

**THE PUBLIC INTEREST DISCLOSURE
(PROTECTION OF WHISTLEBLOWERS) ACT, 2010**

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GOVERNMENT OF ZAMBIA

ACT

No. 4 of 2010

Date of Assent: 12th April, 2010

An Act to provide for the disclosure of conduct adverse to the public interest in the public and private sectors; provide for a framework within which public interest disclosures shall be independently and rigorously dealt with; provide for procedures in terms of which employees in both the private and the public sectors may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; safeguard the rights, including employment rights, of persons who make public interest disclosures; provide a framework within which persons who make a public interest disclosure shall be protected; and for matters connected with, or incidental to, the foregoing.

[16th April, 2010

ENACTED by the Parliament of Zambia.

Enactment

PART I

PRELIMINARY

1. This Act may be cited as the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010, and shall come into operation on such date as the Minister may, by statutory instrument, appoint. Short title
and
commencement
2. (1) In this Act, unless the context otherwise requires— Interpretation
 - “act” includes investigate;
 - “conduct” includes an act or omission;
 - “corrupt” has the meaning assigned to it under the Anti-Corruption Commission Act; Cap. 91
 - “detriment” means —

- (a) injury, damage or loss;
- (b) intimidation or harassment; or
- (c) discrimination, disadvantage or adverse treatment in relation to career, profession, employment, trade or business;

“disciplinary offence” means conduct that constitutes grounds for disciplinary action, in respect of a public officer, under the General Orders or the officer’s contract of employment, or in relation to any other person, under the person’s contract of employment or conditions of service;

“disclosable conduct” in relation to any person or a public officer, means—

- (a) conduct of the person, whether or not a public officer, that adversely affects, or could adversely affect, either directly or indirectly, the honest or impartial performance of official functions by the person, public officer or agency;
- (b) conduct of the public officer which amounts to the performance of any of the public officer’s functions dishonestly or with partiality;
- (c) conduct of the public officer, a former public officer or a government agency that amounts to a breach of public trust;
- (d) conduct of the public officer, a former public officer or a government agency that amounts to the misuse of information or material acquired in the course of the performance of the public officer functions, whether for the benefit of that person or agency or otherwise;
- (e) conduct of the public officer that amounts to maladministration which is action or inaction of a serious nature that is—
 - (i) contrary to any law;
 - (ii) unreasonable, unjust, oppressive or discriminatory; or
 - (iii) based wholly or partly on improper motives;
- (f) conduct of the person or public officer that would, if proven, constitute—
 - (i) a criminal offence;
 - (ii) a disciplinary offence;
 - (iii) serious and substantial public wastage or abuse of financial or other public resources or assets; or
 - (iv) reasonable grounds for dismissing or dispensing with, or otherwise terminating, the services of the person or public officer who is engaged in it; or

(g) a conspiracy or attempt to engage in conduct referred to in paragraphs (a) to (e) inclusive;

“ disclosure ” means any communication or release of information regarding any disclosable conduct of any person, a public officer or employer made by an employee or any person who has reason to believe that the information shows or tends to show one or more of the following:

(a) that a criminal offence has been committed, is being committed or is likely to be committed;

(b) that a person has failed, is failing or is likely to fail to comply with any obligation to which that person is subject;

(c) that a miscarriage of justice has occurred, is occurring or is likely to occur;

(d) that the health or safety of any person has been, is being or is likely to be endangered;

(e) that the environment has been, is being or is likely to be endangered; or

(f) that any matter referred to in paragraphs (a) to (e) has been, is being or is likely to be deliberately concealed;

“ employee ” means—

(a) any person, excluding an independent contractor, who works for another person, whether incorporated or not, or for a government agency, and who receives, or is entitled to receive, any remuneration; or

(b) any other person who in any manner assists in carrying on or conducting the business of an employer;

“ employer ” means any person—

(a) who employs or provides work for another person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or

(b) who permits any other person in any manner to assist in the carrying on or conducting of the person’s business, including any person acting on behalf of or on the authority of such employer;

“ exercise ” in relation to a function includes, where the function is a duty, the performance of the duty;

“ function ” includes power, authority or duty;

“ government agency ” means —

- (a) a Government department, Ministry or institution;
- (b) a statutory body, local authority, organisation or agency established under any law;
- (c) a body, organ or institution incorporated under any law or established by Government for any public purpose;
- (d) a body, organ or institution owned by Government or in which Government has any interest or is under Government control; or
- (e) any other functionary or institution—

Cap. 1

- (i) exercising a power or performing a duty in terms of the Constitution or any other law; or
- (ii) exercising a public power or performing a public function in terms of any law;

“ impropriety ” means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of “ disclosable conduct ”, irrespective of whether or not —

- (a) the impropriety occurs or occurred in the Republic of Zambia or elsewhere; or
- (b) the law applying to the impropriety is that of the Republic of Zambia or of another country;

“ investigate ” includes inquire or audit;

“ investigation Act ” means—

Cap. 1

(a) in relation to the Auditor -General, the Constitution;

Cap. 39

(b) in relation to the Investigator-General, the Commission for Investigations Act;

