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Kick-off: Aotearoa's new whistleblowing regime takes effect

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The Protected Disclosures (Protection of Whistleblowers) Act2022 (Act) is now in force, replacing New Zealand’s previous whistleblower protection legislation. The purpose of the Act remains the same - facilitating the disclosure and investigation of serious wrongdoing in the workplace and providing protection to workers, and other persons, who report suspected serious wrongdoing.

The Act seeks to strengthen our disclosure regime, clarify the processes to be followed by both disclosers and recipients of protected disclosures, and to outline the protections available to whistleblowers.

A major change is that the Act clarifies the requirements of internal protected disclosure policies that public sector organisations, including councils, must have in place.

What is serious wrongdoing?

‘Serious wrongdoing’ that may be reported under the Act covers all the types of wrongdoing that were specified in the previous legislation, including acts and omissions that: are offences; pose serious risk to public health and safety, the environment, or the maintenance of law; are an unlawful, corrupt, or irregular use of funds or resources of public sector organisations; or are oppressive, unlawfully discriminatory, or grossly negligent, or constitute gross mismanagement, in the circumstances specified in the Act.

The Act broadens this definition further to cover the use of public funds generally, including in the private sector, and to capture behaviour which poses a serious risk to a person’s health and safety (including bullying and harassment).

What else has changed?

Further changes include:

- 1. APPROPRIATE AUTHORITIES:** A whistleblower may now make a protected disclosure directly to an appropriate authority (like the Ombudsman or the Commerce Commission) at any time, without having to first follow an internal process. Previously, this was limited to specified circumstances.
- 2. PROTECTIONS:** The adverse conduct that a whistleblower could face, and the associated protections from that conduct, have been clarified, providing greater context and rationale for the protections contained in the Act. These include protection from retaliation by way of employment process, and victimization – treating a whistleblower less favourably than others in the same or similar circumstances.
- 3. INTERNAL POLICIES:** The Act clarifies the internal protected disclosure policy and procedure requirements to be followed by public sector organisations. Under the Act, all public sector organisations must have internal procedures in place.
- 4. PROCESS:** The Act sets out, in detail, the process that should be followed when either making or receiving a disclosure under the Act.

Next steps

Organisations with internal protected disclosure policies already in place should review and update these to ensure that they comply with the new Act. If your organisation does not currently have an internal protected disclosure policy, you must now prepare one and circulate it amongst your workers.

You should also familiarise yourself with the processes and requirements under the Act to ensure your organisation is compliant with the new protected disclosure obligations in practice.

If you need help drafting or updating a protected disclosures internal policy or would like to know more about how these changes apply to your organisation, get in touch with the team at Wynn Williams.



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