



OFFICE OF THE INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY

MAKING PROTECTED DISCLOSURES TO THE INSPECTOR-GENERAL

OVERVIEW

What is a protected disclosure?

The Protected Disclosures Act 2000 protects current and past employees who make disclosures of serious wrongdoing in or by their organisation. These are called “protected disclosures” and are sometimes referred to as public interest disclosures or whistleblowing. Employees of intelligence and security agencies who make protected disclosures are protected from civil or criminal liability or punishment by their employer.

This protection also applies to employees of public sector organisations whose disclosure relates to classified information or information about intelligence and security agencies.

These protections are intended to encourage current and past employees to speak up about wrongdoing.

Who can you make a protected disclosure to?

You can make a protected disclosure to the person designated in your organisation’s internal protected disclosures policy. In some cases, you can make a protected disclosure directly to the Inspector-General.

The Inspector-General has facilities for handling information classified at all levels.

If you are considering making a disclosure about classified information, contact the Inspector-General for information and guidance about how to make a disclosure without breaching security procedures.

You must not make a disclosure of classified information or information relating to the activities of an intelligence and security agency to anyone outside your agency, other than the Inspector-General, a Minister responsible for an intelligence and security agency or the Prime Minister.

What is the role of the Inspector-General?

The Inspector-General can in some circumstances receive protected disclosures of classified information or information relating to the activities of an intelligence and security agency.

You can get information and guidance from the Inspector-General about making a disclosure. The Inspector-General will keep all requests for information and guidance confidential

You can make a complaint to the Inspector-General if you have been punished or discriminated against for making a protected disclosure of classified information, or information relating to the activities of an intelligence and security agency.

CONTACTING THE INSPECTOR-GENERAL

You can contact the Office of the Inspector-General in several ways.

Phone: +64 4 817 0402

Email: enquiries@igis.govt.nz

Post: PO Box 5609, Wellington

Meeting: The Inspector-General can arrange a meeting at an off-site location if necessary.

All staff at the Office of the Inspector-General are trained in receiving inquiries about disclosures and providing information and guidance.

INDEPENDENCE OF THE INSPECTOR-GENERAL

The Inspector-General is an independent statutory officer. This means the Inspector-General is separate from the intelligence and security agencies and responsible Ministers. The Inspector-General can decide independently whether to make inquiries and investigate complaints. The Inspector-General's office is funded and administered separately from the intelligence and security agencies.

CONFIDENTIALITY

The person to whom you make a disclosure must keep it confidential unless it has to be disclosed further to:

- effectively investigate the disclosure
- prevent a serious risk to public health or safety or the environment, or
- ensure the disclosure is fairly investigated, for example, by giving a person an opportunity to respond to an allegation.

You can seek information and guidance from the Inspector-General about any limits to confidentiality.

Initial approaches to the Inspector-General for information and guidance will always be kept confidential.

ANONYMITY

You can make anonymous disclosures to the Inspector-General.

It is more difficult to effectively investigate anonymous disclosures when it is not possible to make contact with the person who has made the disclosure. If you choose to remain anonymous, please provide the Inspector-General with all the information you have.

PROTECTED DISCLOSURES

The Protected Disclosures Act 2000 protects current and past employees who make disclosures of serious wrongdoing in or by their organisation. These protections are intended to encourage current and past employees to speak up about wrongdoing.

Your agency's internal policy must identify procedures to be followed in making disclosures.

This section explains more about protected disclosures. If you are in any doubt about whether a disclosure qualifies as a protected disclosure, you can seek information and guidance from the Inspector-General.

When a disclosure is protected

Protected disclosures are sometimes referred to as public interest disclosures or whistleblowing. A protected disclosure is where an employee wants to disclose information about serious wrongdoing in his or her organisation so that the wrongdoing can be investigated and wants to make use of the protections in the Act.

Serious wrongdoing includes:

- unlawful, corrupt or irregular use of public money or resources
- conduct that poses a serious risk to public health, safety, the environment or the maintenance of the law
- criminal offending
- gross negligence or mismanagement by public officials.

Your disclosure will be protected if:

1. it's about serious wrongdoing in or by your organisation
2. you believe the information is true or is likely to be true
3. you want the serious wrongdoing to be investigated, and
4. you want your disclosure to be protected.

When a disclosure is not protected

Your disclosure won't be protected if:

- you know the information is false
- you act in bad faith (for example, making a disclosure that you know has no substance), or
- the information is protected by legal professional privilege.

Who can make a protected disclosure to the Inspector-General

There are two categories of people who can make protected disclosures to the Inspector-General.

You can make a protected disclosure to the Inspector-General if you work, or have worked, for the GCSB or NZSIS. You work, or have worked, for the GCSB or NZSIS if you are or were in any of these roles:

- employee
- contractor
- person seconded to the GCSB or NZSIS from another organisation
- person at another organisation who is engaged to do work for the GCSB or NZSIS
- person who works for the GCSB or NZSIS as a volunteer, such as an informant or agent.

