



PROPOSAL FOR A WHISTLEBLOWER'S PROTECTION ACT 2022

WHISTLEBLOWER'S PROTECTION ACT 2022

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An Act

To enable and facilitate the disclosure and investigation of matters of wrongdoing in or by an organisation; to protect employees who, in accordance with this Act, make disclosures of information about wrongdoing in or by an organization; and to establish the Whistleblowing Authority.

Enacted by the Parliament of Mauritius, as follows –

Part I-PRELIMINARY

1. Short Title

This Act may be cited as the Whistleblower Act 2021.

2. Interpretation

In this Act –

agreement has the same meaning as in section 2 of the Workers' Rights Act 2019

appropriate authority, without limiting the meaning of that term,—

(a) includes—

- (i) the Police Force;
- (ii) the Independent Commission Against Corruption;
- (iii) the Independent Police Complaints Commission;
- (iv) the Director of Audit;
- (v) the Integrity Reporting Services Agency;

- (vi) the Ombudsman;
 - (vii) the Ombudsperson for Children;
 - (viii) the Director-General of the Mauritius Revenue Authority;
 - (ix) the Governor General of the Bank of Mauritius;
 - (x) the Financial Intelligence Unit;
 - (xi) the Gambling Regulatory Authority and
- (b) includes a private sector body which comprises members of a particular profession or calling and which has power to discipline its members; but
- (c) does not include
- (i) a Minister of the Republic; or
 - (ii) a member of Parliament

Authority means the Whistleblowing Authority established under section 20

Director means the Director of the Whistleblowing Authority appointed under section 20;

employee, in relation to an organisation, includes but is not limited to—

- (a) a former employee;
- (b) a person seconded to the organisation;
- (c) an individual who is engaged or contracted under a contract for services to do work for the organisation;
- (d) a person concerned in the management of the organisation (including a person who is a member of the board or governing body of the organisation); and
- (e) a person who works for the organisation as a volunteer without reward or expectation of reward for that work.

Government company means a company registered under the Companies Act and in which the Government of Mauritius -

- (a) directly or indirectly or through any other corporate body, owns or controls not less than 50 per cent of the entire share capital; or

- (b) by reason of its financial input through loans, debentures or otherwise, or by reason of the presence of its representatives on the Board of Directors, is in a position to influence its policy or decisions;

organisation means a body of persons, whether corporate or unincorporate, and whether in the public sector or in the private sector; and includes a body of persons comprising 1 employer and 1 or more employees

Parliamentary Committee means the Parliamentary Committee set up under section 22;

penalisation means any act or omission that affects a worker to the worker's detriment, and in particular includes—

- (i) suspension,
- (ii) demotion or loss of opportunity for promotion,
- (iii) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (iv) the imposition or administering of any discipline, reprimand, or other penalty (including a financial penalty),
- (v) unfair treatment,
- (vi) coercion, intimidation, or harassment,
- (vii) discrimination, disadvantage, or unfair treatment,
- (viii) injury, damage, or loss, and
- (ix) threat of reprisal;

public body –

- (a) means a Ministry or Government department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and
- (b) includes a Government company.

3. Application of the Act

- (1) Subject to subsection (2), this Act shall bind the State.
- (2) The Minister to whom responsibility for the subject of protected disclosures is assigned may, on the recommendation of the Whistleblowing Authority and on such terms and

conditions as he thinks fit, exempt any public body from compliance with this Act in the interests of the sovereignty of the State, national security, and public order.

- (3) Any public body exempted from compliance with this Act under subsection (2) shall, after consultation with the Whistleblowing Authority and the Minister to whom responsibility for the subject of protected disclosures is assigned, put in place and operate an internal procedure to enable its employees to make protected disclosures and ensure the public body deals with protected disclosures of information.

