



# QQI Policy and Procedures for making an external Protected Disclosure to the QQI Prescribed Person

Version Control:

*QQI Protected Disclosures Policy 2017* is replaced by this document and the QQI policy and procedures for making an internal protected disclosure to QQI.

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## Table of Contents

<b>INTRODUCTION .....</b>	4
<b>Part I: Policy on making an external protected disclosure to QQI Prescribed Person .....</b>	6
<b>1. Policy Statement.....</b>	6
1.1    Responsibility for Policy and Procedures .....	6
2. To whom does this policy and procedure apply? .....	6
3. Matters which fall within the scope of the QQI Prescribed Person.....	7
4. What is a protected disclosure?.....	7
5. Definition of key terms.....	8
5.1    Worker or reporting person .....	8
5.2    Relevant Wrongdoing .....	8
5.3    Disclosure of Information.....	9
5.4    Reasonable Belief.....	9
5.5    Substantially true .....	9
5.6    Work-related context .....	9
6. Motivation of the reporting person.....	10
7. What type of disclosure is not a protected disclosure? .....	10
7.1    Protected disclosures vs personal grievances .....	10
8. Channels or avenues for making a protected disclosure .....	11
8.1    Internal Channels .....	11
8.2    External Channels.....	12
9. Protection of identity .....	14
9.1    Measures in place to protect identity.....	14
9.2    Identity of a Person Concerned .....	15
9.3    Exceptions when Identity can be disclosed .....	15
9.4    Complaints of failure to protect a discloser's identity .....	16
10. Anonymous Disclosures .....	16
10.1    Limitations associated with anonymous disclosures .....	16
11. Protection from penalisation .....	16
11.1    What protections will QQI provide?.....	17
11.2    Internal avenue of complaint to the employer if penalisation occurs .....	17
11.3    External avenues of redress and timelines .....	17
12. Criminal Offences .....	18
12. Withdrawal of a Protected Disclosure .....	18
13. Annual Report.....	18
14. Data Protection.....	18

<b>15. Freedom of Information.....</b>	19
<b>16. Review of policy and procedures .....</b>	20
<b>Part 2: Procedures for making an external protected disclosure to QQI.....</b>	20
<b>17. Requirements for making an external Protected Disclosure to the Prescribed Person in QQI .....</b>	20
17.2 Designated Person .....	21
17.2 How to make a protected disclosure .....	21
17.3 Information to be contained in a Protected Disclosures Report.....	21
<b>18. Process Following Receipt of a Disclosure.....</b>	22
18.1 Acknowledgement .....	22
18.2 Initial Assessment .....	22
18.3 Potential Outcomes of Initial Assessment .....	22
18.4 Investigation.....	24
18.5 Feedback to the Reporting Person.....	24
<b>19. Review of decisions made by QQI .....</b>	25
<b>Appendix 1: Summary of disclosure channels from DEPR guidance gov.ie - Protected Disclosures Act: Information for Citizens and Public Bodies (www.gov.ie).....</b>	27
<b>Appendix 2: Information to be included in a Report of a Protected Disclosure .....</b>	28

## INTRODUCTION

The Protected Disclosures Act 2014, as amended by the Protected Disclosures (Amendment) Act 2022 (“the Act”) enables workers to disclose information in relation to significant wrongdoing in the workplace, also referred to as “whistleblowing”, by ensuring that safeguards are put in place to protect such workers against possible reprisal. The significance of a ‘protected disclosure,’ sometimes called ‘whistleblowing,’ is that a worker who makes a report of a protected disclosure in the manner set out in the Act is legally protected, including against retaliations and discrimination by their employer, if they make a report of wrongdoing that qualifies as a protected disclosure under the Act. (Sections 10 and 12 below set out these protections).

The Act provides that protected disclosures can be made internally to a worker’s employer or externally, such as to a prescribed person, Minister or Commissioner for Protected Disclosures. The CEO of QQI is a prescribed person. A prescribed person provides workers with a means of making an external disclosure of relevant information to an independent body that has oversight over a particular sector, without first notifying their employer. The Act provides a statutory framework within which any worker can make a protected disclosure to a prescribed person if the reporting person reasonably believes that the relevant wrongdoing falls within the description of matters in respect of which the prescribed person is prescribed and they believe that the information disclosed, and any allegation contained in it, are substantially true. The CEO of QQI is prescribed to receive protected disclosures in respect of the following:

*All matters relating to quality assurance, validation of programmes of education and training, the making of awards, the delegation of authority to make awards, the establishment of the Code of Practice for the provision of programmes of education and training to international learners and the authorisation to use the international education mark, as provided for by the Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28 of 2012).*

As a ‘prescribed person’ under the Act, QQI must establish, maintain, and operate independent **external** reporting channels and procedures for the making of disclosures to the prescribed person. This document sets out the policy and procedure for workers who wish to make an external report to QQI in relation to the matters set out above. This policy also applies to any reports transmitted to QQI by another prescribed person or the Protected Disclosures Commissioner in accordance with the Act.

Part I sets out QQI’s policy commitment to facilitate the disclosure of relevant wrongdoings in accordance with the provisions of the Act. It sets out the protections provided to workers under the Act and guidance on the options or channels that they can use to make a report of a protected disclosure. Disclosures can in general be made internally to the employer and externally to other persons. Higher thresholds apply to disclosures made through external channels. Part II sets out QQI’s procedures for making external protected disclosures to the CEO of QQI as the Prescribed Person. These set out how such disclosures should be made, will be handled by QQI, communication with the worker and the protections available to workers.

This policy and procedures are prepared in line with the provisions of the Act. They also have regard to the interim guidance issued by the Minister for Public Expenditure and Reform on the implementation of the Act by public bodies. The Act and the related guidance are available at: [gov.ie - Protected Disclosures Act: Information for Citizens and Public Bodies  
\(www.gov.ie\)](http://gov.ie - Protected Disclosures Act: Information for Citizens and Public Bodies (www.gov.ie))

## **Part I: Policy on making an external protected disclosure to QQI Prescribed Person**

### **1. Policy Statement**

QQI is committed to enabling workers to make a protected disclosure of information that has come to their attention in a work-related context about relevant wrongdoing that falls within the scope of matters in which the CEO of QQI is a prescribed person under statutory instrument SI367//2020. The full list of prescribed persons is available at: [gov.ie - Protected Disclosures \(Whistleblowing\): List of prescribed persons \(www.gov.ie\)](http://gov.ie - Protected Disclosures (Whistleblowing): List of prescribed persons (www.gov.ie))

In general terms, a protected disclosure is made when a person or worker discloses certain information in relation to a potential wrongdoing to a particular person in a particular way. These requirements are set out below in sections 3 and 4.

