

No.     of 2021

**VIRGIN ISLANDS**  
**WHISTLEBLOWERS ACT, 2021**  
**ARRANGEMENT OF SECTIONS**

*Section*

**PART I**

**PRELIMINARY**

1. Short title and commencement.
2. Interpretation.

**PART II**

**DISCLOSURE OF INFORMATION**

3. Disclosure of impropriety.
4. Person who qualifies to make disclosure of impropriety.
5. Person to whom or institution to which disclosure of impropriety may be made.

**PART III**

**PROCEDURES FOR DISCLOSURE OF IMPROPRIETY AND  
RELATED ACTION**

6. Procedures for making a disclosure.
7. Reduction of disclosure into writing.
8. Action by person who receives disclosure of impropriety.
9. Submission of copy of written disclosure to the Attorney General.
10. Investigation.
11. Application to court for assistance.
12. Submission of report of investigation to the Attorney General.
13. Action by the Attorney General.

**PART IV**

**PROTECTION FOR MAKING DISCLOSURE OF IMPROPRIETY**

14. Protection of whistleblower.

15. Report to Complaints Commissioner.
16. Action by the Commission and enforcement of its orders.
17. Right of action for victimisation.
18. Legal assistance.
19. Police protection.
20. Protection against civil and criminal action.
21. Void employment contracts.

## **PART V**

### **WHISTLEBLOWER REWARD FUND**

22. Establishment of Whistleblower Reward Fund.
23. Sources of money for the Fund.
24. Object of the Fund.
25. Reward on conviction.
26. Reward on recovery of money.
27. Bank account of the Fund.
28. Management of the Fund.
29. Disbursement of Fund.

## **PART VI**

### **MISCELLANEOUS PROVISIONS**

30. Accounts and audit.
31. Annual report.
32. Regulations.

No. of 2021

Whistleblower Act, 2021

Virgin  
Islands

I Assent

Governor.

, 2021

## VIRGIN ISLANDS

No. of 2021

A Bill for

An Act to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimisation of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures and to provide for related matters.

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

### PART I

#### PRELIMINARY

1. (1) This Act may be cited as the Whistleblower Act, 2021.

Short title and  
commencement.

(2) This Act shall come into force on such date as the Minister may, by notice published in the *Gazette*, appoint.

2. In this Act, unless the context otherwise requires,

Interpretation.

“Commissioner” means the Complaints Commissioner appointed under section 110 of the Virgin Islands Constitution Order, 2007;

“Disclosure” includes the publication, revelation, notification or divulgence of information to any of the public officials specified under section 5;

“Fund” means the Whistleblowers Reward Fund established under section 22;

“Impropriety” includes conduct connected with matters falling under section 3;

“Minister” means the Minister with responsibility for Finance;

“reward” includes a sum of money payable from the Fund to a person who makes a disclosure in accordance with this Act;

“victimisation” means acts which fall within the matters specified in section 14(2);

“Whistleblower” refers to a person who makes disclosure of impropriety.

## **PART II**

### **DISCLOSURE OF INFORMATION**

Disclosure of  
impropriety.

**3. (1)** A person may make a disclosure of information where he or she has reasonable cause to believe that the information tends to show that:

- (a) a crime has been committed, is about to be committed or is likely to be committed;
- (b) another person has not complied with a law or is in the process of breaking a law or is likely to break a law which imposes an obligation on that person;
- (c) a miscarriage of justice has occurred, is occurring or is likely to occur;
- (d) in a public institution there has been, there is or there is likely to be waste, misappropriation or mismanagement of public resources;
- (e) the environment has been degraded, is being degraded or is likely to be degraded; or
- (f) the health or safety of an individual or a community is endangered, has been endangered or is likely to be endangered.

(4) Notwithstanding any other law to the contrary, a disclosure of an impropriety is protected if

- (a) the disclosure is made in good faith;
- (b) the whistleblower has reasonable cause to believe that the information disclosed and an allegation of impropriety contained in it are substantially true; and
- (c) the disclosure is made to one or more of the persons or institutions specified in section 5.

**4.** Disclosure of impropriety may be made by

Person who qualifies to make disclosure of impropriety.

- (a) an employee in respect of an employer;
- (b) an employee in respect of another employee; or
- (c) a person in respect of another person, or an institution.

**5. (1)** Disclosure of impropriety may be made to anyone or more of the following persons:

Person to whom or institution to which disclosure of impropriety may be made.