PART II - Protected Disclosures

4. Protected disclosures

- (1) For the purposes of this Act, “protected disclosure” means, subject to subsection (6), a disclosure of relevant information (whether before or after the date of the passing of this Act) made by an employee of an organisation in the manner specified in sections 6 to 10.
- (2) For the purposes of this Act information is “relevant information” if—
- (a) in the reasonable belief of the employee at the time the disclosure is made, it tends to show one or more relevant wrongdoings, and
 - (b) it came to the attention of the employee in the course of the employee’s employment.
- (3) The following matters are relevant wrongdoings for the purposes of this Act—
- (a) that an offence has been, is being or is likely to be committed;
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation, other than one arising under the employee’s contract of employment or other contract whereby the employee undertakes to do or perform personally any work or services;
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - (d) that the health or safety of any individual has been, is being or is likely to be endangered;
 - (e) that the environment has been, is being or is likely to be damaged;
 - (f) that an employee in the organisation is subject to violence at work;
 - (g) that an employee is being treated in a discriminatory manner;
 - (h) that an unlawful or otherwise improper use of funds or resources of a public body, or of other public money, has occurred, is occurring or is likely to occur;
 - (i) that an act or omission by or on behalf of a public body is oppressive, discriminatory or grossly negligent or constitutes gross mismanagement;
 - (j) that an act, omission or course of conduct is in breach of an organisation’s code of conduct;
 - (k) that the public interest has been, is being or is likely to be harmed, or
 - (l) that information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be concealed or destroyed.

- (4) For the purposes of subsection (3) it is immaterial whether a relevant wrongdoing occurred, occurs or would occur in Mauritius or elsewhere and whether the law applying to it is that of Mauritius or that of any other country or territory.
- (5) A matter is not a relevant wrongdoing if it is a matter which it is the function of the employee or the employee's organisation to detect, investigate or prosecute and does not consist of or involve an act or omission on the part of the organisation.
- (6) 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 was disclosed in the course of obtaining legal advice.
- (7) The motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure.
- (8) In proceedings involving an issue as to whether a disclosure is a protected disclosure it shall be presumed, until the contrary is proved, that it is.

5. Obligation on organisation to adopt an internal procedure

- (1) Any organisation with more than 100 employees and any public body shall put in place and operate an internal procedure to enable its employees to make protected disclosures and ensure the organisation deals with protected disclosures.
- (2) For the purpose of subsection (1), an employee means a person who has entered into, or works under an agreement or a contract of apprenticeship with the organisation.
- (3) A private organisation may delegate its obligation under subsection (1) to another private organisation, subject to the approval of the Whistleblowing Authority.
- (4) An internal procedure established under subsection (1) shall comply with relevant guidelines issued by the Whistleblowing Authority.
- (5) An organisation shall publish information on how to use its internal procedure widely in the organisation and shall republish such information at regular intervals.
- (6) An organisation shall publish annually a report on the use and operation of its internal procedure.
- (7) A report made under subsection (6) shall comply with relevant guidelines issued by the Whistleblowing Authority.
- (8) A report made under subsection (6) shall be published widely in the organisation.

6. Disclosure must be made in accordance internal procedure

- (1) Subject to the rest of the section and to sections 7 to 10, an employee must disclose information in the manner provided by the internal procedure established by and published in the organisation for receiving and dealing with disclosures of relevant information.
- (2) A disclosure of relevant information may be made to the head or a deputy head of the organisation if—
 - (a) the organisation has no internal procedures established and published for receiving and dealing with disclosures of relevant information; or
 - (b) the employee making the disclosure of relevant information believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedure is or may be involved in the relevant wrongdoing alleged in the disclosure of relevant information; or
 - (c) the employee making the disclosure of relevant information believes on reasonable grounds that the person to whom the wrongdoing should be reported in accordance with the internal procedures is, by reason of any relationship or association with a person who is or may be involved in the relevant wrongdoing alleged in the disclosure of relevant information, not a person to whom it is appropriate to make the disclosure.
- (3) The person or persons to whom the protected disclosure was made may refer the protected disclosure to an appropriate authority if:
 - a. immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or
 - b. the head of the organisation is or may be involved in the relevant wrongdoing which is the subject of the protected disclosure.
- (4) A protected disclosure shall not be referred to an appropriate authority under subsection (3) unless, where reasonably possible, the written consent of the employee who made the disclosure has been obtained,

