
Fourth Session Twelfth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 9 of 2024

[L.S.]

AN ACT to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector, to protect persons making those disclosures from detrimental action, to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct and to provide for other matters connected therewith

[Assented to 19th July, 2024]

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

PART I

PRELIMINARY

Short title 1. This Act may be cited as the Whistleblower Protection Act, 2024.

Commencement 2. This Act comes into force on such date as is fixed by the President by Proclamation.

Interpretation 3. In this Act—

“designated authority” means the office or body listed in the Schedule;

“detrimental action” means any act or omission that results in a person being—

- (a) unfairly subject to disciplinary action;
- (b) or demoted;
- (c) harassed, intimidated or victimised;
- (d) transferred against his will;
- (e) unfairly refused transfer or promotion;
- (f) subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
- (g) provided with an adverse reference or refused a reference;
- (h) unfairly denied appointment to any employment, profession or office;

- (i) threatened with any of the actions specified in paragraphs (a) to (h);
- (j) otherwise adversely affected in respect of his employment, profession, office (including employment opportunities and job security); or
- (k) otherwise suffering injury, loss or damage in relation to his employment, family life, career, profession, trade or business;

“disclosure” means disclosure of information by a person which shows or potentially shows that improper conduct has occurred, is occurring or is likely to occur;

“employee” means—

- (a) any person who—
 - (i) works or 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 assisted in the carrying on, or conducts 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” means any person who—

- (a) employs or employed another person to carry out work or provide services and who remunerates, remunerated or expressly undertakes to remunerate, that other person for the work carried out or services provided; or
- (b) permits or permitted another person to assist in any manner in the carrying on, or conduct of the business of that person, without any obligation to provide remuneration or reward to that other person;

“external disclosure” means a disclosure made to a whistleblowing reports unit;

“improper conduct” means any—

- (a) criminal offence;
- (b) failure to carry out a legal obligation;
- (c) conduct that is likely to result in a miscarriage of justice;
- (d) conduct that is likely to threaten the health or safety of a person;
- (e) conduct that is likely to threaten or damage the environment;

- (f) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;
- (g) act of reprisal against, or victimisation of, a whistleblower or person related to, or associated with a whistleblower;
- (h) conduct that tends to show unfair discrimination on the basis of gender, race, place of origin, social class, colour, religion or political opinion; or
- (i) wilful concealment of any act described in paragraphs (a) to (h);

“internal disclosure” means a disclosure made to a whistleblowing reports officer;

“Minister” means the Minister to whom responsibility for national security is assigned;

“organisation” means any entity or body of persons, whether having legal personality or not, and includes a public body;

“protected disclosure” means a disclosure referred to in section 7(1);

“public body” has the meaning assigned to it by section 4 of the Public Procurement and Disposal of Public Property Act, 2015;

“whistleblower” means any person who makes a disclosure to a whistleblowing reporting officer or a whistleblowing reports unit, as the case may be, whether it qualifies as a protected disclosure or not under this Act;

“whistleblowing reporting officer” means such officer within an organisation appointed under section 10(1);

“whistleblowing reports unit” means a unit of a designated authority established under section 13; and

“whistleblower protection” means protection afforded to a whistleblower under this Act.

Act No.1 of 2015

Application of Act

4. This Act applies to any disclosure made after the coming into force of this Act, irrespective of whether or not the conduct or the improper conduct to which the disclosure relates occurred before or after the coming into force of this Act.

Act binds the State

5. This Act binds the State.

PART II

DISCLOSURE OF IMPROPER CONDUCT

Division 1

Protected Disclosures

Disclosure of improper conduct

6. (1) An employee of an organisation may make a disclosure of improper conduct to a whistleblowing reporting officer or a whistleblowing reports unit where he has reasonable grounds to believe that improper conduct has occurred, is occurring or is likely to occur within the organisation.

(2) A disclosure under subsection (1) may be made—

(a) although the employee is not able to identify a particular person to whom the disclosure relates;

- (b) although the improper conduct occurred before the coming into force of this Act;
- (c) in respect of information acquired by the employee while he was employed in the organisation; or
- (d) of any improper conduct of a person while that person was employed in the organisation.

(3) A disclosure under subsection (1) may be made orally or in writing.

