

Bill introduced by Members of Parliament Van Raak, Fokke, Schouw, Voortman, Segers, Ouwehand and Klein to establish a Whistleblowers Centre (Whistleblowers Centre Act)

We, Willem-Alexander, by the grace of God King of the Netherlands, Prince of Orange-Nassau, etc., etc., etc.

Greetings to all who see or hear these presents! Be it known:

Whereas We consider that it is desirable to establish a Whistleblowers Centre to provide legal protection for whistleblowers and that it is necessary to introduce statutory provisions for this purpose;

We, therefore, having heard the Advisory Division of the Council of State, and in consultation with the States General, have approved and decreed as We hereby approve and decree:

CHAPTER 1. GENERAL PROVISIONS

§ 1. Definitions

Section 1

In this Act and the provisions based upon it:

- a) 'the Centre' means the Whistleblowers Centre referred to in section 3;
- b) 'the Advisory Department' means the Centre's Advisory Department referred to in section 3a, subsection 2;
- c) 'the Investigation Department' means the Centre's Investigation Department referred to in section 3a, subsection 3;

d) 'suspected abuse' means an employee's suspicion of an abuse in the organisation at which he works or has worked or in another organisation if he has come into contact with that organisation through his work, in so far as:

(1^o) the suspicion is based on reasonable grounds resulting from the knowledge gained by the employee in the service of his employer or from the knowledge obtained by the employee through his work at another business or organisation, and

(2^o) a public interest is at stake since the suspected abuse concerns a breach of statutory regulations, a risk to public health, public safety or the environment, or an improper act or omission that jeopardises the proper functioning of the public service or an undertaking;

e) 'investigation' means an investigation as referred to in section 4;

f) 'Our Minister' means Our Minister of the Interior and Kingdom Relations;

g) 'employer' means a person who arranges or has arranged for work to be performed pursuant to a civil-law employment contract or an appointment under public law or a person who arranges or has arranged for work to be performed other than in the context of an employment relationship;

h) 'employee' means a person who performs or has performed work pursuant to a civil-law employment contract or an appointment under public law or a person who performs or has performed work other than in the context of an employment relationship;

i) 'requester' means an employee who requests the Investigation Department to institute an investigation;

j) 'office' means the office referred to in section 3d.

§ 2. Internal procedure

Section 2

1. Any employer which usually has at least fifty people in its employ draws up a procedure for dealing with a report of a suspected abuse within the organisation.

2. The procedure referred to in subsection 1 must in any event:

a) set out how an internal report is to be handled;

- b) describe when a suspected abuse is deemed to exist, subject to the definition of a suspected abuse in this Act;
- c) identify the designated officer or officers to whom a suspected abuse can be reported;
- d) set out the employer's obligation to treat such a report confidentially at the employee's request;
- e) state that an employee may consult an adviser confidentially about a suspected abuse.

3. The employer is obliged to provide a written or electronic statement of the procedure referred to in subsection 1 to everyone in its employ. The employer at the same time provides information about:

- a) the circumstances in which a suspected abuse outside the organisation can be reported;
- b) the legal protection for an employee who reports a suspected abuse.

CHAPTER 2. THE WHISTLEBLOWERS CENTRE

§ 1. Establishment and task

Section 3

1. There is a Whistleblowers Centre.
2. The Autonomous Administrative Authorities Framework Act, with the exception of sections 12, 21 and 22, applies to the Centre.
3. Notwithstanding section 20 of the Autonomous Administrative Authorities Framework Act, the Centre's obligation to furnish Our Minister with information or to allow Our Minister to inspect business information and documents is restricted to data and documents relating to the Centre's financial management and accounting system.
4. Section 23 of the Autonomous Administrative Authorities Framework Act applies only in relation to the Centre's financial management and accounting system.