7. Disclosure may be made to appropriate authority in certain circumstances

A disclosure of information may be made to an appropriate authority if the employee making the disclosure—

- (a) believes on reasonable grounds that the head of the organisation is or may be involved in the relevant wrongdoing which is the subject of the protected disclosure;

(b) believes on reasonable grounds that immediate reference to an appropriate authority is justified by reason of the urgency of the matter to which the disclosure relates, or some other exceptional circumstances; or

(c) has already made substantially the same disclosure in accordance with section 6; and believes on reasonable grounds that-

(i) the organisation has decided not to investigate the matter; or

(ii) the organisation has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority; or

(iii) the organisation has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and

continues in good faith to believe on reasonable grounds that the information disclosed is true or likely to be true.

8. Reference from one appropriate authority to another of information disclosed

(1) Where an appropriate authority to whom a protected disclosure of information is made considers, after consultation with another appropriate authority, that the information disclosed can be more suitably and conveniently investigated by that other appropriate authority, the appropriate authority to whom the information is disclosed may refer that information to that other appropriate authority.

(2) Where, under subsection (1), information is referred from one appropriate authority to another, the appropriate authority to whom the information has been referred must promptly notify the person by whom the protected disclosure of information was made that the information disclosed has been so referred.

(3) A protected disclosure of information does not, by reason of the information being referred under subsection (1), cease to be a protected disclosure of information.

(4) Nothing in this section prevents a protected disclosure of information being transferred from one appropriate authority to another on more than 1 occasion.

9. Disclosure may be made to Minister in certain circumstances

(1) A disclosure of information may be made to a Minister if the employee making the disclosure—

(a) has already made substantially the same disclosure in accordance with section 8; and

- (b) believes on reasonable grounds that the appropriate authority to whom the disclosure was made—
 - (i) has decided not to investigate the matter; or
 - (ii) has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to appropriate authority; or
 - (iii) has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and
 - (c) continues in good faith to believe on reasonable grounds that the information disclosed is true or likely to be true.
- (2) A disclosure of information may be made to a Minister if the employee making the disclosure in good faith believes on reasonable grounds that immediate reference to a Minister is justified by reason of the exceptionally serious nature of the relevant wrongdoing.
- (3) A protected disclosure made under sub-sections (1) or (2) shall comply with relevant guidelines issued by the Whistleblowing Authority.
- (4) Where a Minister to whom a protected disclosure of information is made considers, after consultation with another Minister, that the information disclosed can be more suitably and conveniently investigated by that other Minister, the Minister to whom the information has been disclosed may refer that information to that other Minister.
- (5) Where, under subsection (4), information is referred from one Minister to another, the Minister to whom the information has been referred must promptly notify the person by whom the protected disclosure of information was made that the information disclosed has been so referred.
- (6) A protected disclosure of information does not, by reason of the information being referred under subsection (4), cease to be a protected disclosure of information.

10. Disclosure in other cases

- (1) A disclosure of information may be made under this section if the employee making the disclosure—
- (a) has already made substantially the same disclosure in accordance with section 9; and
 - (b) believes on reasonable grounds that the Minister to whom the disclosure was made—

- (i) has decided not to investigate the matter; or
 - (ii) has decided to investigate the matter but has not made progress with the investigation within a reasonable time after the date on which the disclosure was made to the person or appropriate authority; or
 - (iii) has investigated the matter but has not taken any action in respect of the matter nor recommended the taking of action in respect of the matter, as the case may require; and
- (c) continues in good faith to believe on reasonable grounds that the information disclosed is true or likely to be true.
- (2) Any person who publishes a protected disclosure made by an employee under this section shall take reasonable steps to verify that the employee making the disclosure has complied with this Part of the Act prior to publishing the disclosure.

