



## **COMMENTS ON THE DRAFT PROTECTED DISCLOSURES BILL (2026)**

***The IGL believes that this Bill, in its current form, falls far short of what is necessary to protect and support individuals who risk their jobs, security, and lives to disclose improper conduct.***

### 1. Introduction

1.1. The Institute for Governance and Law (IGL) is a non-profit, public benefit organisation that aims to improve governance through the application of the rule of law. The IGL was established recently, but through its senior staff, it has a long involvement in policy matters in the public, private, and NGO sectors.

1.2. The IGL holds that office bearers in the Executive, the Legislature, the Judiciary, and subsidiary branches of the State, including State Owned Enterprises, have a particular duty to uphold the Constitution. As such, it takes great interest in both the procedural and substantive characteristics of the rule of law in South Africa. The scope of the IGL's activities, therefore, includes making submissions to Parliament on a range of issues, including impending legislation and policy reviews.

1.3. The Protected Disclosures Bill, 2026 ("the Bill") is of particular interest to the IGL for its stated aim to protect whistleblowers exposing improper conduct. South Africa has long struggled and suffered under corruption, and effective transparency is a vital first step in improving governance. As US Supreme Court Justice Louis Brandeis claimed, "Sunlight is the best disinfectant."

1.4. Those who disclose improper conduct, such as whistleblowers, are at the forefront of this fight against corruption. The vital importance of these remarkable individuals is emphasised repeatedly by civil society organisations and, especially, former Chief Justice Raymond Zondo in his commission report.

2. The IGL believes that the Bill, in its current form, falls far short of what is necessary to protect and support individuals who risk their jobs, security, and lives to disclose improper conduct. There are thus a number of issues that need to be considered and addressed in order to improve not only the Bill's clarity and efficacy but also to enhance its coherency.
3. The definitions of *discloser* and *protected disclosures* used in the Bill are too narrow and fail to include groups deserving of protection.
  - 3.1. The State should be supportive and welcoming of people who, in good faith, wish to disclose improper conduct. Limiting the categories of individuals that can make protected disclosures surely undermines this aim.
  - 3.2. The Bill misses an opportunity to simplify the definition of *discloser* to make the legislation easily accessible. Chapter 2 of the Bill (which repeats much of what is already in the Protected Disclosures Act 26 of 2000), is likely to create confusion and uncertainty in anyone considering making a disclosure, with a legitimate fear that they may not be afforded protection.
  - 3.3. The IGL suggests that the protection afforded to disclosers/whistleblowers should follow Article 33 of the United Nations Convention against Corruption. The Convention urges that appropriate measures should provide protection against the unjustified treatment of any person who reports offences to the competent authorities in good faith and on reasonable grounds. This would be in line with section 39(1)(b) of the Constitution which states, "when interpreting the Bill of Rights, a court, tribunal or forum (b) must consider international law."<sup>1</sup> This allows for a broad range of witnesses, experts, and victims to make protected disclosures.
4. The Bill should create a specialised office to protect whistleblowers.

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<sup>1</sup>See further in *Glenister v President of the Republic of South Africa and others* (Helen Suzman Foundation intervening as amicus curiae) (2011) ZACC 6 para 189 and *Sonke Gender Justice NPC v The President of the Republic of South Africa and others* (2020) ZACC 26 (para 70)

