Tonga

WHISTLEBLOWER PROTECTION ACT 2025

Act 32 of 2025

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Arrangement of Sections

Section

1 Short Title and Objective 5
2 Interpretation 5
3 Anonymous and identified reporting 7
4 Protection from Liability and Retaliation 8
5 Protection from liability – public interest disclosure 8
6 Protection from liability – cooperation with the authorities 9
7 Offence to Commit Act of Victimisation 9
8 Obligations of Public Authorities and Officers 10
9 Training and Awareness Programs 10
10 Confidentiality of identity of whistleblower 10
11 Offences of false, malicious or misleading disclosure 10
12 Regulations 10
13 Periodic Review 11

WHISTLEBLOWER PROTECTION ACT 2025

Act 32 of 2025

AN ACT TO PROTECT BY FACILITATING THE DISCLOSURE AND TIMELY INVESTIGATION OF SERIOUS WRONGDOING IN OR BY A PUBLIC OFFICIAL; AND TO PROTECT THE PEOPLE WHO DISCLOSE

I assent,
TUPOU VI,
16 December 2025.

BE IT ENACTED by the King and Legislative Assembly of Tonga in the Legislature of the Kingdom as follows:

1 Short Title and Objective

(1) This Act may be cited as the Whistleblower Protection Act 2025.

(2) The purpose of this Act is to protect a person who discloses serious wrongdoing of a public official, from retaliation, and to encourage reporting of such conduct.

2 Interpretation

In this Act, unless the context otherwise requires —

"appropriate authority" as set out in Section 4, means the Anti-Corruption Commissioner or the Ombudsman;

"Commissioner" means the Anti-Corruption Commissioner established and appointed under the Anti-Corruption Commissioner Act [CAP 2.01];

"conduct" includes neglect, failure and inaction;

"corrupt conduct" has the meaning given by sections 6 and 7 of the Anti-Corruption Commissioner Act [CAP 2.01];

"Ombudsman" means the Ombudsman holding office under the Ombudsman Act [CAP 2.02];

"protected disclosure" means disclosing information where the whistleblower disclosing —

(a) believes on reasonable grounds that there is, or has been, serious wrongdoing in or by a public authority or public official;

(b) discloses information in accordance with this Act; and

(c) does not disclose it in bad faith;

"public authority" includes the following —

(a) a Government Department;

(b) a statutory body or public enterprise;

(c) the Police Force;

(d) a public body; or

(e) the holder of a public office or authority;

"public interest disclosure" means the disclosure of information by a whistleblower where the whistleblower reasonably believes that the information shows or tends to show –

(a) serious wrongdoing;

(b) misconduct, including but not limited to –

(i) environmental violations;

(ii) human rights abuses;

(iii) violations of workplace safety regulations;

(iv) financial mismanagement or irregularities; or

(v) any other conduct that poses a significant risk to the public or the integrity of public institutions;

"public official" means an individual having public official functions or acting in a public official capacity, and includes any of the following -

(a) a Minister of the Crown;

(b) a member of the Legislative Assembly;

(c) a person employed by the Legislative Assembly;

(d) a judge, a magistrate or the holder of any other judicial office;

(e) an officer or temporary employee of the Public Service;

(f) an individual who constitutes or is a member of a public authority;

(g) a person in the service of the Crown or of a public authority;

(h) a member of the Police Force;

(i) the holder of an office declared by regulations to be an office within this definition;

(j) an employee of or any person otherwise engaged by or acting for or on behalf of, or in the place of, or as deputy or delegate of, a public authority or any person or body described in any of the foregoing paragraphs;

(k) estate holders when exercising statutory functions;

"relevant authorised officer" means an officer from an appropriate authority or any other officer delegated by the appropriate authority;

"retaliation" means any adverse action taken against a whistleblower as a result of their disclosure, including but not limited to –

(a) termination of employment;

(b) demotion or suspension;

(c) harassment or discrimination; or

(d) any other form of reprisal or detrimental action.

"serious wrongdoing" means any conduct that is likely to constitute or has constituted –

(a) a criminal offence;

(b) a failure to comply with a legal obligation;

(c) a miscarriage of justice;

(d) corruption or fraud;

(e) a threat to public health or safety;

(f) a threat to the environment;

(g) gross mismanagement or waste of public resources;

(h) abuse of authority; or

(i) any other conduct that is detrimental to the public interest; and

"whistleblower" means any person, including but not limited to –

(a) public servants;

(b) employees of public authorities;

(c) contractors, subcontractors, and suppliers to public authorities;

(d) private sector employees; or

(e) any person who reports misconduct, illegal activities, or violations of public service policies.

3 Anonymous and identified reporting

(1) A whistleblower may choose to make a public interest disclosure anonymously.

(2) The appropriate authority shall ensure that the identity of an anonymous whistleblower remains confidential and protected.

(3) The appropriate authority shall establish secure communication channels for receiving anonymous disclosures.

(4) Anonymous disclosures shall be investigated with the same diligence as disclosures made by identified whistleblowers.

(5) Feedback on the progress and outcome of the investigation shall be provided to anonymous whistleblowers where possible, without compromising their anonymity.

