

17 Kildare Street,
Dublin 2.

Seamus O'Reilly,
Government Reform Unit,
Department of Public Expenditure and Reform,
7-9 Merrion Row,
Dublin 2

9th October 2017

CONSULTATION: PROTECTED DISCLOSURES ACT 2014

Dear Mr O'Reilly,

ISME strongly supports the Protected Disclosures Act ('the Act'), and believes it has already yielded dividends in exposing malpractice in the public and private sectors.

However, we have also been privy to evidence from one employer of an inducement to an employee by their solicitor to represent a work-place issue as a protected disclosure, in the full knowledge by both parties that it was nothing of the sort. This is not isolated, since evidence from the [Workplace Relations Commission](#) tends to suggest that the Act is being cited in numerous employment law situations where the appropriateness of the Act is not apparent.

The motivation for use of the Act in these circumstances is clearly evident: the penalty regime associated with breaches of the Act are far more onerous than those under the Unfair Dismissals Act. Not alone that, but awards under the Act can be cumulative; i.e. an employee could be made an award under the Act, in addition to being the beneficiary of an order under the Unfair Dismissals Act. We have no objection to this where such awards are fairly made. The categories under which a disclosure can be made are listed below.

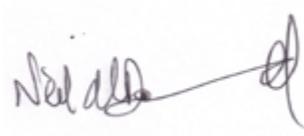
- (a) ... an offence has ... or is likely to be committed,
- (b) ... a person has failed... to comply with any legal obligation,
- (c) ... a miscarriage of justice has occurred...
- (d) ... the health or safety of any individual has been... endangered,
- (e) ... the environment has been... damaged,
- (f) ... an unlawful... use of funds or resources of a public body... has occurred...
- (g) ... an act or omission by... a public body is oppressive...
- (h) ... information... within any of the preceding... is likely to be concealed or destroyed.

ISME has no issue with these issues *per se*. The particular difficulty is with disclosures made on health and safety grounds. It is obvious that this clause permits the presentation of a protected disclosure in circumstances where:

1. The Oireachtas would not have intended the matter warranted a protected disclosure, such as a minor health and safety issue in a company, and
2. Existing health and safety law already deals adequately with such issues.

We do not wish to have the health and safety grounds excluded from the Act, but we do wish to see the Act amended to exclude disclosures where the complainant has not exhausted procedures already provided for under the Safety Health and Welfare at Work Act.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Neil McDonnell', written over a light blue horizontal line.

Neil McDonnell
Chief Executive
ISME, the *independent* business organisation