

The Whistleblower Protection Act, 2024: Safeguarding Integrity in Trinidad and Tobago



Protection

The Act provides comprehensive protection for whistleblowers who disclose improper conduct in both public and private sectors.



Legislation

Enacted by Parliament and receiving Presidential assent on 19 July 2024, published in the "Trinidad and Tobago Gazette" on 23 July 2024.



Integrity

Aims to combat corruption and wrongdoing by encouraging disclosures of improper conduct.

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Overview and Core Objectives



Encourage Disclosure

Facilitate the disclosure of improper conduct in both public and private sectors



Protect Whistleblowers

Shield individuals making disclosures from detrimental action



Regulate Process

Establish clear procedures for receiving, investigating, and handling disclosures

The Act applies to any disclosure made after its coming into force, regardless of whether the conduct occurred before or after this date. Importantly, the Act is binding on the State, ensuring comprehensive coverage across all sectors.

Key Definitions: Understanding the Terminology

The Act establishes clear definitions to ensure proper interpretation and application:

- **Designated Authority:** An office or body listed in the Schedule of the Act
- **Disclosure:** Information showing that improper conduct has occurred, is occurring, or is likely to occur
- **Employee:** Anyone who works/worked for another and receives remuneration, assists without entitlement to remuneration, or is engaged under a contract for services
- **Employer:** Anyone who employs another for work/services with remuneration, or permits assistance without obligation to provide remuneration
- **Whistleblower:** Any person making a disclosure to a whistleblowing reporting officer or unit
- **Protected Disclosure:** A disclosure meeting specific criteria outlined in section 7(1)
- **Internal Disclosure:** Made to a whistleblowing reporting officer
- **External Disclosure:** Made to a whistleblowing reports unit

Understanding "Detrimental Action"

The Act provides comprehensive protection against "detrimental action," which encompasses a wide range of adverse treatments that might be directed at whistleblowers:



Employment Consequences

Unfair disciplinary action, demotion, involuntary transfer, unfair refusal of transfer or promotion, disadvantageous alteration of employment terms, or unfair denial of employment



Personal Mistreatment

Harassment, intimidation, victimization, threats, or any other adverse effect on employment, family life, career, profession, trade, or business



Material Harm

Injury, loss, damage, or adverse references that could harm the whistleblower's reputation or future prospects

What Constitutes "Improper Conduct"?

The Act defines "improper conduct" broadly to cover various forms of wrongdoing:

Criminal Offences

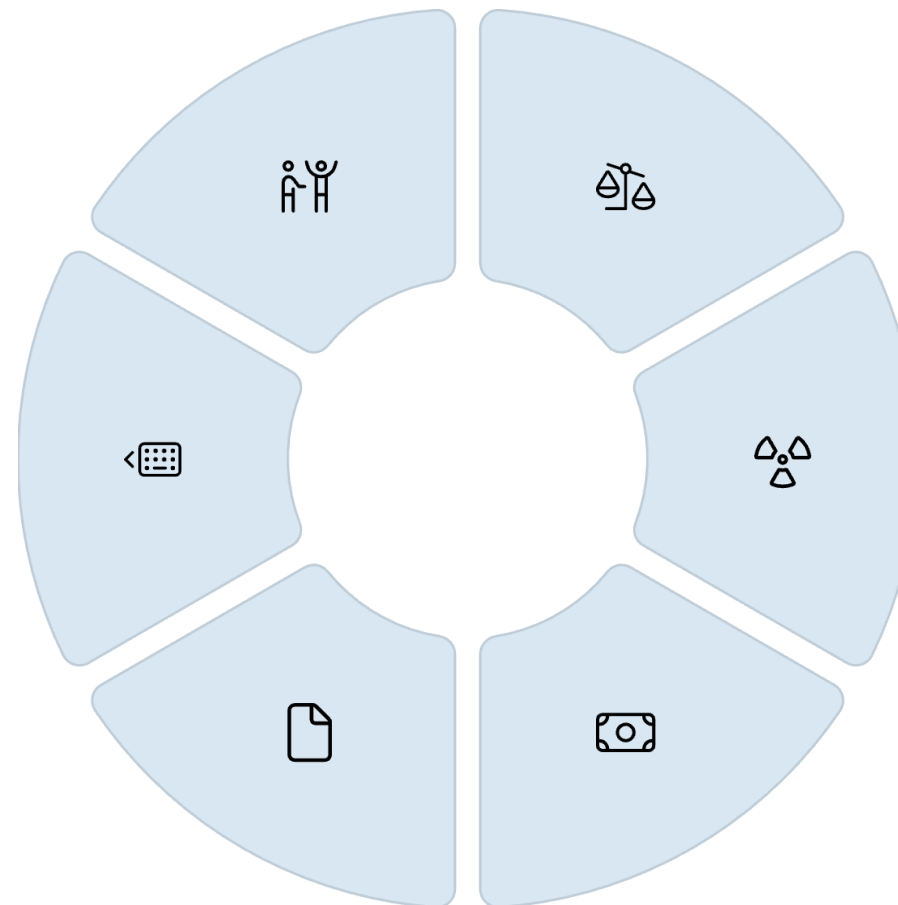
Any action that constitutes a criminal offence under Trinidad and Tobago law