Workers are assured that such disclosures will be taken seriously, assessed, and investigated where it is considered appropriate to do so. QQI is committed to protecting the identity of the worker as is set out in Section 9 below. Workers are also advised about how they are protected under the Act against penalisation or reprisal for having made a protected disclosure (see Section 11 below). All disclosures will be treated in a confidential manner. The identity of the worker will not be disclosed without their consent unless it is required by law or as required to such persons as may be necessary for the receipt, transmission, or follow-up of the report of a disclosure. These procedures aim to ensure that all disclosures of wrongdoing in the workplace reported to QQI as a prescribed person will be assessed to determine if they meet the requirements of protected disclosure and where they do, that the appropriate action will be taken in line with QQI's statutory powers under the *Qualifications and Quality Assurance (Education and Training) Act 2012*

#### **1.1 Responsibility for Policy and Procedures**

The Executive and Board of QQI are committed to dealing appropriately with reports of protected disclosures and to provide the necessary protections that it can for those who make protected disclosures.

Overall responsibility for this policy and procedures lies with the CEO of QQI. Day-to-day responsibility for these procedures is delegated to the designated person. Oversight is maintained by the QQI Board and the Audit and Risk Committee.

When a report of disclosure of potential wrongdoing is made, the CEO shall assign the report to a designated person who is responsible for the reporting channel and follow up with the reporting person (see section 17 below).

#### **2. To whom does this policy and procedure apply?**

This policy and procedures apply to all workers who have acquired information on a relevant wrongdoing in the course of their work which relates to matters in which the CEO of QQI is prescribed.

A 'worker', as defined in Section 3 of the Act, includes:

- i. Employees including former employees
- ii. Agency workers
- iii. Independent contractors
- iv. Trainees, apprentices, as well as non-paid workers such as interns, students on work experience and volunteers
- v. A member of an administrative, management or supervisory body of an undertaking, including non-executive members
- vi. A shareholder of an undertaking
- vii. Current or former shareholders of an undertaking
- viii. An individual who has acquired information on a relevant wrongdoing during a recruitment process
- ix. An individual who has acquired information on a relevant wrongdoing during pre-contractual negotiations (other than a recruitment process).

### **3. Matters which fall within the scope of the QQI Prescribed Person**

The CEO of QQI as a Prescribed Person under the Act may receive disclosures of relevant wrongdoings that concern:

*All matters relating to quality assurance, validation of programmes of education and training, the making of awards, the delegation of authority to make awards, the establishment of the Code of Practice for the provision of programmes of education and training to international learners and the authorisation to use the international education mark, as provided for by the Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28 of 2012).*

Disclosures must meet the requirements below to be treated as protected disclosures. Higher thresholds apply to external disclosures.

### **4. What is a protected disclosure?**

A protected disclosure, as defined in the Act, is a **disclosure of information** which, in the **reasonable belief** of a **worker**, tends to show one or more **relevant wrongdoings**; came to the attention of the worker in a **work-related context**; and is disclosed in the manner prescribed in the Act.

For an external disclosure to QQI to be protected, the worker must also reasonably believe that:

1. the relevant wrongdoing must fall within the description of **matters in respect of which QQI is prescribed**, and
2. the information disclosed, and any allegation contained in it, are **substantially true**.

The key terms “worker”, “relevant wrongdoing”, “reasonable belief”, “work-related context” and the kind of information that is required in a report are explained below. The term ‘in a manner prescribed in the Act refers’ to the requirements that attach to making disclosures to different bodies or persons. These are designed to encourage workers to

make disclosures to their employer in the first instance, to specified third parties in certain other circumstances and, as a last resort, in the public domain.

## **5. Definition of key terms**

### **5.1 Worker or reporting person**

An individual is classified as a “worker” for the purposes of the Act if they fall within one of the categories set out in section 3 above. A worker who reports information about a *relevant wrongdoing* in accordance with the Act is referred to as a “reporting person” or discloser in these procedures.

### **5.2 Relevant Wrongdoing**

Under Section 5 of the Act, the following are relevant wrongdoings:

- a) that an offence has been, is being or is likely to be committed.
- b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the worker’s contract of employment or other contract whereby the worker undertakes to do or personally perform any work or services.
- c) that a miscarriage of justice has occurred, is occurring or is likely to occur.
- d) that the health or safety of any individual has been, is being or is likely to be endangered.
- e) that the environment has been, is being or is likely to be damaged.
- f) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur.
- g) that an act or omission by or on behalf of a public body is oppressive, discriminatory, or grossly negligent or constitutes gross mismanagement.
- h) that a breach of specified European Union (EU) law set out in the EU Directive 2019/1937 on the protection of persons who report breaches of EU law has occurred, is occurring or is likely to occur.
- i) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed or an attempt has been, is being or is likely to be made to conceal or destroy such information.

In order to report to the QQI, the information you wish to report must concern a relevant wrongdoing and fall within the scope of the matters for which QQI is prescribed under the Act.

A protected disclosure may be about a relevant wrongdoing that is happening now, took place in the past or is about to happen.

The Act covers relevant wrongdoings that may occur in Ireland or any other country or territory. Section 8 below sets out the types of disclosures that are not considered to be protected disclosures.

### **5.3 Disclosure of Information**

A protected disclosure should contain information which tends to show relevant wrongdoing. Such information must be relevant, i.e., it must be information that comes to the attention of a worker in a *work-related context* and, in the *reasonable belief* of the worker, tends to show one or more *relevant wrongdoings and that the allegations are substantially true*. For a disclosure to be protected under the Act, it must convey facts - a bare allegation or an expression of concern that is based on suspicion and not founded on anything tangible will not be protected.

Disclosing information in relation to alleged wrongdoing in accordance with the Act is also referred to as “making a report” or “making a disclosure.”

### **5.4 Reasonable Belief**

A reporting person must have a *reasonable belief* that the information disclosed shows, or tends to show, one or more *relevant wrongdoings*.

The term “reasonable belief” does not mean that the belief has to be correct. Workers are entitled to be mistaken in their belief, so long as their belief was based on reasonable grounds i.e., there was an objective basis for holding that belief.