PART III - Protection of Whistleblowers

11. Protection against termination of work agreement

- (1) The Workers' Rights Act 2019 is amended –
 - (a) in section 2 by inserting in the appropriate alphabetical order the following new definition-

“protected disclosure” means a protected disclosure under section 4 of the Whistleblower Act; and
 - (b) in section 64 (1) by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and replaced by a semi-colon:

(g) an employee having made a protected disclosure;

12. Other protection of employees from penalisation for having made protected disclosure

- (1) An organisation shall not penalise or threaten penalisation against an employee, or cause or permit any other person to penalise or threaten penalisation against an employee, for having made a protected disclosure.
- (2) An employee claiming that he or she has been penalised or was threatened with penalisation in contravention of subsection (1) may file a claim before the Industrial Court notwithstanding any other action which the circumstances of his claim may dictate.

13. Right of action under article 1382 of the Code Civil Mauricien for suffering detriment because of making protected disclosure

- (1) If a person causes detriment to another person because the other person or a third person made a protected disclosure, the person to whom the detriment is caused has a right of action under article 1382 of the Code Civil Mauricien against the person by whom the detriment is caused.
- (2) A person may not both—
 - (a) pursue a right of action under subsection (1) against a person in respect of a matter, and
 - (b) in respect of the same matter make or present against the same person—
 - (i) a claim for severance allowance under the Workers' Rights Act 2019, or
 - (ii) a claim under s. 12(2) above.
- (3) In subsection (1) "detriment" includes—
 - (a) coercion, intimidation, or harassment,
 - (b) discrimination, disadvantage, or adverse treatment in relation to employment (or prospective employment),
 - (c) injury, damage, or loss, and
 - (d) threat of reprisal.

14. Protection of identity of maker of protected disclosure

- (1) A person to whom a protected disclosure is made, and any person to whom a protected disclosure is referred in the performance of that person's duties, shall not disclose to another person any information that might identify the employee who made the protected disclosure.
- (2) A failure to comply with subsection (1) shall –
 - (a) actionable by the employee who made the protected disclosure if that employee suffers any loss by reason of the failure to comply; and
 - (b) constitute an offence.
- (3) It shall be a defence to proceedings under subsection (2) to show that-
 - (a) the person to whom the protected disclosure was made or referred to take all reasonable steps to avoid so disclosing any such information;

(b) the employee who made the protected disclosure consented in writing to any such information;

(c) the person to whom the protected disclosure was made or referred reasonably believes that disclosing any such information is necessary for—

- (i) the effective investigation of the relevant wrongdoing concerned;
- (ii) the prevention of serious risk to the security of the State, public health, public safety, or the environment; or
- (iii) the prevention of crime or prosecution of a criminal offence; or

(d) the disclosure is otherwise necessary in the public interest or is required by law.

(4) That Section shall bind the State and any other public authority.

15. Personal protection

(1) A person who makes a protected disclosure and who has reasonable cause to believe that

- (a) his or her life or property; or
- (b) the life or property of a member of that person'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) "Family" for the purposes of this section means spouse, father, mother, child, grandchild, brother, and sister.

16. Immunity from civil and criminal proceedings

(1) No person who—

- (a) makes a protected disclosure of information in good faith; or
- (b) refers, in good faith, a protected disclosure of information to an appropriate authority for investigation; or
- (c) makes a complaint in good faith to the Whistleblowing Authority under section 25 of this Act

is liable to any civil or criminal proceeding or to a disciplinary proceeding by reason of having made or referred that disclosure of information.

(2) Subsection (1) applies despite any prohibition of, or restriction on, the disclosure of information under any enactment, rule of law, contract, oath, or practice.

17. False Disclosure

- (1) The protections conferred by this Part shall not apply if it is proven that the person who made a protected disclosure or the person who referred a protected disclosure knew that the information contained in the disclosure was false at the time of the disclosure, or referral, and the disclosure was made with malicious intent or bad faith.

18. No contracting-out of protections

- (1) Any provision in an agreement is void in so far as it purports—
 - (a) to prohibit or restrict the making of protected disclosures;
 - (b) to exclude or limit the operation of any provision of this Act;
 - (c) to preclude a person from bringing any proceedings under or by virtue of this Act;
or
 - (d) to preclude a person from bringing proceedings for breach of contract in respect of anything done in consequence of the making of a protected disclosure.

19. Legal professional privilege

- (1) Nothing in this Act authorises a person to disclose information protected by legal professional privilege.
- (2) A disclosure of such information is not a protected disclosure for the purposes of this Act, unless such disclosure is mandatory by virtue of any enactment.

