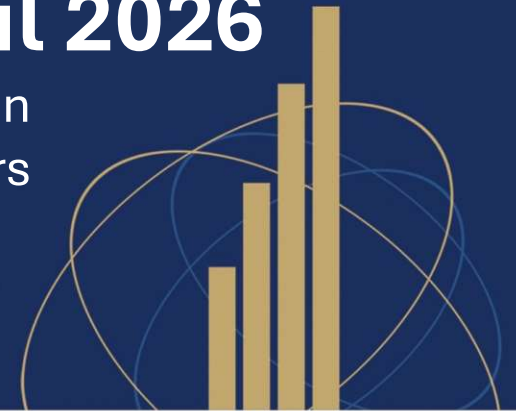




**23 April 2026**

The role of institutions in  
supporting practitioners



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**Adv Nomsa Thomas**  
Public Protector South Africa

SAQA Recognised Professional Body

# Constitutional Mandate of the Public Protector



The Public Protector is established in terms of section 181(1)(a) the Constitution of the Republic of South Africa to strengthen constitutional democracy.



The Public Protector has powers, as regulated by section Constitution 182(1), to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper or to result in any impropriety or prejudice; report on that conduct and take appropriate remedial action.



The Public Protector has additional powers and functions as prescribed by national legislation. One of the core pieces of legislation in this regard is the Public Protector Act 23 of 1994, which empowers the Public Protector to investigate issues of undue delays in the delivery of public services; unfair, capricious or discourteous behavior; abuse of power; abuse of state resources, dishonesty or improper dealings in respect of public money and improper enrichment.

# Primary Mandate Areas

Maladministration and abuse of power, unlawful enrichment, any form of prejudice (**Public Protector Act 1994**)

**Anti-corruption** Mandate  
(Prevention and Combating of Corrupt Activities Act), 2004  
**(PRECCA)**

Enforcement of the **Executive Members' Ethics Code**  
(Executive Members' Ethics Act) 1998

Protection for **whistle-blowers** and Investigation of disclosures in terms of **Protected Disclosures Act 2000**

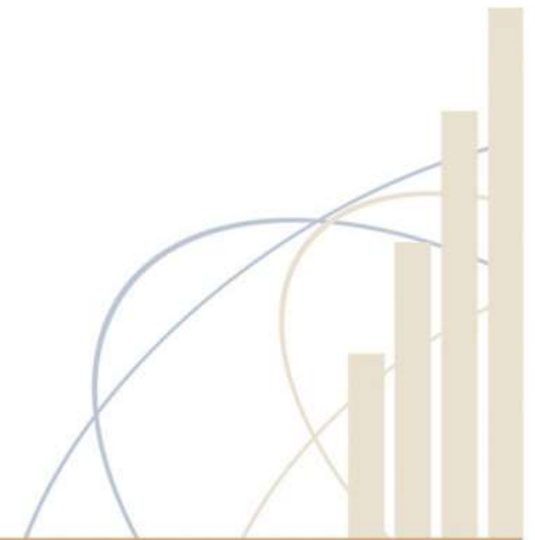
**Additional** powers and functions as prescribed by national legislation set out hereunder

# Search and Seizure

## SEARCH AND SEIZURE



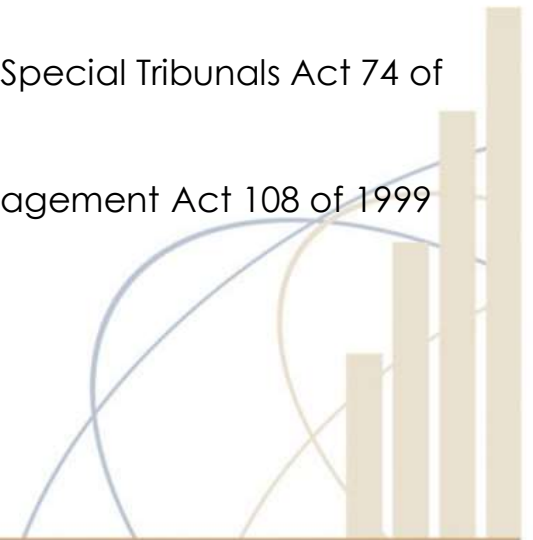
Section 7A of the Public Protector Act, further provides that the Public Protector shall be competent to enter or authorize any other person to enter any building or premises and to make such an inquiry and seize anything on those premises which has a bearing on the investigation.