You can also make a protected disclosure to the Inspector-General if you work, or have worked, at an organisation in the public sector that holds or has access to classified information or information relating to the activities of the GCSB or the NZSIS, and your disclosure relates to classified information or information relating to the activities of the GCSB or the NZSIS.

You can seek information and guidance from the Inspector-General if you are not sure whether you work or have worked for these organisations.

How to make a protected disclosure

Your organisation must have an internal procedure for protected disclosures. You should try to follow this procedure. But if you don't, you may still be protected from liability or punishment. Technical failures to follow an internal procedure will not prevent your disclosure from being protected, for example if your disclosure is not in writing but the internal procedure requires disclosures to be in writing.

Your organisation's internal procedure will identify the people in your organisation who can receive a protected disclosure. Generally, a protected disclosure must be made to a designated person within your organisation in the first instance. But in some circumstances you can make your disclosure to the head of your organisation, the Inspector-General, a Minister responsible for an intelligence and security agency or the Prime Minister.

You can make your disclosure directly to the head of your organisation if:

- you think the person the internal procedure requires you to make disclosures to is involved in the serious wrongdoing
- you think it's not appropriate to disclose the wrongdoing to that person because of their relationship or association with the alleged wrongdoer.

You can make your disclosure directly to the Inspector-General if:

- the matter is urgent
- the head of your organisation is or may be involved in the serious wrongdoing
- you've already made the disclosure to your organisation but there has been no action or recommended action within 20 working days
- there are some other exceptional circumstances, for example if no one in your organisation has an appropriate security clearance or is authorised to receive the material your disclosure is about.

You can make your disclosure directly to a Minister if you've already made the same disclosure to the head of your organisation or the Inspector-General and you think they have:

- decided not to investigate the matter
- not made progress on an investigation within a reasonable period of time, or
- investigated but not taken or recommended any action.

The only Ministers to whom you can make a disclosure about classified information or information relating to the activities of an intelligence and security agency are:

- the Prime Minister
- a Minister responsible for an intelligence and security agency.

You can seek advice and guidance from the Inspector-General if you are not sure to whom you can make a disclosure.

Confidentiality for protected disclosures

If you make a disclosure the law requires that your disclosure be kept confidential in most circumstances.

The person to whom you make a disclosure must keep it confidential unless it has to be disclosed further to:

- effectively investigate the disclosure
- prevent a serious risk to public health or safety or the environment, or
- ensure the disclosure is fairly investigated, for example, by giving a person an opportunity to respond to an allegation.

You can seek information and guidance from the Inspector-General about confidentiality and situations where confidentiality might not apply.

Protections you will have

If you make a protected disclosure you will be protected from civil or criminal liability and punishment by your employer.

You can make a complaint to the Inspector-General if you have been punished, dismissed or mistreated because you have made a disclosure. The Inspector-General can investigate your complaint and make recommendations to an employer about what should be done about your complaint.

What the Inspector-General will do with a disclosure

The Inspector-General has powers to conduct investigations based on information you disclose. If you make a disclosure, the Inspector-General will decide whether or not to investigate further. The Inspector-General can investigate complaints, and conduct inquiries, leading to recommendations. If criminal offending is disclosed, the Inspector-General could refer a matter to Police. The Inspector-General can also involve the Privacy Commissioner or other organisations if necessary.

You will be kept informed about what is being done about your disclosure and the way it is resolved.

HISTORICAL MATTERS

You can make a protected disclosure, or draw a matter to the attention of the Inspector-General, even if it is about something that happened historically.

BRINGING OTHER MATTERS TO THE ATTENTION OF THE INSPECTOR-GENERAL

Employees of intelligence and security agencies are protected from being punished or discriminated against by their employer for bringing a matter to the attention of the Inspector-General. This

protection is additional to the protections for protected disclosures and is provided by the Intelligence and Security Act 2017.

This protection will apply instead of the Protected Disclosures Act in circumstances where the matter isn't a "protected disclosure". The protection might apply if, for example:

- your disclosure doesn't meet the definition of "serious wrongdoing" under the Protected Disclosures Act
- your disclosure is about information protected by legal professional privilege
- you're not sure the disclosure is likely to be true, but it would be very serious if it was.

The protections won't apply if the Inspector-General decides you did not act in good faith, for example, by providing information you know is false.

You can make a complaint to the Inspector-General if you have been punished or discriminated against because you have brought a matter to the attention of the Inspector-General. The Inspector-General can investigate your complaint and make recommendations to an employer about what should be done about your complaint.

You can get information and guidance from the Inspector-General about bringing a matter to the attention of the Inspector-General. The Inspector-General will keep all requests for information and guidance confidential.

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