(6) Retaliation against any whistleblower, whether identified or anonymous, is an offence under this Act.

4 Protection from Liability and Retaliation

(1) The appropriate authorities for making a protected disclosure are –

(a) for a disclosure relating to suspected corrupt conduct, to the Commissioner; and

(b) for a disclosure about an allegation of maladministration to the Ombudsman.

(2) The procedure for making the disclosure shall take into account the protection of the whistleblower making the disclosure, ensuring that the whistleblower is protected from identification, and the information provided shall be kept confidential to the agency.

(3) The appropriate agency shall accept the disclosure as a complaint and assess the complaint in their usual methods.

5 Protection from liability – public interest disclosure

(1) A whistleblower who makes a public interest disclosure to an appropriate authority in good faith –

(a) incurs no civil or criminal liability by doing so; and

(b) does not become liable to disciplinary action, or other adverse administrative action, for doing so.

(2) Subsection (1) applies even if the public interest disclosure is made in breach of an obligation of confidentiality.

(3) For subsection (1), a whistleblower makes a public interest disclosure in good faith only if the person –

(a) believes on reasonable grounds that the information contained in the disclosure is true; or

(b) is not in a position to form a belief on reasonable grounds about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated.

6 Protection from liability – cooperation with the authorities

(1) This section applies if a whistleblower complies and cooperates with a requirement imposed by a relevant authorised officer.

(2) The whistleblower –

(a) does not incur civil or criminal liability by doing so; and

(b) does not become liable for disciplinary action, or other adverse administrative action, for doing so.

(3) Subsection (2) applies even if the whistleblower breaches an obligation of confidentiality.

(4) A statement made by the whistleblower to the relevant authorised officer is not admissible as evidence against him in any civil or criminal proceeding unless –

(a) the whistleblower is a defendant or witness in criminal proceedings for a corruption offence or an inquiry by the Public Service Commission into misconduct in office, in which case the statement may be used to discredit the person's testimony; or

(b) the whistleblower is being prosecuted for perjury or obstructing the course of justice in relation to the statement.

(5) Subsections (2) and (4) do not apply in relation to any information given by the whistleblower knowing that it is false, misleading, or in bad faith.

7 Offence to Commit Act of Victimisation

(1) A person commits an offence if –

(a) he causes, or threatens to cause, detriment to the whistleblower; and

(b) he takes, or threatens action because the whistleblower –

(i) has made or intends to make a public interest disclosure to an appropriate authority; or

(ii) has complied and cooperated with, or intends to comply and cooperate with, a requirement by a relevant authorised officer.

(2) A person convicted under this section shall be liable to a fine not exceeding $100,000 or imprisonment for 10 years, or both.

(3) A court convicting a person of an offence against subsection (1) may, in addition to imposing a penalty for the offence, order the person to pay the victim of the offence compensation for the detriment suffered by the victim.

(4) Subsection (2) does not affect the victim's right to seek a civil remedy for detriment suffered.

8 Obligations of Public Authorities and Officers

The public authorities shall publicise –

(a) the ways in which a whistleblower may make a public interest disclosure relating to the conduct of the public authority or any of its officers; and

(b) the protections offered by this Act to a whistleblower who makes such a disclosure.

9 Training and Awareness Programs

The appropriate authority shall carry out regular training on whistleblower protections to all public officials and employees, and undertake public awareness campaigns to inform them about the protections and procedures available under the Act.

10 Confidentiality of identity of whistleblower

(1) A person commits an offence if –

(a) he discloses the identity of a whistleblower to an unauthorised person or authority; or

(b) engages in conduct that results in the disclosure of the identity of the whistleblower.

(2) A person convicted under this section shall be liable to a fine not exceeding $50,000 or to imprisonment for a period not exceeding 5 years, or both.

(3) Subsection (1) does not apply if the person discloses the identity of the whistleblower –

(a) to the extent necessary to ensure the matters to which the disclosure relates, are properly investigated; or

(b) with the consent of the whistleblower.

11 Offences of false, malicious or misleading disclosure

A person who intentionally makes a false, malicious or misleading disclosure commits an offence, and on conviction is liable to a fine not exceeding $50,000 or imprisonment for a period not exceeding 5 years, or both.

12 Regulations

The Commissioner in collaboration with the Ombudsman, may with the consent of the King in Privy Council make Regulations, not inconsistent with this Act, for or

with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

13 Periodic Review

(1) The appropriate authority shall conduct a comprehensive review of this Act at least once every five years to assess its effectiveness and relevance in light of evolving best practices and emerging challenges in whistleblower protection.

(2) The review process shall include public consultation to gather input from stakeholders, including whistleblowers, public authorities, civil society organisations, and the general public.

(3) The appropriate authority shall prepare a report detailing the findings and recommendations for amendments to this Act. The report shall be submitted to the Legislative Assembly for consideration.

(4) The Legislative Assembly shall consider the recommendations and, where appropriate, enact amendments to this Act to enhance its effectives and ensure it remains aligned with international standards and best practices.

Passed by the Legislative Assembly on this **6th** day of **August** 2025.