# Additional Mandate Areas

**Public Protector has additional powers and functions as prescribed by national legislation:**

- ❑ Electoral Commission Act 51 of 1996
- ❑ National Archives and Record Service Act 43 of 1996
- ❑ National Nuclear Regulator Act 447 of 1999
- ❑ Promotion of Equality & Prevention of Unfair Discrimination 4 of 2000
- ❑ Public Finance Management Act 1 of 1999
- ❑ Lotteries Act 57 of 1997
- ❑ Special Investigating Units & Special Tribunals Act 74 of 1996
- ❑ National Environmental Management Act 108 of 1999



# Publishing of Public Protector Reports



## Section 8(2)(A)(a) of the Public Protector Act

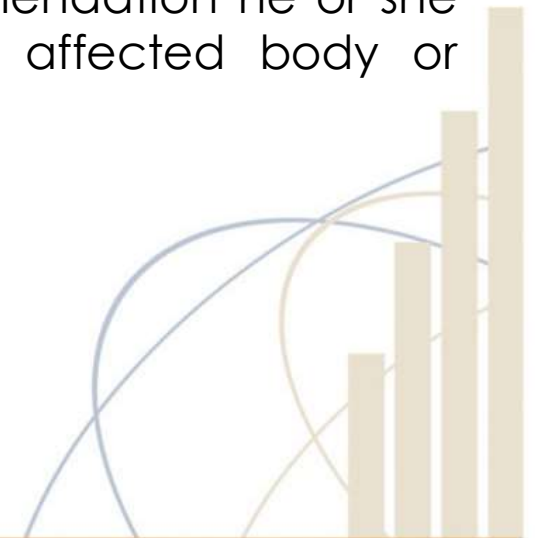
“Any report issued by the Public Protector shall be open to the public unless the Public Protector is of the opinion that exceptional circumstances require that the report be kept confidential”.



# Remedial Action of the Public Protector



- ❑ Sec 182(1)(c) of the constitution empowers the Public Protector to take remedial action in relation to any investigation
- ❑ In terms of s 6(4)(c)(ii) of the Public Protector Act, the Public Protector may refer any matter to an appropriate public body with a recommendation regarding the redress of the prejudice resulting therefrom or to make any other appropriate recommendation he or she deems expedient to the affected body or authority.



# Remedial Action of the Public Protector



- ❑ Constitutional Court judgment in *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* held that the Public Protector's remedial action must be implemented unless it is set aside by a Court.

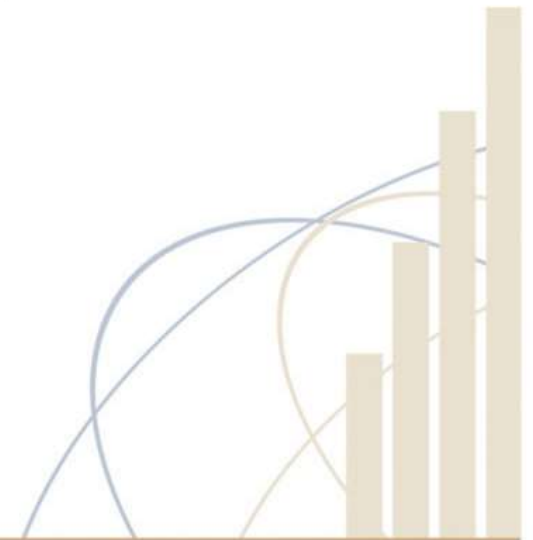
*"... **the remedial action taken by the Public Protector has a binding effect,** "When remedial action is binding, compliance is not optional, and whatever reservations the affected party might have about its fairness, appropriateness or lawfulness. For this reason, the remedial action taken against those under investigation cannot be ignored without any legal consequences."*

- ❑ The Courts also emphasised that only a **court order** will suffice to **suspend implementation of the remedial action** – i.e. by taking the matter on judicial review AND applying for an order to stay the remedial action pending the outcome of the review proceedings

# Responsibility of Organs of State

## Section 181(3) of the Constitution

"Other organs of state, through legislative and other measures, must assist and protect these institutions (**constitutional institutions**) to ensure the independence, impartiality, dignity and effectiveness of these institutions".

