

Protected disclosures fact sheet



This fact sheet sets out a simple step-by-step guide to deciding if the *Protected Disclosures Act 1994* applies to a complaint and gives some practical tips on how to manage protected disclosures. It is designed to be used by CEOs, General Managers, senior managers and protected disclosures coordinators in public sector agencies.

Department of Local Government

AM I DEALING WITH A PROTECTED DISCLOSURE?

THE SCENARIO:

A member of staff complains to you about something to do with your organisation or your staff.

Ask yourself:

1. Does the complaint concern possible:
- corruption
 - serious maladministration
 - serious or substantial waste of public money?

N

Y

2. Has the complaint been made:
- to the CEO, or
 - to a person authorised to accept disclosures in your organisation's internal reporting policy, or
 - externally to the Ombudsman, the ICAC, the Police Integrity Commission, the Audit Office or the Director-General of the Department of Local Government?

N

Y

3. Has the complaint been made primarily to avoid disciplinary action?

Y

N

4. Does the complaint principally involve the questioning of the merits of government policy?

Y

N

It's probably
not a protected
disclosure

It is most likely this is a protected disclosure and by law your agency must:

- assess the complaint and decide what action you will take
- keep details about the complaint confidential, if possible and appropriate
- tell the complainant within 6 months what action the agency will take or has taken.
- report the matter to the ICAC if you suspect on reasonable grounds that it concerns or may concern corrupt conduct.

(see *Protected Disclosures Act 1994* ss 22 and 27 and *Independent Commission against Corruption Act 1988* s 11)

HOW DO I MANAGE THIS SITUATION?

WHETHER OR NOT THE COMPLAINT IS A 'PROTECTED DISCLOSURE' UNDER THE PD ACT, YOU SHOULD:

1. SUPPORT THE COMPLAINANT

If the complainant genuinely believes there is something seriously amiss with your organisation and is sufficiently concerned to bring this to your attention, the agency has a responsibility to:

- take the person seriously and treat them with respect
- give the person support in what is commonly a stressful situation (this includes keeping them informed of what is being done with their complaint)
- protect the person from suffering repercussions for coming forward (this includes dealing with the matter discreetly if not confidentially, and responding swiftly and fairly to any allegations that the person has in fact suffered retribution).

2. BE FAIR TO ANY PERSON WHO HAS BEEN ACCUSED OF WRONGDOING

The process of finding out the truth of allegations should be impartial. This means you do not take sides and do not have a preconceived outcome in mind.

Any person who has been accused of wrongdoing must be given an opportunity to put forward their response to any allegations made against them. However, he or she does not have a right to have any information about who has made the allegations (except where the matter results in disciplinary or criminal proceedings).

3. REMEMBER THE PEOPLE INVOLVED ARE EMPLOYEES

Be mindful of your obligations under occupational health and safety legislation, your common law duty of care, and your obligations to comply with principles of good conduct and administrative practice.

4. DON'T FORGET INNOCENT BYSTANDERS

If a matter cannot be dealt with confidentially, be vigilant in preventing gossip, innuendo and paranoia amongst staff who find out that something is going on. Explain to potential witnesses why they are being interviewed or give them some information about the process to contain suspicion and fear. Remember that retribution is sometimes taken against a person suspected of causing trouble, who may not be the person who made the disclosure.

5. USE THE COMPLAINT AS CONSTRUCTIVE FEEDBACK

Complaints from staff, just like those from outsiders, often contain valuable information that can be used to fix problems or improve the way your organisation operates.

Try to find out the truth of the allegations. Do not be tempted to dismiss a complaint from a disgruntled staff member who is perceived as a troublemaker. Often it is only the agitators who will speak out. Others may also see problems but have an interest in keeping the peace.

Deal with any problems that are identified as a result of the complaint or its investigation.

Keep good and comprehensive records of the making of the disclosure, how it was handled and the result.

6. LEARN FROM THIS EXPERIENCE

Do you need to implement or improve your policies or procedures to make these complaints easier to handle in the future?

Do you need to educate staff and management to prepare them for the challenges that these situations present and to deter people from taking retribution against people who report suspected problems?

Read the *Protected Disclosures Guidelines*, NSW Ombudsman.

Ask for help and support.

For advice and training for senior managers, contact the Ombudsman.

If you require assistance in developing in-house training programs for staff or managers on protected disclosures, contact the ICAC.

CONTACT

NSW Ombudsman

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Independent Commission Against Corruption

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