

2021-10-15

### **OBJECTS AND REASONS**

This Bill would deter and combat corruption and other improper conduct by encouraging and facilitating disclosures of such conduct, protecting the persons who make such disclosures and regulating the receipt, investigation and other treatment of such disclosures.

*Arrangement of Sections*

PART I

PRELIMINARY

1. Short title
2. Interpretation
3. Application of Act

PART II

DISCLOSURES

4. Disclosure to Disclosure Receiving Authority
5. Disclosure to employer
6. Special procedure for matters relating to national security etc.
7. Legal professional privilege
8. Content and form of disclosure
9. Anonymous disclosures
10. Disclosure procedures
11. Disclosure receiving officers

**12. Protected disclosures**

**PART III**

**RECEIVING, INQUIRING INTO AND OTHERWISE DEALING WITH  
DISCLOSURES**

**13. Duty to receive and inquire into disclosures**

**14. Right to refuse; duty to refer**

**15. Disclosure Monitoring Authority**

**PART IV**

**PROTECTION OF WHISTLEBLOWERS ETC.**

**16. Prohibition against detrimental action**

**17. Presumption of detrimental action resulting from disclosure**

**18. Immunity from civil, criminal and disciplinary proceedings**

**19. No immunity where whistleblower was perpetrator or accomplice**

**20. Prohibition of disclosure of information to identify whistleblower**

**21. Civil remedies for detrimental action**

**22. Other remedies not affected**

**23. Protection of associated persons, wrongly identified persons etc.**

PART V

MISCELLANEOUS

- 24. Provisions for non-disclosure void
- 25. Confidentiality
- 26. Offences and penalties
- 27. Amendment of First Schedule
- 28. Regulations
- 29. Act binds the Crown
- 30. Consequential Amendments
- 31. Commencement

FIRST SCHEDULE

DISCLOSURE RECEIVING AUTHORITIES

SECOND SCHEDULE

*Consequential Amendments*

## **BARBADOS**

A Bill entitled

An Act to deter and combat corruption and other improper conduct by encouraging and facilitating disclosures of such conduct, protecting the persons who make such disclosures and regulating the receipt, investigation and other treatment of such disclosures.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

**Short title**

1. This Act may be cited as the *Whistleblower Protection Act, 2021*.

**Interpretation**

2. In this Act,

“appointed day” means the date of commencement of this Act;

“associated person” means a person who

- (a) provides or attempts to provide supporting information in respect of a disclosure or otherwise assists or attempts to assist a whistleblower; or
- (b) is a member of the family of a whistleblower;

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

- (a) harassed, intimidated or victimized;
- (b) unfairly denied appointment to any employment, profession or office;
- (c) unfairly subjected to disciplinary action;
- (d) unfairly dismissed, suspended or demoted;
- (e) transferred against his will;
- (f) unfairly refused transfer or promotion;
- (g) subject to a term or condition of employment or retirement from employment that has been altered to his disadvantage;
- (h) unfairly provided with an adverse reference or refused a reference;
- (i) threatened with any of the actions specified in paragraphs (a) to (h); or

(j) otherwise adversely affected in respect of his employment, profession or office, including in respect of employment opportunities and job security,

or in a person otherwise suffering injury, loss or damage, whether personally or in relation to his family life, career, employment, profession, office, trade or business;

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

“Disclosure Monitoring Authority” means the authority designated as such under section 15(1) for the purposes of this Act;

“disclosure procedures” means the procedures described in section 10(1);

“Disclosure Receiving Authority” means a person specified in the *First Schedule*;

“document” includes

(a) anything on which there is writing;

(b) a map, plan, drawing or photograph; and

(c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from the information so recorded or stored;

“employee” has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

“employer” has the meaning assigned to it by section 2(1) of the *Employment Rights Act, 2012* (Act 2012-9);

“improper conduct” includes any

(a) criminal offence;