(4) Where a disclosure is made orally, the officer receiving the disclosure shall—

- (a) reduce the disclosure immediately into writing in the presence of the person making the disclosure; and
- (b) read the written disclosure to the person who made it.

(5) Where a disclosure is reduced into writing, in accordance with subsection (4), the person who made the disclosure shall read the written disclosure and sign it.

(6) A disclosure made in relation to a member of Parliament shall not amount to a breach of privilege.

7. (1) A disclosure is a protected disclosure if—

Protected disclosure

- (a) it is made in accordance with section 6;
- (b) it is made in good faith;
- (c) at the time of making the disclosure, the whistleblower reasonably believes, based on the information he has at that time, that—
 - (i) the information disclosed, and any allegation contained in it, are substantially true; and
 - (ii) the information disclosed tends to show that his employer, another employee of his employer or a person acting on his employer's

behalf has engaged, is engaging or is preparing to engage in improper conduct;

- (d) the disclosure is not made for purposes of personal gain;
- (e) in the case of an internal disclosure, it is made substantially in accordance with the internal procedures established under section 11(1); and
- (f) in the case of an external disclosure, the director of a whistleblowing reports unit concludes that a disclosure has been properly made under section 14(5).

(2) A disclosure is not a protected disclosure if the whistleblower discloses information which he knows, or ought reasonably to have known, is false.

Information protected by legal professional privilege

8. A disclosure of information in respect of which a claim to legal professional privilege could be maintained in legal proceedings is not a protected disclosure if it is made by a person to whom the information has been disclosed in the course of obtaining legal advice.

Anonymously made disclosures

9. (1) Subject to subsection (4), disclosure made anonymously is not a protected disclosure.

(2) Subject to subsection (3), a whistleblowing reporting officer or whistleblowing reports unit may receive and process an anonymous disclosure and may take the disclosure into account in determining whether improper conduct has occurred.

(3) Where a whistleblowing reporting officer or whistleblowing reports unit, after having taken into account all the relevant circumstances, considers that the information in an anonymous disclosure is likely to be defamatory or libellous, the officer or unit shall reject the information but keep a record of it in the event that the person who discloses the information becomes known and liable to criminal or civil proceedings.

(4) Where the identity of a person who makes an anonymous disclosure becomes known, the disclosure shall be deemed to be a protected disclosure if it would have been a protected disclosure if it had not been made anonymously.

Division 2

Internal Disclosures

10. (1) An employer shall appoint and keep in his employment such whistleblowing reporting officers as are required for the purposes of this Act. Appointment of whistleblowing reporting officers

(2) A whistleblowing reporting officer shall be responsible for—

- (a) receiving and processing internal disclosures of information about improper conduct committed within or by his employer's organisation; and
- (b) determining whether an internal disclosure should be referred for further investigation to a designated authority through its whistleblowing reports unit and the conditions under which the referral should take place.

11. (1) An employer shall have in operation internal procedures for receiving and dealing with disclosures relating to his organisation. Internal procedures for receiving and dealing with disclosures

(2) Internal procedures referred to in subsection (1) shall identify the whistleblowing reporting officer within the organisation to whom an internal disclosure may be made.

(3) An employer shall publish and republish widely in his organisation and at regular intervals, the internal procedures referred to subsection (1), and adequate information on how to use those procedures.

12. (1) Subject to subsection (2), a whistleblowing reporting officer shall, within thirty days after receiving an internal disclosure, notify the whistleblower of the status of the disclosure or such matters as may be prescribed. Notice to whistleblower

(2) Where it is apparent that action has been taken to rectify or deal with the improper conduct disclosed in an internal disclosure, it shall not be necessary for the whistleblowing reporting officer to comply with subsection (1).

(3) Where an internal disclosure is a protected disclosure and leads to the detection of improper conduct which constitutes a criminal offence or a breach of the law, the whistleblowing reporting officer shall refer the internal disclosure to a designated authority, through its whistleblowing reports unit, for investigation.

(4) Where a whistleblowing reporting officer refers an internal disclosure under subsection (3), the whistleblowing reporting officer shall not disclose the identity of the whistleblower except with his prior consent in writing.

(5) A protected disclosure does not, by reason of its referral to a whistleblowing reports unit, cease to be a protected disclosure.

