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DULLAH OMAR INSTITUTE
FOR CONSTITUTIONAL LAW, GOVERNANCE AND HUMAN RIGHTS

DULLAH OMAR INSTITUTE
University of the Western Cape
Private Bag X17, Bellville, 7535, RSA
T: (+27 21) 959-2951
E: doi@uwc.ac.za
Web: www.dullahomarinstitute.org.za

General Comments

Dr. Johandri Wright, a researcher at the Dullah Omar Institute, submitted comments on the Draft Protected Disclosures Bill, 2026 to the Department of Justice and Constitutional Development on 14 May 2026 on behalf of the Institute.

The Draft Protected Disclosures Bill represents an important and welcomed attempt to strengthen whistleblower protection in South Africa. The Bill contains several commendable improvements, including expanded protections against occupational detriment, the inclusion of related persons within the protective framework, and the clearer procedures and timelines introduced in section 14. These developments reflect a stronger appreciation for the practical risks and institutional challenges faced by whistleblowers.

At the same time, the Draft Bill still contains several structural weaknesses which may undermine its practical effectiveness if left unaddressed. In particular, the continued reliance on an employment or employment-like relationship as a prerequisite for protection may unnecessarily narrow the scope of the Bill. Concerns also remain regarding the continued emphasis placed on the motives of the discloser rather than the substance of the information disclosed and the risks faced by the whistleblower.

The most significant weaknesses in the current Draft Bill, however, relate to sections 26 and 28 dealing with complaints and remedies. As currently structured, these provisions appear unlikely to substantially improve whistleblowers' practical ability to access urgent, meaningful, and enforceable relief. Ultimately, the effectiveness of whistleblower protection legislation depends not only on the recognition of rights in principle, but also on whether whistleblowers are capable of accessing real protection and practical remedies in a timely and accessible manner.

The comments contained in this submission are structured on a section-by-section basis following the layout of the Draft Bill. Each comment seeks to identify specific areas of concern, ambiguity, inconsistency, or potential implementation challenges within the relevant provision. Where appropriate, the submission also includes recommendations or proposed considerations aimed at strengthening the practical effectiveness, accessibility, and legal certainty of the Bill. In addition to identifying areas requiring reconsideration, the submission also expressly acknowledges provisions of the Draft Bill which are particularly strong or represent meaningful improvements to the current legislative framework. Lastly, a list of additional academic articles, commentary pieces, and related materials has been included for the drafters' consideration should they wish to engage further with some of the broader issues raised in this submission.

Preamble

The Preamble would benefit from the more consistent use of predefined or clearly defined terminology. In particular, the reference to "criminal and other irregular conduct" may create unnecessary interpretive uncertainty. While the inclusion of criminal conduct is relatively clear, the meaning and scope of "irregular conduct" is not expressly defined within the Bill. This is significant because the Preamble may in future serve as an important interpretive aid when determining the

DULLAH OMAR INSTITUTE
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E: doi@uwc.ac.za
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types of disclosures the legislature intended to encourage and protect through the statutory framework. Ambiguous terminology at this level may therefore create uncertainty regarding the scope of protected disclosures and could result in inconsistent interpretation or application. Consideration should accordingly be given to either defining the term expressly or replacing it with terminology already used and defined elsewhere in the Bill.

The Preamble also appears to place considerable emphasis on the relationship between employers and employees. While employment-related disclosures remain an important component of whistleblower protection, the current wording may unintentionally create the impression that the Bill is primarily directed at employment-like relationships. This may unnecessarily narrow the perceived scope and application of the legislation, particularly in circumstances where disclosures are made by community members or other persons who may come into possession of information concerning wrongdoing. Consideration should therefore be given to adopting broader and more inclusive language in the Preamble to better reflect the wider public-interest purpose underpinning the Bill.

Section 1 – Definitions

The definition section would benefit from reconsideration of the extent to which some form of employment relationship is used as a prerequisite for protection under the Bill. While workplace-related disclosures remain central to whistleblower protection frameworks, limiting protection primarily to persons connected through employment-related relationships may unnecessarily narrow the scope of the Bill and undermine its broader public-interest objectives. This approach also contributes to increasingly complex definitional drafting and may give rise to future interpretive uncertainty regarding who qualifies for protection. In practice, important disclosures are often made by persons who do not fall within conventional employment relationships, including community members reporting gang-related activity to the South African Police Service, journalists, civil society actors, service users, or members of the public who come into possession of information relating to wrongdoing. Consideration should therefore be given to adopting a broader and more inclusive approach to standing and protection, particularly where disclosures are made in the public interest and concern improper conduct affecting governance, public safety, or the administration of justice.