- 4.1. In 2025, the National Anti-Corruption Advisory Council (NACAC) proposed that there should be a specialist Institution closely attuned to the experiences and needs of whistleblowers.<sup>2</sup> NACAC recommended that this Institution should have “a clearly defined whistleblower protection mandate; independence; adequate resources; and a single focus on protecting whistleblowers. The *Institution* should be headed on a full-time basis by a retired judge, appointed through a legitimate and transparent process who would enjoy security of tenure” (our emphasis).
- 4.2. Earlier in 2022, former Chief Justice Raymond Zondo, through the Judicial Commission of Enquiry into State Capture, had recommended legislating a specialist Institution. This Institution would focus on preventing corruption in public procurement, which would include measures to protect whistleblowers.
- 4.3. This Bill provides for a retired judge to support whistleblowers. But, seemingly, there is no provision to support the retired judge with an effective, resourced structure in order to assist him/her to perform the task effectively. It also fails to indicate processes for the removal or replacement the retired judge once appointed.
- 4.4. The retired Judge, along with his/her office, must enjoy adequate structural and operational independence to deliver effectively and efficiently on its core mandate.
- 4.5. Thus, the IGL proposes that the Bill should explicitly create an office to protect individuals making good faith disclosures. The South African Police Service Act 68 of 1995 (SAPS Act) provides a possible guide for creating an independent institution in Chapter 6A (sections 17A-17L). Mirroring section 17DA would provide for the removal of the retired judge, while following 17H would ensure financial independence. This Bill could follow the method provided by the SAPS Act to make a new and independent office, matching suggestions from NACAC and Zondo.

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<sup>2</sup>National Anti-Corruption Advisory Council (2025). “Final Report to the President, the Cabinet, and the Country.” <https://www.thepresidency.gov.za/sites/default/files/2025-08/National%20Anti-Corruption%20Advisory%20Council%20Final%20Report%202025.pdf>

5. The Central Data Centre created in section 3 of the Bill is fundamentally flawed as it is not clear why it is there or what it is supposed to do.

5.1. There are insufficient incentives for the database to receive the information it is supposed to store and manage. First, it provides no detail as to the purpose of the database. Secondly, it does not create an obligation for authorised persons to submit reports from the discloser/whistleblower. Thirdly, it does not create a relationship between the Central Data Centre and the Proposed Complaints mechanism.

5.2. The Bill does not provide sufficient clarity around the resourcing, management, or under whose authority the Central Data Centre would fall. An assumption is that the Centre would fall under the Department of Justice and Constitutional Development. However, the Bill does not provide this Department with the leadership and resources necessary to operate such a Centre.

5.3. Section 3(2)(a) provides for registering authorised persons who can access the database. There are wide groups of individuals who can be authorised persons, as detailed in Chapter 2 of the Bill. This creates a significant concern about the leaking of sensitive or confidential information about disclosers/whistleblowers. This could serve as a serious deterrent to those who consider making protected disclosures. Strict and efficient measures must be put in place.

5.4. The Data Centre, as it stands, is hopelessly inadequate to address the challenges which disclosers/whistleblowers face. Unless the safety of information can be guaranteed, it should be removed from consideration.

5.5. A revision of this section should include housing the Central Data Centre within a specialised, independent whistleblower protection office that is sufficiently resourced to manage and protect the data. This safeguards information through limiting access to only those necessary to act upon the disclosures.

5.6. The Data Centre, as currently described in the Bill, is in danger of being both an ineffective waste of resources and potentially very harmful. Unless section 3 undergoes comprehensive revision to address the

problems with the Central Data Centre, this section should be removed entirely.

6. Authorised persons who can receive disclosures are given undue and extraordinary powers.

6.1. The Bill defines *authorised persons* as any person to whom a protected disclosure can be made. This is a very wide group, as explained in Chapter 2 of the Bill. Authorised persons include employers, legal practitioners, government officials, organisations named in section 9 of the Bill, and other persons with stricter requirements in section 10.

6.2. The Bill then gives authorised persons extraordinary powers that could harm and prevent whistleblowing. In section 27, authorised persons are given the power to revoke the protection given to disclosers/whistleblowers based on the (subjective) opinion of that authorised person. Since authorised persons can include employers who may have a stake in preventing whistleblowing, this could create immense harm.

6.3. Section 14(5) of the Bill gives an authorised person the power to decline to investigate a disclosure with a written reason to the discloser/whistleblower. This can include a belief that the matter has no merit, is trivial, is not following the right procedure, or has been dealt with before.

