

GUYANA
BILL NO. 12 OF 2017

PROTECTED DISCLOSURES BILL 2017

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Intituled

AN ACT to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sectors, to protect persons making those disclosures from detrimental action, to establish the Protected Disclosures Commission to receive, investigate or otherwise deal with disclosures of improper conduct and to provide for other related matters.

A.D. 2017 Enacted by the Parliament of Guyana:-

PART I

PRELIMINARY

Short title and commencement.

1. (1) This Act may be cited as the Protected Disclosures Act 2017.

(2) This Act shall come into operation on such day as the Minister may by order appoint.

Interpretation.

2. In this Act –

“Chairperson” means the Chairperson of the Commission appointed under section 4(2)(a);

“Commission” means the Protected Disclosures Commission established and constituted under section 4;

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

- (a) subject to disciplinary action;
- (b) terminated, suspended or demoted;
- (c) harassed, intimidated or victimised;
- (d) transferred against his will;
- (e) refused transfer or promotion;
- (f) subject to a term or condition of employment or retirement from employment that is altered to his disadvantage;
- (g) denied access to internship, training or scholarship for professional advancement;
- (h) provided with an adverse reference;
- (i) denied appointment to any employment, profession, or office;
- (j) threatened with any of the actions specified in paragraphs (a) to (i);
- (k) otherwise adversely affected in respect of his employment, profession, or office (including employment opportunities and job security); or
- (l) otherwise made to suffer injury, loss or damage in relation to employment, family life, career, profession, trade or business;

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

“enforcement agency” means a ministry, body, authority, commission or agency, whether incorporated or unincorporated, established by the Government, with investigative powers, disciplinary powers or enforcement functions, and includes the Financial Intelligence Unit established under the Anti-Money Laundering and Countering the Financing of Terrorism Act, the Revenue Authority established under the Revenue Authority Act, the State Assets Recovery Agency established under the State Assets Recovery Act 2017, the Special Organised Crime Unit and the Customs Anti-Narcotics Unit;

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Cap.79:04

Act No. 14
of 2017

“employee” means –

- (a) a person who works 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 person;

“employer” means a person, including an organisation, who –

- (a) employs or has employed another person to carry out work and remunerates, remunerated or expressly or tacitly undertakes to remunerate that other person for the work carried out;
- (b) permits or has permitted another 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 that other person; or
- (c) engages or contracts for services another person or his agent to do work;

“improper conduct” means any –

- (a) commission of a criminal offence;
- (b) failure to carry out a legal obligation;
- (c) conduct that is likely to result in a miscarriage of justice;
- (d) conduct that is likely to threaten the health or safety of a person;
- (e) conduct that is likely to threaten or damage the environment;
- (f) conduct that tends to show gross mismanagement, impropriety or misconduct in the carrying out of any

Cap. 99:08

activity that involves the use of public funds or any financial resources of an employer;

(g) conduct that tends to show unlawful discrimination on grounds set out in section 4(2) of the Prevention of Discrimination Act;

(h) wilful concealment of any act described in paragraphs (a) to (g);

“Minister” means the Minister of Legal Affairs;

“organisation” means any entity or body of persons, whether incorporated or unincorporated, and includes a public body;

“protected disclosure” means a disclosure which qualifies for protection under section 10;

“public body” means –

(a) a ministry, department, commission or agency of the Government;

(b) a statutory body or authority or a corporation or other body corporate in which the controlling interest is held by the State or by an agency on behalf of the State.

Application of Act.

3. This Act applies to any disclosure made after the coming into operation of this Act where the improper conduct to which the disclosure relates –

(a) occurred twelve years immediately before the coming into operation of this Act; or

- (b) occurs after the coming into operation of this Act.

PART II

THE PROTECTED DISCLOSURES COMMISSION

Establishment and
constitution of the
Protected
Disclosures
Commission.

4. (1) There is established the Protected Disclosures Commission which shall be a body corporate with the responsibility to receive, investigate and otherwise deal with disclosures of improper conduct.

(2) The Commission shall consist of a Chairperson and four other members appointed as follows –

(a) the Chairperson, appointed by the Minister, shall be a person who –

(i) holds or has held the office of a Judge of the Court of Appeal or is qualified to be appointed as a Judge of the Court of Appeal; or

(ii) holds or has held the office of a Judge of the High Court or is qualified to be appointed as a Judge of the High Court;

(b) the four other members of the Commission shall be appointed by the Minister after being elected by the National Assembly from a nominee of the –

(i) Integrity Commission;

- (ii) Private Sector Commission;
- (iii) Guyana Bar Association;
- (iv) Institute of Chartered Accountants of Guyana;
- (v) Guyana Human Rights Association;
- (vi) Guyana Trades Union Congress; and
- (vii) Guyana Police Association, being a retired police officer who was not below the rank of Inspector.

