

## **INVITATION FOR PUBLIC COMMENTS PROTECTED DISCLOSURES BILL, 2026**

1. The Department of Justice and Constitutional Development invites interested parties to submit written comments on the proposed Protected Disclosures Bill, 2026 (the Bill).

2.1 The legal environment has a major influence on an individual's decision to make a disclosure regarding any improper conduct of an employer or employee (publicly known as 'blowing the whistle'). Protection for disclosers (who are referred to as 'whistleblowers' in the public domain) is provided by the Protected Disclosures Act, 2000 (Act No. 26 of 2000) (the PDA). The PDA was primarily enacted to 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 and most importantly to provide protection to employees who make a disclosure.

2.2 It was found in the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud into the Public Sector Including Organs of State (the Zondo Commission), that the PDA does not provide a clear-cut procedure for a discloser to follow, and it does not sufficiently guarantee that the disclosures will be protected. Furthermore, it is not pro-active in providing physical protection, it offers no incentives to the discloser, and it does not ensure that all such information finds its way to a destination with specialised skills in receiving, investigating, and utilising such information effectively.

2.3 The National Anti-Corruption Advisory Council (NACAC) in its final report to the President in August 2025 recommends, *inter alia*, on the strategic and systemic implementation of the Zondo Commission report, including acknowledging and supporting disclosers, preventing retaliation, and exploring mechanisms for incentivised disclosures.

2.4 A draft Bill was prepared taking into consideration the Zondo Commission's recommendations and the NACAC report, guidelines from international instruments and foreign jurisdictions.

3. The comments on the Bill must be submitted to Ms A van der Walt, on or before **14 May 2026**. The contact details are:

- (a) Postal address:  
The Director-General: Justice and Constitutional Development  
Private Bag X 81  
Pretoria  
0001;
- (b) e-mail address: [whistleblowingreforms@justice.gov.za](mailto:whistleblowingreforms@justice.gov.za)

4. Further information can be obtained from Ms A van der Walt at [alvanderwalt@justice.gov.za](mailto:alvanderwalt@justice.gov.za).

REPUBLIC OF SOUTH AFRICA

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**PROTECTED DISCLOSURES BILL**

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*(As introduced in the National Assembly (proposed section 75); explanatory  
summary of Bill published in Government Gazette No. of 2026)  
(The English text is the official text of the Bill)*

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(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B—2026]**

## **BILL**

**To provide for procedures in terms of which persons may disclose information regarding improper conduct in the public or private sectors; to provide for the conducting of investigations regarding a disclosure made; to provide for the protection of persons who make disclosures which are protected in terms of this Act; to provide for the award payable to disclosers; to provide for certain remedies in connection with any occupational detriment or detrimental action suffered by a person on account of having made a protected disclosure; and to provide for matters connected therewith.**

## **PREAMBLE**

### **RECOGNISING THAT—**

- the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;
- section 8 of the Bill of Rights provides for the horizontal application of the rights in the Bill of Rights, considering the nature of the right and the nature of any duty imposed by the right;
- criminal and other irregular conduct in the public and private sectors are detrimental to good, effective, accountable and transparent governance and can endanger the economic stability of the Republic and have the potential to cause social harm;

### **AND BEARING IN MIND THAT—**

- neither the South African common law nor statutory law makes provision for mechanisms or procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or the public sector;
- every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace;
- every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals because of such disclosure;

### **AND IN ORDER TO—**

- create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals because of such disclosures; and
- promote the eradication of criminal and other irregular conduct in the public and private sectors,

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa as follows:—

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## CHAPTER 1 GENERAL PROVISIONS

### Definitions

1. In this Act, unless the context otherwise indicates—

**'authorised person'** means a person to whom a protected disclosure can be made as contemplated in sections 6, 7, 8, 9 and 10;

**'Department'** means the Department of Justice and Constitutional Development;

**'designated officer'** means a person designated by an employer to receive and act upon a disclosure made in terms of this Act;

**'detrimental action'** means an act or omission that—

- (a) results in unfair discrimination;
- (b) threatens or violates the legal rights of a discloser or a related person; or
- (c) amounts to intimidation, harassment or causes personal harm or injury, or loss of damage to property or livelihood;

**'Director-General'** means the Director-General of the Department of Justice and Constitutional Development and includes a person delegated by them;

**'discloser'** means an employee in the public or the private sector or any other person who is not an employee, who makes a disclosure;

**'disclosure'** means the disclosing of information regarding improper conduct with regards to an employer or employee, in the public or private sector;

**'employee'** means—

- (a) any person who works or worked in the public or private sector and who receives or received, or is entitled to receive, any remuneration, including, but not limited, employees or investigators appointed in terms of the—
  - (i) South African Police Service Act, 1995 (Act No. 68 of 1995);
  - (ii) Special Investigating Units and Special Tribunals Act, 1996 (Act No 74 of 1996)
  - (iii) National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
  - (iv) Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);
  - (v) Defence Act, 2002 (Act No. 42 of 2002);
  - (vi) Intelligence Services Act, 2002 (Act No. 65 of 2002);
  - (vii) Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011); and
  - (viii) any other organ of state authorised by law to investigate corruption or fraud, whether in a full time, part time, contractual or temporary capacity; or
- (b) any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an employer, client of the employer, person acting on behalf of or on the authority of such employer, including volunteers and trainees;
- (c) any other person who in any manner assists or assisted in carrying on or conducting or conducted the business of an employer, client of the employer, person acting on behalf of or on the authority of such employer as an independent contractor, consultant or agent; or