- (b) failure to carry out a legal obligation, other than one arising under an employee's contract of employment whereby the employee undertakes to perform personally any work or services;
- (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, negligence, impropriety or misconduct in the carrying out of any activity that involves the use of public funds;
- (g) act of reprisal against, or victimization of, a whistleblower, an associated person or a person mistakenly perceived or identified as a whistleblower or an associated person;
- (h) conduct that tends to show unfair discrimination, whether under the *Employment (Prevention of Discrimination) Act, 2020* (Act 2020-26) or otherwise;
- (i) other conduct that represents a significant threat or harm to the public interest;
- (j) wilful concealment of any act described in paragraphs (a) to (i); or
- (k) wilful concealment or destruction of any information tending to show that any act described in paragraphs (a) to (i) has been, is being or is likely to be committed;

“persons exercising public functions” includes

- (a) public officers;
- (b) members, chief executive officers, managers, directors and employees of state-owned enterprises; and

- (c) any other person who holds a legislative, executive, administrative or judicial office in the Government of Barbados, whether appointed or elected, permanent or temporary, paid or unpaid;

“privileged information” means

- (a) communications between an attorney-at-law and his client or any person representing his client, made in connection with the giving of legal advice to the client;
- (b) communications between an attorney-at-law and his client or any person representing his client, or between such an attorney-at-law or his client or any such representative and any other person, made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and
- (c) materials enclosed with or referred to in such communications and made
  - (i) in connection with the giving of legal advice; or
  - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the communications or materials are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

“protected disclosure” means a disclosure described in section 12;

“public body” means

- (a) a Ministry, department, agency or other authority of Government;
- (b) a state-owned enterprise;

“state-owned enterprise” means

- (a) a statutory board;

- (b) a company that is substantially owned and effectively controlled by the Government;

“whistleblower” means any person who is personally aware of improper conduct and who intends or attempts to make, makes or has made, a disclosure.

### **Application of Act**

**3.** This Act applies to any disclosure made after the appointed day, notwithstanding that

- (a) the conduct to which the disclosure relates may have occurred before the appointed day;
- (b) the whistleblower is not able to identify a particular person to whom the disclosure relates.

## **PART II**

### **DISCLOSURES**

#### **Disclosure to Disclosure Receiving Authority**

**4.(1)** A whistleblower may make a disclosure to any Disclosure Receiving Authority.

(2) Where a whistleblower makes a disclosure to a Disclosure Receiving Authority, the whistleblower shall ensure, as far as practicable, that the matter to which the disclosure relates falls within the area of responsibility of the Disclosure Receiving Authority.

(3) Notwithstanding subsection (2), a whistleblower shall not be denied the protection afforded by Part IV merely on the basis that he made a disclosure to a Disclosure Receiving Authority of a matter that does not fall within the area of responsibility of the Disclosure Receiving Authority.

**Disclosure to employer**

5. Without prejudice to the generality of section 4, a whistleblower who is an employee may, where the improper conduct he wishes to disclose relates to his employment or to the business of his employer, make the disclosure to his employer.

**Special procedure for matters relating to national security etc.**

6. Notwithstanding sections 4 and 5, a whistleblower who wishes to disclose a matter that would prejudice the national security, defence or international relations of Barbados shall make the disclosure to the Minister responsible for the matter or to the Prime Minister or to both.

**Legal professional privilege**

7. For the avoidance of doubt, nothing in this Act authorizes the disclosure of information that is protected by legal professional privilege.

