b) that immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or
 - (c) that there has been no action or recommended action on the matter to which the disclosure relates within 20 working days after the date on which the disclosure was made.
- (2) This section is subject to sections 12 to 14.

10 Disclosure may be made to Minister of the Crown or Ombudsman in certain circumstances

- (1) A disclosure of information may be made to a Minister of the Crown or an Ombudsman if the employee making the disclosure—
- (a) has already made substantially the same disclosure in accordance with section 7 or section 8 or section 9; and
 - (b) believes on reasonable grounds that the person or appropriate authority to whom the disclosure was made—
 - (i) has decided not to investigate the matter; or
 - (ii) has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority; or
 - (iii) has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and
 - (c) continues to believe on reasonable grounds that the information disclosed is true or likely to be true.
- (2) A disclosure under this section may be made to an Ombudsman only if—
- (a) it is in respect of a public sector organisation; and
 - (b) it has not already been made to an Ombudsman under section 9.
- (3) This section is subject to sections 12 to 14.

11 Public sector organisations to establish internal procedures

- (1) Every public sector organisation must have in operation appropriate internal procedures for receiving and dealing with information about serious wrongdoing in or by that organisation.
- (2) The internal procedures must—
 - (a) comply with the principles of natural justice; and
 - (b) identify the persons in the organisation to whom a disclosure may be made; and
 - (c) include reference to the effect of sections 8 to 10.
- (3) Information about the existence of the internal procedures, and adequate information on how to use the procedures, must be published widely in the organisation and must be republished at regular intervals.

*Intelligence and security and international relations***12 Special rules on procedures of intelligence and security agency**

The internal procedures of an intelligence and security agency must—

- (a) provide that the persons to whom a disclosure may be made must be persons holding an appropriate security clearance and be authorised to have access to the information; and
- (b) state that the only appropriate authority to whom information may be disclosed is the Inspector-General of Intelligence and Security; and
- (c) invite any employee who has disclosed, or is considering the disclosure of, information under this Act to seek information and guidance from the Inspector-General of Intelligence and Security, and not from an Ombudsman; and
- (d) state that no disclosure may be made to an Ombudsman, or to a Minister of the Crown other than—
 - (i) the Minister responsible for the relevant intelligence and security agency; or
 - (ii) the Prime Minister.

13 Special rules on procedures of certain organisations relating to international relations and intelligence and security

The internal procedures of—

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

must, insofar as they relate to the disclosure of information concerning the international relations of the Government of New Zealand or intelligence and security matters,—

- (e) provide that the persons to whom a disclosure may be made must be persons holding an appropriate security clearance and be authorised to have access to the information; and
- (f) state that the only appropriate authority to whom information may be disclosed is an Ombudsman; and
- (g) invite any employee who has disclosed, or is considering the disclosure of, information under this Act to seek information and guidance from an Ombudsman; and
- (h) state that no disclosure may be made to a Minister of the Crown other than,—
 - (i) in the case of a disclosure relating to the international relations of the Government of New Zealand, either the Prime Minister or the Minister responsible for foreign affairs and trade; or
 - (ii) in the case of a disclosure relating to intelligence and security matters, either the Prime Minister or the Minister responsible for an intelligence and security agency.

14 Further protection of information relating to intelligence and security and international relations

Neither the Inspector-General of Intelligence and Security nor an Ombudsman may disclose information referred to in section 12 or section 13 except in accordance with the provisions of the Inspector-General of Intelligence and Security Act 1996 or the Ombudsmen Act 1975, as the case may be.

*Further provisions related to making disclosures***15 Information and guidance for employees making disclosures**

Where an employee notifies the Office of the Ombudsmen, orally or in writing, that he or she has disclosed, or is considering the disclosure of, information under this Act, an Ombudsman must provide information and guidance to that employee on the following matters:

- (a) the kinds of disclosures that are protected under this Act;
- (b) the manner in which, and the persons to whom, information may be disclosed under this Act;
- (c) the broad role of each authority referred to in subparagraphs (i) to (x) of paragraph (a) of the definition of **appropriate authority** in section 3;
- (d) the protections and remedies available under this Act and the Human Rights Act 1993 if the disclosure of information in accordance with this Act leads to victimisation of the person making the disclosure;
- (e) how particular information disclosed to an appropriate authority may be referred to another appropriate authority under this Act.