- (d) any person who renders or rendered services to an employer, client of the employer, person acting on behalf of or on the authority of such employer while being employed by a temporary employment service;

**'employer'** means a person contemplated in section 6;

**'improper conduct'** means—

- (a) any unlawful activity as contemplated in the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
- (b) the offence of corruption and corrupt activities as contemplated in Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
- (c) a criminal offence that has been committed, is being committed or is likely to be committed;
- (d) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
- (e) that a miscarriage of justice has occurred, is occurring or is likely to occur;
- (f) that the health or safety of an individual has been, is being or is likely to be endangered;
- (g) that the environment has been, is being or is likely to be damaged;
- (h) unfair discrimination as contemplated in Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998), or the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or
- (i) that any matter referred to in this section has been, is being or is likely to be deliberately concealed,

irrespective of whether—

- (i) the improper conduct occurs or occurred in the Republic of South Africa or elsewhere; or
- (ii) the law applying to the improper conduct is that of the Republic of South Africa or of another country;

**'Minister'** means the Cabinet member responsible for the administration of justice;

**'Labour Relations Act'** means the Labour Relations Act, 1995 (Act No. 66 of 1995);

**'law enforcement agency'** means the—

- (a) Directorate for Priority Crime Investigation, established by section 17C of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (b) Special Investigating Units and Special Tribunals, established by section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No 74 of 1996)
- (c) Investigating Directorate against Corruption established by section 7(1A) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- (d) Independent Police Investigative Directorate established by section 3 of the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011);
- (e) South African Police Service; or
- (f) any other organ of state authorised by law to investigate corruption or fraud;

**'occupational detriment'** means, but is not limited to, being—

- (a) subjected to any disciplinary action;
- (b) dismissed, suspended, demoted, harassed, intimidated or subjected to emotional and psychological trauma;
- (c) transferred against their will;
- (d) refused transfer or promotion;
- (e) subjected to a term or condition of employment or retirement which is altered or kept altered to their disadvantage;
- (f) refused a reference, or being provided with an adverse reference, from their employer;

- (g) denied appointment to any employment, profession or office;
- (h) subjected to any civil claim for the alleged breach of a duty of confidentiality or a confidentiality agreement;
- (i) threatened with any of these actions referred to in paragraphs (a) to (h) above; or
- (j) otherwise adversely affected in respect of their employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services;

**'prescribed'** means prescribed by regulation;

**'private sector'** means the private sector as defined in the Prevention and Combating of Corrupt Activities Act, 2004;

**'protected disclosure'** means a disclosure contemplated in section 4;

**'public body'** means a public body as defined in the Prevention and Combating of Corrupt Activities Act, 2004;

**'related person'** means any member of the family or household of a discloser, or any other person in a close relationship to, or associated with the discloser, including a person who assists the discloser in making a disclosure or a colleague of the discloser;

**'temporary employment service'** means any person who, as a reward, procures for, or provides to a client, another person—

- (a) who render services to, or perform work for the client; and
- (b) who are remunerated by the temporary employment service; and

**'this Act'** includes regulations made under this Act.

## Objects and application of Act

2. (1) The objects of this Act are to—
- (a) provide for procedures in terms of which a discloser can disclose information regarding improper conduct in the public or private sector by an employer or employee;
  - (b) protect a discloser and related person from being subjected to any occupational detriment or detrimental action on account of having made a protected disclosure;
  - (c) provide, under certain circumstances, for the payment of an award to the discloser;
  - (d) provide for the management and investigation of disclosures; and
  - (e) provide for a complaints mechanism and certain remedies in connection with occupational detriment or detrimental action suffered on account of having made a protected disclosure.

(2) This Act applies to a protected disclosure made after the date on which this section comes into operation, irrespective of whether the improper conduct occurred before or after the commencement of this section.

## Central database

3. (1) The Director-General must—
- (a) ensure the development and maintenance of an electronic central database for disclosures, containing information contemplated in subsection (2)(b);
  - (b) designate one or more employees of the Department to oversee the maintenance and operation of the database, including identifying and addressing any problems that may arise in the effective functioning of the database.

- (2) The database must make provision for—
- (a) the once off registration of an authorised person;

- (b) the uploading of information regarding—
- (i) the disclosure received by the authorised person, including the receipt of a disclosure by another authorised person if the disclosure was referred to such other authorised person;
  - (ii) the date of receipt of the disclosure;
  - (iii) whether the disclosure is—
    - (aa) being investigated;
    - (bb) referred to another authorised person for investigation, and if so the date of the referral and the authorised person to whom the disclosure is referred to;
    - (cc) dismissed and reason for dismissal; and
    - (dd) finalised including the date of finalisation.
- (3) An authorised person may designate a person or persons who would be responsible for—
- (a) registering the authorised person on the database in the prescribed manner;
  - (b) upload the information contemplated in subsection (2)(b) onto the database; and
  - (c) informing the employee or employees contemplated in subsection (1)(b) of any problems experienced in the uploading of information on the database, if any.
- (4) If no designation is made in terms of subsection (3) the authorised person must register on the database in their personal capacity in the prescribed manner.
- (5) No personal information of a discloser, as contemplated in the Protection of Personal Information Act, 2013 (Act No. 4 of 2013) may be uploaded onto the database.
- (6) The database may only be accessible to—
- (a) an authorised person registered onto the database; and
  - (b) a person designated in terms of subsection (3), to the extent necessary to perform the functions contemplated in that subsection.
- (7) The Director-General must include the information contemplated in subsection (2)(b) in the Department's Annual Report.

