

**CAYMAN ISLANDS**



# **WHISTLEBLOWER PROTECTION LAW, 2015**

**(Law 22 of 2015)**

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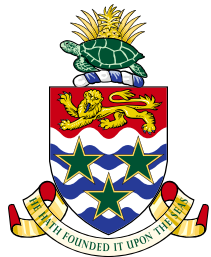
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CAYMAN ISLANDS



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(Law 22 of 2015)

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## CAYMAN ISLANDS

**WHISTLEBLOWER PROTECTION LAW, 2015****(Law 22 of 2015)**

**A LAW TO ENCOURAGE AND FACILITATE THE MAKING BY EMPLOYEES OF SPECIFIED DISCLOSURES OF IMPROPER CONDUCT IN THE PUBLIC INTEREST AND TO PROTECT EMPLOYEES WHO MAKE SPECIFIED DISCLOSURES FROM BEING SUBJECTED TO DETRIMENTAL ACTION; TO REGULATE THE RECEIVING, INVESTIGATING OR OTHERWISE DEALING WITH DISCLOSURES OF IMPROPER CONDUCT; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART 1 - PRELIMINARY****Short title and commencement**

1. (1) This Law may be cited as the *Whistleblower Protection Law, 2015*.
- (2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.

**Interpretation**

2. In this Law —

“**appointed day**” means the date of commencement of this Law;

“**Chief Officer**” has the meaning assigned by the *Public Service Management Law (2013 Revision)*;

**“civil service entity”** means a ministry, portfolio, the Cabinet Office, Office of Director of Public Prosecutions, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office and the Legislative Assembly;

**“complaint”** means a complaint made under this Law;

**“designated authority”** means the person so designated under section 7;

**“detrimental action”** includes —

- (a) action causing injury, loss or damage;
- (b) intimidation or harassment;
- (c) unlawful discrimination, disadvantage or adverse treatment in relation to a person’s employment, family life, career, profession, trade or business, including the taking of disciplinary action;
- (d) preventing, restraining or restricting an employee from making a protected disclosure; and
- (e) inducing any person by threats, promises or otherwise to contravene this Law;

**“Director of Labour”** means the Director of Labour appointed under the *Labour Law (2011 Revision)*;

**“disclosure”** means disclosure of information made by a person where the person has a reasonable belief that the information disclosed shows or tends to show that improper conduct has occurred, is occurring or is likely to occur;

**“employee”** includes —

- (a) any person who —
  - (i) works or has worked for another person; and
  - (ii) receives, received, or is entitled to receive, any remuneration for work done;
- (b) any person who in any manner assists or has assisted in the carrying on or the conduct of the business of an employer, without any entitlement to receive remuneration or reward; or
- (c) any person who is, or was, engaged or contracted under a contract for services to do work for another person, or any agent of the person;

**“employer”** includes any person who —

- (a) employs or has employed another person to carry out work or provide services and who remunerates, or expressly or tacitly undertakes to remunerate, that other person for the work carried out or services provided; or



- (b) permits or has permitted another person to assist in any manner in the carrying on or the conduct of the business of that person, without any obligation to provide remuneration or reward to that other person;

**“improper conduct”** means —

- (a) a criminal offence which has been committed, is being committed or is likely to be committed;
- (b) a failure to carry out a legal obligation;
- (c) conduct that has resulted, is resulting or is likely to result in a miscarriage of justice;
- (d) conduct which is or is likely to be a detrimental action;
- (e) conduct that has resulted, is resulting or is likely to result, in a violation of the human rights set out in the Constitution of the Islands;
- (f) conduct that has resulted, is resulting or is likely result, in a threat to the health or safety of a person or of the public;
- (g) conduct that has resulted, is resulting or is likely to result, in a threat or damage to the environment;
- (h) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds; or
- (i) wilful concealment of any act described in paragraphs (a) to (h);