**Content and form of disclosure**

8.(1) A disclosure may be made orally or in writing and shall contain, as far as practicable, the following information:

- (a) the full name, address and occupation of the whistleblower;
- (b) details of the improper conduct in respect of which the disclosure is made;
- (c) the name of the person alleged to have committed, to be committing or to be about to commit the improper conduct;
- (d) the time and place where the improper conduct is alleged to have taken place, to be taking place or to be about to take place;
- (e) the full name, address and description of a person, if any, who witnessed the commission of the improper conduct;

- (f) whether the whistleblower made a disclosure of the same or of some other improper conduct on a previous occasion and, if so, about whom and to whom the disclosure was made; and
  - (g) where the whistleblower is an employee making a disclosure about his employer or a fellow employee, whether the whistleblower remains in the same employment.
- (2) Where a disclosure is made orally, the person who receives the disclosure shall, within 24 hours of receiving the disclosure, cause the disclosure to be reduced into writing containing the particulars specified in subsection (1).
- (3) A disclosure shall be made substantially in accordance with any applicable disclosure procedure.
- (4) A whistleblower shall not be denied the protection afforded by Part IV merely on the basis of a defect in the form or content of a disclosure.

#### **Anonymous disclosures**

- 9.(1)** Notwithstanding any other provision of this Act, a disclosure may be made anonymously.
- (2) A person who receives an anonymous disclosure shall not refuse to act upon the disclosure merely on the basis that it was made anonymously.

#### **Disclosure procedures**

- 10.(1)** Every person to whom disclosures may be made under this Act shall have and implement procedures for the making, receipt, inquiry into and other treatment of such disclosures.
- (2) Disclosure procedures shall
- (a) be set out in writing; and
  - (b) include as a minimum requirement
    - (i) a list of the Disclosure Receiving Authorities;

- (ii) a description, in accordance with sections 4, 5 and 6, of the options available for the making of disclosures; and
  - (iii) as far as is practicable, the information specified in section 8,
- (3) An employer shall provide his employees with a copy of the disclosure procedures.
- (4) Nothing in this section precludes a person required to establish disclosure procedures under this Act from implementing other procedures for disclosure that are not inconsistent with this Act.

### **Disclosure receiving officers**

- 11.(1)** Every director, chief executive officer or other head of a Disclosure Receiving Authority and every employer shall identify within his organization, at least one individual, to be known as a disclosure receiving officer, who may receive disclosures on behalf of the organization.
- (2) Notwithstanding subsection (1), a director, chief executive officer or other head of a Disclosure Receiving Authority or an employer may be the disclosure receiving officer.
- (3) A disclosure receiving officer shall have the requisite authority and training to receive, inquire into and otherwise deal with disclosures.

### **Protected disclosures**

- 12.(1)** A disclosure made or intended or attempted to be made in accordance with this Part is a protected disclosure.
- (2) A disclosure that is privileged information is a protected disclosure.
- (3) A whistleblower shall enjoy the protection afforded by Part IV in respect of a protected disclosure he makes or intends or attempts to make.
- (4) Notwithstanding subsection (1)
- (a) a disclosure is not a protected disclosure where the whistleblower commits an offence by making it;

- (b) a disclosure made anonymously does not become a protected disclosure until the whistleblower identifies himself to the recipient of the disclosure.

### PART III

#### RECEIVING, INQUIRING INTO AND OTHERWISE DEALING WITH DISCLOSURES

##### **Duty to receive and inquire into disclosures**

**13.(1)** A person to whom a disclosure is

- (a) made in accordance with section 4, 5 or 6; or
- (b) referred in accordance with section 14(4),

shall receive and record the disclosure and take appropriate steps to inquire into the disclosure where he considers that the circumstances specified in section 14(2) do not apply and an inquiry should be undertaken.

(2) A person referred to in subsection (1) who determines to inquire into a disclosure shall

- (a) commence the inquiry forthwith;
- (b) ensure that the inquiry is carried out fairly;
- (c) issue to the whistleblower, periodic updates on the inquiry at intervals of no more than 30 days;
- (d) review the results of the inquiry and report its findings to
  - (i) the whistleblower;
  - (ii) any other relevant person having regard to the improper conduct and the area of responsibility involved; and