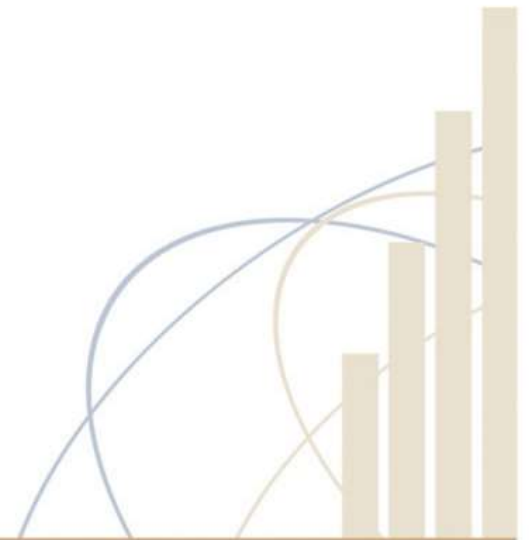


# Fraud

Is the unlawful and intentional making of a misrepresentation which causes actual or potential prejudice to another

## CAUSES OF FRAUD

- Feeling underpaid and over worked
- Funding of high standard of living due to peer pressure
- Overriding internal controls
- Lack of ethical conduct



# Fraud Cont.

## ACTIVITIES THAT INVOLVE FRAUD IN THE WORKPLACE

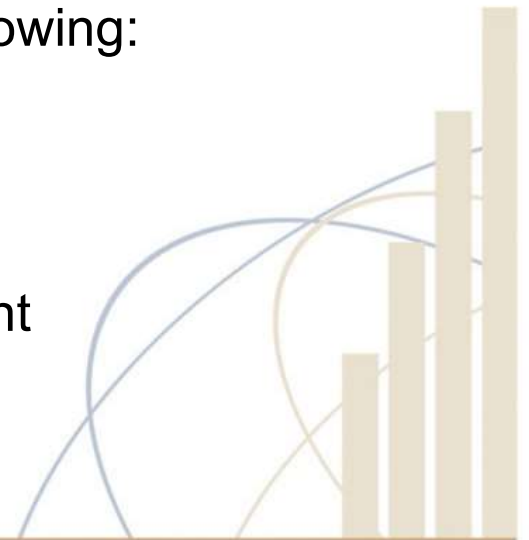
- Misstatements of qualifications, experience and other material facts on job applications and CV's for recruiting purposes.
- Misstatements of material facts by bidders on tender, proposal or quotation documentation.
- Bribery, blackmail or extortion
- Misconduct in the handling or reporting of cash or financial transactions



# Corruption

## DEFINITION OF CORRUPTION

- ❑ Any conduct or behavior in relation to persons entrusted with responsibilities in the public office that violates their duties as public officials and is aimed at obtaining undue gratification of any kind for themselves or for others.
  
- ❑ Gratification in this sense can include any of the following:
  - Any donation, gift, loan or reward
  - Money whether in cash or otherwise
  - The avoidance of a penalty or any sort of punishment



# Corruption Cont.

DID YOU KNOW THAT THE FOLLOWING CONSTITUTE CORRUPTION IN THE WORKPLACE?

- That exercising preferential treatment in the awarding of tenders is a form of Corruption?
- Performing favors for relatives and friends is a form of corruption?
- Manipulating the value of assets is a form of Corruption?
- Being influenced in the allocation of public funds is a form of Corruption?

