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**POSITION PAPER ON WHISTLEBLOWER PROTECTION AMENDMENT BILL**

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## **Introduction**

1. This position paper was developed in collaboration between the Platform to Protect Whistleblowers in Africa, the Legal Resources Centre and Open Secrets and is endorsed by the Civil Society Working Group on State Capture (**CSWG**).
- 1.1. The **Platform to Protect Whistleblowers in Africa (PPLAAF)** is a non-governmental organisation (NGO) established in 2017 to protect whistleblowers and advocate on their behalf when their revelations deal with the African public interest. PPLAAF provides confidential legal assistance, secure communication channels, media coordination, safety and technical assistance, psychosocial support, and public advocacy to whistleblowers across the continent.
- 1.2. The **Legal Resources Centre (LRC)** is a non-governmental public interest law centre that seeks to empower individuals and communities through the law, promoting social justice, championing equality, and realising the human rights enshrined in the Constitution. The LRC combines strategic litigation and public advocacy to advance the Constitution, with offices around the country.
- 1.3. **Open Secrets (OS)** is an independent civil society organisation which carries out investigations, legal interventions and advocacy campaigns to hold corporations, private individuals and state actors accountable for economic crimes especially where there are human rights abuses.
- 1.4. The **CSWG** is a coalition of civil society organizations formed in 2018 to advance democratic accountability in the wake of *state capture* - the systematic weakening of state institutions in order to extract state funds for private gain.

2. Against the backdrop of the Judicial Commission of Inquiry into State Capture (**CISC**), this collective civil society response to corruption seeks to promote constitutional principles of accountability, transparency and democratic governance. A key focus area is to advocate for the advancement of legislative protection of whistleblowers.
3. Whistleblowers, as acknowledged in the CISC, play an invaluable role in exposing malfeasance, corruption, fraud, and other forms of wrongdoing and have been described as *"one of the most effective weapons against corruption"*. The CISC goes on to accurately note that *"recent events in South Africa which will be well known to every reader make it the highest priority that a bona fide whistleblower who reports wrongdoing should receive, as a matter of urgency, effective protection from retaliation."*<sup>1</sup>
4. The CISC made several critical findings and recommendations, including that the current **Protected Disclosures Act (PDA)** fails to provide clear procedures for whistleblowers to follow, lacks adequate physical protection mechanisms, does not reward or incentivise whistleblowers, disclosures fail to consistently reach investigative entities, retaliation against whistleblowers must be criminalised, and protection should be extended beyond employment relationships to cover all forms of retaliation.
5. The effectiveness of whistleblowing as a weapon against corruption is dependent on the state's ability to legislate and implement adequate protective measures for whistleblowers. This position paper, intended to inform and promote public participation regarding the PDA Amendment Bill that is currently being finalised

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<sup>1</sup> P. 851-852 of the CISC Report

by the Department of Justice and Constitutional Affairs for publication, summarises what we recommend regarding legislative reform that ought to improve the protection of whistleblowers in South Africa.

6. In the 2026 State of the Nation Address, the President highlighted the amendments to the PDA as one of the pillars of state's crackdown on corruption, citing that the proposed amendments would ensure the criminalisation of retaliation against whistleblowers and the provision of psychosocial, legal and financial support to whistle-blowers.
7. As of April 2026, the promise to bring legislation to protect whistleblowers to parliament was fulfilled when the **Protected Disclosure Bill, 2026 (PDB)** was published for public comment. The PDB repeals its predecessor entirely and thus provides a new framework for whistleblower protection.
8. In addressing the key legislative advancements necessary to protect whistleblowers and foster accountability, this paper addresses the following:
  - 8.1. Shortcomings in the existing legislation;
  - 8.2. Recommendations to improve the current legislative regime, including comparative examples of best practice and whether these recommendations are present in the PDB; and
  - 8.3. Next steps to effect improvements to the new PDA through the proposed Amendment Bill.
9. Through this commentary on the legislative protection for whistleblowers as an anti-corruption mechanism, we seek to better position South Africa to hold those

responsible for corruption to account, strengthen key state institutions and safeguard society from abuses of power.