Section 3a

1. The Centre has an Advisory Department and an Investigation Department.
2. The task of the Advisory Department is:
 - a) to provide information, advice and support to an employee about the steps to be taken in relation to a suspected abuse;
 - b) to refer the matter to administrative authorities or agencies responsible for investigating criminal offences or monitoring compliance with any provision laid down by or pursuant to statutory regulation or to any other competent authority to which a suspected abuse may be reported, and
 - c) to provide general information about dealing with suspected abuses.
3. The task of the Investigation Department is:
 - a) to determine whether the request is admissible, taking account of the conditions referred to in section 6, subsection 1;
 - b) in response to a request, to institute an investigation into:
 - (1°) a suspected abuse;

- (2°) how the employer has treated the employee following a report of a suspected abuse;
- c) to institute an investigation into a suspected abuse following one or more requests for advice, taking into account section 3k (3) and section 6 (1); and
- d) to formulate general recommendations on dealing with a suspected abuse.

Section 3b

1. The management board of the Centre consists of a chairperson and not more than four members.
2. The board members are appointed to either the Advisory Department or the Investigation Department. A member may not be appointed to both departments.
3. A board member who has been involved in advising on a suspected abuse may not take part in an investigation into the same abuse.
4. The chairperson is responsible for the proper functioning of the Centre.

Section 3c

1. The board members and chairperson of the Centre are appointed by Royal Decree. Their appointment may be terminated by Our Minister at their own request. They may also be suspended and dismissed by Royal Decree on the grounds of unsuitability or incompetence or for other compelling reasons related to the person concerned. A proposal for suspension or dismissal will not be made until the Centre has been consulted on the matter.
2. The board members are selected in such a way as to ensure that all relevant expertise is available in the Centre for the performance of the tasks referred to in section 3a.
3. The board members are appointed for a term of office of not more than four years. The term of office of a board member appointed to fill a casual vacancy is equal to the remainder of the term of office of the board member in whose place the former has been appointed. Board members may be reappointed twice.
4. The chairperson and the board members may not hold positions that could jeopardise the proper performance of their role or compromise their impartiality and independence or confidence in such impartiality and independence.

Section 3d

1. The management board of the Centre is supported by an office.
2. The chairperson appoints, suspends and dismisses the staff members of the office.
3. The staff members are selected in such a way as to ensure that all relevant expertise is available in the office.
4. The office consists of staff members appointed to the Advisory Department as advisers, staff members appointed to the Investigation Department as investigators and staff in the general service of the Centre.
5. A staff member who, in the capacity of adviser, has been involved in advising on a suspected abuse may not take part in an investigation into the same abuse.

Section 3e

Office staff members may not be members of the Centre's management board.

§ 2. Procedure

Section 3f

1. The members of the Centre's management board are not bound by any mandate or instructions.
2. A board member refrains from taking part in the preparation of an advisory report or the conduct of an investigation as referred to in section 3a, subsections 2 and 3, if:
 - a) it concerns himself or one of his relatives by blood or marriage up to and including the fourth degree;
 - b) it concerns an institution or legal person for which he works or has worked or in which he has an interest;
 - c) it concerns a suspected abuse in which he might be or have been involved;
 - d) involvement might otherwise give rise to an apparent conflict of interest.

Section 3g

1. An office staff member immediately notifies the Centre's chairperson if the advisory report or investigation referred to in section 3a, subsections 2 and 3:

a) concerns himself or his relatives by blood or marriage up to and including the fourth degree;

b) concerns an institution or legal person for which he works or has worked or in which he has an interest;

c) concerns a suspected abuse in which he could possibly be or have been involved;

d) could otherwise give rise to an apparent conflict of interest.

2. The chairperson decides whether the member of staff must for this reason refrain from taking part in the preparation of the advisory report or the conduct of the investigation.

Section 3h

The Centre draws up and publishes a set of management board rules and an advisory report and investigation protocol.

Section 3i

Anyone who is involved in performing the duties of the Centre and, in the process, obtains access to information which he knows or should reasonably know is of a confidential nature is bound not to disclose such information, unless he is obliged to disclose the same by virtue of any statutory regulation or in consequence of his duties.

