

Version  
as at 12 April 2022



## Protected Disclosures Act 2000

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

### Contents

	Page
1      Title	3
2      Commencement	3
3      Interpretation	3
4      Act binds the Crown	6
5      Purpose of Act	6
<i>Protected disclosures</i>	
6      Disclosures to which Act applies	6
6A     Technical failure to comply with or refer to Act	7
6B     Role of Ombudsmen in providing information and guidance	7
6C     Information about internal procedures	8
7      Disclosure must be made in accordance with internal procedures	8
8      Disclosure may be made to head of organisation in certain circumstances	8
9      Disclosure may be made to appropriate authority in certain circumstances	9
10     Disclosure may be made to Minister of the Crown or Ombudsman in certain circumstances	9

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#### Note

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**This Act is administered by the Public Service Commission.**

11	Public sector organisations to establish internal procedures	10
	<i>Intelligence and security and international relations</i>	
12	Special rules on procedures of organisations relating to intelligence and security matters	10
13	Special rules on procedures of certain organisations relating to international relations	11
14	Further protection of information relating to intelligence and security and international relations	11
	<i>Further provisions concerning Ombudsmen</i>	
15	Ombudsmen may escalate disclosure to appropriate authority or Minister or investigate disclosure	12
15A	Ombudsmen may take over some investigations or investigate in conjunction with public sector organisation	13
15B	Ombudsmen may review and guide investigations by public sector organisations	13
15C	Ombudsmen may receive reports on investigations and include information in annual report	13
15D	Chief Ombudsman may appoint persons to perform Ombudsman's functions under this Act	14
15E	Miscellaneous provisions relating to Ombudsmen	14
	<i>Reference from one appropriate authority to another of information disclosed</i>	
16	Reference from one appropriate authority to another of information disclosed	15
	<i>Protections</i>	
17	Personal grievance	15
18	Immunity from civil and criminal proceedings	16
19	Confidentiality	16
19A	Protections extend to volunteers of supporting information	17
	<i>Miscellaneous provisions</i>	
20	False allegations	17
21	Other protections preserved	17
22	Legal professional privilege	17
23	No contracting out of Act	18
24	Review of operation of Act [ <i>Repealed</i> ]	18
	<i>Amendment to Human Rights Act 1993</i>	
25	Victimisation	18

## 1 Title

This Act is the Protected Disclosures Act 2000.

## 2 Commencement

This Act comes into force on 1 January 2001.

## 3 Interpretation

(1) 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 Independent Police Conduct Authority;
- (viii) the Solicitor-General;
- (ix) the Public Service 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

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

**employee**, in relation to an organisation, includes—

- (a) a former employee;
- (b) a homemaker within the meaning of section 5 of the Employment Relations Act 2000;
- (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 (including a person who is a member of the board or governing body of the organisation):
- (f) in relation to the New Zealand Defence Force, a member of the Armed Forces:
- (g) a person who works for the organisation as a volunteer without reward or expectation of reward for that work

**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 4 of the Intelligence and Security Act 2017

**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 the Chief 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 official** means a person who is an employee of a public sector organisation

**public sector organisation** means—

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

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

- (a) an unlawful, corrupt, or irregular use of funds or resources of a public sector organisation; 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) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, Te Rā Aro ki a Matariki/Matariki Observance Day, and Labour Day; and
  - (ab) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; 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.
- (2) An example used in this Act has the following status:
- (a) the example is only illustrative of the provision to which it relates and does not limit the provision; and
  - (b) if the example and the provision to which it relates are inconsistent, the provision prevails.

Section 3(1) **appropriate authority** paragraph (a)(vii): amended, on 29 November 2007, by section 26 of the Independent Police Conduct Authority Amendment Act 2007 (2007 No 38).

Section 3(1) **appropriate authority** paragraph (a)(ix): amended, on 7 August 2020, by section 135 of the Public Service Act 2020 (2020 No 40).

Section 3(1) **classified information**: inserted, on 28 September 2017, by section 319 of the Intelligence and Security Act 2017 (2017 No 10).

Section 3(1) **employee** paragraph (b): substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

Section 3(1) **employee** paragraph (e): amended, on 6 May 2009, by section 4(1) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 3(1) **employee** paragraph (g): added, on 6 May 2009, by section 4(2) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 3(1) **intelligence and security agency**: replaced, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

Section 3(1) **Ombudsman** paragraph (b): amended, on 6 May 2009, by section 4(3) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 3(1) **public funds or public resources**: repealed, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 10).

