



WHISTLEBLOWERS PROTECTION BILL 2016

(NO. 4 OF 2016)



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A

BILL

Entitled

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 BILL 2016

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WHISTLEBLOWERS PROTECTION BILL 2016

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Whistleblowers Protection Act 2016*.

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 2016*;

“detriment” includes the following:

- (a) physical 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 Prisons Service Commission” means the Police and Prisons 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 2016*.

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 2016*); 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 – the Police and Prisons Service Commission or the Commissioner of Police;
 - (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 or Magistrate – 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.

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OBJECTS AND REASONS

The object of the *Whistleblowers Protection Bill 2016* is to protect persons making disclosures about conduct that may constitute corruption, maladministration or misconduct in public office from liability and victimisation.

In 2014, the UN Office on Drugs and Crime conducted a Review of Solomon Islands' compliance with the United Nations Convention Against Corruption. It showed deficiencies in several areas of law and administration, in particular as regards the scope of the existing laws and their effectiveness in preventing corruption.

The Government has accepted most of the recommendations in the UN Review, and the Anti-Corruption Unit in the Office of the Prime Minister and Cabinet has developed a policy on Anti-Corruption, one component of which is this Bill.

Prosecutions for corruption are rare because evidence is difficult to obtain. This is because either people do not understand what corruption is, or they are reluctant to come forward. The Review recommended that as well as revising the offences relating to corruption, the Government should put in place legislation to protect people who come forward with information about conduct that may constitute corruption, and people who cooperate with investigations into corruption.

The Bill is intended to provide such protection, not only in the context of corruption, but also maladministration and misconduct in public office. The Bill achieves its objects by providing protections from civil and criminal liability, as well as protection from victimisation.

**HON. MANASSEH SOGAVARE
PRIME MINISTER**

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EXPLANATORY MEMORANDUM

PART 1 PRELIMINARY MATTERS

Clause 1 provides for the short title of the Act.

Clause 2 allows the Minister to appoint a date for the Act to commence.

Clause 3 defines terms used in the Act. The key term is “*public interest disclosure*”, as it is this type of disclosure that attracts the protection of the Act. A public interest disclosure is disclosure of information that, if true, would tend to show that a person (whether an individual or body) has engaged, is engaging or intends to engage in corruption, maladministration or misconduct in office.

PART 2 PROTECTIONS FROM LIABILITY AND VICIMISATION

Clause 5 defines another important concept – who the appropriate authority is to make a public interest disclosure to. This is intended to ensure that disclosures only attract the protection of the Act if they are made the appropriate authority – the goal is to protect people who provide information for the purpose of combatting corruption, maladministration or misconduct in office. This occurs when information is given to the authority with the power to investigate the relevant allegation.

The appropriate authority for a disclosure about:

- corruption, is the Solomon Islands Anti-Corruption Commission (SIICAC)
- maladministration, is the Ombudsman
- misconduct in office, is the Leadership Code Commission.

However, if a person does not know who to make the disclosure to (perhaps because they do not know what category the alleged conduct falls into) the person can make the disclosure to the person responsible for supervising the body or individual about whom the disclosure is made. A list of such persons is included in the clause.

Clause 6 protects a person making a public interest disclosure to an appropriate authority from civil and criminal liability as well as disciplinary

and other administrative action. The protection does not apply if the person makes the disclosure in bad faith, including if the person knows the information contained in the disclosure is not true.

Clause 7 protects a person assisting SIICAC, the Ombudsman or the Leadership Code Commission from civil and criminal liability as well as disciplinary and other administrative action. This assistance could be in the form of responding to a request for documents or information, giving an authorised officer access to premises or any other cooperation or assistance. The clause also provides that a statement made to one of these authorities is not admissible against the person in civil or criminal proceedings except in very limited circumstances. The protections provided by the provision do not apply to any misleading information given by the person.

Clause 8 makes it an offence to victimise a person who makes a public interest disclosure to an appropriate authority or assists SIICAC, the Ombudsman or the Leadership Code Commission. Victimisation means causing or threatening to cause any kind of detriment to the person, including adverse treatment in relation to the person's employment. A court convicting a person of the offence of victimisation can order the person to pay the victim damages.

PART 3 OBLIGATIONS OF PUBLIC BODIES AND OFFICERS

Clause 9 is designed to ensure the protections offered by the Act encourage people to make public interest disclosures and assist authorities by ensuring people are aware of those protections. To this end, it requires each public body to publicise the availability of the protections to employees and people interacting with the body. It also requires SIICAC to create public awareness of the protections, including among private sector employees who might seek to disclose information about corrupt practices in the private sector.

Clause 10 makes it an offence for a person exercising a power or performing a function for an appropriate authority to disclose the identity of a person who makes a public interest disclosure, except in limited legitimate circumstances.