## CHAPTER 2 PROTECTED DISCLOSURES

### *Part 1* *General provisions*

#### **Protected disclosures**

- 4.** A disclosure is a protected disclosure if it is made to—
- (a) an employer as contemplated in section 6;
  - (b) a legal practitioner or legal adviser as contemplated in section 7;
  - (c) a member of the Cabinet or of the Executive Council of a province or a Municipal Council as contemplated in section 8;
  - (d) a person or body as contemplated in section 9; or
  - (e) any person, body or institution to whom a disclosure can be made as contemplated in section 10.

#### **Disclosures not protected**

- 5.** A disclosure is not a protected disclosure if—

- (a) it is not made to a person as contemplated in section 4;
- (b) subject to section 20, the making of that disclosure constitutes a criminal offence;
- (c) it is made by a legal practitioner or legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice as contemplated in section 7;
- (d) it is made by the discloser knowing, or ought reasonably to have known, that the information disclosed is false;
- (e) it is made with the intention to cause harm to the affected party and where the affected party has suffered harm as a result of the disclosure;
- (f) it is made for pecuniary gain excluding any rewards or other incentives provided for in this Act;
- (g) it is made for an illegal purpose; or
- (h) it is made solely or substantially with the motive to avoid dismissal or other disciplinary action.

### **Protected disclosure to employer**

**6.** A disclosure contemplated in section 4(a) is a disclosure made to a person in the public or private sector who—

- (a) employs or provides work for another person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or
- (b) permits another person in any manner to assist in the carrying on or conducting of their business,

and includes any client of the employer, or any person acting on behalf of or on the authority of that employer.

### **Protected disclosure to legal practitioner or legal adviser**

**7.** A disclosure contemplated in section 4(b) is a disclosure made—

- (a) to a legal practitioner as defined in the Legal Practice Act, 2014 (Act No. 28 of 2014); or
- (b) to a person whose occupation involves the giving of legal advice, with the object of and while obtaining legal advice.

### **Protected disclosure to member of Cabinet, Executive Council or Municipal Council**

**8.** A disclosure contemplated in section 4(c) is a disclosure made to a member of Cabinet, the Executive Council of a province or a Municipal Council, if the discloser's employer is—

- (a) an individual appointed in terms of legislation by a member of Cabinet, of the Executive Council of a province or a Municipal Council;
- (b) a body whose members are appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province or a Municipal Council; or
- (c) a public body falling within the area of responsibility of the member concerned.

### **Protected disclosure to certain persons or bodies**

**9.** A disclosure contemplated in section 4(d) is a disclosure made to—

- (a) the Public Protector;

- (b) the South African Human Rights Commission;
- (c) the Commission for Gender Equality;
- (d) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- (e) the Public Service Commission;
- (f) the Auditor-General;
- (g) a person appointed or designated, or a body established in terms of national legislation; or
- (h) a person or body prescribed for purposes of this section in respect of which the person concerned reasonably believes that the relevant improper conduct falls within any description of matters which, in the ordinary course, are dealt with by the person or body concerned.

### **Disclosure made to other person, body or institution regarded as protected disclosure**

**10.** (1) A discloser who makes a disclosure contemplated in section 4(e) must—

- (a) reasonably believe the information disclosed and any allegation contained in the disclosure, is substantially true; and
- (b) not make the disclosure for purposes of personal gain, excluding any reward payable in terms of any law.

(2) The disclosure referred to in subsection (1) must meet one or more of the following conditions:

- (a) At the time of making the disclosure, the discloser reasonably believes that they would suffer an occupational detriment if the information were disclosed the information to their employer in accordance with section 6;
- (b) that the discloser making the disclosure has reason to believe that it is likely that evidence relating to the improper conduct is likely to be concealed or destroyed;
- (c) that the discloser has previously made a disclosure of substantially the same information to an authorised person, and no action was taken within a reasonable period after the disclosure; or
- (d) that the improper conduct is of an exceptionally serious nature, including but not limited to—
  - (i) an imminent risk of a substantial and specific danger to the life, health or safety of a person;
  - (ii) an imminent danger to the public interest;
  - (iii) a risk of irreversible damage to any property; or
  - (iv) the commission of an offence.

(3) A disclosure may be made under this section only if it is reasonable to make the disclosure, having regard to the factors listed in subsection (4).

(4) In determining for the purposes of subsection (3) whether it is reasonable for the person to make the disclosure, consideration must be given to—

- (a) the identity of the person to whom the disclosure is made;
- (b) the seriousness of improper conduct;
- (c) whether the improper conduct 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 subsection (2)(c), any action which the employer or the person or body to whom the disclosure was made has been taken or might reasonably be expected to have taken, because of the previous disclosure;
- (f) 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.

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

## *Part 2*

### *Making a disclosure*

#### **Making disclosure to authorised person other than employer of discloser**

**11.** (1) A disclosure to an authorised person other than the employer of the discloser may be made—

- (a) in writing;
- (b) electronically; or
- (c) orally,

in the prescribed manner and containing the prescribed information: Provided that the disclosure is regarded as a protected disclosure only if it is made to an authorised person.

(2) A disclosure contemplated in subsection (1) may be made anonymously.

(3) (a) Where a discloser makes a disclosure orally, the authorised person to whom the disclosure is made must cause the disclosure to be reduced to writing and signed by the discloser.

