



## Policy on Protected Disclosures

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# Policy on Protected Disclosures

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## 1. Introduction

The purpose of the Protected Disclosures (Amendment) Act 2022 is to provide a robust statutory framework within which workers can raise concerns regarding potential wrongdoing that has come to their attention in the workplace in the knowledge that they can avail of significant employment and other protections if they are penalised by their employer or suffer any detriment for doing so.

The 2014 Act requires every public body to establish and maintain procedures for dealing with protected disclosures and to provide written information relating to these procedures to workers. The 2014 Act became operational on 15th July 2014.

This Policy sets out the process by which a worker can make a disclosure, what will happen when a disclosure is made and what NESDO will do to protect a discloser.

This Policy does not supersede the Protected Disclosures Act 2014 and does not purport to be a legal interpretation of the Act.

## 2. To whom does this Policy apply?

This Policy is applicable to all workers in NESDO including former workers of NESDO and provides protections for those beyond the usual definition of employees by also including agency workers, contractors, trainees, interns, volunteers, Board members, and job applicants.

## 3. Key principles underlying this policy

NESDO is committed to fostering an appropriate environment for addressing concerns and supporting staff in 'speaking-up' relating to potential wrongdoing in the workplace and to providing the necessary support for staff who raise genuine concerns. A worker who makes a protected disclosure is protected from penalisation (or threatened penalisation), which includes suspension, lay-off or dismissal, demotion, and unfair treatment.

Anyone who has a reasonable belief that the information contained in his or her disclosure shows or tends to show that wrongdoing covered by this Policy has occurred, is occurring or is likely to occur, will be protected against penalisation even if the worker's concern is ultimately misguided or mistaken.

The NESDO is committed to the following:

- facilitating the disclosure of wrongdoing:
- encouraging workers to make protected disclosures at the earliest possible opportunity:
- providing workers with guidance on how to make protected disclosures:
- assisting, supporting and protecting workers who make protected disclosures:

- protecting a worker's identity in a manner consistent with the requirements of the 2014 Act and taking action where those requirements have been breached:
- evaluating any disclosure made, conducting an investigation (where warranted) and addressing all findings that require attention:
- providing that workers are not to be penalised for reporting relevant wrongdoings; and:
- taking appropriate action against workers who make disclosures without a reasonable belief in the truth of the disclosure:

NESDO will take all reasonable steps to treat disclosures made under this Policy in a confidential and sensitive manner. NESDO will not disclose the worker's identity without their consent, unless it is required by law or necessary for the effective investigation of the relevant wrongdoing in line with the principles of natural justice.

If a staff member believes they have been penalised for making a disclosure of wrongdoing in accordance with this Policy, they should notify the Head of Corporate Affairs or the Chief Officer of NESDO, as appropriate. The notification will be assessed / investigated and appropriate action taken where necessary. Workers who penalise or retaliate against those who have raised concerns under this Policy will be subject to disciplinary action.

This Policy document relates to the reporting of wrongdoing as defined in the 2014 Act and is not intended to act as a substitute for normal day to day operational reporting. Neither is it intended to act as a substitute for existing grievance procedures all of which remain in place and which are included in the NESDO Policies & Procedures document at [NESDO Policies & Procedures \(Update 2022\)](#) [APPENDICES](#)

## 4. What is a “protected disclosure”?

Making a protected disclosure refers to a situation where a worker discloses information in relation to wrongdoing. This is sometimes referred to as “whistleblowing”. A protected disclosure is the disclosure of ‘relevant information’ as opposed to making a bare allegation or expressing an opinion. The ordinary meaning of disclosing information is conveying facts, such as stating that particular events have occurred. This is different to simply making an allegation e.g. that a law is being breached.

To qualify as relevant information:

- A worker must reasonably believe that the information disclosed tends to show one or more ‘relevant wrongdoings’; and
- The wrongdoing must come to the worker's attention in connection with his or her employment. For example, a disclosure will not be protected if it relates to matters in someone's personal life outside and unconnected to the workplace.

Workers are not required or entitled to investigate matters themselves to find proof of their suspicion and should not endeavour to do so. All a worker needs to do is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing.

A worker must have a reasonable belief that the information disclosed tends to show a wrongdoing. The term “reasonable belief” does not mean that the belief has to be correct. A worker is entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds.

It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what they observe. However, a worker may not know all the facts of the case and as noted above, the worker is not obliged to find proof of their suspicion. In such a case, the worker may have reasonable grounds for believing that some form of wrongdoing is occurring, but it may subsequently turn out that the worker was mistaken.