Act No. 15
of 2004
Cap. 107

(c) the Public Finance Act, 2004;

(d) the Zambia Police Act;

Cap. 96

(e) the Narcotic Drugs and Psychotropic Substances Act;

Act No. 13 of
1999
Cap.91

(f) the Judicial Code of Conduct Act, 1999;

(g) the Anti-Corruption Commission Act; and

Act No. 14 of
2001

(h) the Prohibition and Prevention of Money Laundering Act, 2001;

“investigating authority” means—

- (a) the Auditor-General;
- (b) the Anti-Corruption Commission;
- (c) the Drug Enforcement Commission;
- (d) the Investigator-General;
- (e) the Police Public Complaints Authority;
- (f) the Judicial Complaints Authority; or
- (g) any other person or body prescribed under this Act or any other law;

“legal practitioner” has the meaning assigned to it in the Legal Practitioners Act; Cap. 30

“local authority” means any municipal, district or city council established under the Local Government Act; Cap. 281

“maladministration” means any conduct that involves action or inaction of a serious nature that is —

- (a) contrary to the law;
- (b) unreasonable, unjust, oppressive or discriminatory; or
- (c) based wholly or partly on improper motives;

“occupational detriment” in relation to the working environment of an employee, means the employee —

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

“Parliament” means the Parliament of Zambia;

“protected disclosure” means a disclosure made to—

- (a) a legal practitioner in accordance with section *thirty-seven*;
- (b) an employer in accordance with section *thirty-eight*;
- (c) a person or body in accordance with section *thirty-nine*; or
- (d) any other person or body in accordance with Part III, but does not include a disclosure—
 - (i) in respect of which the employee making the disclosure commits an offence by making that disclosure; or
 - (ii) made by a legal practitioner to whom the information was disclosed in the course of obtaining legal advice in accordance with section *thirty-seven*;

“public interest disclosure” means a disclosure of information made by any person or an employee, regarding any conduct of any person or an employer, or an employee of that employer, that the person making the disclosure believes on reasonable grounds shows or tends to show one or more of the following:

- (a) that a person has engaged, is engaging, or proposes to engage, in disclosable conduct;
- (b) public wastage;
- (c) conduct involving substantial risk or danger to the environment;
- (d) that a person has engaged, is engaging, or proposes to engage, in an unlawful reprisal;
- (e) that a public officer has engaged, is engaging, or proposes to engage, in conduct that amounts to a substantial and specific danger to the health or safety of the public;
- (f) that a criminal offence has been committed, is being committed or is likely to be committed;
- (g) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;

- (h) that a miscarriage of justice has occurred, is occurring or is likely to occur; or
- (i) that any matter referred to in paragraphs (a) to (h) has been, is being or is likely to be deliberately concealed;

“public officer” means—

- (a) an employee of a government agency, including an agency head;
- (b) a person employed by, or on behalf of, a government agency or in the service of an investigating authority, whether under a contract of service or a contract for services, or a person who has ceased to perform those services; or
- (c) a person otherwise authorised to perform functions on behalf of a government agency or an appropriate authority;

“public wastage” means conduct by a public officer that amounts to negligent, incompetent or inefficient management within, or of, any government agency resulting, or likely to result, directly or indirectly, in a substantial waste of public funds or resources;

“serious and substantial waste” includes uneconomical, inefficient or ineffective use of public funds or resources, whether authorised or unauthorised, which results in a loss or wastage of public funds or resources, having regard to the nature and materiality of the wastage; and

“unlawful reprisal” means conduct that causes, or threatens to cause, detriment—

- (a) to a person directly because a person has made, or may make, a public interest disclosure; or
- (b) to a public officer directly because the public officer has resisted attempts by another public officer to involve the officer in the commission of an offence.

3. (1) This Act applies to any disclosure made after the date on which it comes into operation, irrespective of whether or not the impropriety occurred before or after that date.

Application

(2) For the avoidance of doubt, this Act applies to any government agency, any private or public company, institution, organisation, body or organ registered, established or incorporated under any law.

4. Any provision in a contract of employment or other agreement between an employer and an employee is void in so far as it—

Void
contracts

- (a) purports to exclude any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract; or

- (b) purports to preclude the employee or has the effect of discouraging the employee, from making a protected disclosure.
- Disclosures during proceedings** **5.** If information that could amount to a public interest disclosure is disclosed in the course of any proceedings of a court or tribunal, the court or tribunal shall refer the information to an investigating authority.
- Other protection preserved** **6.** (1) This Act does not limit the protection given by any other law to a person who makes a public interest disclosure or prejudice any other remedy available to the person under that law.
- (2) Nothing in this Act affects the rights and privileges of Parliament in relation to the freedom of speech, and debates and proceedings, in Parliament.
- Liability of agent of State** **7.** An agent of the State who commits an offence under this Act is liable for the penalty for the offence.
- Legal professional privilege** **8.** Nothing in this Act shall be taken to entitle a person to disclose information which would otherwise be the subject of legal professional privilege.
- Relationship of Act with other Acts** **9.** (1) This Act prevails, to the extent of any inconsistency, over the provisions of any investigation Act.
- (2) Notwithstanding subsection (1), nothing in this Act otherwise limits or affects the operation of any Act or the exercise of the functions conferred or imposed on an investigating authority or any other person or body under it.
- (3) Nothing in this Act authorises an investigating authority to investigate any complaint that it is not authorised to investigate under the relevant investigation Act.
- (4) Nothing in this Act affects the proper administration and management of an investigating authority or public authority, including action that may or is required to be taken in respect of the salary, wages and conditions of employment or discipline of a public officer, subject to the following:
- (a) detrimental action is not to be taken against a person if to do so would be in contravention of this Act; and
- (b) beneficial treatment is not to be given in favour of a person if the purpose, or one of the purposes for doing so is to influence the person to make, to refrain from making, or to withdraw a disclosure.