It may be quite reasonable for a worker to believe that a wrongdoing is occurring on the basis of what he or she observes. A worker may not know all the facts of the case and is not obliged to find proof of their suspicion. It may subsequently turn out that the worker was mistaken. As long as a reporting person has a reasonable belief that the information they disclose shows, or tends to show, relevant wrongdoing, then they will benefit from the protections provided for by the Act.

### **5.5 Substantially true**

There is an additional requirement that must be met for an external disclosure to QQI, in its role as a prescribed person, to be a protected disclosure. The worker must reasonably believe that the information disclosed, and any allegation contained in it, are *substantially true*.

### **5.6 Work-related context**

The information must come to their attention in a “work-related context.” A work-related context means current or past work activities through which, irrespective of the nature of these activities, the reporting person acquires information concerning a *relevant wrongdoing*. Such information need become known as part of a worker’s duties or relate to

their employer/contractor. The possibility of penalisation occurring for reporting such information will be a factor in determining whether the context is a work-related context.

## **6. Motivation of the reporting person**

The motivation of a worker when making a disclosure is irrelevant when determining whether not it is a protected disclosure. QQI will deal with all disclosures regardless of the worker's motivation when making a disclosure.

Where a worker has made a report, whether or not that has been assessed or investigated, the worker is still required to conduct themselves professionally and to continue to carry out their duties as normal.

Workers are not required or entitled to investigate matters themselves to find proof of their concerns of wrongdoing and should not endeavour to do so.

A disclosure of a wrongdoing does not confer protection or immunity on a worker in relation to any involvement that they may have had in that wrongdoing.

It is a criminal offence to make a protected disclosure which contains information a worker knows to be false. If it transpires that a worker makes a disclosure which they know to be false or do not believe to be true, they may face disciplinary action in line with their employers' procedures. A person who suffers damage resulting from the reporting person knowingly reported false information, has a right of action in tort against the reporting person.

## **7. What type of disclosure is not a protected disclosure?**

This policy and procedures apply to disclosures of relevant wrongdoings as defined in the Act and that fall within the description of matters in which QQI is prescribed. Disclosures that do not meet these requirements are excluded from these procedures.

These procedures are not a substitute for day-to-day operational reporting or other employment procedures.

A matter is not a relevant wrongdoing if it is a function of the worker, or the worker's employer to detect, investigate or prosecute and does not involve an act or omission on the part of the worker's employer.

Under the Act, a worker is not obliged to make a protected disclosure but nor are they absolved from any mandatory obligations to report that may be contained in other legislation.

### **7.1 Protected disclosures vs personal grievances**

These procedures do not apply to matters that are exclusively:

- interpersonal grievances/conflicts with another worker

- a worker's own contract of employment, duties, terms, and conditions or working conditions
- a matter concerning a complaint by a worker about their employer which concerns the worker.

These matters should be raised with your employer in accordance with their relevant policy e.g., grievance, complaints or dignity at work policy or other such procedures available to the worker. If, however, such matters could apply to other workers, they may be considered to be a relevant wrongdoing for the purposes of the Act and be treated as a protected disclosure by the relevant employer.

Protected disclosures can only be made by workers and must meet the requirements under the Act as set out in the following sections.

## **8. Channels or avenues for making a protected disclosure**

The Act sets out channels or avenues that workers can use to make a protected disclosure. Different requirements need to be met for each one. These channels are set below.

### **8.1 Internal Channels**

Section 6 of the Act provides that a reporting person may make a disclosure to their employer. The employer is the person with whom a worker is/has or work/worked under a contract of employment. For an agency worker, this concerns the person for whom the worker work/worked or the person (such as the agency) who supplied them.

QQI encourages all workers to make disclosures to their employer in the first instance and to use the internal protected disclosures procedures. This enables the employer to identify and address any wrongdoing as quickly as possible. It also enables the employer to protect the worker from any potential penalisation as a result of such disclosure.

It is recommended that persons considering making a protected disclosure consider the option of seeking appropriate advice before doing so and after making a report.

#### ***Independent Support and Advice***

Transparency International Ireland operates a confidential free-phone service and Legal Advice Centre for anyone considering reporting a concern or making a protected disclosure. The *Speak Up* helpline operates from 10am to 6pm Monday to Friday.

Contact details:

**Freephone:** 1800 844 866

**Email:** [helpline@transparency.ie](mailto:helpline@transparency.ie) or via encrypted email to [trachelpdesk@hushmail.com](mailto:trachelpdesk@hushmail.com)

**Website:** [www.speakup.ie](http://www.speakup.ie) **Speak Up Safely Guide**

## 8.2 External Channels

The Act allows a worker to make a disclosure to persons other than their employer in certain circumstances. These external channels are set out below and summarised in **Appendix 1**.

### (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 make a disclosure to that other person.

### (b) *Prescribed Persons*

Under Section 7 of the Act, certain persons are prescribed by the Minister for Public Expenditure and Reform to receive protected disclosures (Prescribed Persons). Most Prescribed Persons are heads of statutory regulatory or supervisory authorities. The CEO of QQI is one such prescribed person. The procedures that apply to disclosures made to the prescribed person in QQI are set out in Part II below.

The list of prescribed persons and the matters in which they are prescribed is set out in legislation at [S.I. No. 367/2020 - Protected Disclosures Act 2014 \(Disclosure to Prescribed Persons\) Order 2020 \(irishstatutebook.ie\)](https://www.irishstatutebook.ie/eli/2020/367/made/enacted/enacted)

The following requirements must be met for such disclosures to qualify as a protected disclosure:

- 1) The relevant information came to the worker's attention in a work-related context
- 2) The worker has a reasonable belief that the information tends to show relevant wrongdoing
- 3) The worker has a reasonable belief that the relevant wrongdoing falls within the matters in which the Prescribed Person is prescribed, and
- 4) The worker has a reasonable belief that the information disclosed, and any allegation contained in it, are substantially true.

If a Prescribed Person determines that a report that it has received does not fall within their remit as a prescribed person but may fall within the description of matters in respect of which another person is prescribed, the matter will be referred to that prescribed person or, where there is no such other prescribed person, the Protected Disclosures Commissioner.