The definition of “employee” may also benefit from simplification. Paragraphs (b) and (c) appear to substantially overlap, with the primary distinction being the express inclusion of “an independent contractor, consultant or agent” in paragraph (c). The current structure may therefore create unnecessary complexity without materially altering the meaning of the definition. Consideration should be given to consolidating these provisions into a single paragraph which includes independent contractors, consultants, and agents within the broader wording of paragraph (b). This would improve readability and drafting clarity without limiting the scope of protection.

The Bill should further clarify whether former employees are included within the definition of “employee”. This issue is important because disclosures are often only made after an individual has left the employment environment in which the wrongdoing occurred, particularly where fear of retaliation or institutional pressure prevented earlier reporting. The absence of express reference to former employees may create uncertainty regarding whether such persons qualify for protection

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under the Bill. Consideration should accordingly be given to expressly including former employees within the definition.

The Bill also appears to use inconsistent terminology when referring to wrongdoing. While the Preamble refers to "criminal and other irregular conduct", section 1 defines "improper conduct". The use of different terminology may create uncertainty regarding whether these concepts are intended to carry different meanings. To avoid interpretive ambiguity and promote consistency throughout the legislation, it would be preferable to adopt a single term consistently across the Bill.

The definition of "improper conduct" may also be too narrow in its current form. In particular, it does not expressly include conduct that threatens the continued viability of state institutions, public health, economic stability, or broader matters of public interest. Comparative international instruments, including the European Union Whistleblowing Directive, adopt a broader understanding of protected disclosures which extends beyond strictly unlawful conduct to include threats to the public interest and institutional integrity. If the Bill seeks to advance the constitutional values identified in the Preamble, including accountable, responsive, and transparent governance, consideration should be given to expanding the definition of "improper conduct" to include activities that threaten good governance, democratic institutions, economic stability, public health, or the effective functioning of the state.

The definition of "law enforcement agency" would also benefit from broader wording. In particular, paragraph (f), which currently refers to "any other organ of state authorised by law to investigate corruption or fraud", may unintentionally exclude institutions that investigate other forms of improper conduct falling outside corruption or fraud narrowly understood. Consideration should therefore be given to replacing the reference to "corruption or fraud" with "improper conduct". Such wording would be sufficiently broad to include institutions such as South African Revenue Service where, for example, tax evasion or related financial misconduct forms part of the underlying disclosure.

The definition of "occupational detriment" also appears to contain a minor typographical error in paragraph (b), where the word "phycological" should be corrected to "psychological".

Finally, the drafters should be commended for the inclusion of the definition of "related person". Whistleblower retaliation frequently extends beyond the disclosing individual and may affect family members, colleagues, associates, or other persons connected to the whistleblower. The express recognition of related persons reflects an important understanding of the practical realities of retaliation and significantly strengthens the protective framework created by the Bill.

Section 3(5) – Central Database

The drafters should be commended for expressly linking the concept of personal information in section 3(5) to the definition contained in the Protection of Personal Information Act 4 of 2013. This approach promotes legislative consistency and reduces the risk of conflicting interpretations across different statutory frameworks dealing with information protection and privacy. By relying on an existing statutory definition, the Bill also avoids unnecessary duplication and provides greater legal certainty to persons and institutions responsible for implementing its provisions. The cross-reference further

DULLAH OMAR INSTITUTE
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strengthens the Bill's alignment with broader constitutional and statutory obligations relating to privacy and the lawful processing of personal information.

Section 4(e) – Protected disclosures

Section 4(e) may benefit from greater clarity regarding the persons, bodies, or institutions to whom protected disclosures may be made. The section currently provides that a disclosure is protected if it is made to any person, body, or institution contemplated in section 10. However, upon reading section 10, it remains unclear precisely who falls within this category or how such persons or institutions are to be identified. The absence of clear guidance may create uncertainty for potential whistleblowers attempting to determine whether a disclosure will qualify for statutory protection. Consideration should therefore be given to either expressly identifying the relevant persons, bodies, or institutions within section 4(e), or alternatively providing clearer and more detailed guidance within section 10 regarding who may lawfully receive protected disclosures.

