



WHISTLEBLOWERS PROTECTION ACT 2018

(NO. 3 OF 2018)



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***PASSED** by the National Parliament this thirty-first day of July 2018.*

(This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true copy of the Bill)

Clezy Rore
Clerk to National Parliament

***ASSENTED** to in Her Majesty's name and on Her Majesty's behalf this twenty-second day of August 2018.*

Sir Frank Utu Ofagioro Kabui
Governor-General

Date of Commencement: see section 2.

AN ACT TO PROTECT PERSONS MAKING PUBLIC INTEREST DISCLOSURES FROM LIABILITY AND VICTIMISATION, AND FOR RELATED PURPOSES.

ENACTED BY THE NATIONAL PARLIAMENT OF SOLOMON ISLANDS.

WHISTLEBLOWERS PROTECTION ACT 2018

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WHISTLEBLOWERS PROTECTION ACT 2018

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Whistleblowers Protection Act 2018*.

2 Commencement

This Act commences on the day appointed by the Minister by *Gazette* notice.

3 Interpretation

In this Act:

“appropriate authority”, in relation to a public interest disclosure, has the meaning given in section 5;

“Commissioner of Police” means the person appointed under section 10 of the *Police Act 2013*;

“corruption offence” means a corruption offence as defined in section 3 of the *Anti-Corruption Act 2018*;

“detriment” includes the following:

- (a) physical or psychological injury;
- (b) damage to or loss of property;
- (c) intimidation or harassment;
- (d) discrimination, disadvantage or adverse treatment in relation to employment, career, profession, trade or business, including disciplinary action;

“Electoral Commission” means the Electoral Commission established by section 57 of the Constitution;

“Leadership Code Commission” means the Leadership Code

Commission established by section 5 of the *Leadership Code (Further Provisions) Act 1999*;

“maladministration” means an action or decision of a public officer or public body that has resulted in injustice to a person;

“misconduct in office” means misconduct in office as defined in section 2 of the *Leadership Code (Further Provisions) Act 1999*;

“Police and Correctional Service Commission” means the Police and Correctional Service Commission for Solomon Islands established by section 119 of the Constitution;

“Political Parties Commission” means the Political Parties Commission established by section 4 of the *Political Parties Integrity Act 2014*;

“public interest disclosure” means a disclosure of information that, if true, would tend to show that an individual or body has engaged, is engaging, or intends to engage, in conduct that constitutes:

- (a) a corruption offence; or
- (b) maladministration; or
- (c) misconduct in office;

“Public Service Commission” means the Public Service Commission for Solomon Islands established by section 115 of the Constitution;

“relative”, of a person, means a member of the person’s family, whether related by blood, adoption, marriage or custom;

“relevant authorised officer” means a person exercising powers or performing functions under a written law for any of the following:

- (a) the Solomon Islands Independent Commission Against Corruption; or
- (b) the Leadership Code Commission; or
- (c) the Ombudsman;

“Solomon Islands Independent Commission Against Corruption” means the Solomon Islands Independent Commission Against Corruption established by section 6 of the *Anti-Corruption Act 2018*.

4 Act binds Crown

This Act binds the Crown.

Part 2 Protections from liability and victimisation

5 Appropriate authority for public interest disclosures

The **“appropriate authority”** for making a public interest disclosure is:

- (a) for a disclosure relating to a suspected corruption offence – the Solomon Islands Independent Commission Against Corruption (either directly or through an integrity officer as defined in section 3 of the *Anti-Corruption Act 2018*); or
- (b) for a disclosure relating to an allegation of maladministration – the Ombudsman; or
- (c) for a disclosure relating to an allegation of misconduct in office – the Leadership Code Commission; or
- (d) if the person making the disclosure is unsure which of the authorities mentioned in paragraphs (a) to (c) the disclosure should be made to, one of the following:
 - (i) for a disclosure relating to the conduct of a police officer or a correctional service officer – the Police and Correctional Service Commission or the Commissioner of Police or the Commissioner of Correctional Service as the case may be;
 - (ii) for a disclosure relating to the use of public money – the Auditor-General;
 - (iii) for a disclosure relating to the conduct of a Judge, Magistrate, the President, Vice-President or a member of a customary land appeal court, or the President, Vice-President or a Justice of a local court – the Chief Justice;

- (iv) for a disclosure relating to the conduct of a member of Parliament – the Speaker of Parliament;
- (v) for a disclosure relating to an election – the Electoral Commission;
- (vi) for a disclosure relating to the conduct of a political party – the Political Parties Commission;
- (vii) for a disclosure relating to the conduct of an officer of a local authority or a local authority – the Minister responsible for the local authority;
- (viii) for a disclosure otherwise relating to a public officer – the Public Service Commission.