### (c) *A Minister of the Government*

The Act provides that if a worker is or was employed in a public body, they may make a disclosure to a relevant Minister. In general, this will be the Minister for the parent department of the public body. In the case of QQI, this is the Minister for Further and Higher Education, Research, Innovation and Science, see: [www.gov.ie/dtheris/](http://www.gov.ie/dtheris/)

For such a disclosure to be protected under the Act, the following conditions must be met:

1. the relevant information came to the worker's attention in a work-related context;
2. the worker has a reasonable belief that the information tends to show relevant wrongdoing;
3. the worker is or was employed in a public body; and
4. at least one of the following conditions is met:
  - (i) the worker has reported internally or externally (or both) but they have not been provided with feedback or, if they have received feedback, the worker reasonably believes that there has been inadequate follow-up action;
  - (ii) the worker reasonably believes that the head of the public body concerned is complicit in the relevant wrongdoing; or
  - (iii) the worker reasonably believes that the relevant wrongdoing may constitute an imminent or manifest danger to the public interest.

*(d) The Office of the Protected Disclosures Commissioner*

The Protected Disclosures (Amendment) Act 2022 provides for the establishment of the Office of the Protected Disclosures Commissioner (the "Commissioner"), within the Office of the Ombudsman [www.ombudsman.ie](http://www.ombudsman.ie). The Commissioner's primary duty is to refer any reports received under the Act to the most appropriate prescribed person (or other suitable person, if a prescribed person cannot be identified) and will effectively act as recipient of last resort in respect of certain reports, i.e., where no prescribed person or other suitable person can be identified.

*(e) A legal adviser*

The Act provides that a disclosure of relevant information will be protected if it is made by a worker in the course of obtaining legal advice from a barrister, solicitor, trade union official or official of an excepted body (an excepted body is a body which negotiates pay and conditions with an employer but is not a trade union as defined in section 6 of the Trade Union Act 1941).

*(f) Disclosure to relevant institutions, bodies, offices, or agencies of the European Union*

Section 7B of the Act provides that a worker can report a relevant wrongdoing which is a breach of the European Union (EU) laws listed in the Directive 2019/1937 (on the protection of persons who report breaches of EU law) to a relevant institution, body, office, or agency of the EU.

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

It is preferable in most circumstances for a worker to make a disclosure directly to their employer and, if that is not appropriate, to one of the other external disclosure options set out above. It will rarely be appropriate to make alternative external disclosures, such as to the media, where the disclosure could be dealt with through one of these options. There are stringent additional requirements for alternative external disclosures to qualify as protected disclosures under section 10 of the Act.

The Act also makes particular provision for making disclosures in the areas of law enforcement, security, defence, international relations, and intelligence.

## **9. Protection of identity**

The Act obliges recipients of disclosures to protect the identity of the worker/reporting person making the disclosure. The protections that QQI has in place are set out below.

### **9.1 Measures in place to protect identity**

Any person in QQI who receives a report of a protected disclosure or with whom a report is shared to allow them carry out their functions in relation to the report, will not disclose the identity of the reporting person to anyone else (or any information that might reveal the identity of the reporting person) without the explicit consent of the reporting person, other than strictly within the provisions permitted in the Act which are explained below, in Section 9.3.

At all times, QQI will focus on the information in the disclosure rather than the identity of the worker making the disclosure. Those within QQI must not attempt to identify a reporting person if their identity has not been revealed to them in accordance with these procedures. A breach of confidentiality is a disciplinary offence and will be treated under QQI's disciplinary process.

The designated person may consider that it is necessary to share the identity of the reporting person on a 'need-to-know' basis and only for the purposes of the receipt, transmission or follow-up of the report. This can include a member of a team involved in follow-up assessment or investigation of the report and a staff member who may have the necessary technical expertise to assist with the assessment and investigation of the report. Such other persons cannot disclose the identity of the reporting person, or any reveal any information that might reveal their identity.

QQI will maintain reports and records of protected disclosures on independent, secure IT systems and, where necessary, physical locations with controlled access to authorised persons responsible for any action in relation to a disclosure.

Disclosures will be kept secure and, in a form, that

- Ensures the completeness, integrity and confidentiality of information.
- Does not endanger the confidentiality of the worker who makes the disclosure.
- Prevents access to the information by persons other than designated persons and any other authorised members of staff.
- Allows the secure retention of information to allow any necessary further investigation to be carried out.

Where any action is to be taken following the receipt of a protected disclosure, a process will be put in place for consulting with the reporting person and, where possible, for gaining their informed consent, prior to any action being taken that could identify them. This may include when disclosures are being referred by QQI to an external party for the purpose of an investigation.

## **9.2 Identity of a Person Concerned**

Under the Act, QQI is also required to protect the identity of any person referred to in the report of a disclosure as a person to whom the wrongdoing is attributed or associated with (known as a “person concerned”). Their identity will be protected for as long as any investigation triggered by the report is ongoing, unless disclosure of the identity is necessary for the purposes of the Act or is otherwise required by law.

## **9.3 Exceptions when Identity can be disclosed**

The Act provides that a recipient must not disclose to another person any information that might identify the discloser, except where:

- (a) The person to whom the protected disclosure was made or transmitted shows that they took all reasonable steps to avoid such disclosure
- (b) The person to whom the disclosure was made or transmitted had a reasonable belief that it was necessary for the prevention of serious risk to the security of the State, public health, public safety, or the environment or for the prevention of crime or prosecution of a criminal offence
- (c) Where the disclosure is otherwise required by law
- (d) Where the disclosure is a necessary and proportionate obligation imposed by EU law or the law of the State in the context of investigations or judicial proceedings, including with a view to safeguarding the rights of defence of the person concerned - this relates to a statutory or criminal investigation or judicial proceedings. It does not relate to internal investigations conducted by the public body or prescribed person

Where it is decided that it is necessary to disclose the identity of the reporting person or other information that may or will disclose the identity of the reporting person, in the cases referred to at (b) or (d) above, the reporting person will be informed of this decision in advance of the disclosure, and the reasons for the disclosure, unless the notification would jeopardise:

- (i) the effective investigation of the wrongdoing;
- (ii) the prevention of serious risk to the security of the State, public health, public safety, or the environment; or
- (iii) the prevention of crime or prosecution of a criminal offence.

If any decision is taken that it is necessary to disclose information that may or will disclose the identity of the reporting person, the reporting person will be informed of this decision in writing advance of the disclosure, except in exceptional cases set out above.

Note that a reporting person is, subject to the limitations explained above, entitled to a review of any such decision to disclose their identity. Please refer to section 19 below for information on the QQI review process.

#### **9.4 Complaints of failure to protect a discloser's identity**

If a reporting person is concerned that their identity is not being protected by QQI, this should be raised immediately. Concerns and complaints of a breach of confidentiality under these procedures should be made to QQI's Director of Corporate Services. All complaints will be assessed and, where warranted, investigated and appropriate action where necessary will be taken.