## **Shortcomings of the Existing Legislative Framework**

### Fragmented Legal Framework

10. South Africa's current whistleblower and anti-corruption legislative framework is fragmented. The legislation applicable to whistleblower protection includes the PDA, and sections of the following:
  - 10.1. Labour Relations Act No. 66 of 1995<sup>2</sup>;
  - 10.2. Companies Act No.71 of 2008<sup>3</sup>;
  - 10.3. Financial Intelligence Centre Act No. 38 of 2001<sup>4</sup>;
  - 10.4. Pension Funds Act No. 24 of 1956<sup>5</sup>;
  - 10.5. National Environmental Management Act No. 107 of 1998<sup>6</sup>;
  - 10.6. National Forest Act No. 84 of 1998<sup>7</sup>;
  - 10.7. National Nuclear Regulatory Act No. 47 of 1999<sup>8</sup>;
  - 10.8. Municipal Finance Management Act No.56 of 2003<sup>9</sup>;
  - 10.9. Public Finance Management Act No. 29 of 1999<sup>10</sup>;

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<sup>2</sup> Sections 185, 186(2)(d),187(1)(h),188A(11) and 194

<sup>3</sup> Section 159

<sup>4</sup> Sections 28, 29, 37 and 38

<sup>5</sup> Sections 9B, 13B(10) and 37(1)

<sup>6</sup> Section 31 and 34B

<sup>7</sup> Section 60

<sup>8</sup> Section 51(4)

<sup>9</sup> Sections 32(6), 32(7) and 102(2)

<sup>10</sup> Section 38(1)(g)

- 10.10. Prevention and Combating of Corrupt Activities Act No. 12 of 2004<sup>11</sup>;
- 10.11. Protection Against Harassment Act No. of 2011<sup>12</sup>; and
- 10.12. Witness Protection Act No. 112 of 1998.
11. This fragmented legal framework has the potential to dilute enforcement and create confusion when attempting to consider which laws apply in instances where a whistleblower requires protection.
12. While comprehensive amendments to the PDA alone cannot resolve all issues arising from fragmentation, the establishment of a centralised Whistleblower Regulatory Authority (as recommended below) would help coordinate the application of various legal provisions and provide clarity to whistleblowers navigating this complex landscape.

#### International best practices applicable to South Africa

13. International best practices, including continental and international conventions, offer a vital starting point for developing whistleblower protection legislative frameworks. However, the use of best practices must be sensitive to national contexts and legislation ought not to be merely duplicated, but respond to the unique, and oftentimes more acute, risks faced by whistleblowers in South Africa.
14. Protected whistleblowing should cover “any” disclosure that would be accepted in a legal forum as evidence of significant misconduct or would assist in carrying out legitimate compliance functions.

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<sup>11</sup> Sections 18 and 34

<sup>12</sup> Sections 1 and 2

15. **Reliable Anonymity Protection.** To maximize the flow of information necessary for accountability, reliable and accessible protected channels must be available for those who choose to make confidential disclosures.
16. **Shielding Whistleblower Rights from Gag Orders.** Any whistleblower law or policy must include a ban on “gag orders” through an organisation’s rules, policies or nondisclosure agreements that would otherwise override free expression rights and impose prior restraint on speech.
17. **Coverage for Attorney Fees.** Attorney fees and associated litigation costs should be available for all who substantially prevail. Whistleblowers otherwise couldn’t afford to assert their rights. The fees should be awarded if the whistleblower obtains the relief sought, regardless of whether it is directly from the legal order issued in the litigation.
18. **Transfer Option.** It is unrealistic to expect a whistleblower to go back to work for a boss whom he or she has just defeated in a lawsuit. Those who prevail must have the ability to transfer for any realistic chance at a fresh start. This option prevents repetitive reprisals that cancel the impact of newly created institutional rights.

#### Deficiencies in the PDA

19. The CISC and the Department of Justice and Constitutional Development (**DOJ**), in their discussion document on proposed reforms to the whistleblower protection regime in South Africa (**the DOJ discussion document**),<sup>13</sup> have acknowledged that the PDA in its current form has key deficiencies.
20. The CISC found that the PDA:

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<sup>13</sup> <https://www.justice.gov.za/legislation/invitations/20230629-Whistleblower-Protection-Regime.pdf>

