



Legal Services

FINANCIAL SERVICES



ON THE SCALES 3 of 2018

Information Circular 1 of 2018 – how to submit disclosure reports to the Financial Services Board

The Registrar of Pension Funds ('Registrar') has become aware of instances where persons are uncertain how they should report or disclose information that they consider necessary to bring to the attention of the Registrar.

Summary

- Information Circular 1 of 2018 explains how people should submit reports or disclose information to the Registrar.
 - Fund officials need to submit a report to the Registrar explaining why they believe they have been terminated from office or if there is an issue which may prejudice the fund or its members.
 - Administrators need to submit a report to the Registrar if they are aware of an issue which may prejudice a fund or its members.
 - The person submitting a report can identify themselves or do so anonymously.
 - If it is an anonymous report, the disclosure must clearly indicate it is a protected disclosure.
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When would a report need to be submitted to the Registrar?

The Pension Funds Act ('the Act') requires that a trustee, principal officer, deputy principal officer, auditor, and valuator of a fund must—

- i) within 21 days of removal as a trustee, or termination of appointment as principal officer, deputy principal officer, auditor or valuator (as the case may be), submit a written report to the Registrar detailing their perceived reasons for the removal or termination; or
- ii) on becoming aware of any matter relating to the affairs of the fund, which in their opinion may prejudice the fund or its members, inform the Registrar thereof in writing.

If an administrator becomes aware of any material matter relating to the affairs of a fund, which in the opinion of the administrator may prejudice the fund or its members, the administrator must inform the Registrar of that matter in writing without undue delay.

Comment: there is no guidance on what qualifies as a matter that should be notified to the Registrar, but clearly it must be an issue which could result in prejudice to members or the fund. There is no list of the information to be submitted to the Registrar, but the Registrar will request more information if necessary and can start their own investigation into a reported matter.

The person making the disclosure can be identified or remain anonymous

A person submitting a report can identify themselves or they can submit it anonymously.

If it is an anonymous submission, then the person submitting the report or making the disclosure must clearly indicate that

- they require the report to be kept confidential or they wish to be anonymous; or
- it is a protected disclosure under section 9B of the Act.

The process for making a protected disclosure

The Act requires that the Registrar put in place a process for the submission of a protected disclosure, that ensures appropriate confidentiality and that the disclosures will be protected.

The Registrar will accept a disclosure in any written form as follows:

by way of electronic mail, which may be addressed to: FSB.PDisclosure@fsb.co.za	by post to:	by hand delivery to:
	The Registrar of Pension Funds	The Registrar of Pension Funds
	Protected Disclosures	Protected Disclosures
	P.O. Box 35655	Riverwalk Office Park, Block B
	Menlo Park	41 Matroosberg Road
	PRETORIA	Ashley Gardens
	0081	PRETORIA

Anonymous tip-offs

A trustee, principal officer, deputy principal officer, auditor, valuator and administrator of a fund may also submit anonymous tip-offs via the FSB website: www.fsb.co.za by clicking on the Anonymous Tip-Offs tab at the bottom of the webpage. The person will be redirected to a whistleblowing website.

What is a protected disclosure?

The Protected Disclosures Act sets out procedures for people to disclose information about unlawful or irregular conduct and to protect people who make those disclosures. It is designed specifically to protect employees that whistleblow against their employers.

Section 9B of the Act refers to the Protected Disclosures Act.

A trustee, principal officer, deputy principal officer, valuator or other officer or employee of a fund or an administrator who makes a protected disclosure under section 9B of the Act may not suffer any occupational or other detriment, for example disciplinary action, harassment, intimidation, dismissal or be refused a transfer or promotion.

Any person who does suffer any detriment, including occupational detriment, may go to court asking for relief, pursue any other process and seek any remedy provided for in law or, if possible, request a transfer to another suitable post.

General confidentiality obligations of the Registrar

Section 22(2) of the Financial Services Board Act is applicable to all information obtained in the performance of any power or function of the Registrar. This provides for the confidentiality of information in the Registrar's possession and for its disclosure in the particular circumstances provided in that section.

The Registrar must act diligently in exercising the discretion to disclose confidential information or the identity of the person who made the disclosure particularly when performing his regulatory or supervisory functions.

If you need more information, please contact your consultant.