- (iii) for the avoidance of doubt, the Commissioner of Police, where the findings suggest that the improper conduct is or involves an offence;
  - (e) where appropriate
    - (i) make recommendations regarding the measures to be taken to remedy the improper conduct;
    - (ii) take steps to remedy the improper conduct, provide redress and reduce any opportunity for recurrence of the conduct; and
    - (iii) take disciplinary action;
  - (f) ensure that the rights of the whistleblower, any witness involved and the person alleged to have committed the improper conduct are protected; and
  - (g) receive, record, review, inquire into and otherwise deal with any complaints made in respect of detrimental action suffered as a result of the disclosure.
- (3) A person who receives, inquires into or otherwise deals with a disclosure shall not be liable in any civil, criminal or disciplinary proceedings on account of his receiving, inquiring into or otherwise dealing with the disclosure in accordance with this Act.

**Right to refuse; duty to refer**

- 14.(1)** A person to whom a disclosure is made may, in good faith, in any of the circumstances set out in subsection (2)
- (a) refuse to deal with the disclosure or to commence an inquiry into any improper conduct alleged in the disclosure; or
  - (b) cease an inquiry into the disclosure.

- (2) The circumstances referred to in subsection (1) are
  - (a) the subject matter of the disclosure or the related inquiry has been adequately dealt with, or could more appropriately be dealt with by another person;
  - (b) the subject matter of the disclosure is frivolous or not sufficiently important to warrant an inquiry; or
  - (c) the circumstances surrounding the subject matter of the disclosure have changed, whether by reason of insufficiency of evidence or otherwise, so as to render the inquiry unnecessary.
- (3) Where a person refuses to carry out an inquiry, the person shall provide reasons for the refusal in writing to the whistleblower within 15 days of his decision.
- (4) Where
  - (a) a disclosure is made to a Disclosure Receiving Authority; and
  - (b) the Disclosure Receiving Authority is not the appropriate person to inquire into the matter disclosed,

the Disclosure Receiving Authority shall forthwith refer the disclosure to such other Disclosure Receiving Authority who, in the opinion of the first mentioned Disclosure Receiving Authority, is the appropriate person to inquire into the matter.

**Disclosure Monitoring Authority**

- 15.(1)** The Minister may by Order declare a person to be the Disclosure Monitoring Authority for the purposes of this Act.
- (2) The Disclosure Monitoring Authority shall be responsible for monitoring compliance with this Act.

(3) In furtherance of his function under subsection (2), the Disclosure Monitoring Authority shall

- (a) publish such procedural guidelines regarding the making, receiving, inquiring into and other treatment of disclosures, as it considers appropriate;
- (b) provide such assistance as may be practicable to any person who is
  - (i) a whistleblower; or
  - (ii) a disclosure receiving officer, Disclosure Receiving Authority, employer or other person subject to the requirements of this Act;
- (c) on an ongoing basis, plan, implement and monitor public awareness programmes aimed at informing and educating the public, and employees and employers, in particular, about the making of protected disclosures in a responsible manner and about disclosure procedures;
- (d) review from time to time the disclosure procedures required to be established under this Act and the implementation and operation of such procedures;
- (e) make recommendations to any person arising from any review under paragraph (d); and
- (f) where he considers it appropriate to do so initiate an investigation into a disclosure.

(4) The Disclosure Monitoring Authority shall not disclose in any report it prepares for publication any information that would directly or indirectly identify a whistleblower or any person about whose conduct a disclosure was made.

PART IV

PROTECTION OF WHISTLEBLOWERS ETC.

**Prohibition against detrimental action**

**16.(1)** No whistleblower shall be subjected to detrimental action on account of his intending or attempting to make, making or having made, a protected disclosure.

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

(3) An employee who is dismissed on account of his intending or attempting to make, making or having made, a protected disclosure shall, without prejudice to any other remedy, be treated as having been unfairly dismissed under the *Employment Rights Act, 2012* (Act 2012-9).

**Presumption of detrimental action resulting from disclosure**

**17.** Where a whistleblower suffers detrimental action at or around the same time that he makes a protected disclosure, the detrimental action shall be presumed to be a consequence of the protected disclosure unless the person who took, authorized or caused the detrimental action to be taken shows that the act that constitutes the detrimental action is otherwise justified.