Concealment

Wilful concealment of any of these acts

Discrimination & Retaliation

Unfair discrimination or acts of reprisal against whistleblowers



Legal Failures

Failure to carry out legal obligations or conduct likely to result in a miscarriage of justice

Safety & Environmental Threats

Conduct posing threats to health, safety, or the environment

Financial Misconduct

Gross mismanagement or impropriety in the use of public funds

Mechanisms for Disclosure: Overview

Two Primary Disclosure Pathways

The Act establishes two main channels for reporting improper conduct, providing flexibility and options for potential whistleblowers:

- **Internal Disclosure:** Made to a whistleblowing reporting officer within the organisation
- **External Disclosure:** Made to a whistleblowing reports unit of a designated authority

Both pathways offer protection under specific conditions, ensuring whistleblowers can choose the most appropriate and safe channel for their situation.

The Act carefully balances the need for internal resolution of issues with the necessity for external oversight when internal mechanisms are inadequate or compromised. This dual-pathway approach enhances accountability whilst respecting organisational autonomy.

Protected Disclosures: Qualifying Criteria

For a disclosure to qualify as "protected" under the Act, it must meet several specific conditions:

Proper Procedure

Made in accordance with section 6 of the Act

Good Faith

Disclosure must be made in good faith, without malicious intent

Reasonable Belief

Whistleblower must reasonably believe the information is substantially true and shows improper conduct

No Personal Gain

Disclosure must not be made for personal gain or advantage

Procedural Compliance

Must comply with internal procedures (for internal disclosures) or be properly made under section 14(5) (for external disclosures)

Limitations on Protected Disclosures



Legal Privilege

Information subject to legal professional privilege if disclosed by a person obtaining legal advice



Anonymous Disclosures

While anonymous disclosures are generally not protected, whistleblowing officers or units may still receive and process them. If an anonymous disclosure is likely to be defamatory or libellous, it must be rejected but recorded for potential future proceedings. If the identity later becomes known, the disclosure may be deemed protected if it would have been so otherwise.

False Information

Disclosures made when the whistleblower knows or ought reasonably to have known the information is false

Internal Disclosure Mechanism



Appointment of Officers

Employers must appoint whistleblowing reporting officers responsible for receiving and processing internal disclosures



Establish Procedures

Employers must establish and widely publish internal procedures for handling disclosures, identifying the relevant officer



Status Notification

Officers must notify whistleblowers of disclosure status within thirty days, unless action has already been taken



Referral When Necessary

If a disclosure reveals a criminal offense or breach of law, the officer must refer it to a designated authority's unit

External Disclosure Mechanism

Whistleblowing Reports Units

Designated authorities must establish whistleblowing reports units, each comprising a director and necessary officers. These units are responsible for receiving and processing external disclosures related to their areas of responsibility. The unit's director determines if an external disclosure should be referred for further investigation.

Annual Reporting

Directors of whistleblowing reports units must submit an annual report to the Minister by March 31st each year, outlining the unit's activities without disclosing specifics of filed disclosures. The Minister must then present this report to both the Senate and the House of Representatives by May 31st.

When Can External Disclosures Be Made?