(3) Members of the Commission shall be persons who are qualified for appointment by reason of their integrity, experience in, and shown capacity in, law, law enforcement, finance or accountancy, public administration, social services and matters relating to the work of the Commission.

(4) Subject to subsection (5), in the exercise of its functions under this Act, the Commission shall not be subject to the direction and control of any other authority.

(5) The Minister may give to the Commission directions of a general character as appear to him to be expedient in relation to the exercise of its functions.

Chairperson and
Deputy
Chairperson of the
Commission.

5. (1) The Chairperson shall have general direction, control and supervision of all matters relating to receiving, investigating and otherwise

dealing with protected disclosures.

(2) A Deputy Chairperson shall be elected by and from the members of the Commission.

(3) The Deputy Chairperson may perform the functions of the Chairperson in the temporary absence of the Chairperson.

Other matters
related to the
Commission.
Schedule

6. The provisions of the Schedule shall have effect as to the procedure, finance, staff of the Commission and other related matters.

PART III

DISCLOSURES OF IMPROPER CONDUCT

Persons who may
make disclosures
and of whom the
disclosures may
be made.

7. (1) An employee who reasonably believes that his employer or another employee of that employer has committed, is committing or is likely to commit an improper conduct may make a disclosure of the improper conduct to the Commission.

(2) A person, not being an employee under subsection (1), who reasonably believes a member of the National Assembly, the Speaker of the National Assembly, a Government official or any other person, with whom he dealt, is dealing or is likely to deal with has committed, is committing or is

likely to commit an improper conduct, may make a disclosure of the improper conduct to the Commission.

(3) A disclosure made by or of a member of the National Assembly pursuant to this Act shall not amount to a breach of privilege.

(4) Where for any reason a person, qualified to make a disclosure under subsection (1) or (2), is fearful of making the disclosure to the Commission, he may, in writing, authorise any person to make the disclosure on his behalf to the Commission.

Manner and form
of disclosures.

8. (1) Subject to section 9, a disclosure under section 7 may be made in any of the following manner –

(a) a person may make the disclosure to the Commission in person –

(i) orally; or

(ii) by delivering a written disclosure;

(b) a person may make a disclosure anonymously to the Commission

in any of the following manner –

(i) by calling the hotline telephone numbers provided by the Commission;

(ii) by ordinary mail; or

(iii) by electronic mail or electronic message.

(2) A person who has made a disclosure anonymously may subsequently make a disclosure in person to the Commission at a mutually agreed date, time and place.

(3) Where a disclosure is made by a person authorised under section 7(4), the person for whom the disclosure is made, may subsequently make a disclosure in person to the Commission at a mutually agreed date, time and place.

(4) Where a disclosure is made orally, the member of the Commission receiving the disclosure shall immediately reduce it into writing and cause it to be signed by the person making the disclosure.

(5) Where a written disclosure is delivered in person it must be signed by that person.

(6) Upon receipt of a disclosure, the Commission shall evaluate the allegation and determine the appropriate action to take.

Special procedure
for making
disclosure relating
to national
security.

9. (1) Where a person seeks to make a disclosure in pursuance of this Act, in relation to a matter that would prejudice the national security, defence or international relations of Guyana, the disclosure shall be made to the President, the Minister or the Minister responsible for public security.

(2) The President, the Minister and the Minister responsible for public security shall establish and cause to be operated procedures for receiving, investigating or otherwise dealing with disclosures made under subsection (1).

Protected disclosures.

10. (1) A disclosure is a protected disclosure if –

- (a) it is made by and of any of the persons mentioned in section 7(1), (2) and (4);
- (b) it is made in accordance with section 8(1)(a), (2) and (3), and the Commission concludes that the disclosure has been properly made under this Act;
- (c) it is made in good faith;
- (d) it is not made for the purpose of personal gain;
- (e) the person making the disclosure reasonably believes, based on the information that person has at that time, that –
 - (i) the information disclosed and any allegation contained in it are substantially true; and
 - (ii) the information disclosed tends to show that the person of whom he has made the disclosure has committed, is committing or is likely to commit an improper conduct; and
- (f) the disclosure was substantially made in accordance with the procedures for the making of a protected disclosure.