### **10. Anonymous Disclosures**

An anonymous disclosure is a case where the reporting person withholds their identity. Confidential disclosures concern the protection of the identity of the reporting person. Anonymous disclosures are included in the scope of the Act, although a worker cannot obtain redress where they have been penalised unless they identify themselves. QQI will act upon such disclosures to the extent that this is possible. However, QQI may not be fully able to investigate an anonymous disclosure without knowing the identity of the reporting person. In such cases, QQI encourages workers to provide as much information as possible in relation to the alleged wrongdoing. Reporting persons are asked to provide an anonymous email address so that QQI can communicate with them and seek further information, if necessary to deal with the disclosure effectively. Workers are advised to consider the option of seeking independent advice before making a disclosure.

#### **10.1 Limitations associated with anonymous disclosures**

QQI may be restricted in its ability to investigate matters in an anonymous. Important elements of these procedures, such as keeping the reporting person informed and protecting a reporting person from penalisation, may be difficult or impossible to apply unless the reporting person discloses their identity. It should be noted that a reporting person cannot obtain redress under the Act without identifying themselves as part of the process of seeking redress.

The person receiving an anonymous disclosure shall record in a manner they deem appropriate, the receipt or transmission of the disclosure, and such information relating to the disclosure that the person receiving the report considers necessary and appropriate for the purposes of the Act, so that this is available should the person making the report be subsequently identified and penalised. For example, this could include the details of the wrongdoing disclosed and the identity of other persons referred to in the disclosure.

### **11. Protection from penalisation**

Penalisation of a reporting person and connected persons are a criminal offence under the Act. Penalisation is defined in section 3(1) of the Act as follows:

*Penalisation means any direct or indirect act or omission which occurs in a work-related context, is prompted by the making of a report, and which causes, or may cause, an unjustified detriment to a worker.*

A non-exhaustive list of examples of penalisation includes:

- a) Suspension, lay-off or dismissal,
- b) Demotion or loss of opportunity for promotion,
- c) Transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- d) The imposition or administering of any discipline, reprimand, or other penalty (including a financial penalty),
- e) Coercion, intimidation, or harassment,
- f) Discrimination, disadvantage, unfair treatment,
- g) Injury, damage, or loss, and
- h) Threat of reprisal
- i) Withholding of training
- j) A negative performance assessment or employment reference
- k) Failure to convert a temporary employment contract into a permanent one, where the worker had a legitimate expectation that he or she would be offered permanency,
- l) Failure to renew or early termination of a temporary employment contract;
- m) Harm, including to the worker's reputation, particularly in social media, or financial loss, including loss of business and loss of income;
- n) Blacklisting on the basis of a sector or industry-wide informal or formal agreement, which may entail that the person will not, in the future, find employment in the sector or industry
- o) Early termination or cancellation of a contract for goods or services
- p) Psychiatric or medical referrals.

It is emphasised that this list is not exhaustive – any form of penalisation is prohibited.

*Penalisation of a reporting person, facilitator who assists the reporting person in the reporting process, and connected person is a criminal offence under the Act.*

### **11.1 What protections will QQI provide?**

QQI will not subject a worker to detriment on the grounds that they have made a disclosure in accordance with the Act and these procedures.

### **11.2 Internal Avenue of complaint to the employer if penalisation occurs**

Under the Act, the obligation not to penalise or threaten penalisation against a reporting person lies with the employer. Employers are obliged to address complaints of penalisation made by reporting persons. Penalisation can be an omission as well as an act, and a failure to investigate a complaint of penalisation may constitute further penalisation.

### **11.3 External avenues of redress and timelines**

A reporting person who believes that they have been penalised for making a protected disclosure may make a claim of penalisation before the Workplace Relations Commission (WRC) and/or make a claim for interim relief in the Circuit Court. The relevant time limits that apply are as follows:

- A penalisation claim must be submitted to the WRC within 6 months of the act of penalisation. In such claims, the alleged penalisation shall be deemed to have been as a result of the reporting person having made a protected disclosure unless the employer proves that the act or omission was justified on other grounds.
- An application to the Circuit Court for interim relief must be made within 21 days of the last instance of penalisation.

Workers are advised to consider seeking independent advice with regard to penalisation or the failure of an organisation to adequately respond to a protected disclosure.

## **12. Criminal Offences**

The Act sets out a range of criminal offences for breaches of the protections provided by the Act (section 14A). Any person proven to have been involved in or contributing to penalisation; hindering a worker in making a report; breaching the duty of confidentiality regarding the protection of the identity of the reporting person; bringing vexatious proceedings or making knowingly false disclosures may face criminal penalties.

### **12. Withdrawal of a Protected Disclosure**

Once a protected disclosure has been made in accordance with the Act, it is not possible for a reporting person to withdraw the disclosure. Reporting persons are required under the Act to co-operate with a Prescribed Person, the Commissioner, or a person to whom a report is transmitted. Where co-operation is withdrawn or the reporting person seeks to withdraw a protected disclosure, public bodies and prescribed persons are still required to comply with the provisions of the Act, to the greatest extent possible. Should the reporting person cease to co-operate with the protected disclosure process, this may make follow-up, including any investigation, more difficult.

### **13. Annual Report**

QQI will provide an annual report to the Minister for Public Expenditure, NDP Delivery and Reform by 1 March of each year. This will include the reporting information required under the Act. The information required will be provided in such a way that it does not enable the identification of reporting persons or persons concerned. This information will be published online by the Minister, in aggregate form.

QQI will also publish a report by 31 March each year in respect of the previous calendar year on its website. This report will contain the same information as required for the report to the above Minister and a statement confirming that QQI has in place the external reporting channels and procedures as required by the Act.

### **14. Data Protection**

In accordance with the Act, when dealing with protected disclosures, all personal data shall be processed in accordance with applicable data protection law, including the General Data Protection Regulation (GDPR) and QQI's Data Protection Policy. This applies to the receipt,

assessment, transmission and referral of a protected disclosure for investigation. In addition, all records of disclosures will be securely maintained and processed in accordance with the provisions and requirements of section 16 of the Act.

Only personal data that is strictly necessary for the purpose of managing protected disclosures will be processed.

It is noted that Section 16B (1) of the Act provides that, in certain circumstances, and where necessary and proportionate, the rights of data subjects under data protection law are restricted in respect of their personal data processed for the purposes of the Act, including receiving, dealing with or transmitting a report of a disclosure, or follow-up to such a report.