Section 3(1) **public official**: substituted, on 6 May 2009, by section 4(4) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 3(1) **public sector organisation** paragraph (g): substituted, on 1 July 2003, by section 262 of the Local Government Act 2002 (2002 No 84).

Section 3(1) **serious wrongdoing** paragraph (a): amended, on 1 July 2001, by section 53 of the Public Audit Act 2001 (2001 No 1).

Section 3(1) **working day** paragraph (a): replaced, on 12 April 2022, by wehenga 7 o Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/section 7 of the Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14).

Section 3(1) **working day** paragraph (ab): inserted, on 1 January 2014, by section 8 of the Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19).

Section 3(2): added, on 6 May 2009, by section 4(5) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

#### **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 accordance with 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.
- (3) If an employee of an organisation believes on reasonable grounds that the information he or she discloses is about serious wrongdoing in or by that

organisation but the belief is mistaken, the information must be treated as complying with subsection (1)(a) for the purposes of the protections conferred by this Act and by section 66(1)(a) of the Human Rights Act 1993.

- (4) This section is subject to section 6A.

Section 6(1): amended, on 6 May 2009, by section 5(1) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 6(3): added, on 6 May 2009, by section 5(2) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 6(4): added, on 6 May 2009, by section 5(2) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **6A Technical failure to comply with or refer to Act**

- (1) A disclosure of information is not prevented from being a protected disclosure of information for the purposes of this Act merely because—
- (a) of a technical failure to comply with sections 7 to 10 if the employee has substantially complied with the requirement in section 6 to disclose the information in accordance with this Act; or
  - (b) the employee does not expressly refer to the name of this Act when the disclosure is made.

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#### **Example**

Person A is an employee of Organisation B.

B's internal procedures for receiving and dealing with information about serious wrongdoing require the information to be provided to B's Human Resources Manager using a particular form.

Person A provides the information using the form to B's chief executive rather than the Human Resources Manager. Person A otherwise substantially complies with the Act.

The failure to comply is merely technical. Under this section, the disclosure is still a protected disclosure for the purposes of this Act.

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- (2) This section applies despite anything to the contrary expressed or implied in the relevant internal procedures.

Section 6A: inserted, on 6 May 2009, by section 6 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **6B Role of Ombudsmen in providing information and guidance**

- (1) An Ombudsman may provide information and guidance to an employee on any matter concerning this Act (either on a request made at any time or at the Ombudsman's discretion).
- (2) If 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 paragraph (a)(i) to (x) of the definition of appropriate authority in section 3(1);
- (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.

Section 6B: inserted, on 6 May 2009, by section 6 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **6C 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 concerning whether the organisation has established and published internal procedures for receiving and dealing with information about serious wrongdoing; and
  - (b) a copy of those procedures; and
  - (c) information about how those procedures operate.
- (2) An organisation is not required to comply with a request made under subsection (1) if it is not a public sector organisation.

Section 6C: inserted, on 6 May 2009, by section 6 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **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 it has not already been made to an Ombudsman under section 9; or
  - (b) it is in respect of an organisation other than a public sector organisation and the disclosure is made for the purpose of allowing the Ombudsman to act under section 15 or 16.
- (3) This section is subject to sections 12 to 14.

Section 10(2): substituted, on 6 May 2009, by section 7 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

## **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 organisations relating to intelligence and security matters**

- (1) This section applies to—
- (a) an intelligence and security agency; and
  - (b) any other organisation in the public sector that holds or has access to—
    - (i) classified information; or
    - (ii) information relating to the activities of an intelligence and security agency.
- (2) An organisation to which this section applies must have internal procedures that—
- (a) provide that the persons to whom a disclosure of information described in subsection (1)(b) 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 described in subsection (1)(b) 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 described in subsection (1)(b) 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 of information described in subsection (1)(b) may be made to an Ombudsman or to a Minister of the Crown other than—
  - (i) the Minister responsible for an intelligence and security agency; or
  - (ii) the Prime Minister.

Section 12: replaced, on 28 September 2017, by section 320 of the Intelligence and Security Act 2017 (2017 No 10).

### **13 Special rules on procedures of certain organisations relating to international relations**

- (1) This section applies to the internal procedures of the following agencies to the extent that those procedures relate to the disclosure of information (other than classified information) concerning the international relations of the Government of New Zealand:
  - (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.
- (2) The internal procedures must—
  - (a) state that the only appropriate authority to whom information may be disclosed is an Ombudsman; and
  - (b) 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
  - (c) state that no disclosure may be made to a Minister of the Crown other than—
    - (i) the Prime Minister; or
    - (ii) the Minister responsible for foreign affairs and trade.