- 20.1. Does not provide a clear-cut procedure for the whistleblower to follow when blowing the whistle;
  - 20.2. Does not sufficiently guarantee that the disclosures will be protected;
  - 20.3. Is not pro-active in providing physical protection;
  - 20.4. Offers no incentives to the whistleblower; and
  - 20.5. Does not ensure that all such information finds its way to a destination with specialised skills in receiving, investigating, and utilising such information effectively.
21. The DOJ discussion document identifies that: -
- “since the PDA is premised on the employer-employee relationship, it does not deal with harm which goes beyond work-related detriments. This means that issues such as blacklisting, bullying and harassment that occur outside of work incidents are not covered by the PDA. Additionally, threats that occur outside of the workplace and legal costs are also not addressed by the act. These economic impacts are often cited by whistleblowers as some of the most difficult consequences to overcome.”<sup>14</sup>
22. In this regard, the PDB attempts to broaden the definition of a discloser to go beyond the employment relation by defining a discloser to be “*an employee in the public or private sector, or **any other person who is not an employee, who makes a disclosure***” [our emphasis added]. This definition therefore needs to be read together with the definition of a disclosure which the PDB defines as “*the*

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<sup>14</sup> P. 14 of the DOJ Discussion Document

*disclosing of information regarding improper conduct with regards **to an employer or employee**, in the public or private sector” [our emphasis added].*

23. The PDB attempts to broaden the definition of a discloser, referring to whistleblowers which is not a defined term in the Bill, by including persons who generally make disclosures. However, a disclosure is categorised as protected if made about improper conduct of employers and employees.
24. This limitation to the employment relationship is problematic for the following reasons:
  - 24.1. It excludes citizen whistleblowers, media, CSO’s, etc.; and
  - 24.2. By focusing on protection against occupation detriment, other forms of retaliation faced by whistleblowers are ignored, for example, reputational harm.

#### Ineffective Investigations

25. The DOJ discussion document also acknowledges concerns around the capacity of institutions (namely the Public Protector) referred to in the PDA to investigate disclosures made by whistleblowers.<sup>15</sup>
26. By comparison section 14(2) of the PDB states that disclosures made to legal practitioners or legal advisers,<sup>16</sup> members of the Cabinet or of the Executive Council of a province or a Municipal Council,<sup>17</sup> persons or bodies as contemplated in section

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<sup>15</sup> P. 31 of the DOJ Discussion Document

<sup>16</sup> Section 7 of the PDB.

<sup>17</sup> Section 8 of the PDB.

9<sup>18</sup> or any other person not already mentioned if certain conditions are met<sup>19</sup> must be investigated in the prescribed manner. Section 14(3) provides that each of these authorised persons must conduct a preliminary investigation to determine whether the disclosure is properly made in terms of section 4 of the PDB and is not unprotected in terms of section 5 of the PDB. Following this, section 14 continues to provide steps to be taken when investigating a disclosure by an authorised person including referring the matter to another authorised person for further investigation.

27. Alongside this, section 12(1) of the PDB requires employers to “*develop appropriate procedures for receiving and dealing with information about improper conduct.*” Section 12 does not place an obligation on employers to investigate the information but merely provides that the employer must have a procedure for investigating in accordance with the Promotion of Administrative Justice Act, 2000 (PAJA).

28. Without a singular authority which manages disclosures (regardless of who the disclosure is made to) we continue to see fragmentation in managing disclosures. Although section 3 of the PDB requires the Director-General of the Department of Justice and Constitutional Development to develop a central database containing information related to the disclosure, the database is managed by anyone designated by the Director-General to do so and may be accessed by authorised persons permitted to do so.

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<sup>18</sup> This includes disclosures to the the Public Protector, the South African Human Rights Commission, the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Service Commission, the Auditor-General or a person designated as such in terms of other legislation.

<sup>19</sup> These conditions are set out in section 10(2) of the PDB.

29. This presents potential significant issues considering the capacity constraints on the DOJ and calls into question whether this can be practically implemented while still ensure there are no data breaches potentially undermining the safety of whistleblowers.

## **Recommendations**

### Legislative Reform Recommendations

30. In March 2025, PPLAAF and the **National Anti-Corruption Advisory Council (NACAC)** convened a high-level conference to assess and bolster whistleblower protection mechanisms and generate actionable recommendations. Participants included civil society, media, state authorities, whistleblowing experts, and whistleblowers. The consensus garnered from this conference forms the basis of the recommendations which follow.

