



**INCLUSION IRELAND**

National Association for People with an Intellectual Disability

# **Submission to the Department of Public Expenditure and Reform**

**On the Protected Disclosures Act 2014**

**October 2017**

**This document is written in font 12 Verdana in line with Inclusion Ireland plain English guidelines.**

## **1. About Inclusion Ireland**

Established in 1961, Inclusion Ireland is a national, rights based advocacy organisation that works to promote the rights of people with an intellectual disability.

Inclusion Ireland uses a human rights-based approach to its work. This recognises persons with an intellectual disability as rights holders with entitlements, and corresponding duty bearers and their obligations. Inclusion Ireland seeks to strengthen the capacities of persons with an intellectual disability to make their claims and of duty bearers to meet their obligations.

The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights as citizens, to live the life of their choice to their fullest potential. Inclusion Ireland's work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy.

Inclusion Ireland welcomes a consultation on the review of the Act and an opportunity to contribute.

## **2. Recommendations**

### **Definition of "worker":**

The definition of a "protected disclosure" is a

"disclosure of relevant information made by a worker in relation to wrongdoing that has come to his or her attention in the workplace, either before or after the date of the passing of the Act, in the manner specified in the Act".<sup>1</sup>

One issue with the wording of this definition is its inclusion of the word 'worker'. This would therefore exclude individuals who are not necessarily employed by organisations but still fulfil the duties of workers. This could include volunteers or any person in a 'position of trust' in an organisation.

Currently, there are protections for workers who are direct employees. This comes in the form of access to industrial relations dispute resolution mechanisms. However, this mechanism is not available to trainees or apprentices who are instead excluded unless they have been penalised for having made a protected disclosure. There is also no mention of people

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<sup>1</sup> Protected Disclosures Act 2014

who may be working as volunteers and how the availability (or lack of) of such a mechanism may affect them.

### **Requirement to investigate:**

At present there is no concrete requirement for public bodies to investigate disclosures that have been made. The Act needs to include a mandatory requirement for public bodies to investigate when disclosures of potential wrongdoings are raised.

### **Public Sector Duty:**

The 2018 Action Plan for Jobs must be consistent and in line with the Public Sector Duty. Section 42 of the Irish Human Rights and Equality Commission Act 2014 places a positive duty on public sector bodies to have regard to the need to eliminate discrimination, promote equality, and protect human rights, in their daily work<sup>2</sup>. The Public Sector Duty applies whether the service is provided directly by the State, or through a non-state actor.

Therefore it is important that the Protected Disclosures Act takes from the Public Sector Duty the emphasis on eliminating discrimination against those who raise concerns in their workplace. This should involve employers proactively examine potentially discriminatory policies and practices. The Act could also place a responsibility on employers to put in place measures that would actively encourage those in their organisations to promote whistle blowing.

### **Promotion and adoption of best practice in relation to the Protected Disclosures Act**

Section 21<sup>3</sup> of the Act presently imposes a legal duty on employers that are public bodies to put whistleblowing procedures in place and to provide written information on them to their workers.

In order to promote the adoption of best practice in relation to the Protected Disclosures Act, third party organisations who are commissioned by public bodies to provide publicly funded services should have a whistleblowing policy in place. Public bodies should be required to make this a standard requirement for any publicly funded contracts or

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<sup>2</sup> Irish Human Rights and Equality Commission (2016). *The Public Sector Duty*.

<sup>3</sup> Protected Disclosures Act 2014

service level agreements that they enter into with third party organisations.

In order to promote best practice and good governance, it is important to have a whistleblowing policy and to report annually on the number, the nature and the responses by public bodies to any disclosures made. As well as strengthening governance oversight of the use of public monies, such a reporting procedure would also enhance the state's capacity to evaluate the effectiveness of the implementation of the act as it relates to public funding.

### **3. Conclusion:**

#### Summary of recommendations:

- It is important that that the review looks at the definition of the "worker" to include those who are in a position of trust, and to give these individuals the same protections currently in place for direct employees.
- The Act should include a requirement for organisations to investigate when disclosures are made.
- The Public Sector Duty must be applied in order to ensure there is no discrimination against those who raise concerns or make disclosures.
- Third-party organisations should be required to have a whistleblowing policy in place, and report annually on any instances of disclosures being made

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