An employee may make an external disclosure to a whistleblowing reports unit under specific circumstances:



Absence of Internal Procedures

If the organisation lacks established internal procedures for handling disclosures



Lack of Response

If a previous internal disclosure has not resulted in a status update or evident action within a reasonable time



Conflict of Interest

If there are reasonable grounds to believe the internal whistleblowing reporting officer or the head of the organisation is involved in the alleged improper conduct



Urgency or Risk

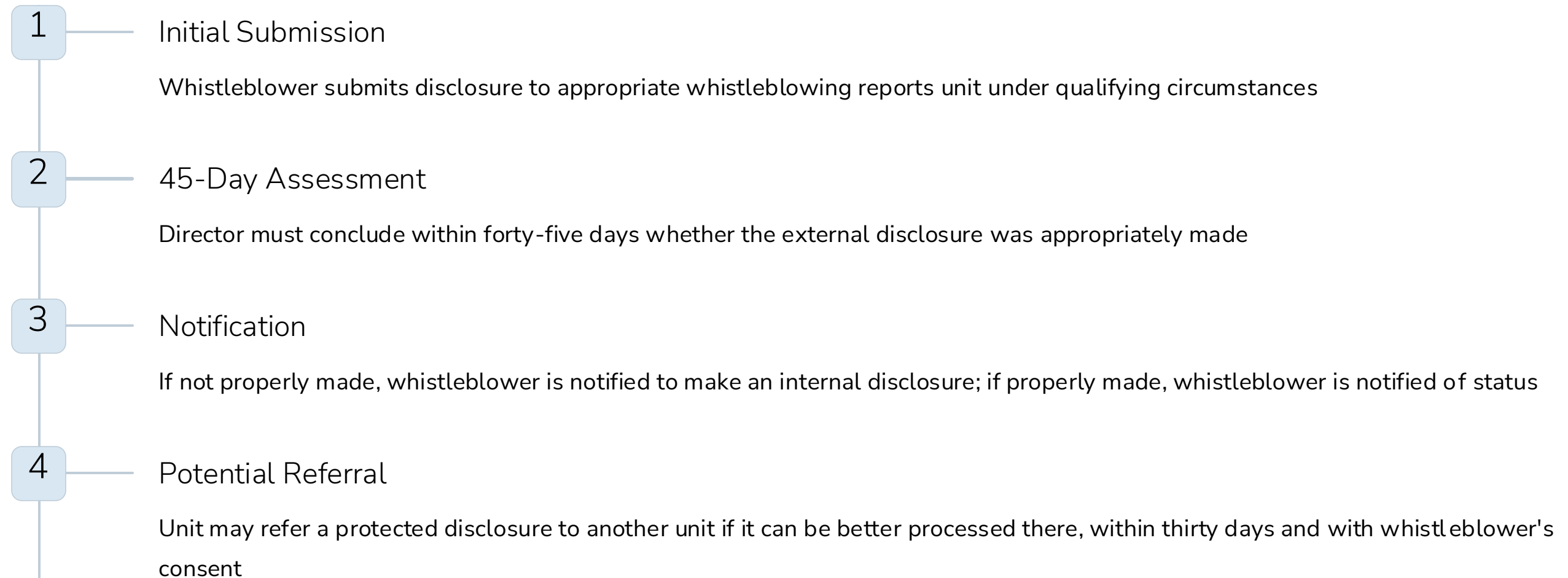
If urgency or exceptional circumstances justify immediate external reference, or if the employee believes they will face detrimental action for making an internal disclosure



Evidence Preservation

If there is a likelihood that evidence of improper conduct will be concealed or destroyed if an internal disclosure is made

External Disclosure Process



Protection of Whistleblowers: Core Safeguards

Protection from Detrimental Action

A whistleblower cannot be subjected to detrimental action for making a protected disclosure, regardless of any other law, contract, or oath

Legal Immunity

Whistleblowers who make protected disclosures are immune from criminal, civil, or disciplinary proceedings for having made that disclosure

Identity Protection

Whistleblowing reporting officers and units are prohibited from disclosing information that identifies or could lead to the identification of a whistleblower without explicit written consent

Civil Remedies

Whistleblowers who suffer or are likely to suffer detrimental action may apply to the High Court for remedies including orders to rectify the action, injunctions, or other relief

Exceptions to Whistleblower Immunity

Limitations for Perpetrators

The Act establishes important exceptions to whistleblower immunity:

- Immunity does not apply if the whistleblower was a perpetrator or accomplice in improper conduct that constitutes a criminal offense
- However, in criminal proceedings, the court must consider the disclosure and any assistance given to the police, potentially mitigating the punishment

Civil and Disciplinary Considerations

In civil proceedings where the whistleblower was a perpetrator or accomplice, the court may limit their liability for damages to the part they caused. For public body employees facing disciplinary proceedings as perpetrators, the public body should endeavour to mitigate the punishment and, where possible, avoid seeking dismissal.