PART IV - The Whistleblowing Authority

20. Establishment of Whistleblowing Authority

- (1) There is established for the purposes of this Act, an Authority which shall be known as the Whistleblowing Authority.
- (2) The Authority shall be impartial and shall perform its functions without fear, favour or prejudice.
- (3) The Authority shall be a body corporate.
- (4) The Authority shall be managed by a Director who shall have substantial post qualification and managerial experience, with specific qualifications in Law, investigation and/or auditing.

- (5) The Authority shall be composed of a panel of three persons, including the Director. The two other members of the panel shall hold similar qualifications as the Director.
- (6) The Director and other two members of the panel shall be appointed by the Parliamentary Committee for the monitoring of the Whistleblowing Authority, after consultation with:
- (a) Public bodies;
 - (b) Private organisations;
 - (c) Recognised trade unions; and
 - (d) Members of the public.
- (7) The Director and the members of the panel shall be appointed on such terms and conditions as the Parliamentary Committee may determine, but never less than a minimum period of 3 years.
- (8) Subject to subsection (10) the Whistleblowing Authority may employ, on such terms and conditions as it thinks fit, such employees and consultants as may be necessary for the proper discharge of the functions of the Authority.
- (9) Every employee shall be under the administrative control of the panel.
- (10) No member of the panel or employee shall take an active part in politics or seek election as a member of the Assembly or a local Authority.
- (11) The Authority shall, with the approval of the Parliamentary Committee, establish the salaries, wages, allowances and conditions of employment of its employees and consultants.

21. Protection of Director and employees

No liability, civil or criminal, shall attach to any member of the panel, any employee, or the Authority in respect of loss, arising from the exercise in good faith by any member of the panel, an employee of the Authority, or the Authority of his or its functions under this Act.

22. The Parliamentary Committee for the monitoring of the Whistleblowing Authority

- (1) There shall be, for the purposes of this Act, a Parliamentary Committee for the monitoring of the Whistleblowing Authority.
- (2) The Parliamentary Committee shall be composed of 8 members, 4 of whom shall be designated by the Prime Minister and 4 of whom shall be designated by the Leader of the Opposition. The President of the Republic shall assent to the designation of each member.
- (3) The members shall designate one of the members to be Chairperson of the Parliamentary Committee.

- (4) A member of the Parliamentary Committee may, at any time, be removed as member of the Committee -
- (a) by the Prime Minister, in the case of a member designated by him;
 - (b) by the Leader of the Opposition, in the case of a member designated by him.
- (5) The Clerk of the Assembly shall be the Secretary of the Parliamentary Committee.
- (6) Subject to the provisions of this Act, the proceedings of the Parliamentary Committee shall be governed by the Standing Orders of the Assembly relating to Select Committees of the Assembly.
- (7) Five members or more shall constitute the quorum of the Parliamentary Committee.
- (8) A vacancy on the Parliamentary Committee shall be filled by the person having appointed the member whose office is vacant.
- (a) A vacancy shall occur on the Parliamentary Committee for the following reasons:-
- (i) resignation for personal reasons to the satisfaction of the Chairperson;
 - (ii) resignation due to personal interest in an enquiry or activities of the Parliamentary Committee;
 - (iii) resignation from the Assembly;
 - (iv) death or incapacity due to illness; and
 - (v) discharge by the Chairperson for repeated unjustified absences.
- (9) Everything authorised or required to be done by the Parliamentary Committee shall be decided by a simple majority of the quorum of the Parliamentary Committee.