31. **Legislative Reform:** -

31.1. **The rights of whistleblowers** ought to be laid out clearly and in accordance with human rights standards. Such rights include:

31.1.1. Access to secure reporting channels and mechanisms;

31.1.2. The right to protection;

31.1.3. The right to confidentiality and anonymous reporting;

31.1.4. The right to be free from occupational, social or any other retaliatory detriment; and

31.1.5. The right to prompt investigation, feedback, and resolution on their complaint.

31.2. Section 21 of the PDB provides for the protection of whistleblowers from detrimental action or occupational harm as a result of making a protected disclosure. Alarming, section 21(3) of the PDB provides that a whistleblower is not considered to have suffered occupational detriment or detrimental action if the occupational detriment or detrimental action is not linked in any way to the protected disclosure. However this position is ameliorated by the reversal of the burden of proof in section 21(5) of the PDB which provides that the person who is alleged to have caused occupational detriment or detrimental action must show why that action or harm is not retaliation.

31.3. Unfortunately, the burden of proof reverts to the whistleblower in section 21(6) of the Bill. It provides that before the evidentiary burden shifts from the whistleblower they first must show that they made a protected disclosure and that the detrimental action is linked to the protected disclosure. In essence, it nullifies the shift introduced in section 21(5) altogether.

31.4. It is also concerning that the harm is not protected under section 21(3) of the Bill. The Bill provides no conditions or requirements that must be established for the harm to be considered linked to the disclosure and creates uncertainty.

31.5. The legal definition of **retaliation must be broadened** to encompass the full range of harmful actions whistleblowers may face. The current scope of “occupational detriment” is too narrow. The definition should be expanded to “detrimental action.” As defined, this includes any act or omission, materialised or at risk of materialising, to the detriment of the

human rights and personal, professional, labour, psychosocial, family or patrimonial interests of the reporting persons, caused by the act of disclosing or presumed to derive from the same. This includes but is not limited to: -

- 31.5.1. Intimidation, coercion, and threats, including legal, physical, and otherwise
- 31.5.2. Online harassment and/or defamation
- 31.5.3. Psycho-emotional abuse, social ostracism and reputational harm
- 31.5.4. Financial hardship and blacklisting
- 31.5.5. Occupational detriment
- 31.5.6. Improper referral to psychiatric or medical care

31.6. The PDB retains the definition of occupational detriment from the PDA and includes psychological harm. However, it introduces the term 'detrimental action' which is an act or omission which "*results in unfair discrimination, threatens or violates the legal rights of a whistleblower or amounts to intimidation, harassment or causes personal harm or injury, or loss of damage to property or livelihood*".<sup>20</sup> This addition is broad and may encompass the recommendations above which we commend as it makes for potentially more responsive action against many forms of retaliation.

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<sup>20</sup> Section of the PDB.

- 31.7. Whistleblowers to be allowed to pursue **civil remedies for all forms of retaliation** and an independent authority should be empowered to adjudicate such cases swiftly, or to issue legally binding remedial action/thwarting of retaliation for urgent interim relief where necessary. The PDB provides for a complaints mechanism in section 24 where the President must appoint a retired judge to investigate complaints including complaints related to detrimental action. In addition, section 28 of the PDB provides that a whistleblower may pursue any process allowed or prescribed by law.
- 31.8. **Removal of the good faith requirement** - Protection and support for whistleblowers must not be contingent on the whistleblower's good faith or personal motives. The value or truth of a whistleblower's disclosure is not impacted by their motive in making the disclosure. It is essential that reasonable belief, rather than subjective intent, forms the basis of protection. Unfortunately the PDB retains the good faith requirement in sections 5(h) which states that a disclosure is not protected if "it is made solely or substantially with the motive to avoid dismissal or other disciplinary action"<sup>21</sup>
- 31.9. **Reverse the burden of proof in retaliation cases** - In cases of alleged retaliation, the onus should lie with the accused party to prove that the retaliatory action was unrelated to the whistleblower's disclosure. Whistleblowers should not bear the burden of establishing this connection and it should be presumed that retaliation is a result of disclosure. As already stated above the PDB attempts to reverse the burden of proof;

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<sup>21</sup> Section 27(1)(c) of the PDB also provides that protection for a whistleblower may be revoked if the

however it reverts to the whistleblower under section 21(6) which should be removed altogether.