(2) Where a person makes a disclosure to the Commission anonymously and subsequently makes the disclosure to the Commission in person, that disclosure shall be a protected disclosure.

(3) Where a person who is qualified under section 7 to make a disclosure, authorises another person to make a disclosure under section 7(4), that disclosure shall be a protected disclosure for the purposes of both the person qualified to make the disclosure and the person authorised.

(4) A disclosure of improper conduct which would prejudice the national security, defence or international relations of Guyana shall be protected if made in accordance with the procedures established and operated by the President or the Minister under section 9.

(5) A protected disclosure does not cease to be a protected disclosure by reason of any recommendation of the Commission of disciplinary or any other proceedings under section 16.

Disclosures not protected.

11.(1) Nothing in this Act authorises the disclosure of information protected by legal professional privilege and a disclosure in this regard is not a protected disclosure.

(2) Subject to section 10(2), a disclosure made anonymously is not a protected disclosure.

(3) The Commission may receive and process a disclosure made anonymously by telephone, ordinary mail and electronic mail or electronic message and may, subject to subsection (4), take the disclosure into account in determining whether improper conduct has occurred, is occurring or is likely to occur.

(4) Where the Commission, after having taken into account all the relevant circumstances, considers that the information in a disclosure made anonymously is likely to be defamatory or libellous or the information is proven to be false, frivolous or vexatious, the Commission shall discard the information.

PART IV

INVESTIGATION

Procedure in respect of an investigation.

12. (1) The Commission may adopt the procedure it considers appropriate to the circumstances of a particular case, hear the person of whom the disclosure of improper conduct is made, obtain any information, document or thing from any person and make other inquiries the Commission thinks fit.

(2) The Commission may request the assistance of experts and enforcement agencies to assist in any investigation before it or in obtaining any information, document or thing from an employer or a person and the experts and enforcement agencies shall, subject to and in accordance with their internal arrangements, do all that is necessary and within their power to assist the Commission in the completion of its investigation.

(3) An enforcement agency acting in accordance with subsection (2) shall be deemed to be an agent of the Commission and any person requested by the agency to furnish any information, document or thing shall comply with the request.

(4) A person who fails to comply with a request of an enforcement agency under subsection (3) commits an offence and is liable on summary conviction to a fine of two hundred thousand dollars and imprisonment for six months.

Evidence.

13. (1) Subject to subsection (7), the Commission may ask any person to furnish information and produce any document or thing in connection with an investigation as may be in the possession or under the control of that person.

(2) For the purposes of an investigation under this Act, the Commission shall have all the powers of a Judge of the High Court in respect

of the attendance and examination of witnesses and the production of any information, document, or thing.

(3) Subject to subsection (7), the Commission shall have the power to summon before it and examine on oath –

- (a) any person who has made a disclosure to the Commission; or
- (b) any person who, in the opinion of the Commission, is able to furnish information relating to the investigation.

(4) A summons for the attendance of a person or for the production of any document or thing shall be in a form determined by the Commission and shall be signed by a member of the Commission and the oath may be administered by a member of the Commission or the Secretary of the Commission.

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(5) Sections 11 and 12 of the Commissions of Inquiry Act, shall apply *mutatis mutandis* in regard to the duty of persons summoned by the Commission and the punishment for the giving of false evidence.

(6) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document or thing imposed on any person by or under any law, shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the

Commission for the purpose of an investigation under subsection (1).

(7) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce any document or thing which he could not be compelled to give or produce in a court of law.

Notice to person who made the disclosure.

14. The Commission shall, within a reasonable time after receiving a protected disclosure, notify the person who made the disclosure of the status of the disclosure, unless it is apparent that action has been taken to rectify or deal with the improper conduct disclosed.

Right to refuse to deal with the disclosure.

15. (1) The Commission may, acting in good faith, in any of the circumstances set out in subsection (2) –

- (a) refuse to deal with the disclosure or commence an investigation into any improper conduct alleged in the disclosure; or
- (b) cease an investigation.

(2) The circumstances referred to in subsection (1) are –

- (a) the subject matter of the disclosure is frivolous or vexatious;
- (b) the circumstances surrounding the subject matter of the disclosure have changed rendering the investigation unnecessary.

(3) Where the Commission decides not to carry out, or ceases, an

investigation the Commission shall so notify the person who made the disclosure within fourteen days of the decision.

Procedure after investigation.

16. (1) After conducting an investigation, the Commission shall, in writing, inform the person, body, authority or commission having the responsibility for or authority over the employee, employer, member of the National Assembly, government official or person of whom the disclosure is made of the result of that investigation and make its recommendations to that person, body, authority or commission.