PART II

PUBLIC INTEREST DISCLOSURES

10. An employer shall not subject an employee to any occupational detriment on account, or partly on account, of the employee having made a protected disclosure or public interest disclosure.

Employee not to be subjected to occupational detriment

11. (1) Any person may make a public interest disclosure to an investigating authority.

Making public interest disclosure

(2) Without limiting the generality of subsection (1), a person may make a public interest disclosure—

(a) about conduct in which a person is engaged, or about matters arising before the commencement of this Act; and

(b) whether or not the person is able to identify any person that the information disclosed concerns.

12. (1) A person may make an anonymous disclosure in accordance with this section and the disclosure is protected by this Act.

Anonymous disclosures

(2) An anonymous disclosure shall be made to any investigating authority where the disclosure does not relate to the investigating authority to whom the disclosure is made.

(3) A person making an anonymous disclosure shall identify themselves to the head of an investigating authority and request that that person's identity be kept confidential by the investigating authority.

(4) The head of an investigating authority shall personally consider an anonymous disclosure and make a preliminary assessment of the disclosure against the matters referred to under section *thirteen* before referring the matter without any identification of the person making the disclosure, to any relevant member of staff of the investigating authority for further and full investigation.

(5) An investigating authority shall maintain confidentiality when examining a matter referred in accordance with this section.

(6) An investigating authority shall subject any anonymous disclosure to the tests set out in section *thirteen*.

Frivolous,
vexatious,
etc.
disclosures

13. (1) An investigating authority may decline to act on a public interest disclosure received by it where the investigating authority considers that—

- (a) the disclosure is malicious, frivolous, vexatious or made in bad faith;
- (b) the disclosure is misconceived or lacking in substance;
- (c) the disclosure is trivial;
- (d) there is a more appropriate method of dealing with the disclosure reasonably available;
- (e) the disclosure has already been dealt with adequately; or
- (f) the disclosure is made for pecuniary gain or other illegal purpose.

(2) An investigating authority shall, where an issue raised in a public interest disclosure has been determined by a court or tribunal authorised to determine the issue at law, after consideration of the matters raised by the disclosure, decline to act on the disclosure to the extent that the disclosure attempts to re-open the issue.

(3) A person who makes a public interest disclosure that falls within the meaning of paragraphs (a) and (f) of subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both.

(4) Where a public interest disclosure is made against any person and the person is suspended or any other administrative action is taken against that person by the employer pending investigation into the matter, and the investigating authority determines that the disclosure falls under subsection (1), the person shall be entitled to—

- (a) reinstatement by the employer;
- (b) compensation for any detriment suffered as a result of the disclosure made;
- (c) re-location to another position of equivalent level of salary and duties, in the employing agency; or
- (d) any other action to remedy to any detriment caused to the person by the disclosure.

(5) Where a person is re-located in accordance with subsection (4), the employing agency of the person being relocated shall—

- (a) meet all reasonable re-location expenses; and
- (b) take all reasonable steps to ensure that the person is placed in a position of equivalent level of salary and duties.

14. Subject to section *seventeen*, if a public interest disclosure received by an investigating authority is not related to—

Referral
without
investigation

- (a) the conduct of the investigating authority or of a public officer in relation to the investigating authority; or
- (b) a matter, or the conduct of any person, that it has a function or power to investigate;

the investigating authority shall refer the disclosure to another investigating authority that, because it has a function or power to deal with the conduct or matter the disclosure concerns, is a proper authority to receive the disclosure.

15. (1) An investigating authority shall investigate a public interest disclosure received by it if the disclosure relates to—

Investigation
by
authority

- (a) its own conduct or conduct of a public officer in relation to the investigating authority;
- (b) a matter, or the conduct of any person, that the investigating authority has a function or power to investigate; or
- (c) the conduct of a person, other than a public officer, performing services for or on behalf of the investigating authority.

(2) Where an investigating authority investigates a matter in accordance with subsection (1) and is unable to investigate the matter impartially or without a conflict of interest, the authority shall refer the matter to another investigating authority.

(3) A disclosure may be referred before or after the matter has been investigated and whether or not any investigation of the matter is complete or any findings have been made by the investigating authority.

(4) An investigating authority may communicate to another investigating authority, to a public officer or public authority any information relevant for purposes of an investigating authority has obtained during the investigation of any matter under this Act.

(5) An investigating authority may recommend what action should be taken by the other investigating authority, a public officer or public authority.