- (a) an employer of the whistleblower;
- (b) the Governor;
- (c) the Premier;
- (d) the Attorney General;
- (e) the Director of Public Prosecutions;
- (f) the Auditor General;
- (g) a member of the House of Assembly;
- (h) the Complaints Commissioner;
- (i) a Cabinet Minister or Junior Minister; or
- (j) the head of a recognised religious body.

**(2)** A whistleblower may take into account

- (a) a reasonable belief or fear on the part of the whistleblower

that the whistleblower may be subjected to dismissal, suspension, harassment, discrimination or intimidation;

- (b) a reasonable belief or fear that evidence relevant to the impropriety may be concealed or destroyed;
- (c) that the person to whom the disclosure is made will not frustrate the objective;
- (d) that the impropriety is of an exceptionally serious nature and that expeditious action must be taken to deal with it;
- (e) the place where and the prevailing circumstances under which the whistleblower lives, in determining to whom the disclosure is made.

### **PART III**

#### **PROCEDURES FOR DISCLOSURE OF IMPROPRIETY AND RELATED ACTION**

Procedure for  
making  
disclosure.

- 6. (1) A disclosure may be made in writing or orally.
- (2) The disclosure shall contain as far as practicable
  - (a) the full name, address and occupation of the whistleblower;
  - (b) the nature of the impropriety in respect of which the disclosure is made;
  - (c) the person alleged to have committed, who is committing or is about to commit the impropriety;
  - (d) the time and place where the alleged impropriety is taking place, took place or is likely to take place;
  - (e) the full name, address and description of a person who witnessed the commission of the impropriety, if there is such a person;
  - (f) whether the whistleblower has made a disclosure of the same or of some other impropriety on a previous occasion and if so, about whom and to whom the disclosure was made; and

- (g) if the person is an employee making a disclosure about that person's employer or fellow employee, whether the whistleblower remains in the same employment.

**7. (1)** Where a whistleblower makes a disclosure orally, the person to whom the disclosure is made shall cause the disclosure to be reduced into writing containing the same particulars as are specified in section 6(2).

Reduction of disclosure into writing.

(2) Where the whistleblower is illiterate, the writing required to be made under subsection (1) shall be read over, interpreted and explained to the whistleblower in a language the whistleblower understands and the whistleblower shall approve of it before making a mark to it and a certificate to this effect shall be attached to the writing.

(3) In the case of a whistleblower who is blind or has some other physical disability, but is literate, a certificate as required in subsection (2) shall be made with the necessary modifications.

**8. (1)** When a disclosure of impropriety is made to a person specified in section 5, the person shall

Action by person who receives disclosure of impropriety.

- (a) make a record of the time and place where the disclosure is made;
- (b) give to the whistleblower an acknowledgment in writing of receipt of the disclosure; and
- (c) keep the writing in which the disclosure is made confidential and in safe custody pending investigation of the impropriety.

(2) Where the disclosure is made to the head of a recognised religious body the head of the religious body may instead of recording the disclosure as required under subsection (1), assist the whistleblower to make the disclosure to the police or to some other authority specified in section 5.

(3) Where a person to whom the disclosure is made fails to keep confidential the disclosure, the person commits an offence and is liable on summary conviction to a fine not exceeding five hundred thousand dollars or to a term of imprisonment not exceeding five years.

**9.** Where a disclosure is made to a person specified under section 5, other than the Attorney General, the person shall submit a copy of the written disclosure to the Attorney General within seven working days after receipt of the disclosure.

Submission of copy of written disclosure to the Attorney General

Investigation.

**10. (1)** Where a disclosure is made to a person specified under section 5, the person shall investigate the matter except that where the person to whom the disclosure is made does not have the capability to undertake the investigation, the person shall refer the disclosure as recorded to the Attorney General or another body as directed by the Attorney General for investigation within seven working days after receipt of the disclosure.

(2) Notwithstanding subsection (1), the Attorney General may on receipt of a copy of a written disclosure under section 9, cause an investigation to be conducted into the disclosure.

(3) Investigation undertaken in respect of impropriety shall be carried out as expeditiously as possible and shall in any event be completed within sixty days of receipt of the disclosure or directives to undertake the investigation.

(4) A person who undertakes an investigation in respect of an impropriety and in the course of that investigation conceals or suppresses evidence, commits an offence and is liable on summary conviction to a term of imprisonment not exceeding five years.

