

## How protected are your Employees' disclosures?

### Recent legislative updates facilitate and afford individuals specific protections around whistleblowing of serious wrongdoing in or by an organisation.

On 1 July 2022, the Protected Disclosures Act 2000 (**the 2000 Act**) was replaced by the Protected Disclosures (Protection of Whistleblowers) Act 2022 (**the 2022 Act**). The purpose of the 2022 Act remains the same, which is to facilitate the disclosure and investigation of serious wrongdoing in the workplace, and to provide protection for employees and other workers who report concerns.

The 2022 Act aims to better facilitate protected disclosures through more accessible legislation, and strengthen and clarify available protections for those who 'blow the whistle' on serious wrongdoing in their workplace or former workplace.

The 2022 Act allows disclosers to report serious wrongdoing directly to an appropriate authority at any time without first having to raise concerns within their own organisation. The 2000 Act only provided an ability to report straight to an appropriate authority if the alleged wrongdoing concerned the head of the discloser's organisation, or in an exceptional or urgent situation.

#### What is a protected disclosure?

A **protected disclosure** is the disclosure of information in good faith by a discloser who believes on reasonable grounds that there is or has been, **serious wrongdoing** in or by the discloser's organisation.

#### Who are protected?

The rights under the 2022 Act apply to a **discloser**, which in relation to an organisation, means an individual who is (or was formerly)—

- an employee;
- a homemaker;
- a secondee to the organisation;
- engaged or contracted under a contract for services;
- concerned in the management of the organisation; or
- a volunteer.

#### What is serious wrongdoing?

Under s10 of the 2022 Act, **serious wrongdoing** includes any act, omission, or course of conduct in (or by) any organisation that is:

- an offence; or
- a serious risk to, public health, public safety, the health or safety of any individual, or the environment; or
- a serious risk to the maintenance of law; or
- oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement (in a public sector organisation).

The 2022 Act has extended the previous definition of serious wrongdoing to cover private sector use of public funds and authority and to cover behaviour that is a serious risk to the health and safety of any individual (which could include instances of sexual harassment and bullying). This places a significant obligation on an organisation when protected disclosures are made.

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## How protected are your Employees' disclosures (Continued)

### What protections do employees have?

The 2022 Act prohibits 'retaliation' which is defined as any of the following circumstances:

- Dismissing an employee.
- Not offering the employee the same terms of employment, conditions of work or opportunities as other similar employees in the organisation.
- Causing detriment to the employee (including the detrimental effect on the employee's employment, job performance or job satisfaction).
- Retiring the employee or causing the employee to retire or resign.

The 2022 Act also prohibits employers from treating another less favourably because the person has:

- made or intends to make a protected disclosure;
- encouraged someone else to make a protected disclosure; or
- provided information in support of a protected disclosure.

A discloser is also protected even if they are mistaken and there is no serious wrongdoing. Further, another discloser, who discloses information in support of, or relating to, a protected disclosure matter is also entitled to protection even if they are required to disclose that information.

### What are the organisations' obligations?

The 2022 Act provides recommended guidance that the receiver of a protected disclosure should within 20 working days, where practicable, **acknowledge receipt** to the discloser, **consider** whether the disclosure warrants investigation, **check** if the disclosure has been

made elsewhere, **deal with** the matter appropriately, and **inform** the discloser of outcome.

An organisation receiving a disclosure has a positive obligation to inform the discloser of what they have done, or are doing, to deal with the matter and provide reasons. If a receiver decides that no action is required in respect of a disclosure, they must now inform the discloser and provide reasons for their decision. Where a matter may take more than 20 working days to practicably deal with the matter appropriately, the receiver should inform the discloser how long the receiver expects to take to deal with the matter and appropriately update the discloser as the matter is dealt with.

We suggest employers review their current whistleblowing policies and procedures in light of the upcoming changes.

### Want to know more?

If this article raises any questions or concerns, please get in touch with one of our [Employment Team](#).