(b) Where the discloser—

- (i) is illiterate; or
- (ii) has a disability preventing them from making a written disclosure,

the written disclosure referred to in paragraph (a) must be read aloud, interpreted and explained to the discloser in a language that the discloser understands.

(c) After the requirements in paragraph (b) have been met, the discloser must indicate their agreement before affixing a mark to the written disclosure.

(d) A certificate in the prescribed form confirming compliance with paragraphs (a) and (b) must be attached to the written disclosure.

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

- (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 disclosure.

#### **Making of disclosure to employer of discloser**

**12.** (1) Every employer must, subject to section 14—

- (a) develop appropriate procedures for receiving and dealing with information about improper conduct;
- (b) take reasonable steps to bring the internal procedures to the attention of every employee.

(2) A disclosure to the employer of a discloser must be made in accordance with a procedure contemplated in subsection (1), provided that the employee has been made aware of the procedure as required in terms of subsection (1)(b).

(3) Where there is no procedure as contemplated in subsection (1)(a), a disclosure may be made—

- (a) to the employer; or
- (b) to another authorised person, if the discloser is of the opinion that their disclosure will be better dealt with by such other authorised person.

(4) A discloser who, in terms of subsection (3)(b), makes a disclosure to another authorised person is, for the purposes of this Act, deemed to have made the disclosure to the employer.

(5) The procedures contemplated in subsection (1)(a) must include the name and contact details of a designated officer to whom a disclosure must be submitted and the procedure for—

- (a) receiving and dealing with disclosures, including time frames for the finalisation of the disclosure;
- (b) referring a disclosure to an appropriate body if the disclosure would be more appropriately dealt with by that body;
- (c) the compulsory referring of a disclosure to the South African Police Service if the designated officer reasonably believes that the matter to which the disclosure relates constitutes a criminal offence, or an imminent risk of substantial or specific danger to the life, health or safety of individuals or to the environment;
- (d) reviewing and investigating disclosures in accordance with Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000);
- (e) investigating other forms of improper conduct if, during the investigation of a disclosure, the designated officer has reason to believe that another form of wrongdoing has been committed or may be committed;
- (f) measures for anonymous reporting and how the discloser's identity will be kept confidential; and
- (g) informing the discloser of the outcome of the investigation.

### **Disclosure of false information**

**13.** (1) A discloser who intentionally discloses false information—

- (a) knowing that information to be false or who ought to reasonably have known that the information is false; and
- (b) with the intention to cause harm to the affected party and where the affected party has suffered harm because of such disclosure,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(2) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the National Director of Public Prosecutions or by a person delegated by them.

**CHAPTER 3**  
**DEALING WITH PROTECTED DISCLOSURE**

*Part 1*  
*Investigation*

**Dealing with protected disclosure**

**14.** (1) An authorised person must, within five days of receipt of a disclosure made in terms of section 11, in writing acknowledge the receipt thereof to the discloser.

(2) A disclosure made to an authorised person or body contemplated in section 4(b) to (e) must be dealt with and investigated in the prescribed manner.

(3) An authorised person must within five days of receipt of a disclosure conduct a preliminary investigation into the disclosure and determine whether the disclosure—

- (a) is a protected disclosure as contemplated in section 4;
- (b) is a disclosure not protected as contemplated in section 5; or
- (c) falls within the ambit of subsection (5).

(4) After the preliminary investigation, the authorised person must decide within 10 days if they will—

- (a) further investigate the disclosure themselves; or
  - (b) refer the disclosure to another authorised person; or
- and must, in writing inform the discloser accordingly.

(5) An authorised person may decide not to investigate the disclosure if—

- (a) there is no merit in the allegations contained in the disclosure;
- (b) the disclosure is trivial;
- (c) there is a more appropriate method of dealing with the disclosure which is in line with approved policies and procedures in place and which does not include the commission of an offence; or
- (d) the disclosure was previously made and has been adequately dealt with.

(6) If the authorised person decides not to investigate the matter, they must give the discloser written reasons for the decision.

(7) (a) An authorised person who is of the opinion that the disclosure would be more appropriately dealt with by another authorised person must inform the discloser accordingly, setting out the reasons, and indicate which other person or body is more suited to deal with the disclosure.

(b) An authorised person who refers the disclosure to another authorised person must update the database accordingly as contemplated in section 3(2)(b)(i)

(c) A disclosure may not be referred to an employer if the disclosure is about the improper conduct of that employer.

(8) (a) An investigation undertaken in respect of a disclosure referred to in subsection (2) must be carried out as expeditiously as possible and must be completed within 12 months from the date of receipt of the disclosure, including a disclosure received as a result of a referral as contemplated in subsection (4)(b).

(b) If the investigation cannot be completed within the 12-month period, the person or body referred to in subsection (2) must apply, in the prescribed manner to the retired judge in terms of section 24, to extend the period for a further period not exceeding six months.

(c) An extension contemplated in paragraph (b) may only be granted once.

(d) Disclosers must be informed of the progress of the investigation at least once every three months.

- (9) (a) An authorised person may not investigate a disclosure where—
- (i) the subject matter of the disclosure is being investigated by another person, body or entity authorised by law to carry out that investigation;
  - (ii) it is clear that a criminal offence was committed, in which case the matter must be referred to a law enforcement agency for investigation.

(b) An authorised person must within five days of becoming aware of circumstances contemplated in paragraph (a), inform the discloser in writing accordingly.