No worker will be penalised simply for getting it wrong – so long as the worker had a reasonable belief that the information disclosed showed, or tended to show, wrongdoing.

## **5. What type of disclosure is covered by this Policy?**

A protected disclosure is a disclosure of information which, in the reasonable belief of the worker, tends to show a ‘relevant wrongdoing’. The definition of ‘relevant wrongdoing’ is widely drafted and includes such matters as:

- Criminal Offences;
- Failure to comply with a legal obligation (other than a worker’s contract of employment)
- Miscarriage of justice;
- Endangerment of health and safety;
- Damage to the environment;
- Unlawful or improper use of public funds
- Oppressive, discriminatory or negligent behaviour by a public body
- Breaches of EU law
- Concealing or destroying evidence of wrongdoing

If information relating to the above matters is likely to be concealed or destroyed, such concealment or destruction is also a ‘relevant wrongdoing’.

## **6. What type of disclosure is not covered?**

The aim of this Policy is to assist and support workers in speaking out about potential wrongdoing, covered in Section 5, that has come to their attention in the workplace. Personal grievances between a reporting person and their employer or a co-worker that solely affect the reporting person are not protect by the Act. Such matters may be protected under general employment law however, a disclosure of any wrongdoing which is the worker’s or the worker’s employer’s function to detect, investigate or prosecute does not come within the terms, or attract the protections and redress, of the Act.

This Policy does not cover a disclosure where the worker knowingly conveys false, misleading, frivolous or vexatious information. If it transpires that a worker makes a disclosure which they know to be false or do not believe to be true, or where they knowingly convey misleading, frivolous or vexatious information, NESDO reserves the right to take disciplinary or other appropriate action in the context of its own Policies & Procedures.

## 7. What are the avenues of disclosure?

A worker can make a disclosure if, in their reasonable belief, any of the wrongdoings outlined in Section 5 has occurred, is occurring or is likely to occur or there has been a breach of the NESDO Policies & Procedures such that harm may be arising to others or to NESDO.

Whether a disclosure of a relevant wrongdoing is protected or not will depend upon the way in which the disclosure is made. A worker must make a disclosure in the manner set out in the 2014 Act to gain the protections of the Act.

The legislation provides for the following avenues of disclosure:

- to your employer;
- to a prescribed person – a list of prescribed persons can be found at [www.gov.ie/prescribed-persons](http://www.gov.ie/prescribed-persons);
- the Taoiseach;
- the Protected Disclosures Commissioner;
- public disclosure - however, such disclosures are subject to more stringent conditions to qualify for protection.

### Disclosure to your employer

We encourage all workers to make disclosures internally (i.e. within NESDO) and to be guided by this Policy document. Such disclosures will be taken seriously and the worker making a protected disclosure will receive appropriate protection. See Section 8 for detailed information on making a disclosure.

### Disclosure outside your employer

The 2014/2022 Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. Different requirements need to be met in different cases, as set out at (a) to (e) below:

#### (a) Other responsible person

Where the worker reasonably believes that the wrongdoing relates to the conduct of a person other than the worker's employer or to something for which that other person has legal responsibility, then the worker can disclose to that other person.

#### (b) A prescribed person

Certain persons are prescribed by Statutory Instrument 339 of 2014 ("SI 339") and Statutory Instrument 448 of 2015 ("SI 448") to receive disclosures ("prescribed persons"), which includes the heads or senior officials of a range of statutory bodies e.g. the Comptroller and Auditor General.

A worker may make a disclosure to a prescribed person if the worker reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the person is prescribed under SI 339 or SI 448. However, the 2014 Act also provides an additional requirement in this case. The worker must believe that the information disclosed, and any allegation contained in it, are substantially true.

(c) **Taoiseach**

A worker in NESDO may make a disclosure to the Taoiseach as the “relevant Minister” with responsibility for NESDO. Disclosures received by the Taoiseach are required to be forwarded by the Taoiseach to the Protected Disclosures Commissioner”

(d) **A legal adviser**

The 2014 Act allows a disclosure to be made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body.

(e) **Alternative external disclosures (in very limited circumstances)**

It is preferable in most circumstances to disclose to your employer and, if that is not appropriate, to one of the disclosure options at (a) to (d) above. It will rarely be appropriate to make alternative external disclosures where the disclosure could be dealt with through one of the other disclosure options above. There are stringent requirements for alternative external disclosures to qualify as protected disclosures under the 2014 Act.