Application to  
court for  
assistance.

**11.** Where in the course of an investigation under section 10, it appears to the investigator

- (a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed or tampered with; or
- (b) that a person who is willing to provide information relevant to the investigation is being subjected to pressure, inducement or intimidation to withhold the information, the investigator may apply to the court for an order to preserve the evidence or documents or to restrain the intimidation of the person willing to provide the information.

Submission of  
report of  
investigation to  
the Attorney  
General.

**12. (1)** A report on an investigation conducted under section 10 shall be submitted to the Attorney General for directives immediately after the investigation is completed.

(2) Where the completion of the investigation is delayed beyond the sixty day period specified in section 10(3), a report shall be submitted to the Attorney General stating

- (a) the reasons for the delay;
- (b) measures that are proposed to expedite the investigation;  
and



- (c) any further assistance required to complete the investigation.

(3) A report of an investigation which is submitted to the Attorney General shall contain particulars of

- (a) the manner in which the investigation was conducted;
- (b) the names and particulars of persons who provided information in the course of the investigation;
- (c) facts obtained which either confirm or dispute the truth or accuracy of the information contained in the disclosure and the person who provided the facts;
- (d) an obstacle/s encountered in the course of the investigation and the nature of such obstacle/s; and
- (e) the recommendations of the investigator.

**13.** The Attorney General may on receipt of a report under section 12(3), take the following steps:

Action by the Attorney General.

- (a) accept the recommendations contained in the report and act on it;
- (b) ask for further investigations by the same person or institution that conducted the investigations or by some other person or institution; or
- (c) reject the report and the recommendations for stated reasons which shall be communicated to the investigator.

## **PART IV**

### **PROTECTION FOR MAKING DISCLOSURE OF IMPROPRIETY**

**14. (1)** A whistleblower shall not be subjected to victimisation by the employer of the whistleblower or by a fellow employee or by any other person because a disclosure has been made.

Protection of Whistle blowers.

(2) A whistleblower shall be considered as having been subjected to victimisation where as a result of making the disclosure

- (a) the whistleblower, being an employee, is

- (i) dismissed;
  - (ii) suspended;
  - (iii) declared redundant;
  - (iv) denied promotion;
  - (v) transferred against the whistleblower's will;
  - (vi) harassed;
  - (vii) intimidated;
  - (viii) threatened with any of the matters set out in subparagraphs (i) to (vii); or
  - (ix) subjected to a discriminatory or other adverse measure by the employer or a fellow employee; or
- (b) not being an employee, the whistleblower is subjected to discrimination, intimidation or harassment by a person or an institution.

(3) A whistleblower shall not be considered as having been subjected to victimisation if the person against whom the complaint is directed has the right in law to take the action complained of and the action taken is shown to be unrelated to the disclosure made.

Report to  
Complaints  
Commissioner.

**15. (1)** A whistleblower who honestly and reasonably believes that he or she has been subjected to victimisation or learns of a likely subsection to victimisation because a disclosure has been made, may in the first instance make a complaint to the Commissioner.

(2) A complaint made under subsection (1) shall contain the following particulars:

- (a) the name, description and address of the whistleblower;
- (b) the name, description and address of the whistleblower's employer or of any other person who the whistleblower claims has subjected the whistleblower to victimisation or might subject the whistleblower to victimisation; and
- (c) the specific acts complained of as constituting

victimisation.

**16. (1)** The Commissioner shall, on receipt of a complaint, conduct an enquiry into the complaint at which the whistleblower and the person against whom the complaint is made shall be heard.

Action by the  
Complaints  
Commissioner  
and enforcement  
of its orders.

(2) The Commissioner in the course of conducting an enquiry under subsection (1) may make an interim order that it considers fit.

(3) After hearing the parties and other persons considered necessary by the Commissioner, the Commissioner shall make any order which is just and fair in the circumstances including an order for

- (a) reinstatement;
- (b) reversal of a transfer; or
- (c) transfer of the whistleblower to another establishment where applicable.

(4) The Commissioner may, where he or she considers it just and fair in the circumstances of the case, make an order for payment of reward from the Fund established under section 22.

(5) An order of the Commissioner under this section shall be of the same effect as a judgment or an order of the High Court and is enforceable in the same manner as a judgment or an order of the High Court.