Section 13: replaced, on 28 September 2017, by section 320 of the Intelligence and Security Act 2017 (2017 No 10).

### **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 subpart 1 of Part 6 of the Intelligence and Security Act 2017 or the Ombudsmen Act 1975, as the case may be.

Section 14: amended, on 28 September 2017, by section 335 of the Intelligence and Security Act 2017 (2017 No 10).

*Further provisions concerning Ombudsmen*

Heading: substituted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

**15 Ombudsmen may escalate disclosure to appropriate authority or Minister or investigate disclosure**

- (1) An Ombudsman may, with the consent of an employee who has made a protected disclosure of information to any organisation, appropriate authority, or other person in accordance with this Act,—
  - (a) refer the disclosure to an appropriate authority or to another appropriate authority if the Ombudsman considers, after consultation with that appropriate authority, that any of the circumstances in section 9(1)(a) to (c) apply; or
  - (b) refer the disclosure to a Minister of the Crown if the Ombudsman considers, after consultation with that Minister, that any of the circumstances in section 10(1)(b)(i) to (iii) apply; or
  - (c) investigate the disclosure if the Ombudsman considers that—
    - (i) the disclosure relates to a public sector organisation; and
    - (ii) any of the circumstances in section 9(1)(a) to (c) or section 10(1)(b)(i) to (iii) apply.
- (2) Subsection (1)—
  - (a) applies despite sections 7 to 10:
  - (b) does not authorise an Ombudsman to act if the protected disclosure of information is in respect of the Office of the Parliamentary Commissioner for the Environment.
- (3) If an Ombudsman makes a referral under this section, he or she must promptly notify any organisation or other person that he or she is aware may be investigating the disclosure that the information disclosed has been referred under this section to an appropriate authority or Minister of the Crown for investigation.
- (4) A protected disclosure of information does not, by reason of an Ombudsman acting under subsection (1), cease to be a protected disclosure of information.
- (5) Nothing in this section prevents a protected disclosure of information being referred under—
  - (a) this section on more than 1 occasion; or
  - (b) section 16.
- (6) This section is subject to sections 12 to 14.

Section 15: substituted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

**15A Ombudsmen may take over some investigations or investigate in conjunction with public sector organisation**

- (1) An Ombudsman may take over an investigation of a disclosure of information by a public sector organisation, or investigate a disclosure of information in conjunction with a public sector organisation, if—
  - (a) the disclosure is in respect of the public sector organisation; and
  - (b) the Ombudsman considers that any of the circumstances in section 10(1)(b)(i) to (iii) apply; and
  - (c) the employee who made the disclosure consents to the Ombudsman acting under this section; and
  - (d) in the case of an investigation in conjunction with a public sector organisation, the public sector organisation consents to the Ombudsman acting under this section.
- (2) However, subsection (1) does not authorise an Ombudsman to act if the protected disclosure of information is in respect of the Office of the Parliamentary Commissioner for the Environment.
- (3) This section is subject to sections 12 to 14.

Section 15A: inserted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

**15B Ombudsmen may review and guide investigations by public sector organisations**

- (1) An Ombudsman may review and guide any investigation of a protected disclosure of information by a public sector organisation (either on the organisation's request or at the Ombudsman's discretion).
- (2) 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.
- (3) Subsection (1) does not apply if the public sector organisation is the Office of the Parliamentary Commissioner for the Environment.
- (4) This section is subject to sections 12 to 14.

Section 15B: inserted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

**15C 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 15:

- (b) investigations in relation to which an Ombudsman has acted under section 15B:
  - (c) investigations in relation to which an Ombudsman has otherwise provided information or guidance under this Act.
- (2) The Ombudsmen may include (among other matters) in their annual report under section 29 of the Ombudsmen Act 1975 information concerning all or any of the following in respect of the period covered by the report:
- (a) current guidance issued by the Ombudsmen in respect of this Act:
  - (b) the number and types of information and guidance inquiries made to the Ombudsmen in respect of this Act:
  - (c) the number of protected disclosures of information made to the Ombudsmen:
  - (d) the number of investigations of disclosures of information undertaken or taken over by the Ombudsmen:
  - (e) the number of investigations referred under section 15:
  - (f) the outcome of the matters referred to in paragraphs (b) to (e) (if known by the Ombudsmen).

Section 15C: inserted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **15D Chief Ombudsman may appoint persons to perform Ombudsman's functions under this Act**

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

Section 15D: inserted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **15E Miscellaneous 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.
- (3) Sections 19, 20, and 30 of the Ombudsmen Act 1975 apply, with all necessary modifications, for the purpose of allowing an Ombudsman to obtain information, documents, papers, or things that would in his or her opinion assist him or her to act under section 6C, 15B, or 15C in relation to a public sector organisation.