6.4. That an authorised person has the amount of power stipulated in the Bill to stop disclosures could easily distort and disrupt whistleblowing. This would force disclosers/whistleblowers to use the more onerous processes as set out in section 10 of the Bill.

6.5. There should be careful restrictions on dismissing or refusing to investigate disclosures. Otherwise, the power to choose whether to investigate disclosures could rest within a specialised whistleblower office - but whether this is a practical manner of dealing with the issue is open to question.

7. The Bill does not explicitly provide procedures for making protected disclosures to the media.

7.1. The media is an important tool to protect human rights, fight corruption, and strengthen democracy. While not usually a good first choice for making a disclosure, the option of going to the media should be available if it becomes necessary. Disclosers/whistleblowers need a guarantee that they will be protected by the provisions contained in this Bill in the event that they go to the media with their concerns.

7.2. The Bill, as it currently stands, lacks any explicit mention of being able to make a protected disclosure to the media, although it is assumed that this is included with others in section 10 of the Bill. This is a serious omission that could have far-reaching negative consequences.

7.3. An alternative is provided by the Open Democracy Bill of 1998 in section 63(3)(b), which allows for disclosures to news media. Incorporating section 63(3)(b) as it stands in the Open Democracy Bill would provide a measure of protection for those who go to the media.

7.4. Furthermore, explicitly welcoming disclosures to the media under certain circumstances would provide a defence against Strategic Litigation against Public Participation (SLAPP) suits. This is in accord with the findings in *Mineral Sand Resource Pty (Ltd) v Christine Reddell and Others* 2022 ZA 37 in which the court held that SLAPP suits form part of South Africa's Common Law.

8. The Bill should not limit the protection of whistleblowers or the powers of courts.

8.1. The use of “exceptionally” in section 10(d), describing an “exceptionally serious nature”, places a difficult burden on the discloser/whistleblower.

8.2. Similarly, the use of “imminent” in sections 10(d)(i) and (ii) could place an undue burden on the whistleblower to prove why the danger is imminent.

8.3. Sections 11(2) and (3) create a curious, apparent contradiction where 11(2) provides for individuals to disclose anonymously. However,

11(3) requires that those who disclose orally sign the transcription. This apparent contradiction needs to be resolved.

9. The language used in the Bill is overcomplicated and clumsy. The Bill is difficult to read, especially for persons who are not legal professionals.

9.1. Plain and understandable language is important in legislation to ensure individuals understand their rights, protections, and obligations. This is especially important when it includes whistleblowers who are likely to be under considerable stress.

9.2. The Constitution supports the need for understandable legislation in several sections. In section 32, the Constitution provides that everyone should have access to information, with national legislation enacted to give effect to this right.

9.3. The Bill is difficult to read and would leave potential whistleblowers unsure of the protection they would enjoy. It should therefore undergo extensive revision, focused on using plain language.

10. The Bill ultimately fails to fulfil its stated intentions in the preamble.

10.1. The intentions in the preamble are good and highlight the recommendations that the Zondo report put forward. This includes empowering a retired judge to investigate “whistleblower complaints” and the expansion of protection to include family, contractors, consultants, and temporary employees. It also expands whistleblower protection beyond corporate to include state employees.

10.2. Unfortunately, the Bill does not address the natural fear of whistleblowers of being victimised and attacked for disclosing improper conduct. The fear is that the Bill will fail to protect whistleblowers.

10.3. The Bill is unnecessarily restrictive in terms of how it defines *disclosers* while lacking explicit protections for those approaching the media with their claims.

10.4. The Bill provides extraordinary powers to authorised persons to review and dismiss disclosures that could hamper and discourage whistleblowing.

10.5. Furthermore, the Bill does not expressly create an independent office for the protection of whistleblowers. This has been strongly recommended from several groups, including NACAC, Zondo, and well-established civil society organisations specialising in whistleblower protection.

10.6. Against this background, there is an urgent need to reconsider the content of the Bill and subsequently to redraft it in a manner that is not difficult to understand.

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