**17.** A whistleblower who has been subjected to victimisation may bring an action in the High Court to claim damages for breach of contract or for another relief or remedy to which he or she may be entitled, except that an action shall not be commenced in a court unless the complaint has first been submitted to the Commissioner under section 15.

Right of action  
for victimisation.

**18.** Where the Commissioner in the course of an inquiry or hearing before it under section 16, is of the opinion that the whistleblower is in need of legal assistance, the Commissioner shall issue a certificate to the whistleblower to obtain legal aid from the Legal Aid Board or from another institution that the Commissioner may specify in the certificate.

Legal assistance.

**19. (1)** A whistleblower who makes a disclosure and who has reasonable cause to believe that

Police protection.

- (a) his or her life or property; or
- (b) the life or property of a member of the whistleblower's

family is endangered or likely to be endangered as a result of the disclosure, may request police protection and the police shall provide the protection considered adequate.

(2) Notwithstanding subsection (1), the Commissioner or the Attorney General as is appropriate may in relation to a disclosure of impropriety made or about to be made direct that the person who has made or is about to make the disclosure and the person's family be given police protection.

(3) For the purposes of this section “family” means spouse, father, mother, child, grandchild, brother and sister.

Protection  
against civil and  
criminal action.

**20.** A whistleblower is not liable to civil or criminal proceedings in respect of the disclosure unless it is proved that the whistleblower knew that the information contained in the disclosure is false and the disclosure was made with malicious intent.

Void  
employment  
contracts.

**21. (1)** A provision in a contract of employment or other agreement between an employer and an employee is void if it

- (a) seeks to prevent the employee from making a disclosure;
- (b) has the effect of discouraging an employee from making a disclosure;
- (c) precludes the employee from making a complaint in respect of victimisation; or
- (d) prevents an employee from bringing an action in court or before an institution to claim relief or remedy in respect of victimisation.

(2) Subsection (1) also applies to a contract of employment or agreement in existence on the commencement of this Act.

## **PART V**

### **WHISTLEBLOWER REWARD FUND**

Establishment of  
Whistleblower  
Reward Fund.

**22.** There is established by this Act a Whistleblower Reward Fund.

Sources of  
money for the  
Fund.

**23.** The moneys for the Fund shall consists of

- (a) voluntary contributions to the Fund; and
- (b) other moneys that may be allocated by the House of

Assembly to the Fund.

- 24.** The object of the Fund is to provide funds for payment of monetary rewards to whistleblowers. Object of the Fund.
- 25.** A whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund. Reward on conviction.
- 26.** A whistleblower whose disclosure results in the recovery of an amount of money shall be rewarded from the Fund with Reward on recovery of money.
- (a) ten percent of the amount of money recovered, or
  - (b) the amount of money that the Governor after consultation with Cabinet shall determine.
- 27.** Moneys for the Fund shall, on the directions of Cabinet be paid into a bank account opened for the purpose by the Accountant General with the approval of the Financial Secretary. Bank account of the Fund.
- 28. (1)** For the purposes of this Act, the Minister may with the approval of Cabinet give instructions not in consistent with the provisions of this Act, for the management of the Fund. Management of the Fund.
- (2)** For the purposes of subsection (1), the Minister shall
- (a) pursue and ensure the achievement of the object of the Fund;
  - (b) ensure accountability for the Fund by defining appropriate procedures for its management; and
  - (c) perform other functions as are incidental to the achievement of the object of the Fund.
- 29. (1)** The disbursement of Funds shall be determined by the Minister with the approval of Cabinet. Disbursement of Fund.
- (2)** The Accountant General shall within thirty days on receipt of the submission of a claim for payment out of the Fund, approve
- (a) payment of a reward from the Fund;
  - (b) the reimbursement of expenses incurred by a whistleblower whose disclosure resulted in an

investigation for which that person incurred those expenses; and

- (c) the payment of other relevant expenses as may be determined by the Accountant General.

(3) An amount payable under paragraphs (a) and (b) of subsection (2) shall be paid within a period of not more than three months from the date the payment of the money is approved.

(4) Each payment issued from the Fund shall be signed for by the Minister.

## **PART VI**

### **MISCELLANEOUS PROVISIONS**

Accounts and  
audit.

**30.** (1) Books of accounts and proper records shall be kept in respect of the Fund, in the form approved by the Auditor General.

(2) The Minister shall submit the accounts of the Fund to the Auditor General for audit within three months after the end of the financial year.