(10) (a) An authorised person must, subject to the provisions of section 19 of the Protection of Personal Information Act, 2013 record and keep, or cause to be kept, all disclosures and documents in respect of the disclosure submitted to them.

(b) The records, disclosures and documents in respect of disclosures as contemplated in paragraph (a) must not be retained for a period any longer than is necessary for finalising the disclosure, unless—

- (i) the retention of the records, disclosures and documents in respect of disclosures is required or authorised by law; or
- (ii) the authorised person reasonably requires the record for lawful purposes related to its functions or activities:

Provided that the authorised person must retain the records, disclosures and documents for a longer period, they must without delay record the reasons for the continued retention and must inform the discloser accordingly.

(c) The records, disclosures and documents in respect of disclosures as contemplated in paragraph (a) must be destroyed in accordance with section 14(4) and (5) of the Protection of Personal Information Act, 2013.

(11) An authorised person who, during an investigation of a disclosure, conceals or suppresses evidence, commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment.

### **Application for court assistance**

- 15.** If, during an investigation, it appears to the authorised person—
- (a) that evidence or documents relevant to the investigation are likely to be destroyed, concealed, or tampered with; or
  - (b) that a person willing to provide information relevant to the investigation is being subjected to undue pressure, inducement or intimidation to withhold that information,
- the authorised person must apply to any court having jurisdiction for an order to preserve the evidence or documents or to restrain the prevention, undue pressure, inducement or intimidation of that person.

## *Part 2*

### *Finalisation of investigation*

#### **Finalisation of investigation**

- 16.** (1) Upon concluding an investigation under this Act, the authorised person must prepare a report which must contain—
- (a) the findings of the investigation; and

(b) recommendations for further steps, if any, to be taken.

(2) (a) The report contemplated in subsection (1) must be made available to—

- (i) the discloser; and
- (ii) the discloser's employer, if the discloser is an employee;
- (iii) the person or entity who was the discloser's employer at the time of the improper conduct, if the discloser is a former employee; or
- (iv) the relevant person, if the disclosure is against any other person that is not an employer.

(b) The report contemplated in subsection (1) may not disclose any personal confidential information about the discloser.

(3) A person who is aggrieved by the report of an authorised person may, in the prescribed manner, apply for the report to be reviewed by a competent court.

(4) If the improper conduct disclosed constitutes a criminal offence, the authorised person must refer the matter to the relevant law enforcement agency.

### **Enforcement of report**

**17.** The authorised person or any other interested party may apply to a High Court as contemplated in the Superior Courts Act, 2013 (Act No. 10 of 2013), for the enforcement of recommendations as set out in the report prepared by the authorised person in terms of this Act.

### **Award to discloser**

**18.** (1) A court which convicts an employer of improper conduct in terms of this Act and imposes a monetary sanction in respect of a disclosure may order, subject to subsection (4), order that an amount not exceeding one-fourth of that monetary sanction be awarded to the discloser whose evidence led to the conviction of that employer.

- (2) An award contemplated in subsection (1) may not be paid to a person—
- (a) in the public service;
  - (b) contemplated in section 34 of the Prevention and Combating of Corrupt Activities Act, 2004;
  - (c) who provided such information as a part of a plea agreement;
  - (d) who was an accomplice to the respective offence; or
  - (e) who is an official of a law enforcement agency, including an agent or confidential informant of that law enforcement agency who uncovered relevant information as a part of their main duties.

(3) If the conviction contemplated in subsection (1) is as a result of disclosures made by several disclosers about the same improper conduct, the court may order that the amount of the award be divided equally between the disclosers or according to their respective contributions as determined by the court.

(4) In determining if a discloser is entitled to any payment of an award as contemplated in subsection (1), the court must take into consideration whether the information—

- (a) originated from the discloser;
- (b) was not known prior to the disclosure; and
- (c) proves elements of a criminal or administrative offence.

## CHAPTER 4 PROTECTION OF PERSON MAKING PROTECTED DISCLOSURE

### Confidentiality

**19.** (1) An authorised person must not disclose information regarding the identity of the discloser or information likely to lead to the identification of the discloser unless the—

- (a) discloser has given their written consent for the release of their identity and only to the extent the discloser consented to; and
- (b) information is disclosed to employees of the authorised person who are competent to deal with the disclosure.

(2) Subject to subsection (1), an authorised person—

- (a) to whom a disclosure is made or to whom a disclosure was submitted; or
- (b) who obtains information related to the disclosure during an investigation into such disclosure,

must not disclose any information related to the investigation to any other person.

(3) (a) A discloser who discloses confidential information is permitted to do so when required—

- (a) by any competent court; or
- (b) in terms of any law.

(b) An authorised person must inform a discloser before making a disclosure that any confidential information disclosed may be required by a competent court or in terms of certain laws.

(4) Where a discloser is a witness in a matter that relates to information given by that discloser, the court before which the matter is heard may, on application by the discloser or by a person acting on behalf of the discloser, order that the discloser give evidence *in camera*.

(5) A book, paper or document which is part of evidence liable to inspection in any civil, criminal or other proceedings before any court, contains any entry in which a discloser is named or described or which might lead to the identification of the discloser, the court before which the proceedings are being held must cause all such passages to be concealed from view or to be redacted to the extent necessary to protect the identity of the discloser.

(6) A person who contravenes or fails to comply with subsection (1) or (2), commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment.