(2) The person, body, authority or commission referred to in subsection (1) includes –

- (a) the employer, where the improper conduct is committed by an employee;
- (b) the Minister assigned responsibility for labour, where the improper conduct is committed by an employer which is not a public body;
- (c) the Minister assigned responsibility for a public body, where the improper conduct is committed by an employer which is a public body;
- (d) the President, where the improper conduct is committed by a Minister or the Speaker of the National Assembly;
- (e) the Speaker of the National Assembly, where the improper

conduct is committed by a member of the National Assembly,
not being a Minister; and

- (f) the Minister assigned responsibility for a government official,
where the improper conduct is committed by that government
official.

(3) Where the Commission finds that disciplinary proceedings are
appropriate in the circumstances the Commission shall so inform the person,
body, authority or commission mentioned in subsections (1) and (2).

(4) Where the Commission finds that disciplinary proceedings are
not appropriate it shall send the record of the investigation –

- (a) to the Attorney General or an enforcement agency, where it is
necessary for any civil action to be taken; or

- (b) to the Director of Public Prosecutions or an enforcement
agency, where it is necessary for any criminal charge to be laid,
against the person of whom the disclosure of improper conduct was made.

(5) Where the report resulting from an investigation does not
substantiate a disclosure of improper conduct, the Commission shall so inform,
in writing, the person who made the disclosure and the person of whom the
disclosure of improper conduct was made.

(6) The Commission may take any other corrective measure which may be necessary for the purposes of this Act.

PART V

PROTECTION OF PERSONS MAKING DISCLOSURES

Immunity from criminal, civil and disciplinary proceedings.

17. (1) Notwithstanding any other law, but subject to section 18(1), 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, received, investigated or otherwise dealt with that protected disclosure in accordance with this Act.

(2) Protection of a person who makes a disclosure of improper conduct shall not be prejudiced on the basis only that –

- (a) the person was in good faith, mistaken about the importance of the disclosure;
- (b) any perceived threat to the public interest on which the disclosure was based has not materialised; or
- (c) the person has not fully complied with the procedural requirements of this Act for the making of a disclosure of improper conduct.

No immunity to the person who makes the

18. (1) Subject to subsection (3), nothing in this Part shall prevent the

disclosure if he was the perpetrator or an accomplice.

institution of criminal proceedings against a person who makes a disclosure of improper conduct, where that person was the perpetrator of, or an accomplice in, any improper conduct –

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

(2) Subject to subsections (4) and (5), nothing in this Part shall prevent the institution of civil or disciplinary proceedings against a person who makes a disclosure, where the proceedings arise from the improper conduct of that person.

(3) In any criminal proceedings instituted against a person who makes a disclosure based on the fact that the person was the perpetrator of, or an accomplice in, the improper conduct disclosed by the person, the court shall, in giving its judgment or decision, take into consideration –

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

and the punishment of the person who made the disclosure may be mitigated or remitted as the court thinks fit.

(4) In any civil proceedings instituted against a person who makes a

disclosure based on the fact that the person was the perpetrator of, or was an accomplice in, the improper conduct disclosed by that person, the court may, if it finds that the person is responsible for the payment of damages, only hold that person liable for the part of the damages as the person may have caused and not hold the person liable jointly and severally with others.

(5) In any disciplinary proceedings instituted against a person who makes a disclosure based on the fact that the person was the perpetrator of, or an accomplice in, the improper conduct disclosed, the person, body, authority or commission having the responsibility for or authority over that person, shall

—

(a) endeavour to mitigate the effects of any punishment; and

(b) where possible, not seek the dismissal of the person as punishment.

Prohibition of disclosure of information to identify the person who makes a disclosure.

19. (1) A member of the Commission to whom a protected disclosure is made shall not disclose, at any time or to anyone, information that identifies or may lead to the identification of the person who has made the disclosure, unless that person expressly consents in writing to the disclosure of that information.

(2) Subject to subsection (1), the Commission shall not communicate the contents of a disclosure to any other person unless it has duly investigated

the disclosure and it has established that it is necessary or expedient in the public interest for further investigation to be carried out in relation to any improper conduct.

Protection of witnesses and other persons.

20. (1) If the Commission, either on the application of a person making a protected disclosure, a person rendering assistance in any investigation or on the basis of information gathered, is of the opinion that either the person making the disclosure or the person rendering assistance needs protection, that person to be protected shall be deemed to be a witness under any law protecting witnesses and the Commission shall issue appropriate directions to the concerned authority under that law to take the necessary steps to protect the person making the disclosure or the person rendering assistance.