Section 3j

The Centre may not disclose the identity of the employee requesting information, advice or support or of the requester without their consent.

§ 3. Advice

Section 3k

1. An employee may ask the Advisory Department for information, advice and support in relation to a suspected abuse. There is no prescribed form for requests for advice.

2. Information, advice and support may be provided both orally and in writing. The form in which the information, advice or support is provided is a matter for the Advisory Department to decide.

3. Neither the information about a suspected abuse provided in a request for advice nor the advice itself is disclosed to the Investigation Department unless the employee has declared in writing that he has no objection to this.

4. Information about the advice in the Centre's possession is not in the public domain.

§ 4. Investigation of suspected abuses by the Investigation Department

Section 4

1. An employee may:

- a) report a suspected abuse to the Investigation Department for the purposes of an investigation, or
- b) request the Investigation Department to institute an investigation into the manner in which the employer has acted in relation to him following a report of a suspected abuse.

2. This section does not apply to:

- a) judicial officers as referred to in section 1 (b) (1°) to (4°) of the Judiciary (Organisation) Act;
- b) the coordinator referred to in section 4 of the Intelligence and Security Services Act 2002, and the officials working for him;
- c) the officials appointed to the General Intelligence and Security Service or the military personnel appointed to the Military Intelligence and Security Service;
- d) the officials referred to in section 60, subsections 1 and 2, of the Intelligence and Security Services Act 2002, in so far as the case concerns the implementation of the activities referred to in that section;
- e) the chairperson, members and secretariat staff of the supervisory committee for the intelligence and security services referred to in section 64, subsection 1 of the Intelligence and Security Services Act 2002.

Section 5

1. The written notice of request is signed by the requester or his authorised representative and contains at least:
 - a) the name and address of the requester;
 - b) the date of the request;
 - c) a description of the suspected abuse, including the name of the employer suspected of the abuse, and
 - d) the grounds on which the suspicion of an abuse is based.
2. Section 9:28, subsections 2 and 3 of the General Administrative Law Act applies *mutatis mutandis* to a written notice of request.

Section 6

1. The Investigation Department institutes an investigation within six weeks of the date of the notice of request, unless it determines that:
 - a) the notice of request does not fulfil the requirements specified in section 5;
 - b) the request is manifestly unfounded;
 - c) the public interest that would be served by an investigation by the Investigation Department or the seriousness of the abuse is manifestly insufficient;
 - d) the suspected abuse is under consideration by administrative authorities or agencies charged with investigating criminal offences or with monitoring compliance with provisions laid down by or pursuant to any statutory regulation or any other competent authority to which a suspected abuse can be reported, and the administrative authority, agency or other competent authority is dealing or has dealt properly with the report of a suspected abuse;
 - e) the requester has not reported the suspected abuse to a line manager, confidential advisor or other person designated in an internal procedure as referred to in section 2 of the organisation in which there is a suspected abuse, unless this could not reasonably have been expected of him;
 - f) the requester has reported the suspected abuse to a line manager, confidential advisor or other person designated in an internal procedure as referred to in section 2 of the organisation in which there is a suspected abuse, and the organisation has dealt with the report of the suspected abuse properly;
 - g) another request relating to the same abuse is being dealt with or has been disposed of by the Investigation Department, except where a new fact or a new circumstance which could

have led to a different determination on the matter has become known; or
h) the abuse has already been the subject of a court judgment that has become final and unappealable.

2. If the Investigation Department does not institute an investigation, the determination referred to in subsection 1 is not made public.

3. The Investigation Department is not obliged to continue an investigation if:

a) in the opinion of the Investigation Department, the requester does not cooperate sufficiently to enable the investigation to be carried out with due care and to maintain the confidentiality of the results of the investigation; or

b) a new fact or a new circumstance becomes known on the basis of which the Investigation Department determines that the request is manifestly unfounded.

Section 7

If the Investigation Department decides not to institute or continue an investigation, it will give written notice of this decision and the reasons for it as quickly as possible to the requester and the employer.