**“investigation”** means the carrying out of an enquiry under this Law in respect of a disclosure;

**“labour tribunal”** means a tribunal established under the *Labour Law (2011 Revision)*;

**“ministry”** means the whole of the division of government administration for the actions of which a Minister is accountable to the Legislative Assembly and includes a departmental section or unit which forms part thereof, but does not include a statutory authority or government company;

**“portfolio”** means the whole of a division of government administration for the actions of which an Official Member is accountable to the Legislative Assembly, and includes a departmental section or unit which forms part thereof, but does not include a statutory authority or government company; and includes the Governor’s office and the judicial administration; and

**“protected disclosure”** means a disclosure made in accordance with this Law by a person to the designated authority or to an attorney-at-law.

### **Application of Law to statutory authorities and government companies**

3. For the avoidance of doubt, this Law applies to statutory authorities and to government companies.

**Application of the Law**

4. (1) This Law applies to any disclosure made after the appointed day, notwithstanding that the conduct to which the disclosure relates may have occurred before the appointed day.
- (2) A disclosure of information is not a protected disclosure if it is established beyond a reasonable doubt that the employee making the disclosure committed the offence of stealing in order to obtain such information.
- (3) Nothing in this Law authorises an employee to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure for the purposes of this Law.

**Public interest requirement**

5. A disclosure shall not qualify for protection under this Law unless it is made in the public interest.

**Promotion of ethical practices and dissemination of information**

6. (1) The Deputy Governor, in relation to public entities, and all employers, shall promote ethical practices as well as a positive environment for disclosing improper conduct by disseminating to employees knowledge of this Law and information about its purposes and processes by any means that they consider appropriate.
- (2) Information provided under subsection (1) shall, among other things, specify —
- (a) the types of disclosures that are protected under this Law;
  - (b) the manner in which, and the persons to whom, information may be disclosed under this Law; and
  - (c) the protections and remedies available under this Law if the disclosure of information in accordance with this Law leads to detrimental action against the person making the disclosure.

## **PART 2 - DESIGNATED AUTHORITY AND ADMINISTRATION OF LAW**

**The designated authority**

7. (1) The Governor shall, by Order, designate an individual or civil service entity as the designated authority for the purposes of this Law.
- (2) The designated authority shall, in addition to any other function provided under this Law, be responsible for receiving, investigating and dealing generally with disclosures in accordance with procedures under this Law as well as monitoring compliance with this Law.





- (3) In furtherance of the functions specified in subsection (2), the designated authority shall —
- (a) publish such procedural guidelines regarding the making, receiving and investigation of disclosures under this Law, as it considers appropriate;
  - (b) provide such assistance as may be practicable to —
    - (i) any person who seeks to make a disclosure under this Law; or
    - (ii) any person who is an employer or other person subject to the requirements of this Law;
  - (c) on an ongoing basis, plan, implement and monitor public awareness programmes aimed at informing and educating employees, employers and the general public in the Islands about the making, in a responsible manner, of protected disclosures and about the procedures for receiving and investigating such disclosures; and
  - (d) make recommendations to any person arising from any review under paragraph (b) or (c).

### **Oversight of the designated authority by the Governor**

8. (1) The Governor shall be responsible for —
- (a) overseeing and inspecting the work of the designated authority;
  - (b) reviewing annual reports submitted by the designated authority under section 9; and
  - (c) the discipline of the designated authority.
- (2) Pursuant to subsection (1), the Governor, in his discretion, may give to the designated authority directions as to the policy to be followed in the exercise and performance of the functions of the designated authority in relation to matters appearing to the Governor to concern the public interest and the designated authority shall give effect to any such directions.