23. Functions and powers of the Parliamentary Committee

- (1) Subject to subsection (2), the Parliamentary Committee shall
- (a) monitor and review the manner in which the Whistleblowing Authority fulfils its functions under this Act;
 - (b) review the budgetary estimates of the Authority;
 - (c) issue such instructions as it considers appropriate with regard to -
 - (i) the financial management of the Authority;
 - (ii) the staffing requirements of the Authority; and
 - (iii) the allocation of resources to the various operations of the Authority;
 - (d) subject to subsection (4), issue guidelines and give general directives to the Whistleblowing Authority with regard to the manner in which the Authority is to perform its functions and exercise its powers;

- (e) receive reports from the Authority at such intervals as the Parliamentary Committee may require;
 - (f) make a report to the National Assembly where the Committee considers that it is expedient that the attention of the Assembly be directed to-
 - (i) the manner in which the Commission is discharging its functions and exercising its powers;
 - (ii) the need for further legislative reforms; or
 - (iii) any other matter relating to this Act.
 - (g) consider the annual report and other reports of the Whistleblowing Authority and report to the Assembly on any matter appearing in or arising out of such report;
- (2) Notwithstanding this Act-
- (a) the Parliamentary Committee shall not
 - (i) exercise its powers or discharge its functions in relation to a specific case under investigation by the Authority;
 - (ii) require the Authority to reconsider a decision to review or not to review an investigation under s. 26;
 - (iii) reconsider the findings of the Authority in relation to a particular complaint under section 29;
 - (iv) question an officer of the Whistleblowing Authority or a public official concerning, or otherwise enquire into, a matter which is under review by the Authority;
- (3) Where the Parliamentary Committee issues a guideline under subsection(1)(d)-
- (a) the Chairperson of the Parliamentary Committee shall lay the guideline on the table of the Assembly within 14 days from the date on which such guideline was issued;
 - (b) a Member of the Assembly may, within 30 days of the date on which the guideline has been tabled, move the Assembly that the guideline be disallowed and, on such motion being tabled, it shall be debated and put to a vote at the next sitting of the Assembly.
- (4) Where -
- (a) a guideline under subsection (1)(d) has not been laid on the table of the Assembly under subsection (3)(a); or

(b) a motion of disallowance under subsection (3)(b) has been voted by the Assembly,
the guideline shall cease to have effect.

24. Functions of the Whistleblowing Authority

- (1) The functions of the Whistleblowing Authority shall be to-
- (a) Raise public awareness so as to encourage the use of protected disclosures;
 - (b) Collect and publish data and information on the functioning of this Act;
 - (c) Provide advice to employees who intend to make or have made protected disclosures;
 - (d) Publish guidelines to facilitate the implementation of this Act;
 - (e) Address complaints of improper investigations of protected disclosures conducted by public bodies made under section 25;
 - (f) Ensure organisations and public bodies adopt and implement internal procedures in compliance with this Act and guidelines published under this Act; and
 - (g) Guide organisations in their investigations of protected disclosures by an employee.

25. Complaints of improper investigations of protected disclosures

- (1) An employee of a public body having made a protected disclosure under the internal procedure of that public body may complain to the Whistleblowing Authority that the investigation of the protected disclosure by the public body is not being conducted properly or was not conducted properly.
- (2) A complaint made under (1) shall be in writing and shall set out the reasons for which the employee making the complaint reasonably believes the investigation of the protected disclosure by the public body is not being conducted properly or was not conducted properly.
- (3) The Whistleblowing Authority shall not disclose to another person any information that might identify the employee who made a complaint under subsection (1).
- (4) Following a complaint made under subsection (1) that an investigation of a protected disclosure by a public body is not being conducted properly, the Director of the Whistleblowing Authority may decide to guide the public body in its investigation of the protected disclosure which is the subject of the complaint.

- (5) Upon a decision under subsection (4) to guide a public body in its investigation of a protected disclosure, the Whistleblowing Authority shall give written reasons to the public body which is subject of the complaint and to the employee having made the complaint under subsection (1) in support of its decision to guide the public body in its investigation.
- (6) Upon a decision under subsection (4) not to guide a public body in its investigation of a protected disclosure, the Whistleblowing Authority shall give written reasons to the public body which is subject of the complaint and the employee having made the complaint under subsection (1) in support of its decision not to guide the public body in its investigation.
- (7) A decision by the Director of the Whistleblowing Authority to guide a public body in its investigation of a protected disclosure does not authorise the Whistleblowing Authority to issue a direction to that public body requiring it to act in a particular manner in relation to the investigation.
- (8) The Whistleblowing Authority shall publish guidelines on how organisations, including public bodies, are to conduct investigations of protected disclosures.