Section 5 – Disclosures not protected

Section 5 raises important concerns regarding the extent to which the Bill excludes certain disclosures from protection based primarily on the motive of the discloser rather than the nature, truthfulness, or public significance of the information disclosed. While it is understandable that the Bill seeks to prevent the abuse of protected disclosure mechanisms for improper personal purposes, some of the exclusions may unintentionally deny protection to persons who disclose genuine improper conduct and who consequently face significant personal risk as a result of making the disclosure.

In relation to section 5(e), consideration should be given to whether the exclusion may be overly broad in circumstances where a disclosure, despite being motivated in part by personal considerations, nevertheless reveals genuine improper conduct and places the discloser at risk. In practice, individuals may make disclosures for multiple overlapping reasons, including personal grievance, fear, moral concern, self-preservation, or frustration with institutional inaction. However, where the information disclosed is substantially true and exposes wrongdoing of public significance, the discloser may still face retaliation, intimidation, or physical danger irrespective of their underlying motivations.

The current wording, which excludes disclosures 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", may unintentionally create difficulties where the disclosure itself is true and concerns serious improper conduct. In many instances, the exposure of wrongdoing will inevitably result in reputational, professional, financial, or even criminal consequences for the person implicated. Such harm may be a natural consequence of exposing improper conduct rather than evidence that the disclosure itself should be denied protection. A whistleblower may, for example, simultaneously wish to expose wrongdoing and recognise that doing so will harm the implicated individual or institution. This does not necessarily negate the public-interest value of the disclosure.

Consideration should therefore be given to refining the provision so that the focus is placed less on the subjective intentions of the discloser and more on whether the disclosure was substantially true, made in the public interest, and revealed improper conduct warranting investigation or intervention.

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An overly rigid exclusion based primarily on motive may otherwise undermine the broader protective purpose of the Bill.

Similar concerns arise in relation to section 5(f), which excludes disclosures made for pecuniary gain or reward. While the intention behind this exclusion is understandable, the provision may conflict with existing legislative frameworks that expressly allow or incentivise disclosures through reward mechanisms. For example, section 34B of the National Environmental Management Act 107 of 1998 permits rewards to be paid in certain circumstances relating to environmental enforcement. Similar considerations may arise under section 18 of the Bill itself or in relation to police informants who provide information concerning criminal activity while facing substantial personal risk as a consequence of their cooperation. The current wording may therefore create unnecessary inconsistency between legislative frameworks and could unintentionally exclude persons who provide valuable information concerning serious wrongdoing merely because some form of financial benefit is associated with the disclosure. Consideration should accordingly be given to refining the exclusion so that it targets opportunistic disclosures, rather than disclosures that remain truthful, valuable, and made in the public interest despite the existence of a reward mechanism.

Section 5(h) raises similar concerns. The provision does not appear to sufficiently account for situations where the information disclosed is substantially true, reveals serious improper conduct, and places the discloser at personal or professional risk, notwithstanding the existence of a disciplinary motive. Consideration should therefore be given to refining the exclusion so that greater emphasis is placed on the truthfulness and public significance of the disclosure, rather than primarily on the subjective motivation of the discloser. The Bill should be cautious not to create circumstances where disclosures that expose serious wrongdoing are technically disqualified from protection, leaving the discloser vulnerable to retaliation or harm despite the public benefit arising from the disclosure.

More broadly, consideration should be given to the underlying purpose of whistleblower protection legislation. The central objective of such legislation is ultimately to protect persons who disclose information relating to improper conduct and who consequently suffer, or are placed at risk of suffering, retaliation, occupational detriment, intimidation, or other forms of harm as a result of making the disclosure. While the motivation of the discloser may in some circumstances be relevant, excessive focus on motive risks shifting attention away from the substance of the disclosure and the improper conduct being exposed. This may inadvertently encourage scrutiny of whistleblowers themselves, rather than the wrongdoing disclosed and the institutional response required to address it.

Consideration should therefore be given to adopting a more disclosure-centred approach, where the primary focus is placed on whether the information disclosed reveals improper conduct of public significance and whether the discloser faces adverse consequences as a result of making the disclosure. Such an approach would more closely align with the broader constitutional values of accountability, openness, responsiveness, and effective governance underpinning the Bill.