Section 8

1. The Investigation Department endeavours to complete the investigation within a year of completion of the determination on admissibility as referred to in section 6, subsection 1.

2. The Investigation Department may, on the basis of its investigation, make recommendations to the employer.

3. A determination or recommendation does not constitute a finding of civil liability for an abuse or a presumption of guilt of any criminal offence.

§ 4a. Investigations in the public sector

Section 9

This division applies to investigations by the Investigation Department in cases where the employer is within the public sector. The public sector comprises:

- a) the state;
- b) the provinces;
- c) the municipalities;
- d) the water boards;
- e) the public bodies for the professions and trades;
- f) the other public bodies to which legislative powers are granted pursuant to the Constitution;
- g) the European groupings of territorial cooperation (EGTC) which have their registered office in the Netherlands;
- h) the other legal persons established under public law; and
- i) legal persons established other than under public law whose core activity is the exercise of public authority vested in one of their organs.

Section 10

1. Sections 9:30 to 9:34 of the General Administrative Law Act apply, *mutatis mutandis*, to an investigation by the Investigation Department, provided always that in each case the term 'administrative authority' is replaced by 'employer' and the term 'the ombudsman' by 'the Investigation Department'. If the employer is represented by an organ consisting of two or more members, the term 'institute' means that organ.
2. Notwithstanding section 9:31, subsection 4 of the General Administrative Law Act, the persons summoned to appear pursuant to section 9:31, subsection 1 or obliged to lodge documents pursuant to section 9:31, subsection 3 may refuse to furnish information or, as the case may be, lodge documents if the provision of the information and papers concerned is contrary to the interests of national security or entails a breach of official secrecy or a statutory regulation. Nor does this obligation apply if the persons concerned would consequently expose themselves, a relation by blood or marriage in the direct or collateral line in the second or third degree, or their present or former spouse or their present or former registered partner to the risk of conviction for a serious offence.
3. During an investigation the Investigation Department may direct that persons who have not appeared in response to a lawful summons should be brought before it by the authorities in order to fulfil their obligations.
4. During an investigation as referred in subsection 1, Our Minister concerned may prohibit

the Investigation Department from entering certain places if this would, in his opinion, compromise state security.

§ 4b. Investigations in the private sector

Section 11

This part applies to investigations by the Investigation Department where section 9 is not applicable.

Section 12

The Investigation Department exercises its powers only in so far as this is reasonably necessary for the performance of its duties.

Section 13

1. The Investigation Department is authorised to request information and demand to inspect case data and documents.
2. The employer suspected of the abuse, employees for whom it is responsible, witnesses and the requester are all obliged to provide the specified information in full and truthfully and are also obliged to appear before the Investigation Department.
3. The Investigation Department determines how and within what period the information is to be provided.
4. The employer suspected of the abuse is obliged to provide the case data and documents fully and truthfully within such period and in such manner as the Investigation Department may specify.
5. The persons summoned to appear pursuant to subsection 2 or the employer obliged to submit documents pursuant to subsection 4, as the case may be, may inform the Investigation Department that the information or documents, as the case may be, may not be disclosed to other persons.
6. Persons may refuse to furnish information or submit documents, as the case may be, if the provision thereof would be contrary to the interests of national security or entail a breach of

the duty of confidentiality or a statutory regulation. Nor does this obligation apply if the persons concerned would consequently expose themselves, a relation by blood or marriage in the direct or collateral line in the second or third degree, or their present or former spouse or their present or former registered partner to the risk of conviction for a serious offence.

7. The Investigation Department decides whether a disclosure limitation as referred to in subsection 5 or a refusal as referred to in subsection 6 is justified.

8. If the Investigation Department decides that the refusal is justified, the obligation ceases to apply.

Section 14

1. The Investigation Department gives the employer and the requester the opportunity to explain their position on the suspected abuse.

2. The Investigation Department decides whether the explanation should be given orally or in writing and whether or not it should be given by the parties in each other's presence.

Section 15

1. In the interests of an investigation the Investigation Department may instruct experts and summon persons to be heard as experts or to act as interpreters.