The protections will only be available if the following conditions are met:

2. The worker must reasonably believe that the information disclosed, and any allegation contained in it, are substantially true; AND

- The disclosure must not be made for personal gain; AND
- At least one of the following conditions at (i) to (iv) must be met:
  - (i) At the time the disclosure was made the worker reasonably believed that they would be penalised if they made the disclosure to the employer, a responsible person, a prescribed person or the Taoiseach; or
  - (ii) Where there is no relevant prescribed person, the worker reasonably believed that it was likely that evidence would be concealed or destroyed if the worker made the disclosure to the employer or responsible person; or
  - (iii) The worker has previously made a disclosure of substantially the same information to the employer, a responsible person, a prescribed person or the Chief Officer of NESDO; or
  - (iv) The wrongdoing is of an exceptionally serious nature.

AND

- In all these circumstances, it is reasonable for the worker to make an alternative external disclosure.

The assessment of what is reasonable takes account of, among other things, the identity of the person to whom the disclosure is made, the seriousness of the wrongdoing, whether the wrongdoing is ongoing or likely to occur in future, whether any action had been taken in cases where a previous disclosure was made and whether the worker complied with any procedures in place when making that previous disclosure.

## 8. Making a disclosure

Any member of staff who has a reasonable belief in relation to one or more of the wrongdoings set out in Section 5 should disclose the relevant information to the Head of Corporate Affairs: [gabe.malone@nesc.ie](mailto:gabe.malone@nesc.ie) in the first instance or the Chief Officer of NESDO [larry.oconnell@nesc.ie](mailto:larry.oconnell@nesc.ie)

if the Head of Corporate Affairs is the subject in the disclosure

The disclosure under this Policy should preferably be made in writing to ensure that all the relevant information is made available at the time the disclosure is made. This will facilitate the assessment as to whether the disclosure warrants investigation. The specific nature of the potential wrongdoing should be communicated at the time the disclosure is made.

While a disclosure may be made anonymously, it should be noted that the extent to which this Policy can be applied and implemented is significantly restricted in the case of anonymous disclosures.

A staff member intending to raise a concern should not carry out an investigation outside of the normal scope of his / her duties with a view to seeking to confirm any perceived wrong-doing.

It should be noted that Section 18 of the 2014 Act makes particular provision for disclosures in the areas of law enforcement, security, defence, international relations and intelligence.

### Details that should be included in a disclosure

It is recommended that, at a minimum, disclosures should include the following details:

- a. that the disclosure is being made under the Policy;
- b. the discloser's name, position in the organisation, place of work and confidential contact details;
- c. the date of the alleged wrongdoing (if known) or the date the alleged wrongdoing commenced or was identified;
- d. whether or not the alleged wrongdoing is still ongoing;
- e. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken;
- f. information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information;
- g. the name of the person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to expose the wrongdoing disclosed); and
- h. any other relevant information.

## 9. Making a disclosure – Internal Reporting Channel

A worker of NESDO may make a protected disclosure to the Head of Corporate Affairs. Such disclosures should be submitted to [hcoprotecteddisclosures@nesc.ie](mailto:hcoprotecteddisclosures@nesc.ie)



## 10. Making a disclosure – Ministerial Reporting Channel

A worker of NESDO may make a protected disclosure to the Taoiseach as the “relevant Minister” subject to certain conditions set out in the Act being met. Such disclosures should be submitted to [ministerialprotecteddisclosure@taoiseach.gov.ie](mailto:ministerialprotecteddisclosure@taoiseach.gov.ie). The Ministerial Reporting Channel is monitored by designated officials in the Taoiseach’s Office and access to this channel will be restricted to those designated officials.

All reports received through the Ministerial reporting channel must be transmitted, within two calendar days, to the Protected Disclosures Commissioner who will ensure the report is sent to the most appropriate person to deal with the concern raised. Correspondence from disclosing persons addressed to the Taoiseach but submitted outside of the Ministerial Channel will also be transmitted to the Protected Disclosures Commissioner. This includes correspondence which has the potential to be a protected disclosure.

On receipt of any such correspondence as outlined in the previous paragraph, a standard acknowledgment will issue to inform the person their report has been transmitted to the Commissioner unless the person specifically requests that no acknowledgment be made. Once the report has been transmitted to the Commissioner, all obligations on the Taoiseach under the Act have been discharged. Any further queries or correspondence from the reporting person following transmission should be referred to the Commissioner.

## 11. Receiving a Disclosure

The recipient of a disclosure under this Policy (e.g. the Head of Corporate Affairs), and any other person to whom the disclosure is referred in the performance of that person’s duties, must take all reasonable steps to avoid disclosing to another person any information that might identify the person by whom the disclosure was made.