Section 6 – Protected disclosure to employer

Consideration should be given to broadening the wording of section 6 to expressly include volunteers and other similarly situated persons who may reasonably be expected to encounter and disclose

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E: doi@uwc.ac.za
Web: www.dullahomarinstitute.org.za

improper conduct within organisational settings. Such an approach would better align with the broader public-interest objectives of the Bill and help ensure that protection is determined primarily by the nature of the disclosure and the risk arising from it, rather than the technical nature of the relationship between the discloser and the institution concerned.

Section 7 – Protected disclosure to a legal practitioner or legal advisor

Section 7 may benefit from further refinement regarding the scope of information protected when disclosures are made to a legal practitioner or legal advisor. In its current form, the provision appears to extend protection to all information disclosed to a legal practitioner or advisor, irrespective of the purpose for which the information is communicated. This wording may be overly broad and could potentially create uncertainty regarding the intended ambit of the protection afforded by the section.

It appears that the underlying purpose of the provision is rather to protect disclosures made for the purpose of obtaining legal advice relating to the making of a protected disclosure, the legal consequences flowing from such disclosure, or the information concerning improper conduct which the disclosure seeks to expose. If this is indeed the intention, consideration should be given to narrowing the wording of the section to more clearly reflect this purpose.

A more focused formulation may improve legal certainty and reduce the risk of unintended interpretations that extend protection beyond the context of whistleblowing-related legal advice. It would also align the provision more closely with the broader objectives of the Bill, namely facilitating and protecting disclosures concerning improper conduct, rather than creating blanket protection for all communications with legal practitioners irrespective of their connection to protected disclosures.

Section 10 – Disclosure made to other person, body or institution regarded as protected disclosure

The comments raised under section 4 regarding uncertainty surrounding the persons, bodies, or institutions to whom disclosures may be made are equally applicable to section 10. Greater clarity regarding the recipients contemplated by this section would improve legal certainty and assist potential whistleblowers in determining whether their disclosures qualify for protection under the Bill.

Section 10(1)(a) also appears to introduce an additional requirement which is not expressly applicable to disclosures made under sections 6 to 8. In particular, the section requires that the information disclosed must be “substantially true”. Consideration should be given to whether this requirement should be applied consistently across all forms of protected disclosures in order to avoid interpretive inconsistency within the Bill. At present, the differing thresholds applicable to various forms of disclosure may create uncertainty regarding the standard that whistleblowers are expected to meet.

In addition, the use of the phrase “substantially true” may itself create interpretive difficulties and potentially give rise to unnecessary litigation. Questions may arise regarding the extent to which information must ultimately be proven correct before protection is triggered, particularly in circumstances where whistleblowers disclose information based on reasonable belief rather than complete factual certainty. Consideration should therefore be given to replacing the phrase with more established legal terminology, such as whether the discloser “reasonably believes” the information to be true. Such wording would better reflect the practical realities of whistleblowing, where individuals often disclose suspected improper conduct based on the information available to them at the time

DULLAH OMAR INSTITUTE
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E: doi@uwc.ac.za
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rather than on conclusively established facts. This would also simplify any interpretation exercise because South African jurisprudence have established clear guidelines for interpreting "reasonable".

Section 10(1)(b) raises concerns similar to those identified in relation to section 5(f). The exclusion or limitation relating to disclosures made for reward or personal benefit may create tension with section 18 of the Bill and with other legislative frameworks that expressly permit or incentivise disclosures through reward mechanisms. As previously noted, there are circumstances in which disclosures made in expectation of a reward may nevertheless reveal serious improper conduct and place the discloser at substantial personal or professional risk. Consideration should therefore be given to ensuring that the Bill does not unintentionally exclude otherwise valuable and truthful disclosures merely because some form of financial incentive or personal benefit is associated with the disclosure. Greater emphasis should instead be placed on the nature and truthfulness of the information disclosed and the public-interest value of the disclosure itself.

Section 10(2)(c), which refers to a "reasonable" period for action to be taken, may also create interpretive uncertainty when read together with later provisions of the Bill that prescribe specific timeframes and deadlines. The simultaneous use of open-ended standards and fixed statutory periods may give rise to inconsistency regarding the applicable obligations imposed on institutions responsible for responding to disclosures. Consideration should therefore be given to aligning this subsection with the prescribed timeframes contained in section 14 of the Bill in order to promote consistency, certainty, and administrative clarity.

