

WHAT IS A DISCLOSURE?

A disclosure is Information given by an employee regarding the improper conduct of:

- 1) an employer of the employee.
or
- 2) another employee of the employer.

WHAT IS A PROTECTED DISCLOSURE?

A protected disclosure is a disclosure made in specific circumstances by an employee to an employer, Minister, Prescribed Person, the Designated Authority, an Attorney-at-Law or to the Prime Minister.

WHAT IS THE PROTECTED DISCLOSURES ACT, 2011?

The Protected Disclosure Act was established to:

- (a) facilitate and encourage the making, in a responsible manner, of disclosures of improper conduct, in the public interest;
- (b) regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; and
- (c) protect employees who make specified disclosures from being subjected to occupational detriment.

WHAT CONSTITUTES IMPROPER CONDUCT?

Improper Conduct means any:

- (a) criminal offence;
- (b) failure to carry out a legal obligation;

- (c) conduct that is likely to result in a miscarriage of justice;
- (d) conduct that is likely to threaten the health or safety of a person;
- (e) conduct that is likely to threaten or damage the environment;
- (f) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;
- (g) act of reprisal against or victimization of an employee;
- (h) conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion; or
- (i) wilful concealment of any act described in (a) to (h) above.

WHAT IS OCCUPATIONAL DETRIMENT?

Occupational detriment means any act or omission that results in an employee, in relation to his employment, being:

- (a) subject to disciplinary action;
- (b) dismissed, suspended, or demoted;
- (c) harassed, intimidated or victimized;
- (d) transferred against his will;
- (e) refused transfer or promotion;
- (f) subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
- (g) provided with an adverse reference;
- (h) denied appointment to any employment, profession or office;

- (i) threatened with any of the actions specified in (a) to (h); or
- (j) otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and job security;

HOW SHOULD A DISCLOSURE OF IMPROPER CONDUCT BE MADE?

A disclosure of improper conduct should first be made to your employer.

Under the Act the employer must establish procedures for the receiving, investigating or otherwise dealing with disclosures. The employer must also appoint at least **one** person as a **Designated Officer** with responsibility for receiving and investigating disclosures.

This Designated Officer would also have the responsibility to give an update of the progress of the investigation, findings and recommendations to his employer, the person who made the disclosure and the Designated Authority.

Alternatively

- 1) A disclosure can be made to a Minister if the person making the disclosure is employed to the Ministry or is employed to a Department or Public Body under that Ministry.
- 2) A disclosure can be made to a Prescribed Person if the employee believes that the subject matter of the improper conduct falls within their portfolio.
- 3) A disclosure can be made to the Designated Authority where there is a reasonable fear of occupational detriment, fear that the evidence

of the improper conduct will be destroyed or where no action was taken on an earlier disclosure made.

- 4) A disclosure can be made to the Minister with portfolio responsibility or the Prime Minister or to both on matter that prejudice national security, defence or international relations.

IS THE INFORMATION MADE IN A PROTECTED DISCLOSURE CONFIDENTIAL?

Under the Act the employer must take all reasonable steps to protect the identity of an employee who makes a disclosure and to treat all disclosures, statements given, information or thing provided to the designated officer as secret and confidential.

Exceptions

The circumstances in which a person may disclose information obtained in an investigation of a protected disclosure is in the furtherance of an investigation or in any legal or disciplinary proceedings. However, the identity of the person who made the disclosure must not be disclosed.

HOW CAN THE EMPLOYEE WHO MAKE A DISCLOSURE BE ASSURED THAT HE WILL NOT BE VICTIMIZED?

Under the Act an employee rights are as follows:

- (a) An employee shall not be subjected to any occupational detriment on the basis that the employee seeks to make, has made, or intends to make, a protected disclosure.
- (b) An employee who is dismissed as a consequence of seeking to make, making or intending to make a protected disclosure shall be treated as being unjustifiably dismissed.
- (c) Where an employee suffers occupational detriment at or about the same time that he makes a protected disclosure, the occupational detriment shall be presumed to be a consequence of the protected disclosure, unless the employer shows that the act that constitutes the occupational detriment is otherwise justified.

This material is intended as a general guide and should not be considered as part of the Protected Disclosures Act, 2011 or the Protected Disclosures Procedural Guidelines.

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INTEGRITY COMMISSION



A GUIDE TO

THE

**PROTECTED DISCLOSURES
ACT, 2011**

&

**THE PROTECTED
DISCLOSURES PROCEDURAL
GUIDELINES**