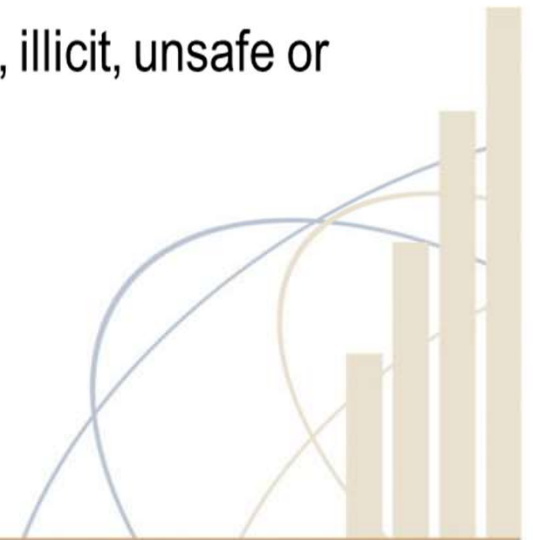


# Whistle Blowing

## WHISTLE BLOWING DEFINITION



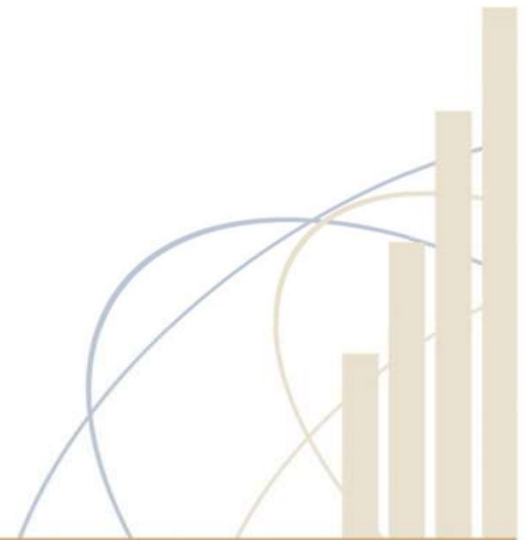
- ❑ Whistle blowing is the activity of a person, often an employee, revealing information about activity within a private or public organization that is deemed illegal, immoral, illicit, unsafe or fraudulent.



# Whistle Blowing Cont.

## LAWS THAT PROTECT WHISTLE BLOWERS

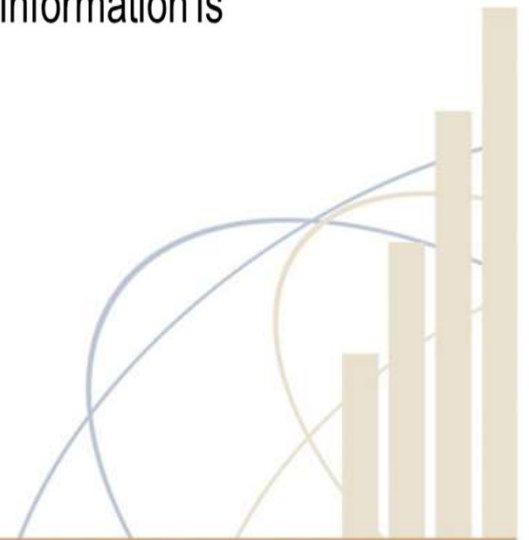
- South Africa has various laws that apply to different categories of whistleblowers, such as employees or the general public. These laws provide different levels of protection to those who come forward with information.
- The main laws that pertain to whistleblowers are:
  - The Constitution.
  - The Protected Disclosures Act of 2000.
  - The Labour Relations Act of 1995.
  - The Companies Act of 2008.
  - The Protection Against Harassment Act of 2011.



## Whistle Blowing Cont.

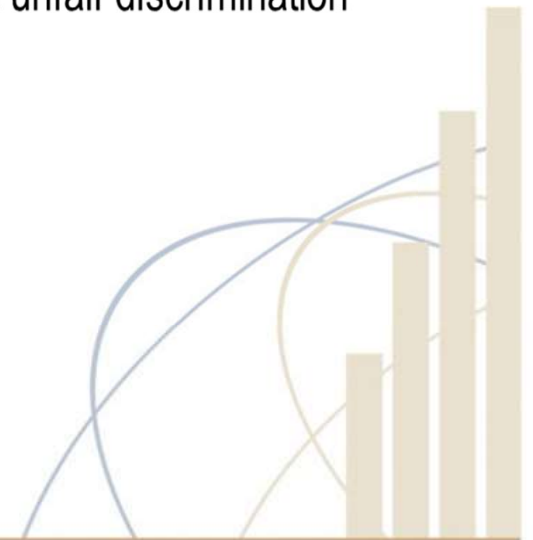
### The Protected Disclosures Act 26 of 2000

- ❑ The main piece of legislation for employees is the Protected Disclosures Act (PDA). Also known as the Whistleblowing Act, it came into force in February 2001. It applies to people in both the public and private sectors and encourages them to raise concerns about improprieties in the workplace.
- ❑ The PDA promotes the public interest by protecting whistleblowers from being subjected to occupational detriment in their work environment. It applies whether or not the information is confidential and extends to malpractice occurring overseas.



