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PROTECTED DISCLOSURES ACT, 2025

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No. 2 of 2025

PROTECTED DISCLOSURES ACT, 2025

AN ACT TO COMBAT WRONG-DOING IN THE PUBLIC AND PRIVATE SECTORS BY ENCOURAGING, FACILITATING AND PROTECTING DISCLOSURES MADE TO AN AUTHORITY DESIGNATED FOR THE PURPOSES OF INVESTIGATING AND DETERMINING WRONG-DOING AND FOR CONNECTED PURPOSES

[Date of Assent - 19th March, 2025]

Enacted by the Parliament of The Bahamas

PART I – PRELIMINARY

1. Short title and commencement.

(1) This Act shall be cited as the Protected Disclosures Act, 2025.

(2) This Act shall come into operation on the date the Minister appoints by notice in the *Gazette*.

2. Interpretation.

In this Act —

"Agency" has the meaning ascribed to it in the Public Finance Management Act, 2023 (*No. 4 of 2023*);

"**designated authority**" means the body designated under section 5;

"**disclosure**" means disclosure of information made by an employee, regarding any conduct of an employer of that employee or any other employee of that employer where the employee has a reasonable belief that the information disclosed shows or tends to show that wrong-doing has occurred, or is occurring and **"disclose"**shall be construed similarly;

"**employee**" means —

(a) a person who works for or has worked for an employer and receives, received or is entitled to receive remuneration for work done;

(b) a person, who, in any manner assists or has assisted in the carrying on, or conduct of the business of an employer without an entitlement to receive remuneration or reward; or

(c) a person who is or was engaged or contracted under a contract for services to do work for an employer, or an agent of that employer;

"**employer**" means in relation to an employee, a person, or organisation which —

(a) employs or has employed a person to carry out work and remunerates, remunerated or agrees to remunerate that person for the work carried out;

(b) engages or contracts a person for services;

(c) is his agent to do work;

(d) permits or has permitted a person to assist in any manner in the carrying on or conduct of the business of that person or organisation without an obligation to provide remuneration or reward to the person assisting; or

(c) a public entity;

"**Government Business Enterprise**" has the meaning ascribed to it in the Public Finance Management Act, 2023 (*No. 4 of 2023*);

"**investigation**" means the carrying out of an enquiry under this Act in respect of a protected disclosure;

"mismanagement" means a pattern of incompetent actions which are wrongful, negligent, arbitrary or capricious and which adversely affect the efficient functioning of an organization;

"**Minister**" means the Attorney-General;

"**occupational detriment**" means any act or omission that results in an employee, in relation to his employment, being —

(a) unfairly disciplined;

(b) harassed, intimidated or victimized;

(c) transferred against his will;

(d) unfairly refused transfer or promotion;

(e) disadvantaged by the alteration of a term or condition of employment or retirement;

(f) provided with an adverse reference;

(g) unfairly denied access to internship, training or scholarship for professional advancement;

(h) unfairly denied appointment to any employment, profession or office;

(i) threatened with any of the actions specified in paragraphs (a) to (h); or

(j) otherwise —

(i) adversely affected in his profession or office including loss of employment opportunities and job security; or

(ii) made to suffer injury, loss or damage in relation to career, profession, trade or business.

"**organization**" means any entity or body of persons whether incorporated or unincorporated and includes a public entity;

"**protected disclosure**" means a disclosure which qualifies for protection under section 12;

"**public entity**" includes —

(a) a ministry or department of the Government;

(b) a Government Business Enterprise;

(c) an Agency; and

(d) a regulatory body, authority, or other organization providing services to the public;

"**wrong-doing"** includes —

(a) the commission of a criminal offence by an employer;

(b) conduct that threatens or damages the environment;

(c) conduct that threatens the health and safety of a person;

(d) conduct that shows gross mismanagement;

(e) corruption or dishonesty in relation to the use of public funds or financial resources of an employer;

(f) an act of reprisal against or victimization of an employee;

(g) wilful concealment of any of the acts in paragraphs (a) to (f),

irrespective of whether the conduct occurred in The Bahamas or elsewhere.