### **Annual report**

9. (1) The designated authority shall, at the end of each year, in relation to that year, or within such longer period as the Governor may in special circumstances approve, cause to be made and transmitted to the Governor an annual report dealing with the activities of the designated authority during the preceding year and containing the particulars specified in subsection (2).
- (2) The annual report shall include the following particulars —
- (a) the number of general inquiries relating to this Law;
  - (b) the number of protected disclosures received and complaints made in relation to detrimental action and the number of them that were acted on and those that were not acted on;

- (c) the number of investigations commenced under this Law;
  - (d) the number of prosecutions under this Law;
  - (e) the number of recommendations relating to any matter arising under the Law made by the designated authority and the responses to such recommendations; and
  - (f) any other matter that the designated authority considers necessary.
- (3) The Deputy Governor, on behalf of the Governor, shall cause a copy of the annual report to be tabled in the Legislative Assembly no later than three months after the annual report has been transmitted to the Governor.
- (4) The designated authority shall not disclose in an annual report any information that would directly or indirectly identify any person who has made a disclosure under this Law, or a person about whose conduct a disclosure was made.

### **Designated authority restricted from providing information**

10. Notwithstanding the provisions of any other Law, the designated authority shall not provide any information, documents or evidence except in accordance with the provisions of this Law or in compliance with an order made by the Grand Court.

## **PART 3 - DISCLOSURES GENERALLY**

### **Disclosure to the designated authority**

11. (1) Subject to this Law, an employee may make a protected disclosure to the designated authority.
- (2) Where information relating to disclosure under subsection (1) was obtained by the person making such disclosure in the normal course of business the designated authority shall not in investigating such disclosure request any subsequent disclosure relating to that investigation unless the court, upon the application of the designated authority, so directs.
- (3) In this section, “normal course of business” and “professional person” have the meanings respectively assigned by the *Confidential Relationships (Preservation) Law (2015 Revision)*.

### **Disclosure to attorney-at-law**

12. A disclosure made by an employee to an attorney-at-law is a protected disclosure for the purposes of this Law if the employee makes the disclosure to the attorney-at-law with the object of obtaining legal advice on such disclosure or if the disclosure is made during the process of obtaining legal advice.



**Procedures for making disclosures**

- 13.** (1) A disclosure shall be in writing and shall contain, at a minimum, the information specified in Schedule 1.
- (2) Notwithstanding subsection (1), if a disclosure is made orally, the designated authority shall, within twenty-four hours after receiving the disclosure, cause the disclosure to be reduced into writing containing the same particulars as are specified in subsection (1).

**Employee's immunity from civil and criminal proceedings**

- 14.** (1) Subject to section 4, this section applies notwithstanding any duty of secrecy or confidentiality or other prohibition of or restriction on the disclosure of information under any enactment, rule of law, contract or practice.
- (2) An employee who makes a protected disclosure shall not be liable in any civil or criminal proceeding or to any disciplinary proceeding by reason of having made a disclosure in accordance with this Law.

**PART 4 - PROTECTION AGAINST DETRIMENTAL ACTION****Application of this Part**

- 15.** (1) This Part applies to a protected disclosure from the time the disclosure is made.
- (2) For the purposes of this Part, any subsequent information relating to a protected disclosure provided by the employee who made the disclosure shall be treated as if it was a protected disclosure.

**Protection from defamation action**

- 16.** In any proceedings for defamation arising out of the making of a protected disclosure there is a defence of qualified privilege in respect of the making of the protected disclosure.

**Liability for own conduct**

- 17.** Notwithstanding anything to the contrary in this Part, an employee's liability for his own conduct is not affected by the employee's disclosure of that conduct under this Law.

**Detrimental action in reprisal for protected disclosure**

- 18.** For the purposes of this Law, a person takes detrimental action against an employee in reprisal for a protected disclosure if —
- (a) the person takes or threatens to take detrimental action against the employee because, or in the belief that —
- (i) the employee has made, or intends to make, the disclosure; or

- (ii) the employee has cooperated, or intends to cooperate, with an investigation of the disclosure; or
- (b) for either of the reasons in paragraph (a)(i) and (ii), the person incites or permits someone else to take or threaten to take detrimental action against the employee.