26. Review of investigation not properly conducted

- (1) Following a complaint under s. 25 that an investigation of a protected disclosure by a public body has not been conducted properly, the Director of the Whistleblowing Authority may decide to review the investigation which is the subject of the complaint.
- (2) On a decision to review an investigation under s. 25 the Whistleblowing Authority shall give written reasons to the public body and to the employee having made the complaint under s. 25 (1) for its decision to review the investigation.
- (3) On a decision not to review an investigation, the Whistleblowing Authority shall give written reasons to the public body concerned and to the employee having made the complaint under s. 25(1) for its decision not to review the investigation.

27. Powers of the Whistleblowing Authority when reviewing an investigation of a protected disclosure by a public body

- (1) The Director of the Whistleblowing Authority may, for the purposes of guiding a public body in its investigation under section 25 (4) or for the purposes of a review of an investigation of a protected disclosure of a public body under s. 26 of this Act –
 - (a) order any person to attend, at a specified time and place, for the purpose of being examined orally under review;
 - (b) order any person to produce before it any book, document, record or article as may be required with respect to any matter relevant to the investigation under review, which he is not prevented by any other enactment from disclosing; and

- (c) order any person to furnish a statement in writing made on oath or affirmation setting out all information in relation to any matter relevant to the investigation which may be required under the notice.
- (2) Every order made under this section shall be in writing and signed by the Director or a member of the staff of the Whistleblowing Authority duly authorised in writing by the Director.
- (3) A person on whom an order under subsection (1) has been served shall –
 - (a) comply with the order;
 - (b) attend before the Director in accordance with the terms of the order;
 - (c) continue to attend on such other days as may be directed until the examination is complete; and
 - (d) answer questions and furnish all information, documents, records or statements, including certified copies thereof, as ordered.
- (4) The Director may take copies or extracts from any document produced under subsection (1) and may require the person producing it to give any necessary explanation relating to such document.
- (5) Where material to which an investigation relates consists of information stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, the request from the Director shall be deemed to require the person named therein to produce or give access to it in a form in which it can be taken away and in which it is visible and legible.
- (6) Any person who, without lawful or reasonable excuse, fails to attend a hearing or to produce a document or other material when required to do so under subsection (3) shall commit an offence

28. Disclosure of information

- (1) The Director, members of the Panel or any other staff of the Whistleblowing Authority shall not –
 - (a) disclose any information relating to the affairs of the Authority, any particular organisation or the affairs of an individual, which he has obtained under or by virtue of any of the provisions of the Act, unless such disclosure is made –
 - (i) with the written authorisation of the organisation or the individual from whom the information was obtained;
 - (ii) for the purpose of the administration or enforcement of this Act;
 - (iii) in connection with the investigations of any criminal offence;
 - (iv) in compliance with the requirements of any Court or the provisions of any other enactment;

- (b) use, for his own personal benefit or for the benefit of any other person, make use of any information, whether directly or indirectly, which has been obtained by him under or by virtue of any of the provisions of this Act.

29. Finding that investigation improperly conducted by a public body

- (1) Upon a review under s. 26 of this Act, the Whistleblowing Authority shall determine whether the investigation which is the subject of a complaint under s. 25 of this Act was not conducted properly.
- (2) On a determination under subsection (1), the Whistleblowing Authority shall give written reasons for its findings to the public body and to the employee having made the complaint.
- (3) Upon a determination in subsection (1) that the investigation was conducted improperly, the Whistleblowing Authority may order the public body whose investigation was the subject of the complaint to investigate the protected disclosure anew.
- (4) In deciding whether to order the public body whose investigation was the subject of the complaint to investigate the protected disclosure anew, the Whistleblowing Authority shall take into account all the circumstances of the complaint, including but not limited to-
 - (a) the nature of the relevant wrongdoing involved;
 - (b) whether the protected disclosure was made to an appropriate authority under section 7; and
 - (c) the status and progress of the investigation of the appropriate authority.
- (5) On a decision under subsection (3), the Whistleblowing Authority shall give written reasons to the public body and to the employee having made the complaint.
- (6) A public body which has been ordered to start an investigation of a protected disclosure anew shall-
 - (a) comply with relevant guidelines issued by the Whistleblowing Authority in carrying out an investigation anew; and
 - (b) inform, at regular intervals, the Whistleblowing Authority of the status of the investigation carried out anew.
- (7) The Director of the Whistleblowing Authority may decide to guide a public body in an investigation when the Whistleblowing Authority determined that the initial investigation was conducted improperly.
- (8) Subsection (6) does not authorise the Whistleblowing Authority to issue a direction to a public body requiring it to act in a particular manner in relation to an investigation.