(6) An investigating authority shall not refer the disclosure to another investigating authority, or to a public officer or public authority, except after taking into consideration the views of the investigating authority, public officer or public authority.

Referral
with
investigation

16. (1) Subject to subsection (2), if a public interest disclosure being investigated by an investigating authority relates to—

- (a) the conduct of another agency or the conduct of a public officer in relation to another agency; or
- (b) a matter, or the conduct of any person, that another agency has a function or power to investigate;

the investigating authority shall refer the public interest disclosure to another investigating authority.

(2) Nothing in this section affects the duty of an investigating authority to act under section *fifteen*.

No referral

17. (1) An investigating authority shall not refer a public interest disclosure to another investigating authority under section *fourteen* or subsection (1) of section *sixteen* if, in the investigating authority's opinion—

- (a) there is a serious risk that a person would engage in an unlawful reprisal; or
- (b) the proper investigation of the disclosure would be prejudiced;

as a result of the reference to the other investigating authority.

(2) Where a non-referral of the type referred to in subsection (1) occurs, the matter shall be referred immediately to the Investigator-General who shall decide what action is to be taken in relation to the matter.

Action by
investigating
authority

18. Where after investigation, an investigating authority is of the opinion that a public interest disclosure has revealed—

- (a) that a person has engaged, is engaging, or intends to engage, in disclosable conduct;
- (b) public wastage;
- (c) that a person has engaged, is engaging, or intends to engage, in an unlawful reprisal; or
- (d) that a public officer has engaged, is engaging, or intends to engage, in conduct that amounts to a substantial and specific danger to the health or safety of the public;

the investigating authority shall take such action as is necessary and reasonable to—

- (i) prevent the conduct or reprisal continuing or occurring in future;
- (ii) discipline any person responsible for the conduct or reprisal;
- (iii) bring an action in court or prosecute any person responsible for the conduct or reprisal, under this Act or relevant investigating Act; or
- (iv) confiscate or forfeit any property, benefit or other proceed obtained from or through the conduct or reprisal or acquired by any person through the commission of any offence under this Act or any investigating Act.

19. (1) A person who makes a public interest disclosure, or an investigating authority which refers a disclosure to another investigating authority, may request the investigating authority to which the disclosure was made or referred to provide a progress report.

Progress
report

(2) Where a request is made under subsection (1), the investigating authority to which the request is made shall provide a progress report to the person who, or investigating authority which requested it—

- (a) within fourteen days from the date of receipt of the request; and
- (b) if the investigating authority takes further action with respect to the disclosure after providing a progress report under paragraph (a)—
 - (i) while the authority is taking action, at least once in every ninety day period commencing on the date of provision of the report under paragraph (a); and
 - (ii) on completion of the action.

(3) A progress report provided under subsection (2) shall contain the following particulars with respect to the investigating authority that provides the report:

- (a) where the investigating authority has declined to act on the public interest disclosure, that it has declined to act and the ground on which it so declined;
- (b) where the investigating authority has referred the public interest disclosure to another investigating authority, that it has referred the disclosure to another investigating authority and the name of the authority to which the disclosure has been referred;

(c) where the investigating authority has accepted the public interest disclosure for investigation, the current status of the investigation; and

(d) where the investigating authority has accepted the public interest disclosure for investigation and the investigation is complete, its findings and any action it has taken or proposes to take as a result of its findings.

(4) Nothing in this section prevents any investigating authority from providing a progress report in accordance with subsection (3) to a person who may make a request under subsection (1).

Joint action

20. If more than one investigating authority is required by this Act to act on a public interest disclosure, the investigating authorities may enter into such arrangements with each other as are necessary and reasonable to—

(a) avoid duplication of action;

(b) allow the resources of the authorities to be efficiently and economically used to take action; and

(c) achieve the most effective result.

PART III

PROTECTED DISCLOSURES

Effect of Part

21. A disclosure is protected by this Act if it satisfies the applicable requirements of this Part.

General
protected
disclosure

22. (1) A disclosure is a protected disclosure if—

(a) it is made in good faith by an employee—

(i) who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and

(ii) who does not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law;

(b) one or more of the conditions specified in subsection (2) apply; and

(c) in all the circumstances of the case, it is reasonable to make the disclosure.

(2) The conditions referred to in paragraph (b) of subsection (1) are—

- (a) that at the time of making a disclosure the employee who makes the disclosure has reason to believe that the employee shall be subjected to an occupational detriment if the employee makes a disclosure to the employer in accordance with section *thirty-eight*;
- (b) that, in a case where no person or body is prescribed for the purposes of section *thirty-nine* in relation to the relevant impropriety, the employee making the disclosure has reason to believe that it is likely that evidence relating to the impropriety shall be concealed or destroyed if the employee makes the disclosure to the employer;
- (c) that the employee making the disclosure has previously made a disclosure of substantially the same information to —
 - (i) the employer; or
 - (ii) a person or body referred to in section *thirty-nine*, in respect of which no action was taken within a reasonable period after the disclosure; or
- (d) that the impropriety is of an exceptionally serious nature.

