

Lead topic: Government Reform Agenda	Sub-topic: Protected Disclosures Act 2014	Contact: Evelyn O'Connor Ext 5311
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FAST FACTS

- **The Protected Disclosures Act 2014 provides robust statutory protections for workers in both the public and private sectors against the real or potential penalisation by their employers where they have brought concerns about wrongdoing in the workplace to light.**
- **Statutory requirement for a review of the Act to commence in summer 2017 and to be completed and published within 12 months.**
- **DPER supporting the Act through issue of guidelines for public bodies and financial support for Transparency International Ireland Legal Advice Centre.**
- **Framework contract for training services out to public tender**
- **DPER working on framework contract for third party investigative services**

Q&A'S

What does the Protected Disclosures Act provide?

The main objective of the Act is the protection of workers in all sectors of the economy – both public and private – against reprisals in circumstances where they make a disclosure of information relating to wrongdoing in the workplace.

It provides for a “stepped” disclosure regime in which a number of distinct disclosure channels are available – internal, “regulatory” and external – which the worker can access to acquire important employment protections but which require different evidential thresholds.

The Act seeks to safeguard the broadest possible range of workers from being subject to occupational detriment for having made a protected disclosure and also provides for immunity against civil liability. Disclosures made under existing sectoral legislation are given “protected disclosure” status to ensure a uniform standard of protection to all workers.

What wrongdoing is covered by the Act?

In order to avail of the protections a worker must have a reasonable belief that the information to be disclosed shows or tends to show one or more of the following that:

- a criminal offence has been, is being or is likely to be committed;
- a person has failed, is failing or is likely to fail to comply with any legal obligation to which he or she is subject;
- a miscarriage of justice has occurred, is occurring or is likely to occur;
- the health and safety of any individual has been, is being or is likely to be endangered;
- the environment has been, is being or is likely to be damaged;
- an unlawful, corrupt, or irregular use of funds or resources of a public sector body has occurred, is occurring or is likely to occur;
- an unlawful, corrupt or irregular use of public monies has occurred, is occurring or is likely to occur;
- an act, omission, or course of conduct by a public official is oppressive, improperly discriminatory, or grossly negligent, or constitutes gross mismanagement;
- information tending to show that any matter falling within any one of the preceding paragraphs, whether alone or in combination has been, is being or is likely to be deliberately concealed.

How can workers disclose information under the Act?

Depending on the channel chosen to disclose the information the level of belief demonstrated by the worker ranges from “reasonable belief” to “substantially true”. Disclosure to an employer is expected to be availed of most frequently. Where a worker reports externally to a “Relevant Body” the worker must meet a higher evidential burden.

Workers in the Public Service will also be in a position to claim the protections if they report their concerns in good faith to the sponsoring Department. In certain circumstances a protected disclosure may be made externally to other recipients such as the media *or Members of the Houses of the Oireachtas*. In such a case the worker will need to meet stronger qualifying criteria. Disclosure of exceptionally serious failure to external recipients will also be allowed.

What protections are available under the Act?

Three forms of protection are available under the Act:-

- Protection from the retributive actions of an employer
- Protection from civil liability
- Protection from victimisation by a third party

The Act provides an impetus for employers to mitigate against the risk of whistleblowing in the first instance through the introduction of risk management strategies which allow workers to report perceived wrongdoing so that corrective action is taken before significant threats to the business arise. The encouragement of workers to report perceived wrongdoing on a no-fault basis will mitigate against the potential for external whistleblowing and consequent reputational damage.

When will the Act be reviewed?

Section 2 of the Act provides that a review of the Act must commence no later than 3 years after the Act commences and that the review must be completed within 12 months of commencement. This means that the review of the Act must be published no later than July 2018. Officials are in the process of working out the exact format of the review but it is expected that it will involve targeted consultations with key stakeholders and a wider public consultation on the operation of the Act.

What is the Transparency Legal Advice Centre? What funding does it receive?

DPER provided funding of €300,000 from its Vote to Transparency International Ireland (TII) in 2016 towards the operation of the Transparency Legal Advice Centre and Speak Up Helpline. An allocation of €220,000 has been provided from the DPER Vote for 2017, half of which has been drawn down to date.

Transparency Legal Advice Centre “TLAC” is an independent law centre, operated by TII, specialising in providing legal advice to anyone who wishes to disclose wrongdoing, particularly under the Protected Disclosures Act 2014. The TLAC also operates a Speak-Up Helpline that offers information, referral advice and advocacy support. Where a Speak Up caller is a worker seeking to make a report of wrongdoing, an appointment will be offered with TLAC as appropriate.

TII also receive funding from the Department of Justice and Equality to enable the Department and bodies under its aegis to participate in TII’s Integrity at Work scheme, which promotes supportive environments in the workplace for anyone reporting concerns of wrongdoing through training, best practice exchange, online resources and specialist advice and guidance.

Framework tender for third party services for public bodies

In conjunction with the Office of Government Procurement, DPER is in the process of developing a set of framework contracts for public bodies to support them in carrying out their obligations under the Protected Disclosures Act. Two framework contracts are planned:

1. Training Services

Two types of training courses are required from successful framework members:

- (i) General Overview Training – to develop general knowledge and awareness of the Act among public service employees

- (ii) Advanced Training – for staff developing internal procedures for managing protected disclosures; acting as confidential recipients; and following up on allegations made in a protected disclosure.

The tender for the framework contract was published on 18 May 2017 and the closing date is 20 June 2017.

2. Receipt and Investigation Services

This will provide third party services split into three lots:

- Lot 1: Full Investigation Services into an alleged wrongdoing (including reviews)
- Lot 2: Full Investigation Services of allegations of penalisation/adverse treatment as a result of having made a disclosure of a wrongdoing
- Lot 3: Provision of third party confidential recipient services

The tender documents are being finalised and should be published during the summer.