Procedures for internal reporting include:

- acknowledgement receipt of the report(s) within 7 days;
- diligent follow-up on all reports received;
- an initial evaluation following which they will advise the discloser no later than 14 days after the receipt of the disclosure as to whether the matter requires an investigation;
- provision of feedback to the reporting person on actions to be taken in follow-up;
- provision of further feedback to the reporting person at 3 month intervals, on request;
- provision of a statement of policy as regards the conditions, if any, under which anonymous reports will be followed-up;
- provision of information on how to report externally to a prescribed person or the Protected Disclosures Commissioner;

It may be necessary, as part of the evaluation process, for the recipient to differentiate between protected disclosures and personal complaints. For example, where the information provided may involve a personal complaint and a protected disclosure. In these circumstances, it may be necessary

for the recipient to disentangle the different elements of the complaint / disclosure and determine whether any specific disclosure of information relating to a relevant wrongdoing has taken place.

If the recipient is of the view that no further investigation is required, they should advise the discloser of this and advise the basis for this assessment, insofar as is possible.

In the event that the discloser is not satisfied with the decision of the recipient not to pursue the matter further they may bring the matter to the attention of the Chief Officer of NESDO stating that the matter has already been considered by the Head of Corporate Affairs and outlining the reasons as to why they feel that the matter requires investigation.

In the event that the concerns are referred to the Chief Officer of NESDO, they will undertake an independent evaluation of the matter following which they will advise the discloser and the first recipient no later than 14 days after the receipt of the disclosure as to whether a more detailed investigation is considered appropriate. A decision of the said Chief Officer not to pursue the matter will represent a final 'internal' decision on the matter.

The recipient of a disclosure under the 2014 Act must advise, in writing, the Chief Officer of NESDO of the receipt of the disclosure, the nature of the information contained in the disclosure and the decision transmitted to the discloser.

As it is not possible to know at the time whether a disclosure will subsequently be deemed protected under the Protected Disclosures Act, the recipient should keep a written record of their actions, including timelines, under this section.

## **12. Investigation of a Disclosure**

Where the recipient of a disclosure forms the view that an investigation is required, a full investigation must be immediately initiated.

The initiation of an investigation must be reported to the Chief Officer of NESDO by the Investigating Officer (i.e. the Head of Corporate Affairs) within 3 working days. The Investigating Officer must also advise the Chairperson of NESDO of the outcome and any recommendations arising out of any investigation.

Any investigation arising as a consequence of a disclosure will be carried out in a manner which is consistent with existing investigatory procedures which embody the principles of natural justice. The discloser will be advised of the progress and outcome of the investigation as appropriate having regard to the nature of the matters investigated, of the outcome of the investigation.

It is not possible to lay down precise timescales or steps required for investigations, as this will depend on the nature of the issues raised. Without affecting the quality or depth of the investigation, all reasonable speed will be taken to bring any investigation arising from the making of a disclosure by a staff member to a conclusion as speedily as possible.

If, following the investigation into the matter, no wrongdoing is found to have occurred and the discloser is assessed not to have had a reasonable belief in making the allegation of wrongdoing, the details of the case will be referred to the Chief Officer of NESDO with a view to considering whether disciplinary proceedings ought to be pursued against the person concerned.

## 13. Records

As it is not possible to know at the time of disclosure whether the disclosure will subsequently be deemed protected under the 2014 Act, written records (including timelines in relation to any assessment and / or investigation undertaken) should be maintained.

Records of concerns raised, including the outcome, will be maintained for a minimum of five years after the closure of the case by the Head of Corporate Affairs. These records will be maintained in a confidential and secure environment.

The Chief Officer of NESDO shall provide details of all disclosures brought to their attention to the Chairperson of NESDO. The NESDO Audit Committee will review the operation of this Policy and include a section on this review in its Annual Report.

A summary report on all protected disclosures will be included in the NESDO Annual Report.

## **14. Further information / Review of Policy**

This Policy will be reviewed when the Department of Public Expenditure & Reform provides guidance as outlined in Section 21 of the Act and at minimum intervals of two years or when required by the Board of NESDO.

The Protected Disclosures Act 2014 can be downloaded at:

<http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/acts/2014/a1414.pdf>

Statutory Instrument 339 of 2014 can be downloaded at:

<http://per.gov.ie/wp-content/uploads/SI-339-of-2014-Section-72-order..pdf>

Statutory Instrument 448 of 2015 can be downloaded at:

<http://www.irishstatutebook.ie/eli/2015/si/448/made/en/pdf>

NESDO Policies and Procedures

[NESDO Policies & Procedures \(Update 2022\) APPENDICES](#)