(3) In determining for the purposes of paragraph (c) of subsection (1) whether it is reasonable for the employee to make the disclosure, consideration shall be given to—

- (a) the identity of the person to whom the disclosure is made;
- (b) the seriousness of the impropriety;
- (c) whether the impropriety is continuing or is likely to occur in the future;
- (d) whether the disclosure is made in breach of a duty of confidentiality of the employer towards any other person;
- (e) in a case falling within paragraph (c) of subsection (2), any action which the employer or the person or body to whom the disclosure was made, has taken, or might reasonably be expected to have taken, as a result of the previous disclosure;
- (f) in a case falling within subparagraph (i) of paragraph (c) of subsection (2), whether in making the disclosure to the employer the employee complied with any procedure which was authorised by the employer; and
- (g) the public interest.

(4) For the purposes of this section, a subsequent disclosure may be regarded as a disclosure of substantially the same information referred to in paragraph (c) of subsection (2) where the subsequent disclosure extends to information concerning an action taken or not taken by any person as a result of the previous disclosure.

Lodging of
public interest
disclosure

23. Any of the following may receive a public interest disclosure concerning a government agency's conduct or the conduct of a public officer in relation to a government agency, or a public interest disclosure that a person has engaged, is engaging, or intends to engage, in an unlawful reprisal:

- (a) the head of the government agency;
- (b) the Anti-Corruption Commission;
- (c) the Police Public Complaints Authority;
- (d) the Judicial Complaints Authority;
- (e) the Drug Enforcement Commission;
- (f) the Investigator-General; and
- (g) the Auditor-General.

Disclosures
made
by public
officers

24. (1) A disclosure by a public officer shall be made to—

- (a) an investigating authority;
- (b) the principal officer of a government agency or investigating authority or other public officer of a government agency;
- (c) another officer of the government agency or investigating authority to which the public officer belongs; or
- (d) an officer of the government agency or investigating authority to which the disclosure relates; in accordance with any procedure established by the authority concerned for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by that authority or any of its officers.

(2) A disclosure is protected by this Act even if it is made about conduct or activities engaged in, or about matters arising, before the commencement of this Act.

(3) A disclosure made while a person was a public officer is protected by this Act even if the person who made it is no longer a public officer.

(4) A disclosure made about the conduct of a person while the person was a public officer is protected by this Act even if the person is no longer a public officer.

25. (1) To be protected by this Act, a disclosure shall be made voluntarily.

Disclosures
to be made
voluntarily

(2) A disclosure is not made voluntarily for the purposes of this section if it is made by a public officer in the exercise of a duty imposed on the public officer by, or under, any law.

(3) A disclosure is made voluntarily for the purposes of this section if it is made by a public officer in accordance with a code of conduct, however described, adopted by an investigating authority or government agency and setting out rules or guidelines to be observed by public officers for reporting corrupt conduct, maladministration or serious and substantial waste of public money by investigating authorities, government agencies or public officers.

(4) A disclosure made by a member of the Zambia Police Force is made voluntarily for the purposes of this section even if it relates to the same conduct as an allegation that the member of the Zambia Police Force has made in performance of a duty imposed on the member by, or under, the Zambia Police Act or any other law.

Cap. 107

(5) A disclosure made by a prison officer, within the meaning of the Prisons Act is made voluntarily for the purposes of this section even if it relates to the same conduct as an allegation that the prison officer has made in the performance of a duty imposed on the prison officer by, or under, that Act or any other law.

Cap. 97

26. To be protected by this Act, a disclosure by a public officer to the Anti-Corruption Commission shall be made in accordance with the Anti-Corruption Commission Act and be a disclosure of information that shows or tends to show that a government agency or another public officer has engaged, is engaged or intends to engage in corrupt conduct.

Disclosure
concerning
corrupt
conduct

Cap. 91

27. To be protected by this Act, a disclosure by a public officer to the Investigator-General shall—

Disclosure to
Investigator-
General
concerning
maladministration

(a) be made in accordance with the Commission for Investigations Act; and

Cap. 39

(b) be a disclosure of information that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a government agency or another public officer, the government agency or public officer has engaged, is engaged or intends to engage in conduct of a kind that amounts to maladministration.

Disclosure to Auditor-General concerning serious and substantial waste
Act No. 15 of 2004

28. To be protected by this Act, a disclosure by a public officer to the Auditor-General shall be a disclosure of information that shows or tends to show that an authority or officer of an authority has seriously and substantially wasted public money contrary to the provisions of the Public Finance Act, 2004.

Disclosure concerning police officer

Cap. 107

29. To be protected by this Act, a disclosure by a public officer to the Police Public Complaints Authority shall—
(a) be made in accordance with the Zambia Police Act; and
(b) be a disclosure that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by a police officer.

Disclosure concerning serious and substantial waste in local government

Cap. 281

30. (1) To be protected by this Act, a disclosure by a public officer to the Minister responsible for local authority shall—
(a) be made in accordance with the Local Government Act; and
(b) be a disclosure of information that shows or tends to show serious and substantial waste of local authority money by any one or more of the following:
(i) a local authority;
(ii) a delegate of a local authority;
(iii) a councillor, within the meaning of the Local Government Act; and
(iv) a member of staff of a local authority.

