



Southern African Catholic Bishops' Conference
PARLIAMENTARY LIAISON OFFICE



SUBMISSION

to the

**Department of Justice & Constitutional
Development**

on the

PROPOSED REFORMS of the
WHISTLEBLOWER PROTECTION REGIME
in SOUTH AFRICA

15 August 2023

1. The Catholic Parliamentary Liaison Office welcomes the opportunity to comment on the proposed reforms concerning whistleblower protection. We commend the Department for identifying the need for such reforms, and for recognizing that, to quote from the Executive Summary of the discussion document, the Protected Disclosures Act 26 of 2000 (the PDA), “is deficient in many important respects”.

2. Whistleblowers play a vital part in the exposure and detection of corruption and malfeasance in both the public and the private sectors. Unfortunately, they have seldom received the encouragement, support and – most crucially – the protection they deserve. Apart from the tragic murders of whistleblowers such as Babita Deokaran (the Tembisa Hospital case) and Sikhosiphi ‘Bazooka’ Rhadebe (the Xolobeni community activist), numerous others have been victimised and penalised by losing their jobs or being demoted. All this has no doubt created a chilling effect on potential whistleblowers who have access to information on corrupt activities and who would be willing to come forward if they could be assured of the necessary support and protection.

3. We therefore strongly support the measures proposed to strengthen, reform and improve whistleblower protection. We comment as follows on some of the proposed Specific Amendments set out in Part A of Chapter 10 of the discussion document:

3.1. definition of ‘detrimental action’: we support the rationale of expanding the definition of ‘occupational detriment’ so as to include persons who are not employees but who have disclosed in terms of the PDA. However, it is not clear that the wording of the proposed amendment, ‘detrimental action’ achieves this. It appears to replace, rather than add to, the definition of ‘occupational detriment’. Surely both occupational detriment in relation to employees and detrimental action not in relation to employees, are needed?

3.2. new definition of ‘improper conduct’: we support the proposed new definition, since it is broader and more far-reaching than the current definition of ‘impropriety’.

3.3. new section on confidentiality of whistleblower’s identity: we support the inclusion of this proposed new section. It is self-evident that the maintenance of confidentiality will encourage whistleblowing and offer a degree of protection to the whistleblower.

3.4. amendment to section 3 to introduce a reverse onus: we support this amendment. Anyone who causes a detrimental action after an instance of whistleblowing should have to justify such action; it should not be up to the whistleblower, who is usually in the weaker position, to have to prove that the detrimental action was as a result of their act of disclosure.

3.5. new section penalising coercive attempts to prevent disclosures: we support the inclusion of this new section, as it is likely to provide increased levels of protection to the whistleblower and to deter those who seek to prevent the disclosure.

3.6. new section invalidating contractual obligations against disclosures: we support this new section. No employment or other contract should be allowed to exclude or punish the making of a protected disclosure.

3.7. proposed new provision (d) in section 4(1B): we support the addition of (d) as it will assist whistleblowers who approach the courts. As already noted, whistleblowers are invariably in a position of weakness, including financial weakness, *vis-à-vis* their employers.

3.8. proposed new provision for Legal Aid assistance to whistleblowers: we support the provision of Legal Aid to whistleblowers in need of legal assistance.

3.9. proposed provision of adequate protection: the proposed amendment set out on page 98 of the discussion document appears to be a new provision, requiring the State to provide adequate protection for whistleblowers who have reasonable cause to believe that their or their families' lives or property are under threat. We support this new provision.

3.10. proposed new provision for the creation of a fund for whistleblowers: the creation of such a fund is a crucial step for the protection and encouragement of whistleblowers. Despite the proposed protections against occupational detriment and detrimental actions, many will find it impossible to remain employed by an employer against whom they have made a protected disclosure. The existence of a fund that can assist them financially while seeking other employment will significantly ease their burden. While such a fund will primarily be supported with public monies, it should be specifically provided that the private sector be allowed to contribute directly to it.

4. We wish the Department well in its work to make the PDA a more effective piece of legislation, and we look forward to the publication of an Amendment Bill in due course.

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