(3) The Auditor General shall not later than three months after the receipt of the accounts, audit the accounts.

Annual report.

**31.** (1) The Minister shall within one month of the audit report submit an annual report to Cabinet covering activities and the operations in relation to the Fund for the year to which the report relates.

(2) The annual report shall include the report of the Auditor General.

(3) Cabinet shall within one month after the receipt of the annual report, shall cause the report to be laid before the House of Assembly.

Regulations.

**32.** (1) Cabinet may make such Regulations as are necessary or expedient for the proper carrying out of the purposes of this Act.

(2) Without limiting the generality of subsection (1), Regulations made under subsection (1) may provide for

- (a) further disclosure procedures;
- (b) other persons to whom disclosures may be made; and

- (c) measures generally for the effective implementation of this Act.

Passed by the House of Assembly this     day of     , 2021

Speaker.

Clerk of the House of Assembly.

## **OBJECTS AND REASONS**

This Bill seeks to provide for the manner in which individuals may in the public interest disclose information that relates to unlawful or other illegal conduct or corrupt practices of others; to provide for the protection against victimisation of persons who make these disclosures; to provide for a Fund to reward individuals who make the disclosures and to provide for related matters.

The Bill is divided into six parts.

Part I (sections 1-2) would provide for preliminary matters.

Clause 1 sets out the short title and commencement.

Clause 2 would introduce definition of terms used in the Bill including impropriety, disclosure and whistleblower.

Part II (sections 3-5) provides for the disclosure of information.

Clause 3 would provide for the disclosure of impropriety. Clause 4 would provide for persons who qualify to make disclosure of impropriety such as an employee in respect of an employer, an employee in respect of another employee or a person in respect of another person, or an institution.

Clause 5 would provide for persons to whom or institution to which disclosure of impropriety may be made such as the Governor, Premier, Attorney General, Director of Public Prosecutions, Auditor General, a member of the House of Assembly, Complaints Commissioner or a Cabinet Minister or Junior Minister.

Part III (sections 6-13) provides for the procedures for disclosure of impropriety and related action.

Clause 6 would provide for the procedures for making a disclosure whether in writing or orally and would state the content of a disclosure.

Clause 7 would provide for the reduction of disclosure into writing and in cases where the whistleblower is illiterate, the writing shall be read over, interpreted and explained to the whistleblower in a language the whistleblower can understand.

Clause 8 would state the actions by persons who receive disclosure of impropriety and if a person to whom the disclosure is made fails to keep confidential the disclosure, the person commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars or to a term of imprisonment not exceeding four years.



Clause 9 would provide for a submission of the written disclosure to the Attorney General within seven working days after receipt of the disclosure. Clause 10 would provide for an investigation within seven working days after receipt of the disclosure.

Clause 11 would provide for in the course of an investigation, the investigator make an application to court for assistance.

Clause 12 would provide for the submission of report of investigation to be made to the Attorney General and clause 13 would state action by the Attorney General whether acceptance, rejection or ask for further investigations.

Part IV (sections 14-21) provides for the protection for making disclosure of impropriety.

Clause 14 would ensure that a whistleblower is not subjected to victimisation by the employer of the whistleblower or by a fellow employee or by another any other person because a disclosure has been made.

Clause 15 would provide for a report to Complaints Commissioner and clause 16 would state the actions by the Commission and enforcement of its orders, while clause 17 -19 would state the rights of action for victimisation, legal assistance and police protection.

Clause 20 would provide for the protection against civil and criminal action and clause 21 would void employment contracts.

Part V (sections 22-29) provides for the whistleblower reward fund.

Clause 22 would provide for the establishment of Whistleblower Reward Fund and clause 23 would provide for the sources of money for the Fund and the moneys for the Fund shall consist of voluntary contributions to the Fund and other moneys that may be allocated by the House of Assembly to the Fund.

Clause 24 would state the object of the Fund which will be to provide funds for payment of monetary rewards to whistleblowers.

Clause 25 would provide for reward on conviction whereby a whistleblower who makes a disclosure that leads to the arrest and conviction of an accused person shall be rewarded with money from the Fund.

Clauses 26 - 29 would provide for the reward on recovery of money, bank account of the Fund, management of the Fund and disbursement of Fund.

Part VI (sections 30-32) provides for the miscellaneous provisions.

Clauses 30 – 32 would provide for accounts and audit, Annual Report, and Regulations.

Minister of Finance.