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(2) In this section, “local authority money” includes all revenue, loans and other money collected, received or held by, for or on account of a local authority.

31. (1) A disclosure by a public officer to the Anti-Corruption Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on a head or officer of any investigating authority, the head or the officer of the investigating authority has engaged, is engaged or intends to engage in conduct that amounts to maladministration is protected by this Act.

Disclosures
about
investigating
authorities

(2) The Anti-Corruption Commission may investigate, and report, in accordance with the Anti-Corruption Commission Act on any matter raised by a disclosure made to it under subsection (1).

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(3) Notwithstanding section *eleven*, a disclosure by a public officer to the Investigator-General or Anti-Corruption Commission that shows or tends to show that the Auditor-General or a member of the staff of the Auditor-General has seriously and substantially wasted public money is protected by this Act.

(4) The Anti-Corruption Commission may investigate, and report, in accordance with the Anti-Corruption Commission Act on any matter raised by a disclosure made to it that is of a kind referred to in subsection (3).

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(5) For the purposes of any investigation under subsection (4), the Anti-Corruption Commission may engage consultants or other persons for the purpose of getting expert assistance.

(6) Notwithstanding section *ten*, a disclosure by a public officer to the Anti-Corruption Commission that shows or tends to show that, in the exercise of a function relating to a matter of administration conferred or imposed on the Inspector-General or Commissioner of Police, the Inspector-General or Commissioner of Police has engaged or intends to engage in conduct that amounts to corrupt conduct or maladministration or has seriously and substantially wasted public money is protected by this Act.

(7) The Anti-Corruption Commission may investigate, and report, in accordance with the Anti-Corruption Commission Act on any matter raised by a disclosure made to it in subsection (6).

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(8) A disclosure referred to in this section is protected by this Act only if it satisfies all other applicable requirements of this Part.

Disclosures
to
public
officers

32. (1) To be protected by this Act, a disclosure by a public officer to the principal officer, or other public officer, of a government agency shall be a disclosure of information that shows or tends to show corrupt conduct, maladministration or serious and substantial waste of public money by the government agency or any of its officers or by another government agency or any of its officers.

(2) To be protected by this Act, a disclosure by a public officer to —

(a) another officer of the government agency to which the public officer belongs; or

(b) an officer of the government agency to which the disclosure relates;

in accordance with any procedure established by the government agency for the reporting of allegations of corrupt conduct, maladministration or serious and substantial waste of public money by that government agency or any of its officers shall be a disclosure of information that shows or tends to show the corrupt conduct, maladministration or serious and substantial waste, whether by that government agency or any of its officers or by another government agency or any of its officers.

(3) A public officer may refer any disclosure concerning an allegation of corrupt conduct, maladministration or serious and substantial waste made to the public officer to an investigating authority, or a principal officer or other public officer of a government agency considered by the public officer to be appropriate in the circumstances, for investigation or other action.

(4) If the public officer to whom the disclosure referred to in subsection (1) is made does not belong to the investigating authority to which the disclosure relates, the public officer shall refer the disclosure to the principal officer or other public officer of a government agency, for investigation or other action.

(5) A public officer may communicate to an investigating authority or principal officer or other public officer of a government agency to whom a matter is referred under subsection (4), any information the public officer has obtained during the investigation of the matter.

(6) In this section, “ government agency ” includes an investigating authority.

33. (1) A disclosure is protected by this Act if it is made by a public officer to an investigating authority and is referred, whether because it is not authorised to investigate the matter under the relevant investigation Act or otherwise, by the investigating authority to another investigating authority or to a public officer or government agency.

Referred disclosures protected

(2) A disclosure is protected by this Act if it is made by a public officer to another public officer in accordance with paragraph (b) or (c) of section *twenty-four* and is referred under Part II by the other public officer to an investigating authority or to another public officer or government agency.

34. (1) An investigating authority, a principal officer or other public officer of a government agency, may decline to investigate or may discontinue the investigation of any matter raised by a disclosure made to the authority or public officer of a kind referred to in this Part if the investigating authority or officer is of the opinion that the disclosure was made maliciously, frivolously, vexatiously, in bad faith, for pecuniary gain or for an illegal purpose.

Disclosures made on frivolous or other grounds

(2) A disclosure referred to in subsection (1) is not, despite any other provision of this Part, protected by this Act if an investigating authority or officer declines to investigate or discontinues the investigation of a matter under this section.

35. (1) A disclosure made by a public officer that principally involves questioning the merits of government policy is not, despite any other provision of this Part, protected by this Act.

Disclosures concerning merits of government policy

(2) In this section, “government policy” includes the policy of a local authority.

36. A disclosure that is made solely or substantially with the motive of avoiding dismissal or other disciplinary action, not being disciplinary action taken in reprisal for the making of a protected disclosure, is not, notwithstanding any other provision of this Part, a protected disclosure.

Disclosures motivated by object of avoiding disciplinary action

37. Any disclosure made to a legal practitioner with the object of, and in the course of, obtaining legal advice, is a protected disclosure.