### **Offence of taking detrimental action**

- 19.** (1) A person shall not take detrimental action against an employee in reprisal for a protected disclosure and a person who takes such action commits an offence and is liable —
- (a) on summary conviction, to a fine of twenty thousand dollars, to imprisonment for a term of two years or to both; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term of five years or to both such fine and imprisonment.
- (2) A person may, apply to the designated authority to determine whether a disclosure is protected and in such a case it is a defence in a proceeding for an offence against subsection (1) if —
- (a) the designated authority, at the application of the person who took the detrimental action, determined that the disclosure is not a protected disclosure; and
  - (b) at the time the person took the detrimental action, that person knew of that determination.

### **Unfair dismissal of employee**

- 20.** An employee who is dismissed as a consequence of seeking to make, making or intending to make a protected disclosure, shall be treated as being unfairly dismissed.

### **Order for re-instatement**

- 21.** (1) If —
- (a) an employer; or
  - (b) someone in the course of employment with, or while acting as an agent of, the employer,
- is convicted of an offence against section 19 in relation to detrimental action taken against an employee, the court may, in addition to imposing a penalty and in addition to any damages ordered under section 22, order, subject to the agreement of the employer and the employee, that the employer reinstate or re-employ the person in his former position or, if that position is not available, in a similar position.



- (2) Without limiting the court's discretion, when making an order under subsection (1) the court may take into account any order made under section 24 in relation to the same conduct.

### **Damages for detrimental action**

- 22.** (1) A person who takes detrimental action against an employee in reprisal for the employee making a protected disclosure is liable in damages for any injury, loss or damage to that other person.
- (2) The damages may be recovered in proceedings as for a tort in a court of competent jurisdiction.
  - (3) Any remedy that may be granted by a court with respect to a tort, including exemplary damages, may be granted by a court in proceedings under this section.
  - (4) The right of an employee to bring proceedings for damages does not affect any other right or remedy available to the employee arising from the detrimental action.
  - (5) Proceedings for damages under this section may be brought whether or not a prosecution in relation to the detrimental action has been brought under section 18.
  - (6) When granting a remedy under this section the court shall take into account any order made under section 21 or 24 in relation to the same conduct.

### **Vicarious liability of employer**

- 23.** (1) If a person in the course of employment with, or while acting as an employee or agent of an employer takes detrimental action against another employee of the employer in reprisal for a protected disclosure —
- (a) the employer and the first-mentioned employee or agent are jointly and severally civilly and criminally liable for the detrimental action; and
  - (b) a proceeding under section 24 may be taken against either or both.
- (2) It is a defence to proceedings against the employer under subsection (1)(a) if that employer proves, on the balance of probabilities, that he took reasonable precautions to prevent the employee or agent from taking detrimental action against another employee in reprisal for the protected disclosure.
  - (3) An employee or agent of an employer is not liable by reason of subsection (1)(a) for taking detrimental action against the other employee if —
    - (a) the first-mentioned employee or agent takes that action in reliance on a statement by the employer that doing it does not contravene this Law; and
    - (b) it is reasonable for the first-mentioned employee or agent to rely on the statement,

but this does not prevent the employer from being liable by reason of subsection (1)(a).

### **Injunction or order**

- 24.** (1) If, on receipt of an application under section 25, the summary court is satisfied that a person has taken or intends to take detrimental action against an employee in reprisal for a protected disclosure, the court may —
- (a) order the person who took the detrimental action to remedy that action; or
  - (b) grant an injunction in any terms the summary court considers appropriate.
- (2) The summary court, pending the final determination of an application under section 24, may —
- (a) make an interim order in the terms of subsection (1)(a); or
  - (b) grant an interim injunction.
- (3) When granting a remedy under this section, the summary court shall take into account any order made under section 21 or 22 in relation to the same conduct.

### **Application for injunction or order**

- 25.** An application for an order or an injunction under section 24 may be made by —
- (a) an employee who believes that detrimental action has been taken or may be taken against him in reprisal for a protected disclosure; or
  - (b) the designated authority believes that detrimental action has been taken or may be taken in reprisal for a protected disclosure the subject of which is a matter that the designated authority is authorised to investigate under another Law.