Section 10(2)(d)(ii) appears to recognise matters affecting the public interest as relevant considerations in determining whether a disclosure qualifies for protection. However, the definition of "improper conduct" in section 1 does not expressly include threats to the public interest within the scope of protected disclosures. This may create inconsistency within the Bill regarding the types of conduct the legislation seeks to expose and address. Consideration should therefore be given to expanding the definition of "improper conduct" to expressly include conduct that threatens the public interest, institutional integrity, public health, economic stability, or accountable and effective governance. Such an amendment would better align the definitional framework with the broader objectives and protections reflected elsewhere in the Bill.

Section 10(4)(d) would also benefit from further clarification. As currently drafted, it is unclear whether a breach of a duty of confidentiality by the employer would render the disclosure more or less reasonable for purposes of protection under the section. The wording may therefore create interpretive uncertainty regarding the role confidentiality obligations are intended to play within the protected disclosure framework. When reconsidering this subsection, careful attention should be given to the risk that confidentiality obligations or secrecy-based provisions may be interpreted or relied upon as mechanisms to shield improper conduct from disclosure. While legitimate confidentiality interests undoubtedly exist in certain contexts, the Bill should avoid creating circumstances where internal secrecy arrangements effectively undermine the objectives of whistleblower protection legislation or discourage disclosures concerning serious improper conduct made in the public interest.

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Section 11 – Making disclosure to authorised person other than employer of discloser

Section 11(4) is a particularly important provision and the drafters should be commended for its inclusion. The subsection appropriately recognises that contractual provisions, confidentiality clauses, settlement agreements, or other employment-related arrangements should not be used to undermine or contractually exclude the statutory protections afforded to whistleblowers under the Bill. This is an important safeguard, particularly in circumstances where individuals may be pressured into silence through contractual terms, non-disclosure agreements, or settlement arrangements aimed at preventing the disclosure of improper conduct.

The provision further strengthens the practical effectiveness of the Bill by expressly recognising that agreements which discourage employees from making protected disclosures, or which attempt to waive statutory protections, should not be enforceable. This reflects an important public-policy consideration, namely that the disclosure of improper conduct in the public interest should not be overridden through private contractual arrangements.

Given the significance of this protection, consideration should be given to moving subsection (4) into a standalone provision or separate section within the Bill in order to increase its visibility and prominence. As currently positioned, the importance of the subsection may be overlooked despite its potentially far-reaching implications for employment contracts, settlement agreements, confidentiality clauses, and related workplace arrangements. A standalone provision would improve accessibility, strengthen legal certainty, and more clearly communicate the legislature's intention that whistleblower protections cannot be contractually excluded or undermined.

Section 14 – Dealing with protected disclosures

The drafters should be commended for section 14, which is one of the strongest aspects of the current Draft Bill. The inclusion of clear procedures, mandatory obligations, and prescribed timeframes is particularly welcomed, as it significantly strengthens legal certainty, accountability, and the practical implementation of the protected disclosure framework. In practice, delays and uncertainty regarding institutional responses frequently undermine whistleblower confidence and discourage disclosures. The structured approach adopted in this section therefore represents an important improvement.

Subsection (9), read together with section 3, is especially valuable. The coordination and referral mechanisms contemplated by these provisions may play an important role in preventing duplication of mandates, jurisdictional disputes between institutions, fragmented investigations, and unnecessary resource wastage. This is particularly important within the South African governance context, where multiple institutions may possess overlapping investigative or enforcement responsibilities. The section accordingly strengthens both institutional efficiency and the effective management of protected disclosures.

Section 15 – Application for court assistance

Section 15 is an important provision aimed at protecting the integrity of investigations and safeguarding both evidence and potential witnesses from interference. The section appropriately recognises the practical risks associated with investigations into improper conduct, including the destruction of evidence and intimidation of persons willing to provide information.

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E: doi@uwc.ac.za
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Consideration should, however, be given to improving practical access to judicial relief by expressly providing that any Magistrate's Court having jurisdiction may be approached for the relief contemplated in the section. As currently drafted, the reference to "any court having jurisdiction" may create uncertainty regarding whether whistleblowers or authorised persons are expected to approach higher courts in circumstances where urgent intervention is required.