6 Protection from liability – public interest disclosure

- (1) A person who makes a public interest disclosure to an appropriate authority in good faith:
 - (a) incurs no civil or criminal liability by doing so; and
 - (b) does not become liable to disciplinary action, or other adverse administrative action, for doing so.
- (2) Subsection (1) applies even if the public interest disclosure is made in breach of an obligation of confidentiality.
- (3) For subsection (1), a person makes a public interest disclosure in good faith only if the person:
 - (a) believes on reasonable grounds that the information contained in the disclosure is true; or
 - (b) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

7 Protection from liability – cooperation with authorities

- (1) This section applies if a person:
 - (a) complies with a requirement imposed by a relevant authorised officer; or
 - (b) otherwise cooperates with a relevant authorised officer.
- (2) The person:
 - (a) incurs no civil or criminal liability by doing so; and
 - (b) does not become liable to disciplinary action, or other adverse administrative action, for doing so.
- (3) Subsection (2) applies even if the person breaches an obligation of confidentiality.
- (4) A statement made by the person to the relevant authorised officer is not admissible as evidence against the person in any civil or criminal proceeding unless:
 - (a) the person is a defendant or witness in criminal proceedings for a corruption offence or an inquiry by the Leadership Code Commission into misconduct in office, in which case the statement may be used to discredit the person's testimony; or
 - (b) the person is being prosecuted for perjury, subornation of perjury or defeating or obstructing the course of justice in relation to the statement.
- (5) Subsections (2) and (4) do not apply in relation to any information given by the person that the person knows is misleading, unless the person draws the misleading aspect of the information to the attention of the relevant authorised officer.

8 Offence to commit act of victimisation

- (1) A person commits an offence if:
 - (a) the person causes, or threatens to cause, detriment to another person; and

- (b) the person does so because, or substantially because, the other person or a relative of the other person:
 - (i) has made or intends to make a public interest disclosure to an appropriate authority; or
 - (ii) has complied with, or intends to comply with, a requirement imposed by a relevant authorised officer; or
 - (iii) has cooperated or intends to cooperate with a relevant authorised officer.

Maximum penalty: 100,000 penalty units or imprisonment for 10 years, or both.

- (2) A court convicting a person of an offence against subsection (1) may, in addition to imposing a penalty for the offence, order the person to pay the victim of the offence compensation for the detriment suffered by the victim.
- (3) Subsection (2) does not affect the victim's right to seek a civil remedy for detriment suffered.

Part 3 Obligations of public bodies and officers

9 Obligations to publicise effect of Act

- (1) Each public body must publicise, within and outside the body:
 - (a) the ways in which, and the appropriate authorities to which, a person may make a public interest disclosure relating to the conduct of the body or any of its officers; and
 - (b) the protections offered by this Act to a person who makes such a disclosure.
- (2) The Solomon Islands Independent Commission Against Corruption must undertake activities to create public awareness, including among employees of private sector organisations, of:
 - (a) the ways in which, and the appropriate authorities to which, a person may make a public interest disclosure; and

- (b) the protections offered by this Act to a person who makes such a disclosure.

10 Confidentiality of identity of informant

- (1) A person commits an offence if the person:
 - (a) while exercising a power or performing a function for an appropriate authority, obtains the identity of a person who makes a public interest disclosure to an appropriate authority; and
 - (b) engages in conduct that results in the disclosure of the identity of the person.

Maximum penalty: 50,000 penalty units or imprisonment for 5 years, or both.

- (2) Subsection (1) does not apply if the person discloses the identity of the person:
 - (a) to the extent necessary to ensure the matters to which the disclosure relates are properly investigated; or
 - (b) with the consent of the person.
- (3) Subsection (1) applies despite any other statutory provision, or a common law rule, to the contrary.