### Exclusion of civil and criminal liability

**20.** Notwithstanding the provisions of any other law, no discloser is civilly or criminally liable on account of having made a disclosure in terms of this Act if they reasonably believed, at the time of the disclosure, that they were disclosing information of improper conduct.

### Protection from occupational detriment or detrimental action

**21.** (1) No employee who is a discloser may be subjected to occupational detriment on account or partly on account of having made a protected disclosure.

(2) No discloser or related person may be subjected to detrimental action on account or partly on account of—

- (a) having made a protected disclosure; or
- (b) a belief that the discloser has made or intends to make a disclosure.

(3) A person takes detrimental action if that person—

- (a) threatens to take, attempts to take or takes detrimental action for a reason contemplated in subsection (2);
- (b) incites, authorises or knowingly permits another person to take or threaten to take such detrimental action. because—
  - (i) the discloser made the disclosure; or
  - (ii) the person believes that the discloser made or intends to make a disclosure; or
- (c) the person incites or permits another person to take or threaten to take the detrimental action for any reason under paragraph (a) or (b).

(3) A discloser or related person is not considered as having been subjected to occupational detriment or detrimental action if the occupational detriment or detrimental action is not linked in any way to the protected disclosure.

(4) A discloser or related person may approach a court with jurisdiction for appropriate relief, including interim relief in respect of any occupational detriment or detrimental action suffered.

(5) Despite anything to the contrary in any law, in any proceedings under this Act including administrative, civil, or labour proceedings concerning an alleged occupational detriment or detrimental action, the person who took or is alleged to have taken such action must show that the action was not taken in retaliation for a disclosure, subject to subsection (6).

(6) Before the evidential burden shifts in terms of subsection (5), the discloser must show that—

- (a) they made a protected disclosure; and
- (b) they or a related person suffered a detriment linked to the protected disclosure.

(7) Where an employer, or a person acting under the express or implied authority or with the knowledge of the employer or a client of the employer, subjects an employee or a related person to occupational detriment or detrimental action, the employer, such person and the client are jointly and severally liable.

(8) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding 15 years, or to both such fine and imprisonment.

### **Witness protection for discloser**

**22.** The provisions of the Witness Protection Act, 1998 (Act No. 112 of 1998), apply *mutatis mutandis* to a discloser or related person.

### **Legal assistance**

**23.** (1) Where a discloser involved in a matter before a court or a tribunal is not represented by a legal representative because such discloser cannot afford to pay for legal representation, and the court or tribunal is of the opinion that it would be in the best interests

of the discloser to have legal representation, the court or tribunal must refer the matter to Legal Aid South Africa in terms of section 22A of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), where substantial injustice would otherwise result.

(2) Expenditure in connection with the implementation and application of subsection (1) must be defrayed from money appropriated by Parliament or other funding made available for this purpose, which funds constitute earmarked funds on the vote of Legal Aid South Africa, and may not be used for any other purpose.

(3) The Legal Aid South Africa must preserve and protect the confidential information concerning the discloser.

## **CHAPTER 5 COMPLAINTS MECHANISM**

### **Complaints mechanism**

**24.** (1) For purposes of this Chapter—

- (a) **'Chapter 9 Institution'** means an institution referred to in Chapter 9 of the Constitution of the Republic of South Africa, 1996;
- (b) **'complainant'** means a discloser, related person or person acting on behalf of the discloser or related person;
- (c) **'retired judge'** means a judge discharged from active service as referred to in the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001).

(2) The President must, in consultation with the Chief Justice, designate a retired judge to investigate complaints referred to in subsection (3).

(3) The retired judge may in the prescribed manner receive—

- (a) an application for extension of the period in which an investigation must be finalised as contemplated in section 14(8)(a);
- (b) complaints, including complaints from a complainant—
  - (i) who honestly and reasonably believes that they have been or are likely to be subjected to detrimental action by any person in retaliation for making a disclosure;
  - (ii) whose identity or confidential information is about to be made known in contravention of section 19(1); or
  - (iii) whose protection was revoked in terms of section 27.

(4) The retired judge must submit a written report to the Minister within three months after the end of each financial year, which must include—

- (a) the number of complaints received;
- (b) the outcome of any investigation undertaken by the retired judge; and
- (c) any referral made to a law enforcement agency, or a Chapter 9 Institution, without including any confidential personal information of a complainant.

(5) The retired judge may request information from any person or employer for purposes of an investigation by that judge.

(6) A refusal to comply with a request in terms of subsection (5) is a criminal offence for which a person, is liable upon conviction to a fine or imprisonment for a period not exceeding two years, or to both a fine and imprisonment, unless the refusal is based on a lawful ground, including—

- (a) legal professional privilege;

- (b) the protection of classified, confidential or security sensitive information in terms of any law; or
- (c) any other ground recognised by law.

(7) To the extent that it is reasonably necessary for the performance of the functions and duties of the retired judge, the retired judge—

- (a) may enter any building or premises under the control of a person or employer to obtain information and documents; and
- (b) must be afforded all reasonable assistance by a person or employer.

(8) The Minister must, in consultation with the retired judge, ensure that the retired judge has sufficient personnel and resources to fulfil their functions.

(9) The Director-General, in consultation with the retired judge, must prepare an annual operational budget for the performance of the functions and duties of the retired judge.

(10) The budget contemplated in subsection (9) may only be used for the performance of the functions and duties of the retired judge.

(11) The Director-General, in consultation with the retired judge, must develop and implement a plan to promote public awareness relating to the functions of the retired judge.