- 31.10. **Protection must be extended** to include direct and indirect forms of retaliation targeting legal entities connected to the whistleblower, family members, colleagues, or facilitators and supporters of the reporting individual, including Civil Society Organisations and the media.
- 31.11. **Implement clear timelines and communication duties** - The Bill or amendments should mandate strict and enforceable timeframes for the processing and investigation of protected disclosures. Responsible authorities must also have a positive duty to regularly inform whistleblowers about the status and progress of their disclosures. An initial update should, at the very least, be provided to the whistleblower within three months of the complaint first being made. The PDB provides for clear timelines in section 14 related to finalising investigations into a disclosure which must be completed within 12 months with the whistleblower being updated every 3 months. Sections 24 and 25 which provide for a complaints mechanism do not include timeframes for when an investigation into a complaint must be concluded.
- 31.12. **Criminalise retaliation against whistleblowers** - Acts of retaliation should be formally criminalised, with penalties including a minimum of five years' imprisonment and/or substantial financial fines. Such penalties will provide a strong deterrent against punitive measures currently taken against whistleblowers. Ensuring the criminalisation of *all* forms of retaliation plays an important role in deterring whistleblower victimisation. Not only can this safeguard the physical safety of

whistleblowers, but it can also assist in deterring cases of occupational detriment in cases where whistleblowers elect to return to work and may face victimisation and stigmatisation in the workplace.

31.13. **Provide immunity from liability** - Whistleblowers must be granted immunity from any civil, criminal, or any other administrative liability arising from reasonable actions taken to make a disclosure or protect their anonymity - provided they had a reasonable belief that their actions met the conditions of the PDA or the proposed Bill. Chapter 4 of the PDB states which protections are afforded to whistleblowers. Included are confidentiality,<sup>22</sup> exclusion of civil and criminal liability,<sup>23</sup> protection from occupational detriment or detrimental action,<sup>24</sup> witness protection<sup>25</sup> and legal assistance.<sup>26</sup>

31.14. **Integrate reforms from the Witness Protection Act (WPA)** - The WPA revisions should be integrated into whistleblower protection mechanisms to provide essential safeguards. This includes anonymity, security and safety measures, relocation assistance, and access to financial and social support where necessary.

31.14.1. The PDB should, as part of the proposed amendments, incorporate such a provision to safeguard whistleblowers from physical harm. Currently, it merely states that the Witness Protection Act applies *mutatis mutandis* to disclosers in the

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<sup>22</sup> Section 19 of the PDB.

<sup>23</sup> Section 20 of the PDB.

<sup>24</sup> Section 21 of the PDB.

<sup>25</sup> Section 22 of the PDB.

<sup>26</sup> Section 23 of the PDB.

PDB. Best practice would enable a Whistleblower Regulatory Authority to keep confidential the information of whistleblowers in matters of extreme sensitivity, as is the case in terms of section 17 of the Witness Protection Act.

31.14.2. The Witness Protection Act in section 22 makes it an offence for any person who wilfully or negligently, allows an unauthorized person to gain access to a protected person, discloses the identity of a protected person, discloses the location of a protected person, compromises the safety of such protected person, and furthermore renders such offender upon conviction liable to a fine or direct imprisonment not exceeding thirty (30) years.

31.14.3. Similar provisions should be incorporated into the PDA to prohibit and criminalise the disclosure of information (a) disclosed by whistleblowers and (b) pertaining to the identity of whistleblowers.

31.15. **Retrospective application of certain provisions** – While the application of the rule of law prohibits the retrospective application of amended provisions criminalising retaliation, certain provisions can and should apply retrospectively to protect current or previous whistleblowers. Provisions extending whistleblower protection can and should apply retrospectively to ensure that whistleblowers who have already made protected disclosures are protected from future retaliatory efforts. Section 2(2) of the PDB provides that it applies to disclosures made after it comes into force notwithstanding that the disclosures can

relate to improper conduct which took place prior to the promulgation of the Bill.

Proposed Additions to the PDA – Establishment of Regulatory Body

32. The establishment of an independent **Whistleblower Regulatory Authority**, which would act as a database for both private and public sector disclosures, independent from the reporting agencies already established in terms of the PDA: to a legal adviser (section 5), an employer (section 6), a member of Cabinet or of the Executive Council of a province (section 7), the Public Protector or Auditor-General (section 9), or any other person or body (section 8), would be a starting point.
33. It would be responsible for:
- 33.1. Providing advice to whistleblowers pre and post-disclosure;
  - 33.2. Directing whistleblowers to the appropriate recipient for receiving disclosures and acting as a referral and monitoring mechanism for these recipients;
  - 33.3. Receiving, investigating, and addressing complaints of retaliation against whistleblowers, with orders for protection and remedial action being legally binding;
  - 33.4. Monitoring and overseeing whistleblower cases reported to competent authorities, as outlined in the PDA;
  - 33.5. Handling reports of improper or delayed investigation by competent authorities;