### **Complaints to the Director of Labour**

- 26.** (1) Subject to subsections (2) and (4), as an alternative to any other remedy under this legislation, an employee may elect to file a complaint with the Director of Labour under the *Labour Law (2011 Revision)* on the ground that he has been subjected to detrimental action in contravention of section 19 and the Director of Labour shall, upon receipt of such a complaint, refer the matter forthwith to a labour tribunal.
- (2) An employee shall, prior to filing a complaint under subsection (1), apply to the designated authority to determine whether a disclosure is protected and shall only be entitled to file a complaint under subsection (1) if the designated authority determines that the disclosure is a protected disclosure.
- (3) A labour tribunal shall consider a complaint made under subsection (1) in accordance with this Law and procedures prescribed by regulations under this Law.



- (4) For the purposes of this section and sections 27 and 28 “employee” means a person whose employment is regulated by the *Labour Law (2011 Revision)*.
- (5) A hearing before the labour tribunal may be held in camera at the request of any party if the party establishes to the satisfaction of the labour tribunal that the circumstances of the case so require.
- (6) On application, the labour tribunal shall determine whether the complainant has been subject to detrimental action and, if it so determines, the labour tribunal may make an order granting a remedy specified in section 27 to the complainant.
- (7) A person aggrieved by a decision as to a remedy of the labour tribunal under section 27 may, within twenty-one days of the date on which notice of the decision is received, appeal to the Grand Court against the decision.

### **Remedies for detrimental action**

- 27.** Where, upon hearing a complaint of detrimental action, a labour tribunal has determined that the employee has suffered detriment it may, by order, require the employer to take one or more of the following measures to —
- (a) permit the employee to return to his duties;
  - (b) reinstate the employee or pay compensation to the employee in lieu of reinstatement if, in the tribunal’s opinion, the relationship of trust between the parties cannot be restored;
  - (c) pay to the employee compensation in an amount not greater than the amount that, in the tribunal’s opinion, is equivalent to the damage that the employee has suffered by reason of the reprisal;
  - (d) rescind any measure or action, including any disciplinary action, and pay compensation to the employee in an amount not greater than the amount that, in the tribunal’s opinion, is equivalent to any financial or other penalty imposed on the employee;
  - (e) pay to the employee an amount equal to any expenses and any other financial losses incurred by the employee as a direct result of the reprisal; or
  - (f) compensate the employee, by an amount of not more than ten thousand dollars, for any pain and suffering that the employee experienced as a result of the reprisal.

### **Report to the police by a tribunal against person who made reprisal**

- 28.** A labour tribunal shall, in relation to any person named in the application who was determined by it to have subjected the employee to detrimental action make a report to the police for investigation.

**Transfer of employee**

- 29.** (1) Nothing in this Law shall abrogate the rights and remedies of an employee of a civil service entity under the *Public Service Management Law (2013 Revision)*.
- (2) The designated authority on behalf of an employee of a civil service entity who has made a protected disclosure and which employee believes, on reasonable grounds, that detrimental action will be, is being or has been taken against him in contravention of section 19, may make a request to the Deputy Governor for a transfer of employment in accordance with this section.
- (3) Subject to subsection (4), the Deputy Governor may transfer an employee of a civil service entity who has made a protected disclosure to duties within another civil service entity or a different area of the same civil service entity on terms and conditions of employment that are no less favourable overall.
- (4) An employee may only be transferred under subsection (3) if —
- (a) the employee requests or consents to the transfer;
  - (b) the Deputy Governor has reasonable grounds to suspect that detrimental action will be, is being or has been taken against the employee in contravention of section 19; and
  - (c) the Deputy Governor considers that the transfer of the employee will avoid, reduce or eliminate the risk of detrimental action being taken against the employee.
- (5) Prior to transferring an employee under this section the Deputy Governor shall consult with the Chief Officer of the civil service entity to which it is proposed to transfer the employee.
- (6) The transfer of an employee under subsection (3) may be permanent or for a fixed term.
- (7) The transfer of an employee under subsection (3) does not constitute a resignation or termination of employment and the post-transfer service is to be regarded as continuous with the pre-transfer service.