(2) For the purposes of determining **"gross mismanagement"** the following factors shall be considered —

(a) whether the acts of mismanagement are of significant importance, and are more than minor wrongdoing or negligence;

(b) whether the acts of mismanagement are an abuse of public funds or financial resources of an employer;

(c) acts of mismanagement are serious errors that are not debatable among reasonable people;

(c) the nature and frequency of the acts of mismanagement;

(d) the potential consequences of the acts of mismanagement on the well-being, health or safety of employees or the environment;

(e) whether the acts of mismanagement are deliberate, isolated, systemic, endemic, repetitive or ongoing;

(f) whether the acts of mismanagement pose a threat to public confidence;

(g) whether the degree of wilfulness, deliberateness or recklessness involved in the acts of mismanagement includes a malicious intent to cause harm or purposely engage in wrongdoing;

(h) whether the acts of mismanagement have an adverse impact on trust or confidence in the employer's ability to carry out its mandate and fulfil its duties in the public interest;

(i) whether the acts of mismanagement create a substantial risk of adverse impact upon the ability of an employer to carry out its mandate;

(j) whether the acts of mismanagement have the potential to severely hamper management goals, waste government resources, and jeopardize the stability of the establishment;

(k) the degree of departure of the acts of mismanagement from the accepted standards, policies, or practices; or

(l) the position, responsibilities and duties of the person alleged to have committed acts of mismanagement, namely whether that person is one who holds a position of trust from whom a higher standard of probity is expected in the performance of his duties.

3. Objectives of the Act.

The objectives of this Act are to —

(a) facilitate and encourage the making of disclosures of wrong-doing;

(b) provide for the receipt, investigation and determination of disclosures of wrongdoing; and

(c) protect employees who make disclosures under section 9.

4. Application of the Act.

This Act —

(a) shall apply to a disclosure made after the commencement of this Act notwithstanding that the conduct to which the disclosure relates occurred before the commencement of the Act; and

(b) shall not apply to an incident to which the Independent Commission of Investigations Act, 2025 applies.

PART II - OVERSIGHT AND MANAGEMENT

5. Oversight by designated authority.

The Minister shall, by Order designate a body as the designated authority for the purposes of this Act.

6. Functions of designated authority.

(1) The designated authority shall be responsible for monitoring compliance with this Act.

(2) In furtherance of its functions under subsection (1), the designated authority shall —

(a) publish guidelines for making, receiving and investigating disclosures under this Act;

(b) plan, implement and monitor public awareness programmes aimed at informing and educating employees, employers and the public about the making of disclosures;

(c) review the procedure for receiving and investigating disclosures under this Act;

(d) review from time to time the procedures under this Act;

(e) make recommendations to the Minister after conducting a review under paragraph (c) or (d); and

(f) authorize a law enforcement agency to carry out an investigation in accordance with this Act.

7. Powers and independence of designated authority.

(1) The designated authority shall have the powers as may be required or are incidental to the performance of its functions assigned by this Act.

(2) Subject to the provisions of the Constitution, the designated authority shall, in the exercise of the powers conferred by this Act, not be subject to the direction or control of any person or authority.

(3) The designated authority may consult with any person, institution or organization in the exercise of its powers under this Act.

8. Designated authority may regulate own procedure.

The designated authority may adopt the procedure it considers appropriate to investigate a disclosure.

PART III – DISCLOSURES

9. Employees who may make disclosures.

An employee who reasonably believes that his employer or another employee of that employer has committed, or is committing a wrong-doing, may make a disclosure to the designated authority.

10. Manner and form of disclosures.

(1) A disclosure under section 9 shall be made in writing to the designated authority and shall include the information contained in the *Schedule*.

(2) A disclosure made under subsection (1) shall be signed by the person making the disclosure.

11. Disclosures relating to national security.

Where a disclosure relating to a matter prejudicial to the national security, defence or international relations of The Bahamas is made to the designated authority, the designated authority shall —

(a) investigate the disclosure; and

(b) notify the Prime Minister and Minister responsible for national security of the disclosure and the investigation.

12. Protected disclosures.

A disclosure qualifies for protection where —

(a) the disclosure is made in accordance with this Act;

(b) the disclosure is made by an employee who reasonably believes, based on the information available to the employee at the time, that the information disclosed is substantially true;

(c) the information disclosed shows that the person of whom he has made the disclosure has committed, or is committing wrong-doing;

(d) the disclosure is made in good faith; and

(e) the information disclosed is not obtained in the course of receiving legal advice.