Division 3

External Disclosures

Setting up a whistleblowing reports unit

13. (1) A designated authority shall have a whistleblowing reports unit consisting of a director and such other officers as are required for the efficient performance of the functions of the unit.

(2) A whistleblowing reports unit shall be responsible for receiving and processing external disclosures pertaining to the matters which fall within the areas of responsibility of its designated authority.

(3) The director of the whistleblowing reports unit shall be responsible for determining whether an external disclosure should be referred for further investigation to a designated authority and the conditions under which the referral should take place.

14. (1) An employee of an organisation may make an external disclosure to the whistleblowing reports unit of a designated authority if—

- (a) the organisation has no internal procedures established and published for receiving and dealing with disclosures relating to the organisation;
- (b) although an internal disclosure has previously been made, he has not been informed on the status of the disclosure, or it is reasonably evident to him that there has been no action or recommended action in relation to the disclosure within a reasonable time from the making of the disclosure; or
- (c) he believes on reasonable grounds—
 - (i) the whistleblowing reporting officer is, or may be involved in the alleged improper conduct;
 - (ii) the whistleblowing reporting officer is, by reason of any relationship or association with a person who is, or may be involved in the improper conduct alleged in the disclosure, not a person to whom it is appropriate to make the disclosure;
 - (iii) the head or senior officer of the organisation is, or may be involved in the improper conduct alleged in the disclosure;
 - (iv) immediate reference to the whistleblowing reports unit is justified by the urgency of the matter to which the disclosure relates, or some other exceptional circumstances;

- (v) he will be subjected to detrimental action by his employer if he makes an internal disclosure; or
- (vi) it is likely that evidence relating to the improper conduct will be concealed or destroyed if he makes an internal disclosure.

(2) In determining, for the purposes of subsection (1), whether it is reasonable for the whistleblower to make the disclosure to the whistleblowing reports unit, regard shall be had, in particular, to—

- (a) the seriousness of the alleged improper conduct;
- (b) whether the improper conduct is continuing or is likely to occur in the future;
- (c) whether the disclosure is made in breach of a duty of confidentiality owed by the employee to any other person;
- (d) in a case falling within subsection (1)(b), any action which the employer has taken or might reasonably be expected to have taken as a result of the previous disclosure; and
- (e) whether, in making the disclosure to the whistleblowing reports unit, the employee complied with internal procedures referred to in section 11(1).

(3) Where a person makes a disclosure to a whistleblowing reports unit, the director of the whistleblowing reports unit shall, within forty-five days after receiving the disclosure, consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally.

(4) Where the director of a whistleblowing reports unit concludes that a disclosure should not have been made externally, he shall, within a reasonable time, not

exceeding forty-five days, notify in writing the whistleblower that an internal disclosure in accordance with Division 2 of this Part should be made and that the whistleblowing reports unit will not be dealing further with the disclosure.

(5) Where the director of a whistleblowing reports unit concludes that a disclosure has been properly made, he shall, within a reasonable time notify in writing the whistleblower of the status of the disclosure or such matters as may be prescribed.

15. (1) Where a whistleblowing reports unit to whom a protected disclosure is made considers that the disclosure can be better processed by another whistleblowing reports unit, the whistleblowing reports unit to whom the disclosure is made may, within not more than thirty days and with the consent of the whistleblower, refer the disclosure to that other whistleblowing reports unit.

Reference of
information to
another authority

(2) Where a whistleblowing reports unit refers a protected disclosure under subsection (1), the unit shall not disclose the identity of the whistleblower except with his prior consent in writing.

(3) A protected disclosure does not, by reason of its referral to another whistleblowing reports unit, cease to be a protected disclosure.

16. (1) The director of a whistleblowing reports unit shall, not later than 31st March in each year, submit a report to the Minister on the activities of the whistleblowing reports unit during the preceding year, so, however, that the report shall not disclose particulars of any disclosures filed with the whistleblowing reports unit.

Annual Report to
Parliament

(2) The Minister shall lay a report submitted under subsection (1) in the Senate and the House of Representatives not later than 31st May in each year.

PART III

PROTECTION ON WHISTLEBLOWERS

Prohibition of
detrimental action

17. Subject to the exceptions provided for in this Act, despite any prohibition of, or restriction on, the disclosure of information under any written law, rule of law, contract, oath or practice, a whistleblower shall not be subjected to detrimental action on account of his having made a protected disclosure.