## **PART 5 - RECEIVING, INVESTIGATING AND OTHERWISE DEALING WITH PROTECTED DISCLOSURES**

**Duty to receive disclosures and carry out investigations into disclosures**

- 30.** (1) The designated authority shall receive a disclosure and take appropriate steps in accordance with this Part and Schedule 2 to investigate or cause the disclosure to be investigated.
- (2) Subject to the provisions of this Law, the designated authority shall —
- (a) receive and record the matter being disclosed; and





- (b) take steps, where the designated authority considers that an investigation should be proceeded with and that the circumstances specified in section 31(2) do not apply, to cause the conduct disclosed to be investigated in accordance with Schedule 2.

**Right to refuse; duty to refer**

- 31.** (1) The designated authority acting in good faith, may, in any of the circumstances set out in subsection (2) —
- (a) refuse to deal with the disclosure, or commence an investigation into any improper conduct alleged in the disclosure; or
  - (b) cease an investigation.
- (2) The circumstances are —
- (a) the disclosure is not a protected disclosure;
  - (b) the subject matter of the disclosure or the related investigation has been adequately dealt with;
  - (c) the subject matter of the disclosure is frivolous or not sufficiently important to warrant an investigation; or
  - (d) the circumstances surrounding the subject matter of the disclosure have changed (whether by reason of insufficiency of evidence or otherwise) so that it renders the investigation unnecessary.
- (3) Where the designated authority refuses to carry out an investigation, the designated authority shall forthwith notify the employee in writing of the refusal and provide reasons for the refusal in such notice or in writing within fifteen days of the refusal.

**Provisions for non-disclosure in employment agreement void**

- 32.** Any provision of an employment agreement is void and of no effect if the provision precludes an employee from making a protected disclosure or purports to require an employee to —
- (a) agree to not make a disclosure under this Law during or after his period of employment;
  - (b) refrain from instituting any proceedings pursuant to this Law; or
  - (c) withdraw or abandon any disclosure made under this Law, or proceedings instituted pursuant to this Law.

## **PART 6 – MISCELLANEOUS**

### **Obligation of secrecy and confidentiality**

**33.** Every person on receiving, investigating or otherwise dealing with a disclosure under this Law shall regard and deal with as secret and confidential —

- (a) the identity of the person making the disclosure and any disclosure made; and
- (b) any statement given, or document, information or thing provided, to the person in the carrying out of an investigation,

and any statement given, or document, information or thing provided, given in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with the obligation for secrecy and confidentiality.

### **Further offences and penalties**

**34.** (1) A person commits an offence if he —

- (a) makes a disclosure under this Law knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading; or
- (b) aids, abets, procures or conspires with any other person to contravene this Law.

(2) A person who commits an offence under subsection (1) is liable upon —

- (a) summary conviction, to a fine of ten thousand dollars, to imprisonment for a term of two years or to both; or
- (b) conviction on indictment, to a fine or to imprisonment for a term of three years or to both such fine and imprisonment.

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by the designated authority in the lawful exercise of the functions of the authority under this Law, commits an offence and is liable on summary conviction to a fine of five thousand dollars, to imprisonment for a term of three months or to both.

### **Obstruction and contempt**

**35.** (1) If any person, without lawful excuse, obstructs the designated authority, or, if the designated authority is a civil service entity, any officer of the designated authority in the performance of his functions under this Law, or is guilty of any act or omission in relation to an investigation under this Law which, if that investigation were a proceeding in the Grand Court, would constitute contempt of court, the designated authority may certify the offence to the Grand Court.



- (2) Where an offence is certified under this section, the Grand Court may inquire into the matter and after —
- (a) hearing any witnesses who may be produced against or on behalf of the person charged with the offence; and
  - (b) hearing any statement that may be offered in defence,
- deal with the person in any manner in which the Grand Court could deal with him if he had committed a contempt of the court.