- 33.6. Providing legal, financial, and psychosocial support to whistleblowers;
  - 33.7. Safeguarding whistleblowers from physical harm by liaising with relevant institutions like the Office of Witness Protection, amongst others;
  - 33.8. Overseeing and monitoring legislative enforcement, including avenues for reform and development;
  - 33.9. Offering guidance and monitoring the development of institutional whistleblowing mechanisms, both in the public and private sector, and sanction for non-compliance;
  - 33.10. Conducting education and awareness raising campaigns on whistleblowing.
34. It would be headed by a senior legal professional such as a retired judge of the High Court (or a senior legal professional with at least 10 years admitted as an attorney/advocate), supported by other legal professionals experienced in both labour law and civil law procedure, and further staffed by investigators who are skilled in forensic and criminal investigation, a unit modelled along the lines of the Directorate for Priority Crime Investigation (**DPCI**) and the Special Investigative Unit (**SIU**).
35. Suitable measures must also be adopted to ensure the independence of the agency/authority and preserve their ability to act without fear or prejudice and free of political independence. Such measures would need to, at the very least, ensure:
- 35.1. Independent control and oversight over the budgetary allocation for the agency/authority;

- 35.2. Operational and structural independence;
  - 35.3. Diminished potential for executive dominance in oversight mechanisms;
  - 35.4. Security of tenure for officials within the agency/authority;
  - 35.5. Transparent and prescribed appointment methods; and
  - 35.6. Non-renewable appointments.
36. It is important that this agency/authority be independent of the South Africa Police Services (SAPS) as SAPS may be riddled with corruption itself. Disclosures made may well relate to SAPS.
37. There needs to be oversight on the functions of the Whistleblower Regulatory Authority, which function must be within the authority of the Parliamentary Committee on Judicial Affairs. Such oversight function will include reviewing the work done in terms of receipt of disclosures, assessment, and subsequent investigations thereof, as well as outsourcing of some of the work to collateral agencies like the Directorate for Priority Crimes and the Special Investigative Unit. Such reports to the Parliamentary Committee on Judicial Affairs should occur bi-annually (every six months), subject to the volume of cases and the importance of the investigations arising from such disclosures.
38. In its current form the PDB does not establish an independent regulatory authority and merely establishes a database managed within the DOJ. It also makes no provision for the oversight generally of the authorised persons receiving and investigating disclosures in the Bill. This is alarming when considering the Bill introduces a database of protected disclosures managed and maintained by the DOJ as discussed above.

### Proposed Additions to the PDA – Punitive Sanctions

39. There should be amendments to the PDA that address the lack of punitive sanctions for retaliation against and the victimisation of whistleblowers. Punitive sanctions should be prescribed for any retaliatory actions or transgressions taken against whistleblowers. Such sanctions could include a minimum prison sentence of at least five (5) years and /or minimum fine of R50 000.00 for the Directors/CEO and Director Generals. This would discourage even minimal transgressions, and the more serious the transgression, the higher the term of imprisonment and/or fine should be.
40. Similarly to the EU Directive on the Protection of Whistleblowers, it is proposed that under the PDA, a whistleblower shall not incur liability of any kind in respect of reasonable acts necessary to make a disclosure and ensure protection of a whistleblower's anonymity as long as they had reasonably believed that the disclosure fell under the conditions of the PDA.
41. In proceedings before a court relating to a detriment suffered by the whistleblower, assuming that detriment followed a protected disclosure under the PDA, it shall be presumed that the detriment was made in retaliation for a disclosure. The burden of proof shall be on the person who has caused the detriment to prove that that measure that led to the detriment was justified.
42. The PDB states under section 21(8) that any person who contravenes sections 21(1) or (2) which provide for the protection of whistleblowers from detrimental action or occupational harm, is guilty of an offence.