**Immunity from civil, criminal and disciplinary proceedings**

**18.(1)** Subject to section 19, a whistleblower shall not be liable in any civil, criminal or disciplinary proceedings on account of his making a protected disclosure.

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

- (3) The protection afforded to a whistleblower by this Part shall not be diminished or denied on the basis that
- (a) the whistleblower was mistaken about the significance 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 complied with any applicable disclosure procedures, guidelines or regulations made under this Act.

**No immunity where whistleblower was perpetrator or 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 an offence.

(2) Subject to subsections (5) and (6), nothing in this Part shall prevent the institution of civil or disciplinary proceedings against a whistleblower where the proceedings arise from conduct of the whistleblower, other than the making of a protected disclosure.

(3) In any criminal proceedings instituted against a whistleblower on the basis 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 members of the Police Force in apprehending 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.

(4) Where the court acts under subsection (3), the court shall expressly refer to that subsection in its judgment or decision.

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

(6) Where a whistleblower is an employee of a public body and disciplinary proceedings are instituted against him on the basis 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 whistleblower**

**20.(1)** No disclosure receiving officer or Disclosure Receiving Authority to whom a protected disclosure is made or referred shall 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 disclosure receiving officer shall not communicate the contents of a disclosure to any other person whether within or outside his organization that is not directly involved in receiving, inquiring into or otherwise dealing with disclosures, unless he first inquires into the disclosure and establishes that it is necessary or expedient in the public interest for further investigation to be carried out by the person or by members of the Police Force or any other body with investigative, prosecutorial or regulatory powers in relation to any improper conduct which constitutes an offence or other breach of law.

- (3) The Disclosure Monitoring Authority may issue guidelines setting out
- (a) the duties of communication between Disclosure Receiving Authorities and whistleblowers and the restrictions thereon; and
  - (b) the rules for disclosure to
    - (i) persons within Disclosure Receiving Authorities who are not directly involved in receiving, inquiring into or otherwise dealing with disclosures; and
    - (ii) other Disclosure Receiving Authorities.

**Civil remedies for detrimental action**

**21.(1)** A whistleblower who believes that detrimental action has been, is being or is likely to be taken against him in breach of section 16 may apply to the High Court for

- (a) an order requiring the person who has taken the detrimental action to remedy the action;
  - (b) an injunction; or
  - (c) any other relief that the court thinks fit.
- (2) The High Court may, pending the final determination of an application under this section
- (a) make an interim order;
  - (b) grant an interim injunction; or
  - (c) grant any other relief it thinks fit.
- (3) Where, in determining an application under subsection (2), the High Court is satisfied that a person has taken, is taking or intends to take detrimental action against a whistleblower in breach of section 16, the High Court may
- (a) order the person who took the detrimental action to remedy the action and determine the amount of damages due to the whistleblower;

- (b) grant an injunction on such terms as the court considers appropriate;  
or
- (c) grant any other relief it thinks fit.

(4) A whistleblower who suffers detrimental action on account of his intending or attempting to make, making or having made, 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.

**Other remedies not affected**

**22.** Nothing in this Act affects the right of a whistleblower who believes that, on account of his intending or attempting to make, making or having made a protected disclosure, he has been, is being, or is likely to be, subjected to detrimental action, to seek redress for such action under any other law.

**Protection of associated persons, wrongly identified persons etc.**

**23.(1)** An associated person who suffers detrimental action on account of his association with a whistleblower shall enjoy the same protection as a whistleblower under this Part.

(2) A person who suffers detrimental action on account of his being perceived as or wrongly identified as a whistleblower shall enjoy the same protection as a whistleblower under this Part.

(3) This Part applies to a person described in subsections (1) and (2) as it applies to a whistleblower.