Immunity from
criminal, civil and
disciplinary
proceedings

18. (1) Notwithstanding any other law, but subject to section 19(1), a whistleblower who makes a protected disclosure is not liable to any criminal, civil or disciplinary proceedings for having made such a disclosure.

(2) Whistleblower protection shall not be prejudiced on the basis that—

- (a) the whistleblower was in good faith, mistaken about the importance of the disclosure;
- (b) any perceived threat to the public interest on which the disclosure was based has not materialised; or
- (c) the whistleblower has not fully respected the procedural requirements of this Act or of any regulations or guidelines made under this Act.

No immunity to
whistleblower if he
was the perpetrator
or an accomplice

19. (1) Subject to subsection (3), nothing in this Part shall prevent the institution of criminal proceedings against a whistleblower, where the whistleblower was the perpetrator of, or an accomplice in, any improper conduct—

- (a) to which the disclosure relates; and
- (b) which constitutes a criminal offence.

(2) Subject to subsections (4) and (5), nothing in this Part shall prevent the institution of civil or

disciplinary proceedings against a whistleblower, where the proceedings arise from the conduct of the whistleblower, other than the making of a protected disclosure.

(3) In any criminal proceedings instituted against a whistleblower based on the fact that the whistleblower was the perpetrator of, or an accomplice in, the improper conduct disclosed by the whistleblower, the court shall, in giving its judgment or decision, take into due account—

- (a) the fact that the disclosure was made by the whistleblower; and
- (b) whether the whistleblower has assisted the police to apprehend any other person involved in the commission of an offence,

and the punishment of the whistleblower may be mitigated or remitted, as the court thinks fit, and the court shall expressly refer to this subsection in its judgment or decision.

(4) In any civil proceedings instituted against a whistleblower based on the fact that the whistleblower was the perpetrator of, or was an accomplice in, the improper conduct disclosed by the whistleblower, the court may, if it finds that the whistleblower is responsible for the payment of damages, only hold him liable for such part of the damage as he may have caused and not hold him liable jointly and severally with others.

(5) Where a whistleblower is an employee of a public body and disciplinary proceedings are instituted against him based on the fact that he was the perpetrator of, or an accomplice in, the improper conduct disclosed by him, the public body shall—

- (a) endeavour to mitigate the effects of any punishment; and
- (b) where possible, not seek the dismissal of the whistleblower as punishment.

Prohibition of disclosure of information to identify the whistleblower

20. (1) A whistleblowing reporting officer or whistleblowing reports unit to whom a protected disclosure is made or referred shall not disclose information that identifies or may lead to the identification of the whistleblower, unless the whistleblower expressly consents in writing to the disclosure of that information.

(2) A whistleblowing reports unit shall not communicate the contents of a disclosure to other departments within its designated authority, until it has duly investigated the disclosure and it has established that it is necessary or expedient in the public interest for further investigation to be carried out by the appropriate department or by the police or any other body with investigative, prosecutorial or regulatory powers, in relation to any improper conduct which constitutes a criminal offence or breach of a law.

(3) Notwithstanding any other law, a designated authority shall not be restricted in any manner in sharing information about its investigation with its whistleblowing reports unit, for the whistleblowing reports unit to determine whether it has any relevant information on the subject matter under investigation.

(4) Guidelines may be issued by each designated authority setting out—

- (a) the duties of communication between the whistleblowing reports unit and the whistleblower and the restrictions thereon; and
- (b) the rules for disclosure to other departments of the designated authority or to other designated authorities.

Civil remedies for detrimental action

21. (1) A whistleblower who believes that detrimental action has been, or is likely to be taken against him in breach of section 17, may apply to the High Court for—

- (a) an order requiring the person who has taken the detrimental action to remedy that action;

- (b) an injunction; or
- (c) any other relief as the court thinks fit.

(2) The High Court, pending the final determination of an application under this section, may—

- (a) make an interim order;
- (b) grant an interim injunction; or
- (c) grant any other relief as the court thinks fit.