Section 15E: inserted, on 6 May 2009, by section 8 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

*Reference from one appropriate authority to another of information disclosed*

Heading: inserted, on 6 May 2009, by section 9 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

**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 paragraph (a) of section 103(1) of the Employment Relations Act 2000, because of a claim of unjustifiable dismissal, and Part 9 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 paragraph (b) of section 103(1) of the Employment Relations Act 2000, because of a claim described in that paragraph, and Part 9 of that Act applies accordingly.
- (2) This section applies only to employees within the meaning of the Employment Relations Act 2000.

Section 17: substituted, on 2 October 2000, by section 240 of the Employment Relations Act 2000 (2000 No 24).

## **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 or under the Local Government Official Information and Meetings Act 1987 (other than one made by a constable 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.
- (3) An Ombudsman may—
- (a) provide information and guidance to organisations and employees concerning the circumstances in which anonymous disclosures of information may be made under this Act; and
  - (b) otherwise provide advice and assistance to organisations and other persons in relation to the duty specified in subsection (1).

Section 19(2): amended, on 6 May 2009, by section 10(1) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

Section 19(2): amended, on 1 October 2008, pursuant to section 116(a)(ii) of the Protected Disclosures Amendment Act 2009 (2008 No 72).

Section 19(3): added, on 6 May 2009, by section 10(2) of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### **19A Protections extend to volunteers of supporting information**

- (1) The protections conferred by sections 17 to 19 apply, with all necessary modifications, to a person who volunteers supporting information as if the information were a protected disclosure of information.
- (2) In this section, a person volunteers supporting information if the person—
  - (a) provides information, in support of a protected disclosure of information made by another person, to—
    - (i) a person investigating the disclosure; or
    - (ii) the person who made the disclosure; and
  - (b) is an employee of the organisation in respect of which the disclosure was made; and
  - (c) wishes to provide the supporting information so that the serious wrongdoing can be investigated.
- (3) However, a person does not volunteer supporting information if the person provides the supporting information only after being—
  - (a) required to do so under any enactment, rule of law, or contract for the purposes of the investigation; or
  - (b) approached during the course of the investigation by, or on behalf of, the person investigating the matter.

Section 19A: inserted, on 6 May 2009, by section 11 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

### *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 No contracting out of Act**

- (1) This Act has effect despite any provision to the contrary in any agreement or contract.
- (2) Any provision in any agreement or contract that purports to require an employee to withdraw or abandon a disclosure of information made under this Act is of no effect.

Section 23: substituted, on 6 May 2009, by section 12 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

**24 Review of operation of Act**

*[Repealed]*

Section 24: repealed, on 6 May 2009, by section 12 of the Protected Disclosures Amendment Act 2009 (2009 No 11).

*Amendment to Human Rights Act 1993*

**25 Victimisation**

*Amendment(s) incorporated in the Act(s).*

## **Protected Disclosures Amendment Act 2009**

Public Act	2009 No 11
Date of assent	5 May 2009
Commencement	see section 2

### **1 Title**

This Act is the Protected Disclosures Amendment Act 2009.

### **2 Commencement**

This Act comes into force on the day after the date on which it receives the Royal assent.

## **Part 2 Transitional provision**

### **13 Transitional provision**

The amendments made by this Act apply to disclosures of information made after the commencement of this Act.

## Notes

### **1** *General*

This is a consolidation of the Protected Disclosures Act 2000 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2** *Legal status*

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3** *Editorial and format changes*

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4** *Amendments incorporated in this consolidation*

Te Ture mō te Hararei Tūmatanui o te Kāhui o Matariki 2022/Te Kāhui o Matariki Public Holiday Act 2022 (2022 No 14): wehenga 7/section 7

Public Service Act 2020 (2020 No 40): section 135

Intelligence and Security Act 2017 (2017 No 10): sections 319, 320, 335

Holidays (Full Recognition of Waitangi Day and ANZAC Day) Amendment Act 2013 (2013 No 19): section 8

Protected Disclosures Amendment Act 2009 (2009 No 11)

Policing Act 2008 (2008 No 72): section 116(a)(ii)

Independent Police Conduct Authority Amendment Act 2007 (2007 No 38): section 26

Local Government Act 2002 (2002 No 84): section 262

Public Audit Act 2001 (2001 No 10): section 53

Employment Relations Act 2000 (2000 No 24): section 240