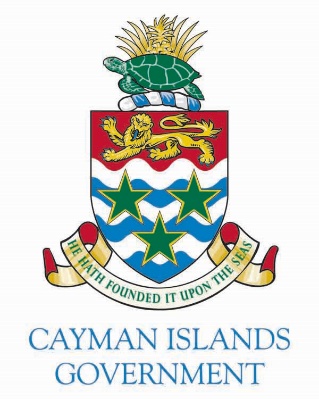
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**Contact: Peter Gough,** [**peter.gough@gov.ky**](mailto:peter.gough@gov.ky)

**GOVERNMENT TO PROTECT WHISTLEBLOWERS**

The previous Complaints Commissioner, Nicola Williams, produced an own motion report titled “Let the Whistle Blow” in 2014. Her report recommended that stand alone legislation be enacted similar to those in Jamaica, Australia or New Zealand.

As good governance and transparency is high on the Government’s agenda it decided to implement this recommendation and immediately set about the task of developing draft regulations.

The Law Reform Commission, after reviewing Jamaica’s Protected Disclosure Act 2011, the United Kingdom’s Public Interest Disclosure Act 1998 and Canada’s Public Service Disclosure Protection Act, drafted legislation specifically for the Cayman Islands.

By bringing this legislation forward so expeditiously the Cayman Islands Government has demonstrated to the world that it is proactive in dealing with the issue of whistleblowing.

The Cayman Islands Government has never had specific legislation dealing with whistleblowing; however, successive governments have ensured that a number of existing laws have whistleblower provisions in them, namely:-

* Section 23 of the Standards in Public Life Law,
* Section 50 of Freedom of Information Law,
* Section 37 of the Anti-Corruption Law,
* The Gender Equality Law,
* Section 30 of the Insurance Law,
* Section 13 of the Bank and Trust Companies Law and
* Section 50 of the Monetary Authority Law.

The bill covers both the private and public sectors. That means that all employers and employees in the Cayman Islands would be subject to this new law. To be effective the law will need to be properly understood by all persons and enforced.

The objectives of this new bill are threefold. Firstly and most importantly it is to encourage all employees to report improper conduct and wrongdoing.

Secondly to have a designate public authority to facilitate the receiving of reports and to ensure a proper investigation is carried out by the most appropriate agency.

Thirdly to ensure that the whistleblower is protected from detrimental action and to compensate whistleblowers who have suffered damage from making disclosures of improper conduct and wrong-doing.

The Bill provides for the Governor to designate an individual or public entity to deal with disclosures by whistleblowers. It is not intended to create an additional agency to deal with disclosures of wrong doing. The Governor will designate the Office of the Complaints Commissioner for this purpose. This office would receive the complaint, investigate if necessary, pass it on to the relevant authority to investigate and monitor the investigation.

An employee can make a protected disclosure of wrongdoing to the designated authority, or to an attorney-at-law in writing. This means the employee who has made the disclosure would be protected and not be liable to criminal, civil or disciplinary proceedings.

The bill also protects the whistleblower from any detrimental action that may ensue from the disclosure of wrongdoing.

However, the whistleblower does not qualify for protection unless it is made in the public interest, or the employee commits a criminal offence in making the disclosure.

The bill defines the detrimental action that a whistleblower can be protected against, such as action causing injury, loss, damage, intimidation, harassment, discrimination or adverse treatment, in relation to employment, career or profession.

Any whistleblower who is dismissed because of making a disclosure shall be deemed as an unfair dismissal, and the court can order the person to be re-instated to their job.

The bill also allows for damages to be paid to the whistleblower.

In a public authority the bill allows for the transfer of a whistleblower to other parts of the organization under certain conditions.

The bill states that taking detrimental action against a whistleblower is a criminal offence and is liable to a fine of $20,000, and, or, a prison term of two years on summary conviction. On indictment the prison term can be increased to five years.

A very important aspect of the bill is confidentiality; without this employees will be reluctant to come forward to report wrongdoing.

The bill provides that the authority dealing with the disclosure by the whistleblower keeps the information secret and confidential.

This means that the identity of the whistleblower and the nature of the disclosure and any documentation regarding the investigation shall be confidential.

The Deputy Governor has specific responsibilities under the new law. First he must ensure that all public entities are made aware of the new law, and he must promote training and awareness to all public servants.

Secondly the Deputy Governor will be responsible for ensuring that the designated authority provides a report to the Legislative Assembly on a timely basis.

The bill also provides for a committee of the Legislative Assembly to review the law no later than three years after its commencement.

The Deputy Governor stated “This is an important piece of legislation. I want to encourage all public servants to report misconduct and wrongdoing without fear of any type of retribution. I can assure every whistleblower will be treated in a strictly confidential manner. Upholding our public service values and complying with our code of conduct are foundational to the civil service”.

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