### Proposed Additions to the PDA - Rewards and Recognition

43. Rewards are an effective tool to motivate whistleblowers, with various studies proving that they enhance the quality and quantity of information. Rewards may also provide necessary support to whistleblowers facing significant personal and professional risks. Therefore, awards or rewards for whistleblowers should be introduced in South Africa. Moreover, financial support should be provided to whistleblowers as interim relief in instances where their disclosure has impacted on their ability to provide for themselves and their dependents.
44. The Whistleblower Regulatory Authority may oversee this process in collaboration with authorities. In meritorious cases, where significant asset recoveries have occurred as a result of or with the help of the protected disclosures, awards of a percentage of assets recovered should be considered. To avoid perverse incentives, discretion should be used when determining whether to issue an award. Care should also be taken to ensure that the Whistleblower Regulatory Authority or other relevant authorities are provided with adequate guidance to ensure the effective exercise of discretion, carefully calibrated to provide adequate compensation.
45. Beyond financial rewards, recognition also plays a vital role in encouraging whistleblowing. Acknowledging the courage and integrity of whistleblowers can foster a culture of transparency and accountability both within organisations and at a national level. This recognition can take various forms, such as public commendation or media campaigns. Recognition may also have the positive knock-on effect of challenging negative perceptions of whistleblowing.

46. Compensation for expenses incurred as a result of disclosing sensitive information is also important. Whistleblowers may incur significant costs as a result of making protected disclosures, including but not limited to legal costs, relocation costs, and a further loss of income. While amendments to the PDA may seek to diminish the need for whistleblowers' to carry such burdens, compensation should be provided where such costs are incurred.
47. The Whistleblower Regulatory Authority, together with the DPCI, should in meritorious cases, where significant asset recoveries have occurred by virtue of the protected disclosures, consider awards of at least (10%) percent of the value of the asset recovered. It should be noted that foreign jurisdictions like the United States have adopted such a scheme with great success.<sup>27</sup>
48. Section 18 of the PDB provides for the award of 25% of any monetary sanction made in a conviction resulting from evidence given by a whistleblower. This may conflict with proposed amendments to the Public Procurement Amendment Bill, 2026 if it is published in its current form. The Public Procurement Amendment Bill provides under sections 14B(2) and (3) that whistleblowers may receive between 20 and 33 percent of any funds recovered through private prosecution and between 15 and 25 percent of funds recovered by the state in normal prosecution.<sup>28</sup>
49. Section 18 of the PDB also provides that a number of people are excluded from receiving rewards. These people include public servants, members of law

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<sup>27</sup> <https://www.pinsentmasons.com/out-law/analysis/zondo-commission-bounties-boost-south-africa-whistleblowing>

<sup>28</sup> LRC, Open Secrets and PPLAAF made a joint submission commenting on the Public Procurement Amendment Bill, 2026 which can be found here: <https://www.opensecrets.org.za/joint-comment-public-procurement-amendment-bill/>.

enforcement, persons in positions of authority under section 34 of PRECCA,<sup>29</sup> persons who made a disclosure in terms of a plea deal or an accomplice to the offence in the protected disclosure.

50. We appreciate that there may be circumstances where a reward should not be due if the whistleblower themselves benefitted from the improper conduct or was party to the improper conduct. However, there is no reason for public servants to be excluded. This creates a circumstance where only whistleblowers in the private sector can receive a reward. That circumstance is absurd when considering that public servants constitute the most likely persons to be able to blow the whistle on corruption and improper conduct within the public sphere if the Zondo Commission is anything to go by.
51. Ultimately there may be extenuating circumstances where any of the above excluded persons should be entitled to any award. We believe these exclusions should be removed entirely. Instead, the court making the award should have regard to the occupation, duties and conduct of the whistleblower in relation to the improper conduct and determine whether it is appropriate to make the award in their favour in line with the discretion already provided under section 18(1) of the PDB.

#### Proposed Additions to the PDA: Private Sector Reporting Measures

52. In light of the employment focus of the PDA, it may appear that it is already able to suitably facilitate whistleblowing in the private sector. However, for many of

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<sup>29</sup> Prevention and Combating of Corrupt Activities Act, 2004.

the reasons outlined above, it is important to ensure effective and independent internal processes for whistleblowing within the private sector.

53. Depending on the size of certain companies, private companies and corporations should be obliged to establish internal reporting or disclosure processes. Staff members responsible for such internal processes should be suitably trained on whistleblower protection generally as well as communicating, handling and following-up on reports.
54. Alternatively, it may be important for the broader reform to other pieces of legislation that require or create disclosure or reporting channels within the private sector to also be revised to ensure constituency across the entire legislative framework regulating protected disclosures.
55. The PDB does not include any provisions placing reporting obligations on the private sector.