16 Reference from one appropriate authority to another of information disclosed

- (1) Where an appropriate authority to whom a protected disclosure of information is made considers, after consultation with another appropriate authority, that the information disclosed can be more suitably and conveniently investigated by that other appropriate authority, the appropriate authority to whom the information is disclosed may refer that information to that other appropriate authority.
- (2) Where, under subsection (1), information is referred from one appropriate authority to another, the appropriate authority to whom the information has been referred must promptly notify the person by whom the protected disclosure of information was made that the information disclosed has been so referred.
- (3) A protected disclosure of information does not, by reason of the information being referred under subsection (1), cease to be a protected disclosure of information.

- (4) Nothing in this section prevents a protected disclosure of information being transferred from one appropriate authority to another on more than 1 occasion.

Protections

17 Personal grievance

- (1) Where an employee who makes a protected disclosure of information under this Act claims to have suffered retaliatory action from his or her employer or former employer, that employee,—
- (a) if that retaliatory action consists of or includes dismissal, may have a personal grievance, for the purposes of section 27(1)(a) of the Employment Contracts Act 1991, because of a claim of unjustifiable dismissal, and Part III of that Act applies accordingly; and
- (b) if that retaliatory action consists of action other than dismissal or includes an action in addition to dismissal, may have a personal grievance, for the purposes of section 27(1)(b) of the Employment Contracts Act 1991, because of a claim described in that section of that Act, and Part III of that Act applies accordingly.
- (2) This section applies only to employees within the meaning of the Employment Contracts Act 1991.

18 Immunity from civil and criminal proceedings

- (1) No person who—
- (a) makes a protected disclosure of information; or
- (b) refers a protected disclosure of information to an appropriate authority for investigation—
- is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made or referred that disclosure of information.
- (2) Subsection (1) applies despite any prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract, oath, or practice.

19 Confidentiality

- (1) Every person to whom a protected disclosure is made or referred must use his or her best endeavours not to disclose information that might identify the person who made the protected disclosure unless—

- (a) that person consents in writing to the disclosure of that information; or
 - (b) the person who has acquired knowledge of the protected disclosure reasonably believes that disclosure of identifying information—
 - (i) is essential to the effective investigation of the allegations in the protected disclosure; or
 - (ii) is essential to prevent serious risk to public health or public safety or the environment; or
 - (iii) is essential having regard to the principles of natural justice.
- (2) A request for information under the Official Information Act 1982 (other than one made by a member of the police for the purpose of investigating an offence) may be refused, as contrary to this Act, if it might identify a person who has made a protected disclosure.

Miscellaneous provisions

20 False allegations

The protections conferred by this Act and by section 66(1)(a) of the Human Rights Act 1993 do not apply where the person who makes a disclosure of information makes an allegation known to that person to be false or otherwise acts in bad faith.

21 Other protections preserved

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

22 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 for the purposes of this Act.

23 Provisions relating to Ombudsmen

- (1) The functions and powers of Ombudsmen under the Ombudsmen Act 1975, including the function of each Ombudsman to make an investigation into a matter of his or

her 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 disclosure of information made under this Act as Ombudsmen have in relation to a complaint under the Ombudsmen Act 1975, but are not bound to investigate the disclosure of information.

24 Review of operation of Act

- (1) The Minister of State Services must, not sooner than 2 years after the commencement of this Act, cause a report to be prepared on—
 - (a) the operation of this Act since its commencement; and
 - (b) whether any amendments to the scope and contents of this Act are necessary or desirable, including an amendment to require further periodic reports to the House of Representatives on the operation of this Act.
- (2) The Minister of State Services must ensure that the Chief Ombudsman is consulted on the matters to be considered in the report.
- (3) The Minister of State Services must, not later than 3 years after the commencement of this Act, present a copy of the report to the House of Representatives.

Amendment to Human Rights Act 1993

25 Victimisation

Section 66(1) of the Human Rights Act 1993 is amended by repealing paragraph (a), and substituting the following paragraph:

- “(a) on the ground that that person, or any relative or associate of that person,—
- “(i) intends to make use of his or her rights under this Act or to make a disclosure under the Protected Disclosures Act 2000; or
 - “(ii) has made use of his or her rights, or promoted the rights of some other person, under this Act, or has made a disclosure, or has encouraged disclosure by some other person, under the Protected Disclosures Act 2000; or

- “(iii) has given information or evidence in relation to any complaint, investigation, or proceeding under this Act or arising out of a disclosure under the Protected Disclosures Act 2000; or
- “(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”.
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Legislative history

1 August 1996	Introduction and first reading (Bill 208-1)
27 August 1996	Second reading and referral to Government Administration Committee
30 September 1997	Reported from Government Administration Committee (Bill 208-2)
16 October 1997	Consideration of report
28 March 2000	Committee of the whole House (Bill 208-3)
29 March 2000	Third reading
3 April 2000	Royal assent

This Act is administered in the State Services Commission.