(12) A person who interferes with the retired judge in performing their functions and duties commits a criminal offence and is liable on conviction to a fine or imprisonment for a period not exceeding two years or to both such fine and imprisonment.

### **Dealing with complaint**

**25.** (1) The retired judge must upon receipt of a complaint—

- (a) investigate such complaint in the prescribed manner; or
- (b) refer the complaint, in the prescribed manner, to be dealt with by the relevant—
  - (i) law enforcement agency; or
  - (ii) Chapter 9 Institution.

(2) If the retired judge decides to—

- (a) investigate the complaint, they must inform the complainant and the employer or other person who threatens the complainant with occupational detriment or detrimental action, of the decision;
- (b) not investigate the complaint, they must inform the complainant accordingly and set out the reasons for the decision; or
- (c) refer the complaint, they must inform the complainant accordingly and set out the reasons for the decision.

(3) The retired judge, law enforcement agency or Chapter 9 Institution may decline to deal with a complaint if—

- (a) the subject matter of the complaint has already been dealt with by another agency, tribunal or court;
- (b) the complaint falls within the ambit of the Labour Relations Act, or any other law; or
- (c) after assessing the complaint, there are no reasonable grounds to support the complaint.

(4) (a) If a complaint is brought in terms of section 24(3)(b)(ii) the retired judge must immediately notify any court, person, body or authority that intends to disclose confidential information under section 19(1) of this Act of the complaint received.

(b) No confidential information may be disclosed until—

- (i) the retired judge has completed the investigation; and
- (ii) submitted a recommendation, which must be considered before any further action is taken.

(5) Nothing in this section prevents a complainant from instituting civil action in a court of law in relation to the complaint.

### **Finalisation of complaint**

**26.** (1) Upon the finalisation of the complaint, the retired judge, law enforcement agency or Chapter 9 Institution must inform the complainant whether the complaint was—

- (a) successful and the remedies available to the complainant; or
- (b) unsuccessful and the reasons why the complaint was unsuccessful.

(2) If the retired judge has referred the matter in accordance with section 25(1)(b), the relevant agency or Institution must, upon finalisation of the investigation, provide the retired judge with a report on the—

- (a) outcome of the investigation and remedies available to the complainant; or
- (b) set out the reasons why the complaint was unsuccessful.

## **CHAPTER 6 MISCELLANEOUS**

### **Revocation of protection**

**27.** (1) An authorised person may revoke the protection awarded to a discloser or related person for making a protected disclosure under this Act if the authorised person is of the opinion, based on an investigation or during an investigation that—

- (a) the discloser has, after making a disclosure, participated or continued to participate in the improper conduct disclosed;
- (b) the discloser, in their disclosure, intentionally made a material statement which they knew or believed to be false or did not believe to be true;
- (c) the disclosure is made solely or substantially with the motive of avoiding dismissal or other disciplinary action; or
- (d) the discloser, while making the disclosure or providing further information, commits an offence under this Act.

(2) (a) If the discloser protection is revoked under subsection (1), the authorised person must—

- (i) give a written notice to that effect to the discloser; and
- (ii) notify the Director: Office for Witness Protection, appointed in terms of section 3(1) of the Witness Protection Act, 1998, if the discloser or related person was under protection or temporary protection in terms of the Witness Protection Act, 1998, to deal with the matter in accordance with their powers.

(b) The Director: Office for Witness Protection must upon receipt of the notification contemplated in paragraph (a)(ii), make a decision with regards to the protection or temporary protection of the discloser or related person in terms of the Witness Protection Act, 1998.

(3) A discloser or related person who is aggrieved by the decision of an authorised person made under subsection (1) may—

- (a) lodge a complaint as contemplated in section 24(3); or
- (b) approach a court which has jurisdiction to adjudicate the matter.

(4) Where a discloser or related person has lodged a complaint or approached a court in terms of subsection (3), the protection that has been granted to the discloser or related person continues unless the retired judge or court rules otherwise.

## Remedies

**28.** (1) Any discloser or related person who has been subjected, is subjected or may be subjected to occupational detriment or detrimental action in breach of section 21, or anyone acting on behalf of a discloser or related person who is not able to act in their own name, may—

- (a) lodge a complaint in term of section 24;
- (b) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act, 1995, for appropriate relief; or
- (c) pursue any other process allowed or prescribed by any law.

(2) If the court, including the Labour Court, is satisfied that a discloser or related person has been subjected to or will be subjected to occupational detriment or detrimental action on account of making a protected disclosure, the court may make an appropriate order that is just and equitable in the circumstances, including—

- (a) an order directing the employer, the client of the employer, or a person acting on behalf of or on the authority of such employer, as the case may be, to pay compensation to the discloser or related person;
- (b) an order directing the employer, the client of the employer, or a person acting on behalf of or on the authority of such employer as the case may be, to pay compensation of actual damages suffered by the discloser or related person; or
- (c) an order directing the employer, the client of the employer, or a person acting on behalf of or on the authority of the employer as the case may be, to take steps to remedy the occupational detriment or detrimental action.

(3) For the purposes of the Labour Relations Act, 1995 including the consideration of any matter emanating from this Act by the Labour Court—

- (a) any dismissal in breach of section 21 of this Act is deemed to be an automatically unfair dismissal as contemplated in section 187 of the Labour Relations Act, 1995 and the dispute about such a dismissal may follow the procedure set out in Chapter VIII of that Act or any other process to recover damages in a competent court; and
- (b) any other occupational detriment or detrimental action in breach of section 21 of this Act is deemed to be an unfair labour practice as contemplated in section 186(2) of the Labour Relations Act, 1995, and the dispute about such an unfair labour practice must follow the procedure set out in section 191 of that Act.: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.

