



Submission on the  
**Protected Disclosures Bill**

(As introduced in the National Assembly (proposed section 75);  
Explanatory summary of the Bill published in the Government Gazette No. of 2026

(MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT )

**[B-2026]**

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## **Introduction**

The Centre for Applied Legal Studies (CALS) and Right2Protest (R2P) welcome the opportunity to make written submissions to the Director-General: Justice and Constitutional Development on the Draft Protected Disclosures Bill. We acknowledge and appreciate the work of the National Anti-Corruption Advisory Council (NACAC) and its recommendations in its final report to the President of the Republic of South Africa.

CALS is a civil society organisation based in the School of Law at the University of the Witwatersrand. CALS is also a law clinic, registered with the Legal Practice Council. As such, CALS connects the worlds of academia and legal practice in advancing social justice. CALS has collaborated with both social movements, communities and individual clients who seek to hold various repositories of power accountable for suspicious conduct and activities. In these engagements and through research, we have established that weak protection mechanisms that are brought about by a vacuum in the laws protecting whistleblowers are exposing whistleblowers to various threats. Whistleblowers are vulnerable to all forms of risks, including the risk to life. It is therefore important that legislation and policy aimed at protecting whistleblowers need to be water-tight and firmly extend individualised institutional protection to encourage a culture of disclosure.

The R2P is a coalition of organisations that collectively aim to establish a non-partisan, peacebuilding, intersectional, and innovative interventions to advance and protect the right to protest in Southern Africa. Protestors in South Africa occupy different positions in our society, but all with the goal of not only expressing their dissent but also exposing unjust practices committed by structures of authority. R2P has engaged with and supported whistleblowers and human rights defenders seeking justice and accountability. In collaboration with CALS and its partners, R2P stands for an enhanced legal system that is victim-centred and comprehensive to ensure the protection of those who may face risks for their act of expression against corrupt activities.

Collectively, these organisations aim to provide a comprehensive submission covering a broad perspective of protection that is currently inaccessible to whistleblowers in the country.

The Protected Disclosure Bill (the Bill) comes at a time of an unsettled and abrasive socio-political climate in South Africa, particularly for whistleblowers and human rights defenders. This comes because of an increase in judicial inquiries and high-level enquiries commissioned by the President to investigate that protection has, for several reasons, been compromised, and reporting corruption and other violations in South Africa is becoming increasingly unsafe,

posing severe life threats. Considering this, there is currently a vacuum in the law on the protection of people on the frontline of exposing human rights violations in South Africa. This Bill, therefore, provides an opportunity to achieve two things: firstly, to extend protection of whistleblowers by recognising whistleblowers as witnesses in terms of the Witness Protection Act 112 of 1998. Secondly, to extend the definition of a whistleblower outside the boundaries of an employment setting.

This is the gist of our submission: that the concept of whistleblowing should be inclusive, and not exclusive. A recognition of people who blow the whistle outside of an employment setting is necessary to encourage a culture of openness and transparency.

These submissions are divided into four (4) categories. Firstly, we address the definition and scope of a whistleblower/discloser, and, similarly, the definition of disclosure, particularly what it ought to be. Secondly, we set out the necessary security measures and protection mechanisms required to encourage whistleblowing and ensure that comprehensive protection is offered to whistleblowers. Thirdly, we propose a comprehensive complaints mechanism that ensures that institutions protecting democracy established by the Constitution (Chapter 9 institutions) are fully integrated into the complaints process and operate in tandem with the appointed retired judge who investigates complaints.

### **Definition and Scope of Whistleblowers**

The Draft Bill currently defines a discloser as someone who is “*an employee in the public or the private sector or any other person who is not an employee, who makes a disclosure.*” We propose that the language and wording of the definition provide “*any person who makes a disclosure, which may include, but is not limited to, an employee, an informer, or an individual acting in the public interest*”. The proposed definition is to ensure that it is broad and encompasses disclosures that may not only relate to disclosures in the workplace.

Currently, the language of the Bill places emphasis on disclosures made in the workplace by employers and employees. The objectives in section 2 state that the objectives of the Act are to set out procedures and terms on which information may be disclosed regarding improper conduct in the public or private sphere by an employer or an employee. We propose that the objectives of the Act set out procedures and terms of disclosures made to all individuals acting in the public interest concerning information in the public and private spheres.

A whistleblower is an individual with access to information that is usually shrouded in secrecy pertaining to suspicious activities and/or corruption in the public and private spheres. This individual need not be employed; they can include a diverse category of people. The categories could include community members reporting conduct of their ward councillor, a junior member of a political party or organisation reporting conduct of their political leader, or a member of a community money-saving club exposing internal corrupt activity within the club. These are all examples of suspicious, corrupt conduct that can be exposed, outside of an employment level. The definition of a whistleblower is in the act of reporting rather than an employment status or their position. The interventions to protect whistleblowers should therefore not be limited to one's employment status and should rather be extended, given the definition above.

### **Security Measures**

Whistleblowers are vulnerable to all forms of security risks. It is therefore important that security measures are watertight and conducive to allowing whistleblowers to gain confidence in the reporting system. Research reports have shown that whistleblowers are severely exposed to security threats before, during, and after making a disclosure. The security measures required should therefore be comprehensive and designed in such a way to ensure that whistleblowers are adequately protected during the reporting process.