2. Experts or interpreters summoned by the Investigation Department appear before it and provide their services impartially and to the best of their knowledge.

3. Witnesses are not heard and interpreters are not allowed to perform their duties until they have sworn the requisite oath or made the requisite affirmation. Witnesses are required to swear or affirm that they will tell the whole truth and nothing but the truth, and interpreters that they will faithfully discharge their interpreting duties.

Section 16

Requesters, witnesses, experts and interpreters summoned by the Investigation Department are awarded a fee from public funds. The provisions laid down by or pursuant to the Criminal Cases (Fees) Act apply *mutatis mutandis*.

§ 5. Reporting

Section 17

1. Once an investigation has been completed, the Investigation Department prepares a report setting out its findings and determination. In doing so, it takes into account section 10 of the Government Information (Public Access) Act.
2. The report in any event contains the following, in so far as they are within the scope of the investigation:
 - a) an analysis of the abuse;
 - b) determination of the causes or probable causes of the abuse and the extent of its consequences, and
 - c) where appropriate, recommendations to the employer.
3. The Investigation Department sends a draft of the report to the employer concerned and the requester.
4. The employer and the requester may submit written comments within four weeks of the day on which the draft report is sent. They are bound not to disclose the draft of the report.
5. The Investigation Department may modify the report if this is warranted by the comments. If the comments do not warrant modification of the report, the Investigation Department will state the reasons for this in its report.
6. If the Investigation Department makes a recommendation to an employer as referred to in subsection 2, the employer informs the Investigation Department within a reasonable period how it intends to implement the recommendation. If the employer is considering not implementing the recommendation, it informs the Investigation Department accordingly, stating its reasons.
7. The Investigation Department may publish the report on its own initiative.
8. Information about the investigation which is in the Centre's possession and not included in the report is not in the public domain.

§ 6. Relationship to other procedures

Section 17a

1. To promote coordination and consultation between them, the Centre and the Board of Procurators General will make agreements about cooperation and the exchange of information within six months of the entry into force of the Act. These agreements will in any event cover cases in which a particular issue leads to the institution of an investigation both by the Investigation Department (into a suspected abuse) and by the Public Prosecution Service (into a criminal offence). The agreements require the approval of Our Minister of Security and Justice.
2. The agreements about cooperation and the exchange of information will be recorded in a cooperation protocol.
3. If both the Investigation Department and the Public Prosecution Service institute investigations into a suspected abuse and a criminal offence respectively in a specific case, they hold consultations about the structure of both investigations in accordance with the cooperation protocol.

Section 17b

To promote coordination and consultation the Centre may conclude cooperation protocols with administrative authorities or services charged with monitoring compliance with the provisions laid down by or pursuant to any statutory regulation. Section 17a, subsection 3 applies *mutatis mutandis*.

§ 7. Follow-up on recommendations

Section 17c

Each year the Centre sends both Houses of the States General an overview of its recommendations and the actions taken on them.

Section 17d

The Investigation Department may carry out a survey to determine what has been done to implement recommendations made in previous investigations.

CHAPTER 3. AMENDMENTS TO OTHER ACTS

Section 18

An article is inserted after article 658b of Book 7 of the **Civil Code**, which reads as follows:

Article 658c

The employer may not treat an employee unfairly for having properly reported in good faith a suspected abuse as referred to in section 1 (d) of the Whistleblowers Centre Act either during or after the period in which this report is dealt with by the employer or the competent authority.

Section 18a

Section 125quinquies, subsection 3 of the **Central and Local Government Personnel Act** reads as follows:

3. A public servant who properly reports a suspected abuse in good faith as referred to in section 1 (d) of the Whistleblowers Centre Act must not, as a result, suffer any detriment to his legal status either during or after the period in which this report is dealt with by the competent authority or agency.

Section 18b

Section 47 (3) of the **Police Act 2012** reads as follows:

3. A public servant who properly reports a suspected abuse in good faith as referred to in section 1 (d) of the Whistleblowers Centre Act must not, as a result, suffer any

detriment to his legal status either during or after the period in which this report is dealt with by the competent authority or agency.