The restrictions apply, among other situations, to the extent necessary, and for as long as is necessary, to prevent and address attempts to a) hinder reporting or to impede, frustrate or slow down follow-up, in particular of investigations, or b) find out the identity of reporting persons.

The following types of personal data may be processed by QQI in accordance with this policy:

- personal data (e.g., name(s), contact details, expressions of opinion, records of incidents involving workers or other parties)
- special categories of personal data (e.g., data relating to racial/ethnic origin, religious or philosophical beliefs, trade union membership, data concerning health, sex life or sexual orientation)
- personal data relating to criminal convictions and offences.

QQI may need to share or disclose personal data it obtains, in connection with a disclosure, with internal parties or external parties (such as An Garda Síochána) on a strictly necessary basis in order to investigate and appropriately follow up on a disclosure in accordance with this policy.

The data protection legislation requires that personal data are deleted as soon as the data are not required for the purpose for which the data has been collected. Personal data collected and processed in accordance with these procedures will only be maintained for as long as is reasonably required and in line with data retention principles or, if the investigation leads to disciplinary procedures by a worker's employer or other action, until the information is no longer required for this purpose.

Any questions and requests regarding rights of access, rectification or restriction under the data protection legislation and QQI's data processing practices may be referred to the QQI Data Protection Officer.

## **15. Freedom of Information**

The Freedom of Information Act 2014 has been amended by the Protected Disclosures (Amendment) Act 2022. The Freedom of Information (FOI) Act does not apply to a record relating to a report made under the Act. Records concerning QQI's general administration of its functions are however subject to FOI.

## **16. Review of policy and procedures**

This policy and procedures will be reviewed at least once within two years after the date of their first publication, or sooner if required to ensure that they are in line with changes in law and/or public sector guidance, and at least once every three years thereafter.

## **Part 2: Procedures for making an external protected disclosure to QQI**

These procedures set out how workers can make an external protected disclosure to the Prescribed Person in QQI, the requirements that must be met and the protections that apply once a disclosure is made. They set out who receives and manages reports, what happens once a disclosure is made and what will be communicated to the reporting person.

These procedures should be read in conjunction with Part I of this policy and procedures.

## **17. Requirements for making an external Protected Disclosure to the Prescribed Person in QQI**

A worker must make a disclosure in the manner set out in the Act to gain the protections of the Act. In most circumstances it is preferable to make an internal disclosure to the employer. QQI encourages workers to use internal channels to make a disclosure.

External disclosures can be made to the Prescribed Person in QQI in respect of all matters relating to

*quality assurance, validation of programmes of education and training, the making of awards, the delegation of authority to make awards, the establishment of the Code of Practice for the provision of programmes of education and training to international learners and the authorisation to use the international education mark, as provided for by the Qualifications and Quality Assurance (Education and Training) Act 2012 (No. 28 of 2012).*

External disclosures must meet the following requirements to be treated as such and to obtain the protections under the Act:

- a) The relevant information came to the worker's attention in a work-related context
- b) The worker has a reasonable belief that the information tends to show relevant wrongdoing
- c) The worker has a reasonable belief that the relevant wrongdoing falls within the matters in which the Prescribed Person is prescribed, and
- d) The worker has a reasonable belief that the information disclosed, and any allegation contained in it, are substantially true.

All external disclosures must be made to the Prescribed Person in QQ using the channel below.

### **Contact details for the Prescribed Person**

**Postal address:**

Chief Executive Officer  
Quality and Qualifications Ireland  
26/27 Denzille Lane  
Dublin 2  
D02 P266

QQI also has a secure, dedicated email address and secure dedicated phone number to receive protected disclosures:

**Email:** [disclosures@qqi.ie](mailto:disclosures@qqi.ie)

**Tel:** +353 1 566 7615

Note that voicemails are recorded. Telephone conversations are not recorded.

### **17.2 Designated Person**

In accordance with the Act, the prescribed person must appoint an impartial, designated person or persons. The designated person is responsible for providing information on making a disclosure; carrying out an initial assessment; receiving and following up on reports; maintaining communication with the discloser/reporting person including requesting further information if necessary, from and providing feedback to the reporting person.

The designated person for QQI is the Senior Adviser on Strategy and Risk.

### **17.2 How to make a protected disclosure**

Disclosures may be made verbally or in writing. In the interests of clarity and to avoid misinterpretation or misunderstanding, it is preferable that a protected disclosure be made in writing by email or post. If the disclosure is made verbally, the designated person will, where possible, confirm the details of the disclosure, in writing, to the discloser.

The designated person will, on request, facilitate a physical meeting with the reporting person for the purpose of making the report. Where this is requested, the meeting place will ensure the privacy and protection of the identity of the reporting person. When a disclosure is made in this manner, or verbally, it will be documented by the designated person, either by way of a digital recording, or by way of a note. Where practicable, the reporting person will be asked to confirm the relevant note or transcript.

### **17.3 Information to be contained in a Protected Disclosures Report**

**Appendix 3** sets out the kind of information that should be included in a report of a protected disclosure.

## **18. Process Following Receipt of a Disclosure**

### **18.1 Acknowledgement**

QQI will acknowledge, in writing, to the reporting person, receipt of the report made through the external channel, in writing, to the reporting person **within 7 days of its receipt.**

There are two exceptions to this: the reporting person has requested otherwise; or where it is reasonably believed that to issue an acknowledgement would jeopardise the protection of the identity of the reporting person.

All acknowledgements will provide the following:

- Information on the protected disclosures process, enclosing a copy of or link to QQI procedures that apply to the handling of the report
- An indication of expectations as to what will happen and when after the report is made
- Information on the protection of the identity of the reporting person and protection of the reporting person from penalisation
- Information, to the extent feasible, on the type of feedback that will be provided, as well as the type of feedback that will not be provided
- Clarity that personal information relating to any other worker(s) will not be provided.

### **18.2 Initial Assessment**

When a protected disclosure is made, CEO of QQI shall assign the report to the designated person for initial assessment. The designated person will carry out an initial assessment to determine whether it is a protected disclosure, having regard to the requirements of the Act, these procedures and whether the matter falls within the scope of matters for which the prescribed person has responsibility.

The purpose of the initial assessment is to determine if there is *prima facie* evidence that a relevant wrongdoing may have occurred and if it should be treated as a protected disclosure, having regard to the provisions of the Act. Further information may be sought from the reporting person, where possible, if required as part of this assessment.