Given the urgency that may accompany situations involving the destruction of evidence, witness intimidation, or retaliation, it is important that accessible and geographically available courts are empowered to grant the necessary relief. Expressly including Magistrates' Courts within the wording of the section may improve accessibility, reduce costs, expedite interventions, and strengthen the practical effectiveness of the protective measures created by the Bill.

Section 16 – Finalisation of investigation

Section 16(2)(a)(iii) refers to a "former employee", despite the current definition of "employee" in section 1 not expressly including former employees. This may create interpretive inconsistency within the Bill. Consideration should therefore be given to expressly including former employees within the definition of "employee" in section 1 to ensure consistency across the legislation.

More broadly, this subsection further highlights the concerns already raised regarding the use of an employment relationship as a prerequisite for whistleblower protection. Important disclosures are frequently made by persons who fall outside traditional employment relationships, and the Bill should be cautious not to unnecessarily narrow the scope of protection through overly restrictive definitional requirements.

Section 17 – Enforcement of report

Section 17 illustrates the significant responsibilities placed upon authorised persons under the Bill, including the investigation of disclosures, the management of procedural obligations, and the drafting of reports capable of supporting further institutional or legal action. Given the importance and complexity of these functions, consideration should be given to whether the Bill should prescribe at least minimum qualifications, expertise, or experience requirements for persons appointed as authorised persons.

The effectiveness of the protected disclosure framework will depend substantially on the competence, independence, and capacity of those responsible for implementing it. Inadequate expertise or institutional capacity may undermine investigations, delay processes, weaken the quality of findings and recommendations, and ultimately reduce confidence in the system. Consideration should therefore be given to including minimum competency requirements relating to areas such as investigations, law, governance, forensic analysis, labour relations, compliance, or public administration, depending on the nature of the institution concerned. Such safeguards may strengthen the professionalisation, consistency, and credibility of the framework established by the Bill.

Section 21 – Protection from occupational detriment or detrimental action

The drafters should be commended for the extensive protections afforded under section 21. The section reflects an important recognition of the wide range of retaliation, intimidation, and detrimental

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E: doi@uwc.ac.za
Web: www.dullahomarinstitute.org.za

consequences that whistleblowers may face following a protected disclosure. The inclusion of broad protections significantly strengthens the practical effectiveness of the Bill and aligns with the broader constitutional objectives of accountability, openness, and responsive governance.

Subsection (4), which refers to interim protection, may however benefit from further elaboration regarding the types of interim protective measures that may be made available to whistleblowers. In practice, whistleblowers frequently require urgent and flexible interventions to protect their employment, safety, financial stability, mental well-being, or personal security while investigations or legal processes remain ongoing. Consideration should therefore be given to including a non-exhaustive or open-ended list of possible interim protective measures contemplated by the Bill. Such measures could include, for example, temporary relocation, transfer arrangements, protection against suspension or dismissal, psychological support, confidentiality measures, security interventions, financial assistance, or urgent court-based relief. An open list would improve interpretive guidance while preserving sufficient flexibility to respond to the varied circumstances whistleblowers may face in practice.

The section may also benefit from further consideration regarding remedies available to the families or dependants of whistleblowers in circumstances where the whistleblower suffers loss of life as a consequence of making a protected disclosure. In practice, retaliation against whistleblowers may extend beyond occupational detriment and may involve serious physical harm or targeted violence. Where a whistleblower who served as the primary breadwinner is killed, surviving family members may experience severe financial and social consequences despite the disclosure having been made in the public interest. Consideration should therefore be given to whether the Bill should provide some form of support, compensation mechanism, or remedial framework for dependants or related persons affected by such circumstances.

Section 22 – Witness protection for discloser

Section 22 raises an important issue regarding the practical accessibility and operation of whistleblower protection measures. While the drafters should be commended for expressly extending the application of the Witness Protection Act to disclosers and related persons, consideration should be given to whether a mere cross-reference to the Witness Protection Act is sufficient to create an accessible, effective, and user-friendly whistleblower protection framework.

The Witness Protection Act was not originally designed specifically for whistleblowing contexts and the process for accessing protection under that framework is procedurally and administratively complex. As reflected in the Act, accessing protection may involve multiple reporting channels, formal applications, evaluations, written protection agreements, ongoing obligations, and discretionary decision-making processes. For many whistleblowers, particularly those acting urgently, without legal representation, or while facing intimidation or retaliation, navigating such a framework may prove extremely difficult in practice.

