

No. 6 of 2020.

Whistleblower Act 2020.

Certified on: 07 MAY 2020



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No. 6 of 2020.

AN ACT

entitled

Whistleblower Act 2020,

Being an Act to protect employees making protected disclosures from occupational detriment and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts the exercise of a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -

- (a) the right to liberty conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44; and
- (c) the right to freedom of expression and publication conferred by Section 46; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not to belong to, political parties, industrial organisations or other associations conferred by Section 47; and
- (e) the right to freedom of choice of employment in any calling for which a person has the qualifications (if any) lawfully required conferred by Section 48; and
- (f) the right to privacy conferred by Section 49; and
- (g) the right to freedom of information conferred by Section 51; and
- (h) the right of freedom of movement conferred by Section 52,

is a law that is made under Section 38 of the *Constitution* taking into account the National Goals and Directives Principles and the Basic Social Obligations, for the purposes of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest.

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2. INTERPRETATION.

In this Act, unless the contrary intention appears -

“approved authority” means an authority approved under Section 4;

“disclosure” means a disclosure of information made by an employee that may show that the employee’s employer, or another employee of the employer, has engaged in, is engaging or intends to engage in conduct that constitutes impropriety;

“employee” means any person, excluding an independent contractor, who works for another person (including the State) and who receives, or is entitled to receive, any remuneration;

“employer” means any person who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person;

“impropriety” means any of the following:

- (a) a criminal offence; and
- (b) a failure to comply with a legal obligation; and
- (c) a miscarriage of justice; and
- (d) endangering the health or safety of an individual; and
- (e) environmental damage; and
- (f) unfair discrimination; and
- (g) deliberately concealing any conduct referred to in Paragraphs (a) to (f);

“legal practitioner” means a person authorised under the *Lawyers Act 1986* to practice as a lawyer in Papua New Guinea;

“occupational detriment”, in relation to an employee means -

- (a) being subjected to any disciplinary action; or
- (b) being dismissed, suspended, demoted, harassed or intimidated; or
- (c) being transferred to a different position against the employee’s will; or
- (d) being refused transfer or promotion; or
- (e) being subjected to a term or condition of employment or retirement which is altered to the employee’s disadvantage; or
- (f) being refused a reference or being provided with an adverse reference; or
- (g) being denied appointment to any employment or office; or
- (h) being threatened with any of the actions referred to in Paragraphs (a) to (g); or
- (i) being adversely affected in respect of the employee’s employment, profession or office in any other way;

“protected disclosure” means a disclosure that is a protected disclosure under Part II.

3. OBJECTS AND APPLICATION OF THE ACT.

(1) The objects of the Act are to -

- (a) provide procedures for employees to report suspected improprieties in the workplace; and
- (b) protect employees who make protected disclosures from occupational detriment; and
- (c) provide remedies to employees who suffer occupational detriment having made protected disclosures.

(2) This Act applies to any protected disclosure made after the date on which this section comes into operation, irrespective of whether or not the impropriety concerned occurred before or after that date.

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4. APPROVED AUTHORITIES.

The Minister may prescribe by regulation one or more approved authorities to which protected disclosures may be made under Section 8.

PART II. - PROTECTED DISCLOSURES.

5. PROTECTED DISCLOSURE TO LEGAL PRACTITIONER.

A disclosure is a protected disclosure if it is made -

- (a) in good faith; and
- (b) to a legal practitioner in the course of obtaining legal advice.

6. PROTECTED DISCLOSURE TO EMPLOYER.

A disclosure is a protected disclosure if it is made -

- (a) in good faith; and
- (b) either -
 - (i) in accordance with a reporting procedure approved by the employee's employer; or
 - (ii) if there is no such approved reporting procedure, directly to the employee's employer or the employee's immediate supervisor.

7. PROTECTED DISCLOSURE TO MINISTER.

(1) This section applies to a disclosure by a person who is -

- (a) not an officer of the public service; and
- (b) either -
 - (i) holds an office constituted by or under an Act; or
 - (ii) is an employee of a statutory body.

(2) The disclosure is a protected disclosure if it is made -

- (a) in good faith; and
- (b) to the Minister responsible for the Act or statutory body.

8. PROTECTED DISCLOSURE TO APPROVED AUTHORITY.

A disclosure is a protected disclosure if it is made to an approved authority -

- (a) in good faith; and
- (b) if the employee making the disclosure reasonably believes that the disclosure relates to the functions of the approved authority.

9. EXCEPTION TO PROTECTION.

A disclosure is not protected disclosure if the person making the disclosure commits an offence by making it.

PART III. - SCOPE OF PROTECTION AND REMEDIES.

10. PROTECTION FROM OCCUPATIONAL DETRIMENT.

An employer must not subject an employee to any occupational detriment as a result, or partly as a result, of the employee making a protected disclosure.

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11. REQUEST FOR TRANSFER.

- (1) This section applies to an employee who -
(a) has made a protected disclosure; and
(b) reasonably believes that, as a result of the disclosure, the employee may be, or has been, subject to occupational detriment.

(2) The employee may request that he or she be transferred to another position with the employer in which the employee will not be subject to occupational detriment.

(3) The employer must comply with the request if reasonably practicable.

12. REMEDIES FOR OCCUPATIONAL DETRIMENT.

(1) An employee who has been subjected to occupational detriment as a result of making a protected disclosure may apply to any court having competent jurisdiction for appropriate relief.

(2) To avoid doubt, this section does not prevent the employee from pursuing any other available process for seeking a remedy.

13. CONTRACTUAL DUTIES OF CONFIDENTIALITY.

A provision in an agreement between an employer and an employee that is inconsistent with this Act is void to the extent of the inconsistency.

PART IV. - MISCELLANEOUS.

14. OFFENCE.

A person who intentionally makes a false or misleading disclosure commits an offence.

Penalty: A fine not exceeding K10,000.00 or six months imprisonment with hard labour.

15. REGULATIONS.

The Head of State, acting on, and in accordance with, the advice of the National Executive Council, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed for carrying out or giving effect to this Act.

I hereby certify that the above is a fair print of the *Whistleblower Act 2020*, which has been made by the National Parliament.


Acting Clerk of the National Parliament.

07 MAY 2020

I hereby certify that the *Whistleblower Act 2020* was made by the National Parliament on 18 February 2020 by an absolute majority in accordance with the *Constitution*.


Speaker of the National Parliament.

07 MAY 2020