Section 18c

Section 12quater, subsection 2 of the **Military Personnel Act 1931** reads as follows:

2. A member of the military who properly reports a suspected abuse in good faith as referred to in section 1 (d) of the Whistleblowers Centre Act must not, as a result, suffer any detriment to his legal status either during or after the period in which this report is dealt with by the competent authority or agency.

Section 18d

The following point is added to section 27 of the **Works Councils Act**:

m) a procedure for handling reports of a suspected abuse as referred to in section 2, subsection 1 of the Whistleblowers Centre Act;

Section 18e

If the bill introduced by Members of Parliament Van Weyenberg and Van Hijum by accompanying letter of 3 November 2010 to amend the Central and Local Government Personnel Act and some other Acts with a view to bringing the legal status of public servants into line with that of employees under a civil-law employment contract (Standardisation of Legal Status (Public Servants) Act) (32 550) becomes or has become law, section 5, subsection 2 of the Central and Local Government Personnel Act will read as follows:

2. A public servant who properly reports a suspected abuse in good faith as referred to in section 1 (d) of the Whistleblowers Centre Act must not, as a result, suffer any detriment to his legal status either during or after the period in which this report is dealt with by the competent authority or agency.

Section 18f

If the bill introduced by Members of Parliament Van Weyenberg and Van Hijum by accompanying letter of 3 November 2010 to amend the Central and Local Government Personnel Act and some other Acts with a view to bringing the legal status of public servants into line with that of employees under a civil-law employment contract (Standardisation of Legal Status (Public Servants) Act) (32 550) has become law, and section IIa (A) of that Act has entered into force, section I (F), **section b [vertalersnoot: in de Nederlandse tekst staat 'artikel 18b']** of that Act will be repealed.

Section 18g

If the bill introduced by Members of Parliament Voortman and Schouw by accompanying letter of 5 July 2012 containing rules on the accessibility of information of public importance (Open Government Act) (33 328) becomes or has become law and section 8.8 of that Act enters or has entered into force, that Act will be amended as follows:

A

Sections 9.54 and 9.55 are repealed.

B

The following is inserted in the alphabetical classification of the annexe to section 8.8:

- Whistleblowers Centre Act: sections 3i, 3j, 3k (4), 6 (2) and 17 (7) and (8), in so far as the information is in the possession of the Whistleblowers Centre.

Section 18h

If the bill introduced by Members of Parliament Voortman and Schouw by accompanying letter of 5 July 2012 containing rules on the accessibility of information of public importance

(Open Government Act) (33 328) becomes or has become law and section 8.8 of that Act enters or has entered into force, the words 'section 10 of the Government Information (Public Access) Act' in section 17, subsection 1 of this Act will be replaced by 'section 5.1 of the Open Government Act'.

Section 19

Deleted.

CHAPTER 4. TRANSITIONAL AND CONCLUDING PROVISIONS

Section 20

Our Minister will send a report on the effectiveness and practical impact of this Act to the States General within five years of the date on which it enters into force. The Centre will cooperate in the preparation of this report and provide Our Minister with the information required for this purpose.

Section 21

The Investigation Department is not obliged to institute an investigation if the requester has reported a suspected abuse to the employer or the competent authority more than a year before the entry into force of this Act.

Section 21a

1. Further rules on the organisation of the Centre may be laid down by or pursuant to Order in Council.
2. The recommendation for an Order in Council to be introduced pursuant to subsection 1 will not be made until four weeks after the draft has been presented to the States General.

Section 22

This Act enters into force on a date to be determined by Royal Decree.

Section 23

This Act may be cited as the Whistleblowers Centre Act.

We order and command that this Act be published in the Bulletin of Acts and Decrees and that all ministries, authorities, bodies and officials whom it may concern diligently implement it.

Done

Ronald Plasterk

The Minister of the Interior and Kingdom Relations