Consideration should therefore be given to developing a more detailed and self-contained system of whistleblower protection within the Bill itself, rather than relying predominantly on incorporation by reference. In particular, the Bill may benefit from adopting a system of incremental protection, where

DULLAH OMAR INSTITUTE
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E: doi@uwc.ac.za
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different forms and levels of protection become available depending on the nature of the disclosure, the degree of risk faced by the whistleblower, and the surrounding circumstances.

The Bill should ideally set out, either directly or through regulations, the types of protections available to whistleblowers, the circumstances in which such protections may be granted, the procedures for requesting assistance, the institutions responsible for implementation, and the applicable timelines for intervention. Importantly, consideration should also be given to providing certain baseline or default protections automatically from the date the protected disclosure is made, without requiring the whistleblower to navigate a separate and potentially burdensome application process before receiving assistance.

Such baseline protections could include, for example, access to psychosocial support, referral mechanisms, emergency risk assessments, or temporary workplace interventions. More extensive protections, including relocation, identity changes, physical protection, or specialised witness protection measures, could then be made available progressively where the level of risk justifies escalation.

At minimum, consideration should be given to empowering the responsible Minister to prescribe a simplified and dedicated whistleblower protection framework through regulations. This would improve accessibility, legal certainty, and practical implementation while ensuring that the protection system remains responsive to the realities faced by whistleblowers in South Africa.

Section 24 – Complaints mechanism

Section 24(6)(b) may benefit from greater precision in its wording. The phrase “security sensitive information” is vague and may create interpretive uncertainty regarding the types of information contemplated by the subsection. Broad or undefined terminology of this nature may also create a risk of inconsistent application or overly expansive interpretation in practice.

Consideration should therefore be given to replacing the phrase with more clearly defined or legally recognised terminology drawn from existing legislative frameworks. This would improve legal certainty and reduce the risk of the provision being interpreted too broadly in a manner that may unnecessarily limit access to information or protected disclosures.

Section 26 – Finalisation of complaint

Section 26 represents one of the weakest aspects of the current Draft Bill and may require substantial reconsideration. While the establishment of a dedicated complaints mechanism reflects an understandable attempt to create an independent avenue for whistleblower complaints and protection, the powers currently afforded to the retired judge or complaints mechanism appear extremely limited in practice. As presently drafted, the mechanism appears largely confined to receiving complaints, referring matters, and compiling reports regarding the outcome of investigations. This raises serious concerns regarding whether the mechanism will be capable of providing meaningful, timely, and effective relief to whistleblowers facing retaliation, occupational detriment, intimidation, or threats to their safety.

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The establishment and operation of such a mechanism will likely require considerable financial, institutional, and administrative investment by the state. However, in its current form, the practical value of the mechanism does not appear proportionate to the costs and resources that would be required to sustain it. The section therefore raises an important institutional design question: whether the creation of an additional oversight structure is necessary where constitutionally established institutions already exist which are arguably better suited, empowered, and equipped to discharge these functions.

In particular, consideration should be given to whether many of these functions could more effectively be performed by institutions such as the Public Protector or the National Prosecuting Authority. Both institutions already possess constitutionally or statutorily recognised independence, investigative expertise, institutional infrastructure, and legal capacity relevant to the handling of serious complaints involving improper conduct, maladministration, corruption, retaliation, and abuse of power.

Importantly, the Public Protector possesses the power to issue binding and enforceable remedial action following investigation. This means that, unlike the current complaints mechanism contemplated in the Bill, the Public Protector is capable not merely of compiling a report, but of directing corrective action capable of producing tangible outcomes and institutional accountability. Similarly, the National Prosecuting Authority may be uniquely positioned to facilitate urgent court-based interventions or fast-track litigation where whistleblowers require immediate protection or enforcement of rights. These institutions therefore already possess mechanisms capable of moving beyond reporting functions toward enforceable remedies and practical relief.