Protected disclosure to legal practitioner

Protected disclosure to employer

- 38.** (1) Any disclosure made in good faith—
- (a) and substantially in accordance with any procedure prescribed, or authorised by the employee's employer for reporting or otherwise remedying the impropriety; or
- (b) to the employer of the employee, where there is no procedure as contemplated in paragraph (a);

is a protected disclosure.

(2) Any employee who, in accordance with a procedure authorised by the employer, makes a disclosure to a person other than the employer, is deemed, for the purposes of this Act, to be making the disclosure to the employer.

Protected disclosure to certain persons or bodies

39. (1) Any disclosure made in good faith to a person or body prescribed for purposes of this Act and in respect of which an employee reasonably believes that —

- (a) the relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by the person or body; and
- (b) the information disclosed, and any allegation contained in it, are substantially true;

is a protected disclosure.

(2) A person or body referred to in, or prescribed in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or prescribed in terms of, that subsection, shall render such assistance to the employee as is necessary to enable that employee to comply with this section.

PART IV

PROVISIONS RELATING TO INVESTIGATING AUTHORITIES

Procedures by investigating authorities on public interest disclosures

- 40.** (1) An investigating authority shall, within twelve months after the commencement of this Act, establish procedures —
- (a) to facilitate the making of public interest disclosures; and
- (b) to deal with public interest disclosures that it is the proper authority to receive.

(2) The procedures to be established under subsection (1) shall include procedures dealing with the following:

- (a) making public interest disclosures;
- (b) assisting and providing information to a person who is considering making or who makes a public interest disclosure;
- (c) protecting a person who makes a public interest disclosure from unlawful reprisals, including unlawful reprisals taken by public officers in relation to the government agency; and
- (d) acting on public interest disclosures.

41. An investigating authority that is required by an Act to prepare an annual report of its activities during a year for tabling before Parliament shall include in the report a description of the procedures established by it under section *forty* and such other information as may be prescribed.

Report on disclosures

PART V

PROTECTION AGAINST REPRISALS

42. (1) A person who takes any detrimental action that is in reprisal for a person who makes a protected disclosure commits an offence, and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Protection against reprisals

(2) A civil proceeding in respect of a detrimental action under this section may be instituted at any time within three years after the detrimental action is alleged to have been committed.

(3) In this section, “detrimental action” means action causing, comprising or involving any of the following:

- (a) injury, damage or loss;
- (b) intimidation or harassment;
- (c) discrimination, disadvantage or adverse treatment in relation to employment;
- (d) dismissal from, or prejudice in, employment; or
- (e) disciplinary proceeding.

Protection
against
actions

43. (1) A person is not subject to any liability for making a protected disclosure in good faith and no action, claim or demand shall be taken or made of or against the person for making the disclosure.

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(2) Subject to the State Security Act, this section has effect despite any duty of secrecy or confidentiality or any other restriction on disclosure, whether or not imposed by an Act, applicable to a person.

Non-
disclosure of
person's
identity

44. An investigating authority, an officer of an investigating authority or public officer to whom a protected disclosure is made or referred shall not disclose information that might identify or tend to identify a person who has made any protected disclosure unless —

- (a) the person consents in writing to the disclosure of that information;
- (b) it is essential, having regard to the principles of natural justice, that the identifying information be disclosed to a person whom the information provided by the disclosure may concern; or
- (c) the investigating authority, public authority or public officer is of the opinion that disclosure of the identifying information is necessary to investigate the matter effectively or it is otherwise in the public interest to do so.

PART VI

UNLAWFUL REPRISALS

Employer to
protect its
officers
against
reprisals

45. Within six months of the commencement of this Act, an employer shall establish procedures to protect its employees from reprisals that are, or may be, taken against them.

Prohibition
of unlawful
reprisal

46. (1) A person shall not engage, or attempt or conspire to engage, in an unlawful reprisal.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, if the offender is a natural person, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both, or if the offender is a body corporate, to a fine not exceeding seven hundred thousand penalty units.

47. (1) Where an employee applies in writing to the employer for relocation and the employer considers— Relocation powers

(a) that there is a danger that a person will engage in an unlawful reprisal in relation to the employee if the employee continues to hold the employee's current position; and

(b) that the only practical means of removing or substantially removing the danger is relocation of the employee to another position in an employing agency;

the employer shall, as far as practicable, make arrangements for relocation of the employee to another position in the employing agency.

(2) Where an employee is relocated in accordance with this section, the employing agency of the employee being relocated shall—

(a) meet all reasonable relocation expenses; and

(b) take all reasonable steps to ensure that the employee is placed in a position of equivalent level of salary and duties.

48. Section *forty-seven* does not authorise the relocation of an employee in relation to an employer to another position in the employing agency without the consent of the employee. Consent to relocation

PART VII

REMEDIES

49. (1) Any employee who has been subjected, is subject or may be subjected, to any occupational detriment in breach of section *ten*, may— Remedies

(a) apply to any court having jurisdiction, including the Industrial and Labour Relations Court for appropriate relief; or

(b) pursue any other process allowed or prescribed by any law.