Whilst the current protection mechanism offered by the Bill is welcome and constitutes a good measure of ensuring protection for disclosers, the Bill must provide specific, comprehensive protection for disclosers. This may, from time to time, require an individualised protection assessment and report; it is also important that guidelines are developed as a benchmark for assessors to consider. The guidelines should consider protection to be offered before, during, and after disclosure and should consider suitable protection mechanisms.

The provision of safe houses should be a priority, based on the needs of the discloser. A consultative process is required to ensure the provision of an effective protection mechanism and protection plan that does not cause further exposure. The exposure of close family members is also a factor that ought to be considered, and therefore protection should also be offered and extended to family members, minor children, and the elderly, who are to be treated as special categories requiring individualised care and attention. If disclosers are to be relocated, an appropriate relocation fund would be required, taking into account immediate personal necessities that may be required during the relocation period.

Guidelines for assessors to consider when relocating disclosers should consider the following factors. This is not intended to be an exhaustive list; a case-by-case approach is more desired as it would ensure the provision of a comprehensive protection plan for disclosers.

- Proximity of discloser to familiar surroundings;
- Activities that can be done for the duration of the relocation;
- Family relocation;
- Relocation grant;
- Access to amenities, health facilities, and other government services;

### **Complaints Mechanism**

We welcome the establishment of a complaint's mechanism and the proposed appointment of a retired judge to receive, assess, and investigate complaints from disclosers. We would, however, propose an amendment to the current proposed complaints mechanism. The role of Chapter 9 institutions is important, and it has often been overlooked and undermined. Chapter 9 institutions are the backbone of our democracy and were established to contribute towards the acceleration of the constitutional project, envisioned by the drafters of the Constitution. In particular, the Public Protector and South African Human Rights Commission (SAHRC) carry the mandate of investigating allegations of corruption and human rights violations in the public sector.

Both these institutions should be appointed to operate at an intimate level with the proposed retired judge, as they are, in our view, more equipped to receive and handle complaints from disclosers; this is owing to the nature of their respective mandate. They are often the institutions that may receive complaints directly from disclosers, particularly disclosers who are not employees; therefore, it becomes essential that they operate and work in tandem with the retired judge for a coordinated and effective complaints process. We propose that more resources be allocated to the institutions to ensure that they are well-capacitated to handle the additional mandate and responsibilities placed on them. Disclosers at risk are most likely to develop a trust relationship and confidence in Chapter 9 institutions, because they dissociate these institutions from the state and state institutions. Their independence, impartial, and non-biased mandate sets an attractive tone for disclosers, encouraging a culture of transparency and openness.

### **Gendered Lens to Whistleblowers**

There is a need for a sharper gendered framework in strengthening whistleblower protection mechanisms in South Africa. Evidence from integrity and anti-corruption bodies shows that women constitute a substantial proportion of whistleblowers, yet remain disproportionately exposed to retaliation and institutional neglect. Under the Protected Disclosures Act (2000, amended 2017), protections exist, but implementation gaps continue to undermine safety and

access to remedies. Research by Transparency International and national integrity studies consistently highlights that fear of reprisal is one of the leading reasons individuals, particularly women, do not report corruption or misconduct.

Women whistleblowers often navigate compounded risks, including workplace isolation, reputational harm, economic insecurity, and gendered negative attitudes. These risks intensify in public sector environments where hierarchical power structures limit accountability. Many institutes have recorded that after women report corruption, they are faced with persistent harassment, unfair dismissal, and career stagnation. These outcomes highlight that whistleblowing frameworks often fail to adequately account for the lived realities of whistleblowers, particularly women in the public sector and low-wage environments. In many instances, women also face compounded social consequences, including stigma within their communities and families, as well as limited access to affordable legal and psychosocial support. These intersecting vulnerabilities mean that whistleblowing is not only an act of civic courage but also one that carries disproportionate personal and economic risk for women.

A more effective and gender-responsive whistleblower protection system must therefore begin with mandatory gender-responsive risk assessments at the point of disclosure. Such assessments should actively evaluate the likelihood and forms of gendered retaliation, including workplace harassment, economic vulnerability, and risks of gender-based violence, ensuring that protective measures are tailored to individual circumstances rather than applied uniformly. In addition, there is a need for independent whistleblower protection units that are structurally and operationally separate from employers and implicated institutions. These units should have dedicated gender-specialist capacity, including trained psychosocial support professionals, trauma-informed investigators, and legal advisors who understand the gendered dimensions of retaliation. Confidentiality and trust are central to the effectiveness of such mechanisms, particularly for women who may already have low confidence in institutional responses.

Strengthening whistleblower protection through these reforms would not only align with South Africa's constitutional commitments to dignity, equality, and security of the person but would also improve the effectiveness of anti-corruption efforts more broadly. A system that fails to protect women whistleblowers ultimately weakens public accountability, whereas one that is gender-responsive strengthens both justice and institutional integrity.

## **Conclusion**

We commend the Department for heeding the call for increased protection mechanisms for whistleblowers. The interventions are not only timely but necessary. The strengthening of security and protection mechanisms in South Africa has become urgent, and therefore, a proactive approach rather than a reactive one is critical. We trust that our contributions will assist the Department in making the necessary changes, and we remain available to assist the Department in the present and future iterations of the amendments to the Protected Disclosure Bill.