Confidentiality Requirements



Identity Protection

Officers and units must not disclose information that identifies or could identify a whistleblower without explicit written consent



Content Confidentiality

Units should generally not communicate disclosure contents to other departments until investigation establishes necessity



Investigation Sharing

Designated authorities may share investigation information with their whistleblowing reports unit to determine relevant information



Communication Guidelines

Guidelines may be issued regarding communication duties, restrictions, and rules for disclosure to other departments or authorities

Civil Remedies for Whistleblowers

High Court Applications

A whistleblower who believes they have suffered or are likely to suffer detrimental action in breach of the Act may apply to the High Court for remedies. The court has broad powers to address such situations:

- Issue orders to rectify the detrimental action
- Grant injunctions to prevent further harm
- Determine appropriate damages
- Provide other appropriate relief

Interim Protection

The High Court can issue interim orders to protect whistleblowers while their case is being heard. Any person suffering detrimental action due to a protected disclosure has a right to compensation for sustained loss or damage, ensuring that whistleblowers have meaningful recourse if they face retaliation.

Offences and Penalties: Hindering Disclosures

\$15,000

Summary Conviction Fine

Plus up to two years imprisonment for hindering disclosures or taking detrimental action

\$50,000

Indictment Conviction Fine

Plus up to ten years imprisonment for more serious cases

The Act establishes serious penalties for those who attempt to obstruct whistleblowing. A person commits an offence if they knowingly prevent, restrain, or restrict any person from making a disclosure; knowingly intimidate anyone intending to make or having made a protected disclosure; knowingly induce contravention of the Act; or, as an employer, knowingly subject someone to detrimental action for making a protected disclosure.

It is also an offence to knowingly make a false or misleading disclosure, or be reckless about its falsity.

Offences and Penalties: Other Violations



Breach of Confidentiality

Fine of \$600,000 plus up to two years imprisonment for breaching secrecy and confidentiality requirements



Obstruction

Fine of \$15,000 plus up to two years imprisonment for obstructing whistleblowing personnel in their duties



Document Tampering

Fine of \$30,000 plus up to five years imprisonment for destroying, mutilating, altering, falsifying, or concealing relevant documents

The Act establishes that any provision in a contract of service or other agreement that purports to exclude any provision of the Act, or to preclude or discourage an employee from making a protected disclosure, is void. This ensures that contractual arrangements cannot be used to circumvent the protections offered by the legislation.

Administrative Provisions

Ministerial Powers

The Minister, responsible for national security, has several important administrative powers under the Act:

- May amend the Schedule (listing designated authorities) by Order, subject to affirmative resolution of Parliament
- Authority to make regulations for various aspects of the Act's implementation
- Can establish guidelines for processing and retaining disclosures and information

Regulatory Framework

Regulations may cover ensuring only relevant information is retained, prescribing retention times, destruction of unnecessary information, and conducting independent reviews for compliance. Such regulations are subject to affirmative resolution of Parliament, ensuring legislative oversight of the administrative framework.

Designated Authorities

The Act establishes 21 specific designated authorities that will have whistleblowing reports units:



Financial Oversight

Auditor General's Department, Board of Inland Revenue, Central Bank of Trinidad and Tobago, Financial Intelligence Unit



Legal & Justice

Office of the Director of Public Prosecutions, Office of the Ombudsman, Trinidad and Tobago Police Service



Governance & Environment

Integrity Commission, Environmental Management Authority, and other key regulatory bodies

These designated authorities form the backbone of the external disclosure system, providing specialised units equipped to handle whistleblower reports in their respective areas of expertise. Their establishment represents a significant commitment to creating robust institutional mechanisms for addressing improper conduct across Trinidad and Tobago.

Get Started Today!



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