



Financial Independence Speak up policy

Version 1.1

● What is the Protected Disclosures Act?

The Protected Disclosures Act (PDA) is a law that helps employees to report serious wrongdoing happening in their workplace, without having to worry that detrimental action will be taken against them.

The purpose of the PDA is to promote the public interest by:

facilitating the disclosure and investigation of serious wrongdoing; and

protecting employees who make disclosures about serious wrongdoing in their workplace.

What is considered a serious wrongdoing?

Unlawful, corrupt, or irregular use of public money or resources.

Any criminal offence.

Any breach of our code of conduct and Financial Markets act.

When is my disclosure protected?

Your disclosure **will be protected** if:

- the information is about serious wrongdoing in your workplace;
- you believe on reasonable grounds that the information is true or likely to be true; and
- you want the serious wrongdoing to be investigated.

Your disclosure **won't be protected** if:

- you know the allegations are false, or you act in bad faith; or
- the information you're disclosing is protected by legal professional privilege.

Legal professional privilege means information that is confidential legal advice. It might be emails, memos or reports written by a lawyer in your workplace, or a lawyer who was advising your workplace. It might also be correspondence about a legal action taking place in Court. Sometimes, it can be difficult to spot. You can [contact the Ombudsman](#) for advice about this if you are unsure.

What if I report the information but it does not meet the threshold of ‘serious wrongdoing’?

It is important that when you make your disclosure, you believe on reasonable grounds that the information is about serious wrongdoing and is true, or likely to be true.

If you are genuinely mistaken, the PDA will protect you anyway. Section 6(3) of the PDA provides that if an employee makes a disclosure but is mistaken, your workplace must treat it as complying with the PDA, for the purposes of the protections that the Act provides. This means that you should not suffer retaliation simply for making a protected disclosure, even if it turns out that you were mistaken.

What protections do I have?

When you make a protected disclosure, you will be protected in the following ways:

- Your disclosure must be kept confidential.
- You will be protected from civil and criminal proceedings.
- You will be protected from retaliatory action or disadvantage in your workplace, and can take a personal grievance if this happens.
- You will be protected by the anti-victimisation provisions of the [Human Rights Act 1993](#).

These are explained below, and if you need further advice, you can [contact the Ombudsman](#).

Confidentiality

When you make a protected disclosure, the person you make it to must use their best endeavours not to disclose any information that would identify you, unless one of the exceptions in the Act applies. This is a very strong obligation to keep your identity confidential.

The exceptions are if you consent to the disclosure, or if disclosure is essential:

- to the effective investigation of the allegations;
- to prevent serious risk to public health or safety, or the environment; or
- to comply with the principles of natural justice.

You might be thinking about making an anonymous protected disclosure. If you are, it is important to think about whether your workplace will be able to investigate the information if it does not know who you are, or cannot ask you further questions.

The Ombudsman can provide information and guidance to you and your workplace about the circumstances in which anonymous disclosures can be made under the PDA.

Will I be told if my confidentiality is going to be breached?

The Ombudsman recommends that your workplace speak to you if you have made a protected disclosure and it looks like identifying information will need to be disclosed for one of the specified reasons.

If, when you make your disclosure, you have serious concerns about confidentiality or some other risk to you, it is important to be open about this with your employer. Providing this information to your workplace can be useful for when they are assessing any risks arising from your disclosure, and when planning action to provide you with support.

Immunity from civil and criminal proceedings

When you make a protected disclosure, you won't be liable to any civil, criminal or disciplinary proceedings for having done so. This applies even if there is a prohibition or restriction on disclosing the information (though not where the information being disclosed is protected by legal professional privilege).

An example of this is if your employment agreement states that you cannot disclose confidential information that you receive from a client or customer or cannot disclose information outside of your workplace. As long as this information is not protected by legal professional privilege, you can disclose it in order to make your protected disclosure. No civil, criminal or disciplinary proceedings can be taken against you because you have disclosed the information.

What if I was involved in the wrongdoing, too?

The protections provided by the PDA only apply to retaliation or detrimental effects that you might experience *because* you made the protected disclosure. This includes immunity from civil and criminal liability for having disclosed what might have been confidential information when you made the protected disclosure.

However, this does not mean that you are protected from civil or criminal liability if you were involved in the wrongdoing, too. Action can still be taken against you for any wrongdoing that you committed.

Personal grievance

If you're an 'employee' within the meaning of the [Employment Relations Act](#), and you believe you've suffered retaliatory action by your employer as a result of making a protected disclosure, you may have a personal grievance because of a claim that:

- you've been unjustifiably dismissed; or
- your employment or conditions of employment have been affected to your disadvantage by some unjustifiable action by your employer.

If you think that this has happened and you would like to consider this type of action, it is important to get legal advice early on. The Employment Relations Act has time limits within which you must raise your personal grievance with your employer.

Who do I disclose the information to?

There is a hidden page on the website, for you to be able to make any complaint that you wish to be confidential. This form will come through to Alana's email, so if you wish to disclose information about Alana you could do one of two things. Speak to Matthew or Ben or leave a letter on their desk.

<https://www.financialindependence.co.nz/speakup>

Or you can make the disclosure directly to the Authorities, such as the police or the ombudsman.

References:

<https://www.legislation.govt.nz/act/public/2000/0007/latest/DLM53466.html#DLM2035939>

<https://www.ombudsman.parliament.nz/what-ombudsman-can-help/serious-wrongdoing-work-whistleblowing>

Approval and Version Control

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