- (9) On a determination in subsection (1) that the investigation was conducted improperly, the Whistleblowing Authority shall-
- (a) inform the Parliamentary Committee and the Minister responsible for the public body which investigation was determined to have been conducted improperly of the determination and of the reasons for the determination; and
 - (b) make such recommendations to the Minister responsible concerned as it considers appropriate.

30. Monitoring of organisations' internal procedures

- (1) For the purpose of this Act, the Whistleblowing Authority may request one or more of the following from an organisation:
- (a) information concerning whether the organisation or public body has established and published internal procedures for receiving and dealing with information about relevant wrongdoings; and
 - (b) a copy of those procedures;
 - (c) information about how those procedures operate; and
 - (d) the report compiled under section 5 of this Act
- (2) Every order made under this section shall be in writing and signed by the Executive Director or a member of the staff of the Commission duly authorised in writing by the Executive Director.
- (3) A request under subsection (1) shall be complied with.
- (4) Any organisation who, without lawful or reasonable excuse, fails to provide information or to produce documents when requested by the Whistleblowing Authority under subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees.

31. Issuing of Guidelines

The Whistleblowing Authority shall issue and publish guidelines to organisations and public bodies regarding the making, receiving and investigation of disclosures under this Act.

32. Annual Report

- (1) The Whistleblowing Authority shall, within six months after the end of each year or within such longer period as the Parliamentary Committee may in special circumstances approve, make and transmit to the Parliamentary Committee a report dealing generally with the activities of the Authority during the preceding year.
- (2) The Chairperson of the Parliamentary Committee shall cause a copy of the report to be laid on the table of the National Assembly.

(3) The Whistleblowing Authority shall not disclose in a report under subsection (1) any information that would directly or indirectly identify any:

- (a) person who has made a disclosure or complaint under this Act; or
- (b) organisation about whose conduct a disclosure was made.

33. General Fund

- (1) The Authority shall establish a General Fund comprising funds derived from the Consolidated Fund, or derived by or accruing to it, from any other source.
- (2) The Authority may accept donations, grants and sponsorship after consultation with the Parliamentary Committee and all funds received under this subsection shall be credited to the General Fund.

34. Estimates

- (1) The Authority shall, not less than 3 months before the commencement of every financial year, submit for approval, to the Minister responsible for finance, an estimate of the income and expenditure of the Authority.
- (2) In determining a submission under subsection (1) by the Authority, the Minister responsible for finance shall take into account any review of such estimates or any consideration given to them by the Parliamentary Committee prior to their submission to the Minister responsible for finance.

35. Audited accounts

- (1) The Authority shall, not later than 6 months after the close of every financial year, furnish audited accounts of the Authority for that financial year to the Parliamentary Committee.
- (2) The Chairperson of the Parliamentary Committee shall, at the earliest available opportunity, but not later than one month after receiving audited accounts under subsection (1), lay a copy of the audited accounts of the Commission before the National Assembly.

36. Exemptions

- (1) The Authority shall be exempt from payment of any duty, levy, rate, charge, fee or tax.
- (2) No registration fee shall be payable in respect of any document signed or executed by the Authority under which the Authority is a beneficiary.

PART V – MISCELLANEOUS

37. Regulations

- (1) The Minister responsible may, after consultation with the Whistleblowing Authority, make such regulations as he thinks fit for the purpose of this Act.
- (2) The Minister responsible may, in accordance with the advice of the Director, designate any public body as an appropriate authority for the purposes of this Act.