PART V

MISCELLANEOUS

**Provisions for non-disclosure void**

**24.** Any provision in an agreement which precludes a person from making a protected disclosure or purports to require a person to

- (a) agree not to make a disclosure under this Act during or after his period of employment;
- (b) refrain from instituting any proceedings under this Act; or
- (c) withdraw or abandon any disclosure made or proceedings instituted under this Act,

is void and of no effect.

**Confidentiality**

**25.(1)** Every person who receives, inquires into or otherwise deals with a disclosure shall regard and treat as secret and confidential

- (a) the disclosure and the identity of the whistleblower; and
- (b) any statement given, or information or other thing provided, to the person in connection with the disclosure.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable on summary conviction to a fine of \$200 000 or to imprisonment for 2 years or to both.

(3) For the avoidance of doubt, any statement given or information or other thing provided in furtherance of an investigation or any legal or disciplinary proceedings shall not be regarded as being inconsistent with subsection (1).

**Offences and penalties****26.(1)** A person who

- (a) prevents or restrains another person from making a protected disclosure or hinders such a person in the making of such a disclosure;
- (b) subjects another person to detrimental action on account of
  - (i) his intending or attempting to make or making a protected disclosure; or
  - (ii) his being an associated person or mistakenly perceived or identified as a whistleblower;
- (c) refuses, in bad faith, to receive a disclosure or to carry out an inquiry in relation to a disclosure;
- (d) purports to make a disclosure knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading;
- (e) induces another person by threats, promises or otherwise to
  - (i) prevent or restrain another person from making a protected disclosure or hinder such a person in the making of such a disclosure;
  - (ii) subject another person to detrimental action on account of the other person's
    - (A) his intending or attempting to make or making a protected disclosure; or
    - (B) his being an associated person or mistakenly perceived or identified as a whistleblower;
- (f) knowing that a document or other thing is relevant to a disclosure or the processing of a disclosure under this Act, destroys, mutilates, alters, falsifies or conceals the document or other thing,

is guilty of an offence.

- (2) A person who is guilty of an offence under subsection (1) is liable on
- (a) summary conviction to a fine of \$200 000 or to imprisonment for 2 years or to both; or
  - (b) conviction on indictment to a fine of \$500 000 or to imprisonment for 5 years or to both.

### **Amendment of First Schedule**

27. The Minister may by Order amend the *First Schedule*.

### **Regulations**

28. The Minister may make Regulations for giving effect to this Act and, in particular, with respect to
- (a) disclosure procedures; and
  - (b) the operations of Disclosure Receiving Authorities in respect of their functions under this Act.

### **Act binds the Crown**

29. This Act binds the Crown.

### **Consequential Amendments**

30. The enactment set out in Column 1 of the *Second Schedule* is amended to the extent set out opposite thereto in Column 2.

### **Commencement**

31. This Act comes into operation on a day to be fixed by Proclamation.

**FIRST SCHEDULE**

*(Sections 2 and 27)*

**DISCLOSURE RECEIVING AUTHORITIES**

1. Disclosure Monitoring Authority
2. Director, Anti-Corruption and Anti-Terrorism Agency
3. Police Force
4. Financial Intelligence Unit
5. Audit Department
6. Barbados Revenue Authority
7. Government Procurement Department
8. Central Bank of Barbados
9. Financial Services Commission
10. Fair Trading Commission
11. Environmental Protection Department
12. Town Planning Department
13. Labour Department
14. Ombudsman
15. Chief Medical Officer

**SECOND SCHEDULE**

*(Section 30)*

CONSEQUENTIAL AMENDMENTS

Column 1	Column 2
<i>Enactments</i>	<i>Amendments</i>
1. <i>Employment Rights Act, 2012</i> (Act 2012-9).	<p>1. In section 2(1), insert in alphabetical order, the following definition:</p> <p style="padding-left: 40px;">“ “protected disclosure” has the meaning given by section 2 of the <i>Whistleblower Protection Act, 2021</i> (Act 2021- )”.</p> <p>2. In section 30(1),</p> <p style="padding-left: 20px;">(a) in paragraph (d), delete the full-stop and substitute the words “; or”; and</p> <p style="padding-left: 20px;">(b) insert after paragraph (d), the following:</p> <p style="padding-left: 40px;">“(e) the reason for the dismissal is that the employee made, or intended or attempted to make, a protected disclosure under the <i>Whistleblower Protection Act, 2021</i> (Act 2021- ).”.</p>