PART IV – INVESTIGATIONS

13. Investigations into disclosures.

(1) Upon receipt of a disclosure, the designated authority shall evaluate the disclosure and determine whether to investigate the allegation of wrong-doing contained in the disclosure.

(2) Where the designated authority determines to conduct an investigation, the designated authority shall —

(a) request from the employer, and the employee making the disclosure, the production of reports, documents or other information regarding the allegation of wrong-doing;

(b) make copies of reports, documents or other information received from the employer, or the employee making the disclosure; and

(c) require any employee or employer to furnish any other information which may be requested by the designated authority.

(3) The designated authority, if satisfied the disclosure may be justly and adequately resolved without a hearing, the designated authority may make a determination on the evidence obtained and forward its report containing its recommendations to the Minister under section 20.

14. Further investigation by hearing.

(1) Where the designated authority determines to hold a hearing, the designated authority shall forward the disclosure and information obtained to —

(a) an investigator appointed by the designated authority; or

(b) an officer of a law enforcement agency duly empowered to conduct investigations under any other written law,

to further investigate the disclosure and report the findings to the designated authority.

(2) Upon receipt of the report in subsection (1), the designated authority shall hold a hearing and make a determination on the evidence.

(3) Upon the completion of a hearing and determination under subsection (2), the designated authority shall forward to the Minister under section 20 —

(a) the report from the investigators;

(b) the report of the evidence adduced in the hearing;

(c) the findings of the designated authority on the evidence adduced; and

(d) the recommendations of the designated authority.

(4) Sections 17 and 18 shall apply to a hearing under subsection (2).

(5) The designated authority shall notify the person making the disclosure and the employer of the conclusion of the hearing and that recommendations have been made to the Minister.

15. Right to refuse to investigate.

(1) The designated authority may refuse to investigate or cease an investigation where —

(a) the disclosure is likely to be defamatory or libellous, frivolous or vexatious; or

(b) circumstances surrounding the subject matter of the disclosure have changed rendering the investigation unnecessary.

(2) Where a designated authority refuses to investigate a disclosure, or ceases an investigation, the designated authority shall —

(a) notify the person who made the disclosure within 14 days from the date of its decision; and

(b) forward to the Minister a quarterly report on the disclosures the designated authority has refused to investigate or ceased to continue to investigate under subsection (1).

16. Recommendations to Minister.

In addition to its recommendations under sections 13(3)and 14(3), the designated authority may make recommendations to the Minister as it considers necessary or desirable for —

(a) the review and reform of any relevant written laws and procedures;

(b) the protection of persons making protected disclosures;

(c) ensuring the system by which protected disclosures are made, is fully accessible to members of the public.

17. Power to summon and examine witnesses.

(1) Subject to this Act, the designated authority shall have the powers of a Justice of the Supreme Court to —

(a) summon and compel the attendance of witnesses;

(b) call for the production of documents or other exhibits, including the power to retain and examine the documents or exhibits produced;

(c) examine witnesses on oath;

(d) subject to the Supreme Court Civil Procedure Rules, 2022 (*S.I. No. 76 of 2022*), issue a commission or a request to examine witnesses abroad.

(2) Any witness who gives false evidence in a hearing before the designated authority commits the offence of perjury and shall be liable to a penalty under section 82 of the Penal Code (*Ch. 84*).

18. Duty of summoned witness.

(1) Where any person —

(a) on being summoned as a witness before the designated authority, fails to attend; or

(b) being in attendance as a witness on being required by the designated authority to do so refuses —

(i) to take the oath or to affirm;

(ii) to produce a document in his power, or control;

(iii) to answer any question to which the authority may legally require an answer; or

(c) does any other thing which would, if the designated authority had been a Justice of the Supreme Court having power to commit for contempt, have been a contempt of court,

the designated authority, may certify the contempt of that person to the Supreme Court and the Supreme Court may thereupon inquire into the alleged offence of contempt after hearing the witnesses who may be produced against, or on behalf of, the person so charged, and after hearing any statement offered in defence, punish that person as if he had been guilty of contempt before the Supreme Court.