(2) For the purposes of this section “a person making a protected disclosure” includes a person authorised to make a protected disclosure under section 7(4).

Prohibition of detrimental action.

21. Despite any prohibition of, or restriction on, the disclosure of information under any written law, contract, oath or practice, a person shall not be subjected to detrimental action on the basis that the person seeks to make, has made, or intends to make a protected disclosure.

Remedies for detrimental action.

22. (1) Where a person who has made a protected disclosure or a person

who is related to or associated with the person who made the protected disclosure believes that detrimental action has been or is likely to be taken against him in reprisal for a protected disclosure, he shall inform the Commission of his belief of the detrimental action and where the Commission finds the detrimental action to be real and unjustifiable the Commission may take any remedial measures as may be justifiable in the circumstances including where necessary an application to the High Court for –

- (a) an order requiring the person who has taken the detrimental action to remedy that action;
- (b) an injunction; or
- (c) any other relief as the Court deems fit.

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

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

(3) If, in determining an application under subsection (2), the High Court is satisfied that a person has taken or intends to take detrimental action against a person who has made a protected disclosure or a person who is related to or associated with the person who made the protected disclosure, in reprisal for making that disclosure, the High Court may –

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

(4) Any person referred to in subsection (1) who may have suffered detrimental action as a result of making a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any damage caused.

Detrimental action presumed a consequence of the protected disclosure.

23. Where any person referred to in section 22(1) suffers detrimental action within the same period that the person makes a protected disclosure, the detrimental action shall be presumed to be a consequence of the protected disclosure, unless the person who has taken the detrimental action shows that the act that constitutes the detrimental action is otherwise justified.

PART VI

OFFENCES AND PENALTIES

Offences.

24. (1) A person commits an offence if he –

- (a) prevents, restrains or restricts any person from making a

disclosure;

- (b) intimidates any person who intends to make a disclosure or who has made a protected disclosure;
- (c) induces any person by threats, promises or otherwise to commit an offence under this Act;
- (d) being a person of whom a disclosure is made, subjects any person to or causes any person detrimental action as a consequence of the person making a protected disclosure; or
- (e) makes a disclosure knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading.

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

on –

- (a) summary conviction to a fine of five hundred thousand dollars and to imprisonment for two years; or
- (b) conviction on indictment to a fine of one million dollars and to imprisonment for ten years.

Obligation of
secrecy and
confidentiality.

25. (1) A person receiving, inquiring, investigating or otherwise dealing with a disclosure shall regard and deal with as secret and confidential –

- (a) the identity of the person making the disclosure and any disclosure made; and

(b) any statement given or information, document or thing provided to the person in carrying out an investigation, except that any statement given, or information, document or thing provided, for the purposes of an investigation or any legal or disciplinary proceedings, shall not be regarded as being inconsistent with the obligation of secrecy and confidentiality.

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction on indictment to a fine of two million dollars and to imprisonment for ten years.

Penalty for obstructing member of the Commission and staff.

26. A person who obstructs a member of the Commission or an officer or employee of the Commission in the performance of any of his duties under this Act commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for four years.

Penalty for falsifying, etc., document, etc.

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

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

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

PART VII
MISCELLANEOUS

Accountability,
transparency and
confidentiality.

28. (1) For the purposes of accountability, transparency and any other purpose including the duty of confidentiality, the Commission shall keep a proper record of all disclosures and any other information, document or thing in relation to the disclosure, whether or not that disclosure has been the subject of an investigation, in a restricted place that is safe from destruction by water, fire or any other element or unauthorised access.

(2) The Commission shall institute administrative measures to ensure that the obligation of secrecy and confidentiality stipulated under this Act is not compromised.

(3) The Commission shall employ persons of fine character, efficiency and integrity recommended by persons of good standing in the Community.

(4) The Commission shall routinely expose the staff to rigorous training, frequent checks and subject them to arrangements that would reveal wrong doing or breach of secrecy and confidentiality.

(5) The Commission shall have secured premises in which to operate internal arrangements to aid the attainment of secrecy and confidentiality.

Report of the
Commission.

29. (1) The Protected Disclosures Commission shall, within six months after the end of each year or within such longer period as the Minister may in special circumstances approve, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Commission during the preceding year.

(2) The Protected Disclosures Commission shall not disclose in the report any information that would directly or indirectly identify any person who has made a disclosure under this Act or a person about whose improper conduct a disclosure was made.