As currently structured, the complaints mechanism may unintentionally create an additional bureaucratic layer that whistleblowers must navigate before obtaining meaningful assistance or protection. Rather than simplifying access to remedies, the mechanism risks fragmenting responsibilities and delaying intervention by requiring matters to move through multiple institutional stages before effective relief becomes available. In practice, whistleblowers frequently require urgent and decisive intervention, particularly where occupational detriment, financial harm, intimidation, or threats to personal safety are involved. Delays caused by additional procedural layers may significantly undermine the effectiveness of the protective framework.

More broadly, the section appears to reflect a recurring concern within the Bill, namely that considerable emphasis is placed on reporting, procedural administration, and institutional coordination, while comparatively limited attention is given to ensuring that whistleblowers can rapidly access enforceable remedies and tangible protection in practice. Consideration should therefore be given either to substantially strengthening the powers of the complaints mechanism itself, including the ability to issue binding directives or facilitate urgent protective interventions, or alternatively to assigning these functions to existing institutions already empowered to provide meaningful remedial action and legal enforcement. The latter would be more cost-effective considering the state's current financial state.

Section 28 – Remedies

Section 28 raises concerns similar to those identified in relation to section 26 and represents another significant weakness in the current Draft Bill. While the section is framed as creating remedies for

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whistleblowers and related persons, it appears in substance to function largely as a roadmap directing whistleblowers toward remedies that already exist under other legislative frameworks, particularly the Labour Relations Act and ordinary court processes. The section therefore does not appear to create substantial additional protections, specialised remedies, or simplified enforcement mechanisms specifically tailored to the realities faced by whistleblowers.

As currently drafted, the section may do little to improve the practical accessibility of legal relief for whistleblowers. In practice, one of the greatest barriers facing whistleblowers is not necessarily the absence of legal rights, but rather the difficulty, cost, complexity, and time involved in enforcing those rights. Litigation processes are often lengthy, procedurally complex, financially burdensome, and emotionally exhausting, particularly for individuals who may already be facing unemployment, financial insecurity, intimidation, reputational harm, or threats to their safety. Merely directing whistleblowers toward existing remedies may therefore be inadequate if the Bill does not also address the practical obstacles involved in accessing those remedies.

Consideration should therefore be given to developing more streamlined and whistleblower-specific enforcement mechanisms within the Bill itself. This could include, for example, simplified application procedures, expedited or specialised processes, reduced procedural barriers, dedicated court rules, prescribed timelines for urgent hearings, interim relief mechanisms, legal assistance frameworks, or mandatory institutional support measures. The Bill should ideally seek not only to recognise existing remedies, but also to make them meaningfully accessible in practice.

One possible approach would be to expressly provide that applications brought under the Bill are deemed urgent for purposes of court rules, particularly where occupational detriment, dismissal, intimidation, financial prejudice, or threats to safety are alleged. Such a provision may significantly improve the ability of whistleblowers to access timely relief before the harm suffered becomes irreversible. Similar consideration could also be given to fast-tracked Labour Court procedures or simplified jurisdictional provisions to reduce delays and procedural fragmentation.

More broadly, the section appears to reflect a recurring challenge within the Bill, namely that while rights, obligations, and institutional processes are recognised at a conceptual level, insufficient attention is given to the practical realities of enforcement and access to justice. Effective whistleblower protection requires not only the recognition of rights in principle, but also realistic, accessible, and efficient mechanisms capable of providing urgent and meaningful relief in practice.

Additional Information

- The drafters should consider the recommendations proposed in the following publications:
    - Wright J “Improving Legislative Protection for Whistleblowers of Corruption in South African Municipalities” (2025) South African Public Law Journal available at https://doi.org/10.25159/2522-6800/17941
    - Wright J “Encouraging Whistleblowers of Corruption in South Africa: A Critical Evaluation of Money Rewards” (2024) Journal of Anti-Corruption Law available at https://www.epubs.ac.za/index.php/jacl/article/download/2368/1651/5341

DULLAH OMAR INSTITUTE
University of the Western Cape
Private Bag X17, Bellville, 7535, RSA
T: (+27 21) 959-2951
E: doi@uwc.ac.za
Web: www.dullahomarinstitute.org.za

- Wright J "Does the Protected Disclosures Bill propose a stronger shield for whistleblowers?" (2026) Daily Maverick available at https://www.dailymaverick.co.za/opinionista/2026-04-20-does-the-protected-disclosures-bill-propose-a-stronger-shield-for-whistleblowers/?dm_source=blocks-horizontal&dm_medium=card-link&dm_campaign=inform