(2) Subject to section 17(2) every person shall have the same rights in relation to the giving of information to the designated authority, the answering of questions put by the designated authority and the production of any documents and things as witnesses have in the Supreme Court.

19. Hearings by the designated authority.

(1) The designated authority may hold hearings in public or in private or partly in public and partly in private unless the designated authority determines that the public interest requires a public hearing.

(2) Where the designated authority proposes to hold hearings in public or partly in public, the designated authority shall consult the Attorney-General.

(3) The designated authority shall, for the purpose of deciding the most appropriate mode of hearing, make an assessment, of —

(a) the seriousness of the allegation of wrong-doing;

(b) the national importance of the investigation of the allegation of wrong-doing;

(c) public interest considerations; and

(d) the circumstances in which the allegation of wrong-doing is alleged to have occurred.

(4) The designated authority may make rules for its guidance, and the conduct and management of its investigations.

20. Procedure after investigation.

(1) The report prepared under sections 13(3), and 14(3) shall be submitted to the Minister for dissemination to the person or organization with responsibility for the employer of whom the disclosure was made.

(2) The person or organisation with responsibility for the employer of whom the disclosure was made includes —

(a) the Minister assigned responsibility for a public entity, where the wrong-doing is committed by an employee of the public entity;

(b) the Minister assigned responsibility for labour where the wrong-doing is committed by an employer which is not a public entity;

(c) the Prime Minister where the wrong-doing is committed by a Minister, the President of the Senate or the Speaker of the House of Assembly;

(d) the President of the Senate or the Speaker of the House of Assembly where the wrong-doing is committed by a member of the Senate or the House of Assembly not being a Minister.

(3) Where a report under subsection (1) contains information which indicates a criminal offence may have been committed, the Minister shall submit the report and any other documents or transcripts it considers relevant to the Director of Public Prosecutions.

(4) Where the Minister has disseminated a report under subsection (1) , the person or organisation with responsibility for the employer of whom the disclosure was made shall —

(a) make recommendations regarding the measures to be taken to correct the wrong-doing;

(b) take steps to remedy the wrong-doing including —

(i) to provide redress where appropriate;

(ii) take disciplinary action where appropriate; or

(iii) reduce the opportunity for recurrence of the wrong-doing; and

(c) ensure that the rights of the employee making the disclosure, any witness or person alleged to be at fault, are protected.

PART V – PROTECTION OF PERSONS MAKING PROTECTED DISCLOSURES

21. Immunity from civil, criminal and disciplinary proceedings.

(1) Subject to section 22, a person who makes, receives, investigates or otherwise deals with a protected disclosure shall not be liable to any criminal, civil or disciplinary proceedings by reason of having made the protected disclosure.

(2) Protection of a person who makes a protected disclosure shall not be prejudiced on the basis that —

(a) the person was honestly mistaken about the content of the disclosure; or

(b) the person has not fully complied with the manner and form for making a disclosure under section 10.

22. No immunity to perpetrator or accomplice.

Nothing in this Act shall prevent the institution of criminal, civil or disciplinary proceedings against an employee who makes a disclosure of wrong-doing, where that employee was the perpetrator of, or an accomplice to, the wrong-doing to which the disclosure relates.

23. Confidentiality of person making disclosure.

A member of the designated authority to whom a protected disclosure is made shall not, pending the completion of their investigation, disclose information to the general public which identifies or assists in identifying the person who made the disclosure.

24. Prohibition of occupational detriment.

(1) An employee shall not be subject to occupational detriment on the basis that the employee has made a protected disclosure.

(2) An employee who suffers occupational detriment as a consequence of making a protected disclosure shall be treated as having been unfairly dismissed under the Employment Act (*Ch. 321A*).

25. Presumption of occupational detriment.

Where an employee suffers occupational detriment at or about the same time that he makes a protected disclosure, the occupational detriment shall be presumed to be a consequence of the protected disclosure, unless the employer shows that the act that constituted the occupational detriment is otherwise justified.

26. Remedies not affected.

Nothing in this Act shall affect the right of an employee to seek redress for occupational detriment.