(4) Any discloser who has made a protected disclosure and who reasonably believes that they may be adversely affected on account of having made that disclosure, must, at their request and if reasonably possible or practicable, be transferred from the post or position occupied by them at the time of the disclosure to another post or position in the same division or another division of their employer or, where the person making the disclosure is employed by a public body, to another public body.

(5) The terms and conditions of employment of a person transferred in terms of subsection (4) may not, without their written consent, be less favourable than the terms and conditions applicable to them immediately before their transfer.

### **Education and information**

**29.** (1) The public and private sectors have a duty to promote awareness of this Act.

(2) Without derogating from the general nature of the duty referred to in subsection (1), one or more Cabinet members, designated by the President, must cause programs to be developed to—

- (a) conduct education and information campaigns to inform the public about this Act; and
- (b) train public officials on the prohibition, prevention and combating of occupational detriment or detrimental actions against a discloser, or related person which training must include social context training.

(3) The South African Judicial Education Institute established in terms of section 3 of the South African Judicial Education Institute Act, 2008 (Act No. 14 of 2008), must develop and implement training courses including social context training courses, for judicial officers for purposes of presiding in court proceedings, for the purposes of this Act.

(4) Every employer and other authorised person must, if the employer or authorised person has a website, publish at least the following information on the website—

- (a) an explanation of what constitutes a protected disclosure;
- (b) the manner in which a disclosure can be made;
- (c) contact details of the authorised person to whom a disclosure can be made;
- (d) remedies and procedures for protection against occupational detriment or detrimental action; and
- (e) conditions under which persons reporting to an authorised person are protected from incurring liability for a breach of confidentiality.

### **Regulations**

**30.** (1) The Minister may make regulations regarding—

- (a) any matter required or permitted to be prescribed in terms of this Act;
- (b) generally, all matters which are reasonably necessary or expedient to be prescribed to achieve the objects of this Act.

(2) Any regulation under this section which results in State expenditure must be made in consultation with the Cabinet member responsible for finance.

(3) Any regulation made under subsection (1) may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and on conviction be liable to a fine, or to imprisonment for a period not exceeding three years.

### **Transitional provisions and saving**

**31.** (1) Any disclosures made and actions taken before the commencement of this Act must be continued and concluded as if this Act has not been passed.

(2) Anything done in terms of a law repealed by section 32 and which could have been done in terms of this Act is regarded as having been done in terms of this Act.

(3) The regulations and practical guidelines in force before the commencement of this Act remain in force until repealed or amended.

### Amendment and Repeal of Laws

32. The laws specified in the Schedule are repealed or amended to the extent indicated in that Schedule.

### Short title and commencement

33. (1) This Act is called the Protected Disclosures Act, 2026, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

### Schedule

#### LAWS REPEALED OR AMENDED BY SECTION 31

No. and Year of Law	Short title	Extent of Repeal or Amendment
Act 112 of 1998	Witness Protection Act, 1998	<p>(a) Amends section 1 by the substitution for the definition of 'witness' of the following definition:  <b>"witness"</b> means any person who is or may be required to give evidence, or who has given evidence in any proceedings <u>and includes a person who made a disclosure in terms of the Protected Disclosures Act, 2000 (Act No. 26 of 2025; and"</u>;</p> <p>(b) amends section 7(1)(a) by the addition of the following subparagraph after subparagraph (v):  <u>"(vi) to an authorised person in the event of a discloser; and"</u>; and</p> <p>(c) amends the Schedule by the insertion of the following item after item 15:  <u>"15A. A protected disclosure in terms of the Protected Disclosure Act, 2000 (Act No. 26 of 2000."</u></p>
Act 26 of 2000	Protected Disclosures Act, 2000	Repeal of whole of Act.
Act 39 of 2014	Legal Aid South Africa Act, 2014	<p>Amends section 22 by the insertion of the following section after section 22:  <u><b>"Provision of legal aid by direction of courts in matters related to protected disclosures</b></u></p>

		<p><u>22A. (1) For purposes of this section 'discloser' and 'related person' means a discloser or related person as defined in the Protected Disclosure Act, 2000 (Act No. 26 of 2000.</u></p> <p><u>(2) A court or tribunal, in dealing with any matter resulting from a protected disclosure in terms of the Protected Disclosures Act, 2000 may direct that a discloser or related person be provided with legal representation at state expense, if the court or tribunal has considered—</u></p> <p><u>(a) the personal circumstances of the discloser or related person concerned and that it would be in the best interests of the discloser, or related person to have legal representation;</u></p> <p><u>(b) whether any other legal representation at state expense is available or has been provided; and</u></p> <p><u>(c) any other factor which in the opinion of the court should be considered.</u></p> <p><u>(3) A direction received from a court or tribunal as contemplated in subsection (2), must be treated with the same confidentiality afforded to the discloser or related person in terms of the Protected Disclosures Act, 2000</u></p> <p><u>(4) Legal Aid South Africa must, notwithstanding the provisions of section 22 of this Act, without—</u></p> <p><u>(a) delay; and</u></p> <p><u>(b) evaluation and reporting, provide legal representation to the discloser or related person."</u></p>
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