If it is unclear whether the report qualifies as a protected disclosure, the designated person will treat the report as a protected disclosure (and protect the identity of the reporting person and any persons concerned, in accordance with the procedures) until they are satisfied that the report is not a protected disclosure.

### **18.3 Potential Outcomes of Initial Assessment**

The following potential outcomes and follow-up to an initial assessment may arise:

- a. If it is determined that there is *prima facie* evidence that a relevant wrongdoing may have occurred and that the report concerns matter within the scope of matters for which QQI has responsibility, appropriate action will be taken to address the relevant wrongdoing. When determining the appropriate action to take, including any investigation, QQI will have regard to the seriousness and

nature of the relevant wrongdoing and QQI's statutory powers and functions under the 2012 Act.

- b. If a report is deemed to relate solely to a complaint exclusively affecting the worker, then the reporting person will be encouraged to utilise other processes (for example, the HR, grievance or dignity at work policy of their relevant employer) so that the complaint can be dealt with in an appropriate manner. It will not be considered under the QQI protected disclosures procedure.
- c. If the initial assessment shows that there is a mix of different issues (e.g., some involving a protected disclosure, some involving a complaint exclusively affecting the worker), then an appropriate process (es) will be applied to deal with the protected disclosures issue for which QQI has responsibility to address. The process to be applied may differ from case to case.
- d. If the initial assessment shows that the report concerns matter outside the scope of matters for which the prescribed person has responsibility, the report in whole or in part, as appropriate - will be transmitted to the relevant prescribed person, or where, in our opinion, there is no such other such prescribed person, the Protected Disclosures Commissioner in a secure manner, and in a way that will not compromise the security and confidentiality of the report.
- e. If the initial assessment shows that there is no *prima facie* evidence that a relevant wrongdoing may have occurred, the matter will be closed.
- f. If it is determined that there is a relevant wrongdoing but that it is clearly minor and does not require further follow up, the matter will be closed.
- g. If it is assessed that the report does not contain any meaningful new information about a relevant wrongdoing compared to a past report where the procedures have been concluded, then the matter will be closed, unless new legal or factual circumstances justify a different follow up.
- h. Some matters may be of such seriousness that the investigation will more appropriately be carried out externally or by professional experts in a particular area. In some cases, the matter may need to be reported to, and investigated by, An Garda Síochána or another body with the statutory power and function of investigation of particular matters.
- i. Where a report of a disclosure concerns a breach of EU law, as provided for in the Act, the prescribed person must send the information to the relevant EU bodies as soon as practicable, where this is provided for under EU or Irish law.

Note that this list is not exhaustive – other outcomes may arise.

The reporting person will be informed, as soon as practicable, of the outcomes of the initial assessment and the reason for the resultant decision.

## **18.4 Investigation**

If the initial assessment concludes that the matter is a protected disclosure and that it falls within the description of matters in respect of which QQI is prescribed, the Prescribed Person will consider what appropriate action or investigation can be taken with reference to QQI's statutory powers and functions under the Qualifications and Quality Assurance (Education and Training) Act 2012.

## **18.5 Feedback to the Reporting Person**

### ***18.5.1 Timelines***

Reporting persons will be provided with feedback within three months of acknowledgement of receipt of their protected disclosure report. Feedback will be provided earlier if circumstances allow.

This timeline may be extended to six months where it is justified due to the particular complexity of the report concerned, in which case the reporting person will be informed of this decision to extend the timeline as soon as is practicable.

The reporting person may request in writing further feedback at three-month intervals and this will be provided at such intervals until the procedure relating to the report is closed.

QQI is permitted to prioritise reports of disclosures of serious relevant wrongdoing, if necessary and appropriate, having regard to the number of reports received. The timelines for the provision of feedback will be the same for reports which have not been prioritised.

Note that, where a report is transmitted by the Commissioner to a prescribed person, or a report is transmitted by a prescribed person to another prescribed person (or the Commissioner), the three month or six month timeframe starts from the date the report was first made, not the date of transmission.

### ***18.5.2 Content of Feedback***

Feedback consists of information on the action envisaged or taken in follow-up to a report and the reasons for such follow-up action.

This includes the initial assessment of the report, any action taken by the recipient of a report, or a person to whom the report is transmitted, to assess and investigate the accuracy of the information reported and, where relevant, actions taken to address the wrongdoing. The extent of feedback depends on the nature of the report of a disclosure. If there is no relevant wrongdoing, this can be provided in the feedback. If an alleged relevant wrongdoing is identified, this and any actions that have been or will be taken to address the wrongdoing and the reasons for this action will be provided in the feedback.

No information will be communicated that could prejudice the outcome of an investigation or action that ensues (e.g., disciplinary, or other legal action, including prosecution) for example, by undermining the right to fair procedures enjoyed by the person against whom a report or allegation is made.

All feedback given by QQI to a reporting person is provided in confidence and should not be disclosed further by the reporting person, other than to their legal advisor or trade union representative, or unless the information forms part of a further protected disclosure being made via another channel.

Personal information related to another worker will not be provided by QQI, such as whether any disciplinary process has taken place or the outcome of any such process which may arise on foot of an investigation occasioned by a protected disclosure.

#### *18.5.3 Communication of Final Outcome*

The reporting person will be advised in writing when consideration of their disclosure is complete. They will be informed of the outcome of any action/investigation triggered by their protected disclosure report, subject to legal restrictions applying concerning confidentiality, legal privilege, privacy and data protection or any other legal obligation.

This communication does not include provision of the full investigation report to the reporting person. QQI will not communicate any information that could prejudice the outcome of any action or investigation that ensues from a protected disclosures report, for example, by undermining the right to fair procedures on the part of any person against whom a report or allegation is made.

### **19. Review of decisions made by QQI**

Any decision or process undertaken by QQI may be reviewed if requested by a person affected by any of the following:

- i. The conduct or outcome of any follow-up actions (including any investigation) undertaken in respect of the protected disclosure
- ii. The conduct or outcome of any investigation into a complaint of penalisation
- iii. Any decision made to disclose the identity of the discloser (except in exceptional cases as set out in section 9.3 above).

A request for a review should be made to the CEO of QQI at [disclosures@qqi.ie](mailto:disclosures@qqi.ie) by the person affected. This request should set out the reason(s) for seeking a review. Depending on the type of review requested, the CEO will either appoint a person to undertake the review or refer the request for a review to another appropriate person who will then appoint a person to undertake the review.