(2) For the purposes of the Industrial and Labour Relations Act, including the consideration of any matter emanating from this Act by the Industrial and Labour Relations Court— Cap. 269

(a) any dismissal in breach of section *ten* is deemed to be an unfair dismissal; and

(b) any other occupational detriment in breach of section *ten* is deemed to be an unfair labour practice.

(3) Any employee who has made a protected disclosure and who reasonably believes that the employee may be adversely affected on account of having made that disclosure, shall, at that employee's request and if reasonably possible or practicable, be transferred from the post or position occupied by that employee at the time of the disclosure, to another post or position in the same division or another division of the employer or, where the person making the disclosure is employed by a government agency to another government agency.

(4) The terms and conditions of employment of a person transferred in terms of subsection (3) shall not, without the person's written consent, be less favourable than the terms and conditions applicable to that person immediately before the person's transfer.

Liability in
damages

50. (1) A person who engages in an unlawful reprisal is liable in damages to any person who suffers detriment as a result of the unlawful reprisal.

(2) The damages referred to under subsection (1) may be recovered in an action in any court of competent jurisdiction.

Application
for
injunction or
order

51. Subject to the State Proceedings Act, an application to a court for an injunction or order under section *fifty-two* may be made—

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(a) by a person claiming that the person is suffering or may suffer detriment from an unlawful reprisal; or

(b) by the Investigator-General on behalf of a person referred to in paragraph (a).

Injunction or
order to take
action

52. (1) If, on receipt of an application under section *fifty-one*, a court is satisfied that a person has engaged, or is proposing to engage, in—

(a) an unlawful reprisal; or

(b) conduct that amounts to or would amount to—

(i) aiding, abetting, counselling or procuring a person to engage in an unlawful reprisal;

(ii) inducing or attempting to induce, whether by threats, promises or otherwise, a person to engage in an unlawful reprisal; or

(iii) being in any way, directly or indirectly, knowingly concerned in, or party to, an unlawful reprisal;

the court may—

(a) order the person to take specified action to remedy any detriment caused by the unlawful reprisal; or

(b) grant an injunction in terms the court considers appropriate.

(2) A court may, pending the final determination of an application under section *fifty-one*, make an interim order or grant an interim injunction.

(3) A court may grant an injunction or an interim injunction under this section whether or not the person has previously engaged in conduct of that kind.

(4) A court may make an order or an interim order under this section requiring a person to take specified action, whether or not the person has previously refused or failed to take that action.

53. (1) If the Investigator-General applies under section *fifty-one* for an injunction or order, no undertaking as to damages or costs is required.

Undertakings
as to
damages and
costs

(2) The Investigator-General may give an undertaking as to damages or costs on behalf of a person applying under section *fifty-one* and, in that event, no further undertaking is required.

PART VIII

GENERAL PROVISIONS

54. (1) A public officer shall not, without reasonable excuse, make a record of, or wilfully disclose to another person, confidential information gained through the public officer's involvement in the administration of this Act.

Prohibition
of disclosure
of
information

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) Subsection (1) shall not apply to a public officer who makes a record of, or discloses, confidential information—

(a) to another person for the purposes of this Act;

(b) to another person, if expressly authorised under any other law; or

(c) for the purposes of a proceeding in a court or tribunal.

(4) In this section, “ confidential information ” means—

(a) information about the identity, occupation or whereabouts of a person who has made a public interest disclosure or against whom a public interest disclosure has been made;

(b) information contained in a public interest disclosure;

(c) information concerning an individual’s personal affairs; or

(d) information that, if disclosed, may cause detriment to a person.

False or misleading information

55. (1) A person shall not knowingly or recklessly make a false or misleading statement, orally or in writing, to any investigating authority with the intention that it be acted on as a public interest disclosure.

(2) Any person who contravenes subsection (1) commits an offence and is liable, upon conviction, if the offender is a natural person, to a fine not exceeding seven hundred thousand penalty units or to imprisonment for a period not exceeding seven years, or to both, or if the offender is a body corporate, to a fine not exceeding one million penalty units.

Limitation of liability

56. (1) A person is not subject to any liability for making a public interest disclosure in good faith or providing any further information in relation to the disclosure to an investigating authority investigating it, and no action, claim or demand shall be taken or made of or against the person for making the disclosure or providing the further information.

(2) Without limiting subsection (1), in proceedings for defamation, a person has a defence of absolute privilege in respect of the making of a public interest disclosure, or the provision of further information in relation to a public interest disclosure, to an investigating authority.

(3) The defence of absolute privilege is not available where the making of a public interest disclosure is frivolous, vexatious or otherwise meets the conditions specified in section *thirteen*.

57. A person's liability for the person's own conduct is not affected by the person's disclosure of that conduct in a public interest disclosure. Liability of person disclosing

58. An investigating authority or principal officer, or other public officer, of a government agency to whom a disclosure is made under this Act or, if the disclosure is referred, the investigating authority or principal officer, or other public officer, of a government agency, to whom the disclosure is referred, shall notify the person who made the disclosure, within six months of the disclosure being made, of the action taken or proposed to be taken in respect of the disclosure. Notification to person making disclosure

59. The Minister may, by statutory instrument, make regulations for the better carrying out of the provisions of this Act. Regulations