(3) The Minister shall cause a copy of the report to be tabled in the National Assembly.

Conflict between
contract of service
and the provisions
of this Act.

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

- (a) purports to preclude the employee or has the effect of discouraging the employee from making a protected disclosure;
- or

- (b) purports to exclude any provision of this Act, including an agreement to refrain from instituting or abandoning any proceedings under this Act.

Power of Minister to make subsidiary legislation.

31. (1) The Minister may make such regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of five hundred thousand dollars and to imprisonment for four years.

(3) Regulations made under subsection (1) shall be subject to negative resolution of the National Assembly.

(4) The Minister may, by order subject to negative resolution, amend the monetary penalties specified in the Act.

Act not in derogation of other laws.

32. The provisions of this Act are not in derogation of any law providing for the discipline of employees by a ministry or any other organisation having its own rules in relation to such matters.

Act binds the State.

33. This Act binds the State.

RELATED MATTERS OF COMMISSION

Terms and conditions of appointment of Chairperson and other members of the Commission.

1. (1) Subject to paragraph 2, the Chairperson or any other member of the Commission shall be appointed for such period, not being less than one year, as may be specified by the Minister when appointing him and the emoluments and other terms and conditions of the Chairperson and other members shall be such as may be determined by the Minister.

(2) Except where the appointment of the Chairperson or any other member is terminated by the Minister under paragraph 2(1), the Chairperson and other members shall be eligible for re-appointment on the expiry of their term.

Termination of appointment and resignation.

2. (1) The appointment of the Chairperson or any other member may be terminated by the Minister if the Chairperson or any other member –

- (a) is convicted for an offence under this Act;
- (b) is convicted of any other offence;
- (c) is guilty of misconduct inconsistent with his membership of the Commission;
- (d) becomes of unsound mind or incapable of carrying out his duties;
- (e) becomes bankrupt or compounds with his creditors;

- (f) is absent , except on leave granted by the Commission, from all sittings of the Commission held during two consecutive months in any period of twelve months; or
- (g) fails to carry out all or any of the duties or functions conferred or imposed on him by this Act:

Provided that the appointment of the Chairperson or other member shall not be terminated under this paragraph unless he had been given a reasonable opportunity of being heard:

Provided further that where an appointment is terminated a concise report thereof shall, with all convenient speed, be laid before the National Assembly.

(2) The Chairperson or any other member may resign by letter addressed to the Minister.

Sittings of the Commission.

3. The headquarters of the Commission shall be in Georgetown, but the Commission may hold its sittings at any other place in Guyana.

Quorum.

4. The quorum of the Commission shall be three.

Budget, resources and expenses of the Commission.

5. (1) The Commission shall determine its own budget for submission to the Minister of Finance for inclusion in the annual budget presented to the National Assembly.

(2) The funds and resources of the Commission shall consist of –

- (a) sums provided to the Commission from the Consolidated Fund;
- (b) sums allocated from time to time to the Commission from loan funds; and
- (c) sums borrowed by the Commission for the purpose of meeting any of its obligations or the performance of any of its functions.

(3) The expenses of the Commission shall be paid out of the funds and resources of the Commission.

Accounting and
audit of the
accounts of the
Commission.

6. (1) The Commission may make rules for the proper control of the system of accounting of the Commission and its finances.

(2) The accounts of the Commission shall be audited annually by the Auditor General or by an auditor authorised by the Auditor General.

Secretary and
other staff of the
Commission.

7. (1) The Commission may, employ a secretary and such other officers and employees as are required for the proper performance of the work of the Commission.

(2) The remuneration and other terms and conditions of employment of the officers and employees shall be determined by the Commission, subject

to the approval of the Minister.

(3) For the purpose of the performance of its work, the Commission may, with the consent of the appropriate authority, utilise the services of any public officer or other employee of the Government.

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(4) Section 28 of the Public Corporations Act shall apply *mutatis mutandis* to public officers, persons (not being public officers) holding appointments in the public service and teachers referred to in that Act, who are seconded, temporarily transferred or transferred to the Commission as if the Commission were a public corporation.

(5) In sub-paragraph (3), “appropriate authority” in relation to any public officer or other employee of the Government, means the person or authority vested by law with power to appoint such public officer or employee of the Government to the position he held in the Government at the time when his service is sought to be utilised by the Commission.

Oath of Office.

8. The Chairperson or any other member shall not enter upon the duties of his office unless he has taken and subscribed to the oath of office set out in the Constitution before a Magistrate or a Justice of Peace.

Procedure of the Commission.