Any review will be undertaken by an appropriate person who has not been involved in the process under review and this person may be external to QQI.

The role of the reviewer will not be to re-investigate the matter in question but to address the specific issues the applicant feels have received insufficient consideration. The reviewer will consider:

- Whether the correct procedures were followed
- In the case of an investigation, whether the terms of reference were adhered to

- Whether the conclusions/findings could or could not reasonably be drawn from the information/evidence on the balance of probability.

Where a review finds significant shortcomings or failings in the process, the CEO will consider what further action(s) may or may not need to be taken in response to the findings of the review. The outcome of the review will be final and there will be no entitlement to further reviews of the same issue(s).

**Appendix 1: Summary of disclosure channels from DEPR guidance [gov.ie - Protected Disclosures Act: Information for Citizens and Public Bodies \(www.gov.ie\)](http://gov.ie)**

Disclosure to	Employer (Internal report)	Prescribed person (External report)	Commissioner (External report)	Minister (Other)
<b>Specific section(s) of the Act</b>	5, 6, 6A	5, 7, 7A	5, 7, 10B, 10C	5, 8, 10D
<b>Who does this apply to?</b>	A worker of the employer. A worker of another employer where the wrongdoing relates solely/mainly to the conduct of that employer or for which the employer has legal responsibility.	A worker.	A worker.	A worker who is or was employed by a public body.
<b>Conditions for protection under the Act</b>	Came to attention in work-related context. Reasonable belief that information tends to show relevant wrongdoing.	Came to attention in work-related context. Reasonable belief that: <ul style="list-style-type: none"><li>• Information tends to show relevant wrongdoing;</li><li>• Information and any allegations are substantially true; and</li><li>• Relevant wrongdoing</li></ul> relates to matter for which person is prescribed.	Came to attention in work-related context. Reasonable belief that: <ul style="list-style-type: none"><li>• Information tends to show relevant wrongdoing; and</li><li>• Information and any allegations are substantially true.</li></ul>	Came to attention in work-related context. Reasonable belief that information tends to show relevant wrongdoing.  Meets one of the following conditions: <ul style="list-style-type: none"><li>• Has reported internally and/or externally but reasonably believes no action or insufficient follow-up action taken;</li><li>• Reasonably believes the Head of the public body concerned is complicit in the wrongdoing;</li><li>• Reasonably believes wrongdoing may constitute imminent or manifest danger to public interest.</li></ul>
<b>Anonymous reports</b>	Public bodies are required to accept.	Must accept unless prohibited by other legislation.	Must accept.	Must accept.
<b>Method of reporting</b>	In writing or orally or both (at choice of employer).	In writing and orally.	In writing and orally.	At choice of Minister.
<b>Obligations on recipient</b>	Acknowledge within 7 days. Diligently follow-up on information reported. Provide feedback within 3 months. Provide ongoing feedback at 3 month intervals (on request).	Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity. Diligently follow-up on information reported.  Provide feedback within 3 months (or 6 months in exceptional cases)  Provide ongoing feedback at 3 month intervals (on request)  Provide information on final outcome of any investigation triggered by report.	Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity.  Transmit the report within 14 days (or longer in exceptional circumstances) to: <ul style="list-style-type: none"><li>• Such prescribed person(s) as the Commissioner considers appropriate; or</li><li>• Another suitable person (other than a prescribed person) as the Commissioner considers appropriate.</li></ul> If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.	Transmit the report to the Commissioner within 10 days of receipt.  On receipt the Commissioner shall: <ul style="list-style-type: none"><li>• Acknowledge within 7 days, unless requested not to or to do so would jeopardise protection of reporting person's identity.</li><li>• Transmit the report within 14 days (or longer in exceptional circumstances) to:<ul style="list-style-type: none"><li>◦ Such prescribed person(s) as the Commissioner considers appropriate; or</li><li>◦ Another suitable person (other than a prescribed person) as the Commissioner considers appropriate.</li></ul></li><li>• If no prescribed person or suitable person can be identified, the Commissioner shall follow-up directly on the report in the same manner as a prescribed person.</li></ul>

## **Appendix 2: Information to be included in a Report of a Protected Disclosure**

Care must be taken to only include information directly relevant to the disclosure. A worker is not required to investigate matters or find proof of the wrongdoing and should not endeavour to do so. All workers need to do, and should do, is disclose the information that they have, based on a reasonable belief that it discloses a wrongdoing and, where the information relates to individuals, that it is necessary to disclose that information.

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

- a. that the report is a protected disclosure and is being made under *QQI policy and procedures for making an internal protected disclosure*
- b. the reporting person's name, position in the organisation, place of work and confidential contact details (email address/phone number). See Part I of this document for anonymous disclosures.
- 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. information in respect of the alleged wrongdoing (what is occurring/has occurred and how) and any supporting information
- f. whether the alleged wrongdoing has already been disclosed and if so, to whom, when, and what action was taken
- g. the name of any person(s) allegedly involved in the alleged wrongdoing (if any name is known and the worker considers that naming an individual is necessary to report the wrongdoing disclosed)
- h. any other relevant information
- i. date of the report.

## **Appendix 3: Glossary of Terms**

**Designated person(s):** The person(s) responsible for the operation of the reporting channel, initial assessment of reports, providing information on protected disclosures, receiving and following up on reports, maintaining communication with the reporting person and, where necessary, requesting further information from and providing feedback to the reporting person.

**External channels** external communication methods or avenues which workers can use to report a relevant wrongdoing/make a protected disclosure. These are maintained by Prescribed Persons, the Commissioner for Protected Disclosures and Ministers.

**Internal channels** the internal communication method or avenue available to workers for reporting relevant wrongdoing/making a protected disclosure

**Making a report or disclosure** disclosing information in relation to alleged wrongdoing in accordance with the Act is referred to as making a report or making a disclosure in these procedures.

**Penalisation** includes dismissal and any act or omission causing detriment to a reporting person.

**Person Concerned** any person referred to in the report of a disclosure as a person to whom the wrongdoing is attributed or associated with is known as a “person concerned”.

**Prima facie** based on what seems to be the truth when first seen or heard.

**Protected Disclosure/whistleblowing** a situation where a person who is in a work-based relationship with an organisation discloses information in relation to alleged wrongdoing that the person has acquired in the context of current or past work-related activity.

**Recipient** the person to whom the disclosure is made or who receives a report.

**Worker/Reporting Person** a person making a protected disclosure.