## WHISTLEBLOWER PROTECTION BILL, 2021

## EXPLANATORY MEMORANDUM

This Bill would deter and combat corruption and other improper conduct by encouraging and facilitating disclosures of such conduct, protecting the persons who make such disclosures and regulating the receipt, investigation and other treatment of such disclosures.

PART I  
PRELIMINARY

- Clause 1:* provides the short title.
- Clause 2:* defines the terms used in the legislation.
- Clause 3:* provides for the legislation to apply even where a disclosure relates to conduct that might have occurred before it came into effect or the identity of the perpetrator of the conduct is unknown.

PART II  
DISCLOSURES

- Clause 4:* provides for a disclosure to be made to any Disclosure Receiving Authority set out in the *First Schedule*.
- Clause 5:* allows for an employee to disclose to his employer.
- Clause 6:* makes special provision for disclosures related to national security, defence and international relations.
- Clause 7:* creates an exception in relation to a disclosure of information protected by legal professional privilege.
- Clause 8:* speaks to the content and form of disclosures.
- Clause 9:* provides for anonymous disclosures.
- Clause 10:* requires persons to have procedures for the receipt and treatment of disclosures.
- Clause 11:* requires both Disclosure Receiving Authorities and employers to identify disclosure receiving officers to be responsible for dealing with disclosures on their behalf.
- Clause 12:* explains the concept of a protected disclosure.

PART III  
RECEIVING, INQUIRING INTO AND OTHERWISE DEALING WITH DISCLOSURES

- Clause 13:* speaks to receiving and inquiring into disclosures.
- Clause 14:* permits a recipient of a disclosure to refuse to inquire into it on certain grounds, for instance, where the matter is frivolous.
- Clause 15:* speaks to the Disclosure Monitoring Authority and its function in monitoring compliance with the legislation.

PART IV  
PROTECTION OF WHISTLEBLOWERS ETC.

- Clause 16:* prohibits the taking of detrimental action against a whistleblower.
- Clause 17:* presumes, where a whistleblower suffers detrimental action around the same time that he makes a disclosure, that the action is related to disclosure.
- Clause 18:* gives a whistleblower certain immunity, subject to clause 19, where he makes a protected disclosure.
- Clause 19:* stipulates that a whistleblower will not be granted immunity where he is the perpetrator of the improper conduct disclosed.
- Clause 20:* prohibits a whistleblower's identity from being disclosed.
- Clause 21:* sets out the remedies available under the Bill where a whistleblower suffers detrimental action.
- Clause 22:* makes it clear that the Bill does not prevent a whistleblower who is subjected to detrimental action from seeking redress under any other law.
- Clause 23:* protects persons associated with a whistleblower or wrongly identified as a whistleblower from detrimental action.

PART V  
MISCELLANEOUS

- Clause 24:* makes void contractual terms seeking to prohibit disclosures.
- Clause 25:* imposes a duty of confidentiality upon persons who receive, inquire into and otherwise deal with disclosures and makes breach of confidentiality an offence.

- Clause 26:** makes certain conduct, such as preventing a person from making a disclosure, an offence.
- Clause 27:** empowers the Minister to amend the *First Schedule*.
- Clause 28:** provides for the making of regulations.
- Clause 29:** states that the legislation binds the Crown.
- Clause 30:** provides for consequential amendments to be made to the *Employment Rights Act, 2012* (Act 2012-9). These are set out in the *Second Schedule* to the Bill.
- Clause 31:** provides for the legislation to come into effect by Proclamation.