9. Subject to the provisions of this Act, the Commission may regulate its own procedure and make rules for that purpose.

EXPLANATORY MEMORANDUM

The Protected Disclosures Bill 2017, sometimes referred to as the ‘Whistleblowers Bill’, marks another step by the Government towards full compliance with the Inter-American Convention against Corruption (1996). The Bill would assist in combating corruption and other wrongdoings both in the public and private sector by encouraging and facilitating the making of specified disclosures of improper conduct in good faith and in the public interest. The Bill seeks to protect persons making those disclosures from detrimental action and to establish the Protected Disclosures Commission to receive, investigate or otherwise deal with disclosures of improper conduct and for other connected matters.

Part I of the Bill is the Preliminary part which includes the definition of a number of important terms including disclosure, protected disclosure, improper conduct, detrimental action, Commission and enforcement agency.

Clause 3 in effect sets out the scope of the Bill. The Bill applies to any disclosure of improper conduct made after the coming into operation of this Act or where the improper conduct occurred twelve years immediately before the coming into operation of this Act.

Part II of the Bill deals with the Protected Disclosures Commission.

Clause 4 establishes and constitutes the Protected Disclosures Commission which shall be responsible for the receiving, investigating and otherwise dealing with disclosures of improper conduct. In an effort to establish an impartial, inclusive and suitably qualified body the clause also makes provisions for the appointment of the members of the Commission, other than the Chairperson, to be chosen from nominees of specified organisations and to be elected by the National Assembly before being appointed by the Minister of Legal Affairs. While **clauses 5 and 6 and the Schedule** make provisions for matters connected to the efficient operation and functioning of the Commission.

Part III deals with Disclosures of Improper Conduct.

This Part makes provisions for the persons who may make a disclosure, whom a disclosure may be made about, the manner in which the disclosure may be made and the disclosures that are protected under the Act.

Clause 7 makes provision for a disclosure of improper conduct to be made to the Commission not only by an employee about his employer or another employee but by any person who is not an employee but who reasonably believes that a member of the National Assembly, the Speaker of the National Assembly, a Government Official or any other person whom he has dealt with has committed, is committing or is likely to commit an improper conduct.

Clause 8 sets out the manner and form of making a disclosure to the Commission. A disclosure may be made in person, orally or in writing and signed on delivery by the person making the

disclosure or anonymously to the Commission by calling the Commission's hotline telephone numbers or delivered by ordinary mail or by electronic mail or electronic messaging.

Clause 9 makes provision for special disclosures of improper conduct in relation to a matter that would prejudice national security, defence or international relations to be made to the President, the Minister or the Minister responsible for public security.

Clause 10 states the disclosures that are protected under the Act. A disclosure is protected if it is made in accordance with the manner and form of making a disclosure and any procedure set out in the Act for doing so, in good faith and the public interest. There must also be a reasonable belief that the information disclosed is substantially true and tends to show that a person has committed, is committing or is likely to commit improper conduct.

Clause 11 makes provisions for disclosures that are not protected including disclosures made anonymously and those that are protected by legal professional privilege. A disclosure that is made anonymously is not a protected disclosure unless the person who has made a disclosure anonymously subsequently remakes the disclosure in person. Disclosures that are made anonymously shall be processed by the Commission unless, after taking into account all the circumstances, the disclosure proves to be defamatory, libellous, false, frivolous or vexatious in which case the information will be discarded.

Part IV deals with Investigation.

In processing a disclosure, under **clause 12** the Commission may adopt whatever procedure it considers appropriate to the circumstance of the case to hear the person who made the disclosure and obtain information from any other person in any manner to investigate a disclosure. In doing so, the Commission may request the assistance of any expert or enforcement agency to assist in its investigation and in obtaining any information, document or thing and the experts and enforcement agency shall do everything in their power to give such assistance.

Clause 13 makes provision for the receiving of evidence by the Commission. The Commission may ask a person who, in its opinion, is able to give assistance in an investigation to give any information or produce any document or thing in connection with the investigation that may be in the possession or under the control of that person. This clause gives the Commission all the powers of a Judge of the High Court in relation to the attendance and examination of witnesses and the production of any information, document or thing. Some provisions of the **Commission of Inquiry Act, Cap. 19:03**, will apply in regard to the duty of persons summoned by the Commission and the punishment for the giving of false evidence.

Clause 14 makes provision for notice to be given to a person who has made a disclosure of the status of the disclosure unless it is apparent that action has been taken to rectify or deal with the improper conduct disclosed.