### **Immunity of designated authority, etc.**

- 36.** The designated authority, or, if the designated authority is a civil service entity, any member or public officer of the designated authority, any other public officer acting pursuant to this Law and any member of a labour tribunal, shall not be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

### **Indemnity of the designated authority, etc.**

- 37.** The Government shall indemnify —
- (a) the designated authority; or
  - (b) if the designated authority is a civil service entity, any member and public officer of that civil service entity;
  - (c) any other public officer acting pursuant to this Law; and
  - (d) any member of a labour tribunal,
- against all claims, damages, costs, charges or expenses incurred by the designated authority, a member of the designated authority or of a labour tribunal, a public officer of the designated authority, or any other public officer acting pursuant to this Law in the discharge or purported discharge of their respective functions under this Law, but such indemnity shall not apply to any claims, damages, costs, charges or expenses caused by the bad faith of the designated authority, the member or the public officer.

### **Regulations**

- 38.** (1) The Cabinet may make regulations, subject to affirmative resolution, for the better carrying out of the purposes of this Law and without limiting the generality of the foregoing, may —
- (a) prescribe procedures to be applied in the making of disclosures;
  - (b) prescribe forms to be used under this Law;
  - (c) prescribe fees or other charges that may be imposed for services provided, if any; and
  - (d) make provision in relation to the operations of the designated authority.

- (2) Regulations made under subsection (1) may provide for the imposition of penalties on summary conviction in a summary court of a fine of five thousand dollars or imprisonment for six months, or both such fine and imprisonment.

### **Obligations to report under any other Law**

- 39.** Nothing in this Law relating to the making of a protected disclosure is to be construed as affecting any obligation of any person to disclose, report or otherwise give notice of any improper conduct under any other Law.

### **Freedom of Information Law not applicable**

- 40.** The *Freedom of Information Law, 2007* does not apply to any matter arising under this Law.

### **Review of Law by legislative committee**

- 41.** (1) This Law shall be reviewed, from time to time, by a committee of the Legislative Assembly appointed by the Speaker for that purpose.
- (2) The first such review shall be conducted not later than three years after the appointed day.

### **Law binds the Crown**

- 42.** This Law binds the Crown.



## **SCHEDULE 1**

(Section 13)

### **Information to be supplied in disclosure**

1. The full name, address and occupation of the person making the disclosure.
2. The nature of the improper conduct in respect of which the disclosure is made.
3. The name of the person alleged to have committed, to be committing or to be about to commit the improper conduct.
4. The time and place where the alleged improper conduct is taking place, took place or is likely to take place.
5. The full name, address and description of a person (if any) who witnessed the commission of the improper conduct.
6. If the person is an employee making a disclosure about that person's employer or a fellow employee, whether the person making the disclosure remains in the same employment.

## **SCHEDULE 2**

(Section 30(2))

### **Procedure and powers of the designated authority**

#### **Procedure in respect of investigations**

1. (1) The designated authority may adopt whatever procedure the authority considers appropriate to the circumstances of a particular case and, subject to the provisions of this Law, may obtain information from such person and in such manner and make such enquiries as the authority thinks fit.
- (2) Nothing in this Law shall be construed as requiring the designated authority to hold any hearing.
- (3) Regulations made under this Law may prescribe the practice and procedure to be adopted at any hearing.

#### **Evidence**

2. (1) Subject to the provisions of sub-paragraph (5), the designated authority may at any time require any person who, in the opinion of the designated authority, is able to give any assistance in relation to an investigation in respect of any disclosure made pursuant to this Law, to furnish such information and produce any document or thing in connection with such investigation as may be in the possession or under the control of that person.
- (2) Subject as aforesaid, the designated authority may summon before the authority and examine on oath —
  - (a) any person who has made representations to the authority; or
  - (b) any other person who, in the opinion of the designated authority, is able to furnish information relating to the investigation,and such examination shall be deemed to be a judicial proceeding.
- (3) For the purpose of an investigation under this Law, the designated authority shall have the same powers as a Judge of the Grand Court in respect of the attendance and examination of witnesses and the production of documents.
- (4) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in proceedings in any court of law.