PART VI – OFFENCES AND PENALTIES

27. Offences.

(1) A person commits an offence if he —

(a) prevents, restrains or restricts an employee from making a protected disclosure;

(b) intimidates an employee who has made a protected disclosure;

(c) induces a person by threats, promises or otherwise to contravene this Act;

(d) being an employer subjects an employee or former employee to occupational detriment as a consequence of the making of a protected disclosure by the employee or former employee;

(e) being an employee, purports to make a disclosure under this Act knowing that it contains a statement that is false or misleading, or is reckless as to whether the statement is false or misleading; or

(f) aids, abets, procures or conspires with another person to contravene this Act.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding two years, or to both the fine and imprisonment.

(3) A person who, without reasonable excuse, fails to comply with a requirement imposed by the designated authority in the lawful exercise of the functions of the authority under this Act, commits an offence and is liable on summary conviction to a fine not exceeding fifteen thousand dollars or to imprisonment for a term not exceeding three years or to both the fine and imprisonment.

28. Duty of confidentiality.

(1) The designated authority shall keep confidential, all documents, information and disclosures obtained by the designated authority in the execution of their functions under this Act including —

(a) the identity of an employee making the disclosure;

(b) the content of a disclosure; and

(b) any statement given, or document, information or thing provided to the designated authority.

(2) Any statement given, or document, information or thing provided in furtherance of an investigation under this Act, or in legal or disciplinary proceedings shall not be inconsistent with the obligation of confidentiality of the designated authority.

(3) A person who contravenes subsection (1) commits an offence and is liable upon summary conviction to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding two years or to both the fine and imprisonment.

PART VII – MISCELLANEOUS

29. Funds of the designated authority.

(1) The funds of the designated authority shall consist of funds appropriated by Parliament for the purposes of this Act.

(2) The designated authority shall, at least three months before the commencement of each financial year, prepare estimates of revenue and expenditure required for the purposes of this Act for the financial year, and shall submit the estimates to the Minister.

(3) The Minister shall submit the estimates approved under subsection (2) to the Minister of Finance to be included in the annual budget to be tabled in Parliament.

30. Accounts and audit of the designated authority.

(1) The designated authority shall keep proper accounts of the financial transactions of the designated authority under this Act.

(2) The accounts of the designated authority shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General and a statement of accounts so audited shall form part of the annual report under section 31.

31. Annual reports.

(1) The designated authority shall no later than six months after the end of each financial year, prepare a report on the performance of the functions of the designated authority under this Act.

(2) The annual report shall contain —

(a) statistical information on the protected disclosures received;

(b) the recommendations made in relation to the protected disclosures received;

(c) the outcome or steps taken by an employer to give effect to a recommendation made by the designated authority; and

(d) audited financial report under section 30.

(3) The designated authority shall prepare and deliver the annual report made under this section to the Speaker of the House of Assembly and the President of the Senate.

(4) The annual report prepared by the designated authority shall be —

(a) laid before each House of Parliament as soon as possible; and

(b) published in a format established by the designated authority on its official website.

(5) The designated authority shall not include in an annual report, information relating to —

(a) any proceedings or matter that might prejudice the national security of The Bahamas;

(b) proceedings before any court; or

(c) between a counsel and attorney and his client in their professional relationship.

32. Conflict between contract of services and Act.

Any provision in a contract of employment precluding an employee from instituting or continuing proceedings for breach of the contract, is void in so far as it purports to preclude an employee from making a protected disclosure under section 9.

33. Regulations.

The designated authority may make regulations for —

(a) the procedure for investigation of a disclosure;

(b) the form of the reports required under the Act;

(c) the procedure for hearings; and

(d) generally for carrying the provisions of this Act into effect.

SCHEDULE

(section 10(1))

INFORMATION TO BE SUPPLIED IN DISCLOSURE

1. The full name, address and occupation of the employee.
2. The nature of the wrong-doing in respect of which the disclosure is made.
3. The name of the person alleged to have committed or is committing the wrong-doing.
4. The time and place where the alleged wrong-doing took place or is taking place.
5. The full name, address, occupation of the person (if any) who witnessed the commission of the wrong-doing.
6. Whether the employee has made a disclosure of the same matter.
7. Whether the person making a disclosure, remains in the same employment.