Clause 15 gives the Commission the right to refuse to deal with a disclosure, or cease an investigation where the disclosure is proven to be frivolous or vexatious or the circumstances have changed rendering the investigation unnecessary.

Clause 16 makes provisions for the procedure after an investigation is carried out by the Commission. After an investigation has been concluded the Commission shall, in writing, inform the person, body, authority or commission for which responsibility is given for the person of whom the disclosure is made of the results of the investigation. The Commission may also make recommendations for disciplinary proceedings to the responsible person, body, authority or commission or to the Attorney General, the Director of Public Prosecutions or an enforcement agency where disciplinary proceedings are not appropriate. The Commission may also take any other corrective measure as the Commission thinks necessary for the purposes of the Act.

Part V of the Bill deals with the Protection of Persons Making Disclosures.

Clause 17 provides for a person who has made, received, investigated or otherwise dealt with a disclosure to be given immunity from criminal, civil and disciplinary proceedings if the only reason for the proceeding was making, receiving, investigating or otherwise dealing with the disclosure. However, that immunity is subject to **clause 18** where the person is an accomplice or the perpetrator in regard to the disclosure in which case immunity shall not be given but the fact of making the disclosure would be taken into consideration when determining any disciplinary action or punishment.

Clause 19 prohibits the Commission from disclosing any information that would identify or lead to the identification of a person who has made a disclosure unless that person consents in writing to the disclosure of that information.

Clause 20 provides for a person who makes a disclosure to the Commission or a person who renders assistance in an investigation of the Commission who needs protection, either on the application of the person or from any information gathered, to be deemed a witness and protected under any law protecting witnesses.

Under clause 21 a person shall not be subject to detrimental action on the basis that the person seeks to make a disclosure, has made a disclosure or intends to make a disclosure.

Under Clause 22 a person who believes that detrimental action has been taken against him or is likely to be taken against him in reprisal for having made a protected disclosure shall inform the Commission and if the Commission finds the detrimental action to be real and unjustifiable, the Commission may take such remedial measures as may be appropriate in the circumstances including where necessary, applying to the High Court for any remedy as the Court may think fit including an interim order or injunction and an order requiring another person to remedy the detrimental action. This clause also expresses the right to compensation for any damages caused for the detrimental action suffered.

Clause 23 puts the burden of proof on the person who is the subject of the disclosure to prove that any detrimental action suffered within the same period a person makes a disclosure is not by reason of that disclosure otherwise it shall be presumed to be a consequence of the protected disclosure.

Part VI deals with Offences and Penalties.

Clauses 24, 25, 26 and 27 of the Bill set out the offences under the Act. Under **clause 24** offences include preventing, restricting, intimidating or restraining a person from making a disclosure or inducing a person to contravene the Act, making a disclosure knowing the information to be false, or subjecting a person to detrimental action as a consequence of the disclosure. These offences are punishable on summary conviction by a fine of five hundred thousand dollars and imprisonment for two years and on conviction on indictment to a fine of one million dollars and imprisonment for ten years.

Clauses 25 to 27 make provision for an obligation of secrecy and confidentiality, the penalty for obstructing members of the Commission and its staff when processing a disclosure and the penalty for falsifying or otherwise tampering with a document that is relevant to a disclosure.

The offences under this Part are punishable with maximum fines ranging from five hundred thousand dollars to two million dollars and imprisonment of maximum terms ranging from four years to ten years.

Part VII is the Miscellaneous part of the Bill.

Clause 28 places the Commission under an obligation to keep its records in a safe and restricted place and protected from unauthorised access by a person or destruction from water, fire or any other element. It seeks to institute administrative measures to ensure secrecy and confidentiality.

The Commission shall employ persons of integrity who will be subjected to rigorous training and checks to reveal any wrong doing.

Under **clause 29** the Commission shall, within six months after the end of each year make a report to the Minister detailing the general activities of the Commission during the preceding year and the Minister shall cause the report to be laid before the National Assembly.

Under **clause 30** any provision of a contract for services shall be void if the provision precludes the employee from making a protected disclosure.

Under clauses 31 the Minister may make regulations subject to negative resolution for carrying out the purposes of the Act and may, by order subject to negative resolution, amend any monetary penalty in the Act.

Clause 32 states that the provisions of the Bill shall not be in derogation of any other written law or rules of an organisation for the disciplining of an employee.

Clause 31 of the Bill binds the State.

**HON. BASIL WILLIAMS, SC, MP
ATTORNEY GENERAL AND MINISTER OF
LEGAL AFFAIRS**