#### Proposed Additions to the PDA: Broadening Reporting Channels

56. Removing whistleblowing from the employment context into the human rights context requires a similar broadening of reporting channels. The PDA is currently skewed to favour reporting to an employer or defined authorities such as the Public Protector, South African Human Rights Commission and Commission for Gender Equality. The establishment of a dedicated agency/authority will add another institution to whom disclosures can be made.
57. However, ensuring the statutory entrenchment of true “citizen whistleblowers” may require an expansion of more directly accessible avenues for disclosures that

better reflect the reality of their lived experiences. Such avenues may include civil society organisations, traditional leaders, the media or religious leaders.

58. While the PDA currently allows for general disclosures, it introduces significantly more arduous threshold requirements for these disclosures. Compliance with these requirements requires significant, in-depth legal knowledge and understanding of the intricacies of the PDA. Improving access to protection flowing from general disclosures may be necessary to ensure a legislative framework that adequately speaks to the concept of citizen whistleblowers.
59. Similarly, the PDA should also ensure the protection of the third parties to whom disclosures are made who are likely to be the individuals taking these complaints forward. Third parties, such as civil society organisations and the media, who support whistleblowers should also be protected.
60. Sections 7 to 10 of the PDB provides for disclosures to persons and bodies outside of the employment relationship. It does not include civil society or related bodies. Disclosures to persons without a specific designation (which might include civil society or the media) can be made under section 10 but only if:

*“(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.”*

61. Unfortunately these requirements continue to be overly burdensome and as a result may discourage potential whistleblowers from coming forward with important and relevant information of wrongdoing.

Proposed Additions to the PDA: Removal of the Good Faith Requirement

62. The PDA currently requires good faith on the part of a whistleblower to qualify for protection under the Act. This requirement serves no operational purpose and, in effect, only limits the protection it affords whistleblowers. The intention with which a disclosure is made has no impact on the objective value of the disclosure, nor does it impact on whether the whistleblower who made the disclosure is worthy of protection.

63. To broaden the scope of whistleblower protection under the Act and align it more squarely with a human rights paradigm, amendments to the PDA should remove the current good faith requirement.

64. Similarly, it is essential to guard against the inclusion of punitive measures against whistleblowers who may make incorrect disclosures. Such measures are likely to have a significantly chilling effect on potential disclosures.

65. As long as the Act requires whistleblowers to have a reasonable belief that their disclosure is true, any potential risk that the good faith requirement or punitive measures may have will be adequately mitigated.

66. The PDB retains the good faith requirement under section 5(e) which provides that a disclosure is not protected if the whistleblower made the disclosure with the intention to cause harm to the affected party and the affected party has actually suffered harm as a result of the disclosure. Section 27 also provides that protection

under the Bill can be revoked by an authorised person if they find that the disclosure was motivated by the whistleblower seeking to avoid dismissal or other disciplinary action.

## **Next Steps**

67. The **Department of Justice and Constitutional Development** has introduced a draft amendment bill to the PDA. This amendment bill is currently out for public comment and the DOJ has invited the public to make submissions on the bill. The period for submissions closes on **14 May 2026**.
68. During this period, the public will be afforded the opportunity to make both written and indicate their willingness to make oral submissions on the bill through the public participation process facilitated by both the National Assembly and the National Council of Provinces.
69. It constitutes a unique opportunity for affected and interested individuals, communities and organisations to try to shape whistleblower protection in South Africa.
70. All interested individuals and groups should consider the draft amendments and consider participating in the ongoing legislative process. Public submissions can:
  - 70.1. Highlighting positive developments and inclusions in the draft amendments to show public support for progressive legislative reform;
  - 70.2. Identify problematic inclusions in the draft amendments and suggest alternatives; and/or

70.3. Highlight necessary legislative reform that the proposed amendments neglect.

70.4. For more information on how to draft submissions, consult the following resources:

70.4.1. <https://www.parliament.gov.za/how-to-make-a-submission>

70.4.2. <https://www.pa.org.za/blog/how-make-submission-bill>

## **Conclusion**

71. It remains a priority of ours to work towards strengthening South Africa's anti-corruption architecture through various means, including legislative reform. Influencing the passage of the law not only ensures that the law is transformed in the interests of society but stands as an expression of South Africa's constitutional democratic principles in action.

72. While we acknowledge that the struggle against corruption is not limited solely to the use of law reform and other legal avenues, law reform remains an effective strategy for creating a safety net to combat corruption in society.