(3) If, in determining an application under subsection (2), the High Court is satisfied that a person has taken or intends to take detrimental action against a whistleblower in breach of section 17, the High Court may—

- (a) order the person who took the detrimental action to remedy that action and determine the amount of damages due to the person who suffered the detrimental action;
- (b) grant an injunction in such terms as the High Court considers appropriate; or
- (c) grant any other relief as the High Court thinks fit.

(4) Any person who may have suffered detrimental action as a result of making a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any loss or damage sustained as a consequence of the detrimental action.

PART IV

MISCELLANEOUS

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

Offences

- (a) knowingly prevents, restrains or restricts any person from making an internal or external disclosure;
- (b) knowingly intimidates any person who intends to make an internal or external disclosure or who has made a protected disclosure;

- (c) knowingly induces any person by threats, promises or otherwise to contravene this Act;
- (d) being an employer, knowingly subjects any person to detrimental action as a consequence of the person making a protected disclosure; or
- (e) purports to make a disclosure under this Act knowing that it contains a statement that is false or misleading, or being reckless as to whether the statement is false or misleading.

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

- (a) summary conviction to a fine of fifteen thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for ten years.

Obligation for
secrecy and
confidentiality

23. (1) A person receiving, investigating or otherwise dealing with a disclosure under this Act 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,

except that any statement given, or document, information or thing provided, 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.

(2) A person who contravenes subsection (1) commits an offence and is liable upon summary conviction to a fine of six hundred thousand dollars and to imprisonment for two years.

24. A person who obstructs a whistleblowing reporting officer or director or other officer of a whistleblowing reports unit in the performance of his duties under this Act commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for two years.

25. A person who, knowing that a document or thing is relevant to a disclosure or the processing of a disclosure under this Act—

- (a) destroys, mutilates or alters the document or thing;
- (b) falsifies the document or makes a false document;
- (c) conceals the document or thing; or
- (d) directs, counsels or causes, in any manner, a person to do anything mentioned in paragraphs (a) to (c),

commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for five years.

26. Any provision in a contract of service or other agreement between an employer and an employee is void in so far as it—

- (a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act; or
- (b) purports to preclude the employee or has the effect of discouraging the employee from making a protected disclosure.

27. The Minister may, by Order subject to affirmative resolution of Parliament, amend the Schedule.

28. (1) The Minister may make such regulations—

- (a) for the processing of disclosures and other information collected under this Act;

- (b) for the retention of disclosures and other other information collected under this Act;
 - (c) for ensuring that only information that is relevant and necessary for the purposes of this Act is retained by whistleblowing reports units;
 - (d) prescribing the length of time during which disclosures and other information collected under this Act may be retained by whistleblowing reporting officers and whistleblowing reports units;
 - (e) for the destruction by whistleblowing reporting officers and whistleblowing reports units of information in their possession which is no longer necessary for the purposes of this Act;
 - (f) for the conduct of independent reviews of information retained by whistleblowing reporting officers and whistleblowing reports units to ensure compliance with this Act and its regulations; and
 - (g) generally for carrying into effect the provisions of this Act.”.
- (2) Regulations made under subsection (1) shall be subject to affirmative resolution of Parliament.

SCHEDULE

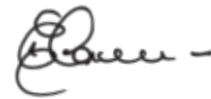
(Section 3)

DESIGNATED AUTHORITIES

1. Auditor General’s Department
2. Board of Inland Revenue
3. Bureau of Standards of Trinidad and Tobago
4. Central Bank of Trinidad and Tobago
5. Children’s Authority of Trinidad and Tobago

6. Customs and Excise Division
7. Elections and Boundaries Commission
8. Environmental Management Authority
9. Equal Opportunity Commission
10. Fair Trading Commission
11. Financial Intelligence Unit of Trinidad and Tobago
12. Integrity Commission of Trinidad and Tobago
13. National Physical Planning Authority of Trinidad and Tobago
14. Occupational Safety and Health Agency
15. Occupational Safety and Health Authority
16. Office of Procurement Regulation
17. Office of the Director of Public Prosecutions
18. Office of the Ombudsman of Trinidad and Tobago
19. Regulated Industries Commission
20. Trinidad and Tobago Police Service
21. Trinidad and Tobago Securities and Exchange Commission

Passed in the House of Representatives this 21st day of June, 2024.



Clerk of the House

Passed in the Senate this 3rd day of July, 2024.



Clerk of the Senate (Acting)