#### **Designated authority not to disclose certain information**

3. (1) Information obtained by the designated authority or his officers in the course of or for the purposes of an investigation under this Law shall not be disclosed except —



- (a) for the purposes of the investigation and of any report to be made on the investigation under this Law;
  - (b) for the purposes of proceedings (or possible proceedings) for an offence of perjury connected with an investigation under this Law; or
  - (c) for the purposes of any proceedings under section 18,
- and the designated authority and his officers shall not be called upon to give evidence in any proceedings (other than such proceedings as aforesaid) of matters coming to his or their knowledge in the course of an investigation under this Law.
- (2) The Governor acting in his discretion may give notice in writing to the designated authority, with respect to any document or information specified in the notice, or any class of documents or information so specified, that in the opinion of the Governor acting in his discretion the disclosure of that document or information, or of documents or information of that class, would be prejudicial to the safety of the Islands or otherwise contrary to the public interest.
- (3) Where a notice is given under sub-paragraph (2) nothing in the Law shall be construed as authorising or requiring the designated authority or any officer of the designated authority to communicate to any person for any purpose any document or information specified in the notice or any document or information of a class so specified.

### **Procedure after investigation**

4. (1) After conducting an investigation under this Law, the designated authority shall, in writing, inform the person who made the disclosure of the result of that investigation and make such recommendations as the authority considers necessary in respect of the matter which was investigated.
- (2) Where, after conducting an investigation under this Law, the designated authority has determined that the employee has suffered detriment the designated authority may make recommendations to the employer or to the Deputy Governor in the case of an employee of a civil service entity, and such recommendation may include directions to take one or more of the following measures to —
- (a) permit the employee to return to his duties;
  - (b) reinstate the employee or pay compensation to the employee in lieu of reinstatement if, in the designated authority's opinion, the relationship of trust between the parties cannot be restored;
  - (c) pay to the employee compensation in an amount not greater than the amount that, in the designated authority's opinion, is equivalent to the damage that the employee has suffered by reason of the reprisal;

- (d) rescind any measure or action, including any disciplinary action, and pay compensation to the employee in an amount not greater than the amount that, in the designated authority's opinion, is equivalent to any financial or other penalty imposed on the employee;
  - (e) pay to the employee an amount equal to any expenses and any other financial losses incurred by the employee as a direct result of the reprisal; or
  - (f) compensate the employee, by an amount of not more than ten thousand dollars, for any pain and suffering that the employee experienced as a result of the reprisal.
- (3) Where the designated authority has made a recommendation under subparagraph (2) and within any time specified or a reasonable time thereafter, the designated authority is of the opinion that no adequate action has been taken to remedy the matter, the designated authority shall submit to the Governor a special report on the case where the matter involves a civil service entity and, in all cases, advise the employee of the employee's further remedies under this Law.
- (4) The designated authority shall not, in any report under subparagraph (3), comment adversely on any person unless he has given that person an opportunity to be heard either orally or in writing.

**Disciplinary action recommended**

5. If the designated authority finds, during the course of the investigation or on the conclusion thereof that there is evidence of a breach of duty or misconduct or criminal offence, the authority shall refer the matter —
- (a) to the person or persons competent to take any disciplinary proceedings;
  - (b) to the Commissioner of Police in the case of a criminal offence; or
  - (c) to the Governor, if the breach of duty, misconduct or a criminal offence is allegedly committed by the Commissioner of Police, the Complaints Commissioner, the Attorney General, the Auditor General, the Information Commissioner or the Director of Public Prosecution.





**Passed by the Legislative Assembly this 26th day of November, 2015**

**Juliana O'Connor-Connolly**  
*Speaker.*

**Zena Merren-Chin**  
*Clerk of the Legislative Assembly.*