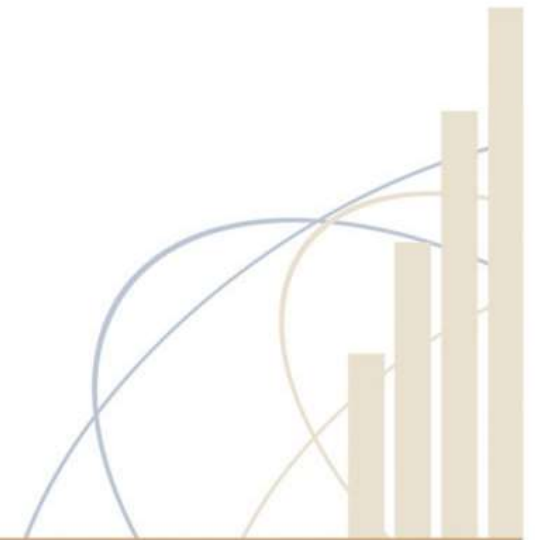
## Whistle Blowing Cont. What Qualifies as a Disclosure?

- As an official, you must have reason to believe that information regarding any conduct of an employer, or an employee of that employer, complies with one or more of the following:
  - a criminal offence has been committed;
  - a person has failed to comply with a legal obligation;
  - a miscarriage of justice has occurred;
  - the health or safety of an individual has been endangered;
  - the environment has been, is being or is likely to be damaged, which results in unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act 4 of 2000); or
  - any matter referred to above either has been deliberately concealed;.



## Whistle Blowing Cont. Protection Provided by the Act

- ❑ The PDA protects whistleblowers who are employees in the public and private sectors from being subjected to occupational detriments, such as being dismissed, demoted, suspended or disciplined.
- ❑ If you are subjected to occupational detriment, you can approach any court that has jurisdiction for relief, such as the Labour Court. You can also pursue any other process allowed by law, such as approaching the Commission for Conciliation, Mediation and Arbitration.



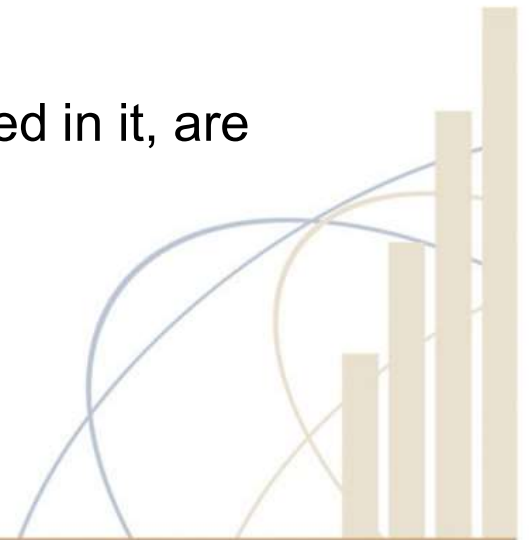
## Whistle Blowing Cont.

### Role of the Public Protector Relating to Whistleblowers

❑ Section 8(1)(a) of the Protected Disclosures Act 26 of 2000 states that:

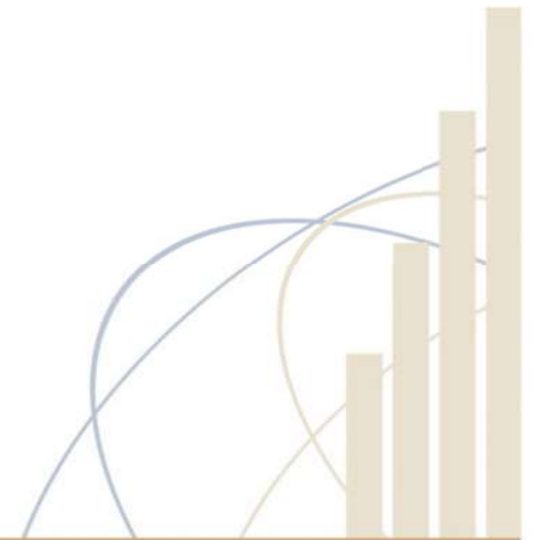
Any disclosure made in good faith to the Public Protector in which the employee concerned reasonably believe that –

- (i) the relevant impropriety falls within any description of matters which in the ordinary course are dealt with by the PP;
- (ii) The information disclosed, and any allegation contained in it, are substantially true is a protected disclosure.



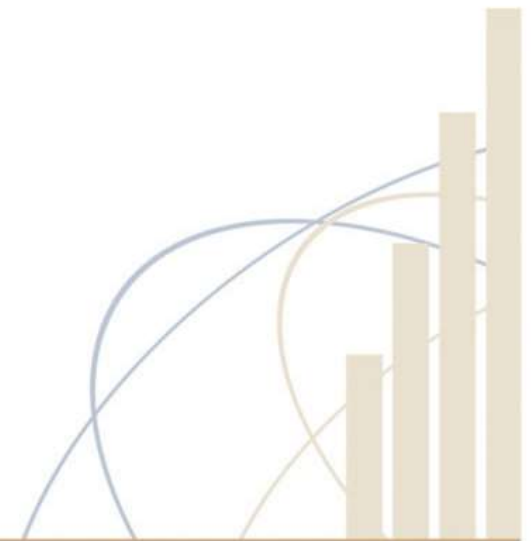
## Whistle Blowing Cont. Challenges Facing Whistleblowers

- ❑ In South Africa whistleblowers can be confused with impimpis – apartheid-era informants. This historical context has unfortunately allowed the stigmatisation of whistleblowing as an activity to be despised rather than encouraged.
- ❑ The fear of the legal, financial and reputational consequences;
- ❑ The belief that nothing will be done, that it will make no difference;
- ❑ Uncertainty about how, where and to whom to report;
- ❑ Fear of unfair treatment, retaliation and discrimination



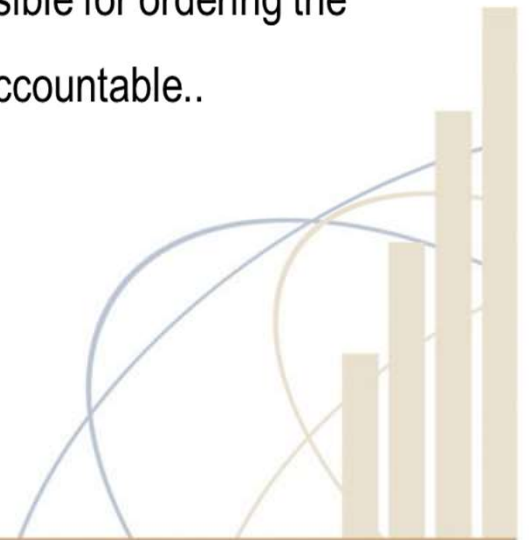
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## Whistle Blowing Cont. Real Life of Whistleblowers

- ❑ The murder of Babita Deokaran in August 2023 is one tragic example. Deokaran was a senior financial officer at the Gauteng Department of Health and an important witness in an investigation of corruption within the department; former colleagues believe she was helping authorities link senior political figures to irregular procurement deals and contracts.
- ❑ President Ramaphosa hailed the late whistleblower as “a hero and a patriot” and several individuals have been arrested, but it remains to be seen whether those ultimately responsible for ordering the assassination of a public servant acting with integrity will be exposed or held accountable..



## Whistle Blowing Cont. Future of Whistleblowing in South Africa

- ❑ There is a Whistleblower Protection Bill where Department of Justice made the following proposals.
- ❑ The Justice Department suggests that whistleblowers under the Protected Disclosures Act should have the right to request state protection if they reasonably believe that their lives or those of their immediate family members are in danger.
- ❑ It also proposes that criminal offences should be imposed on certain persons or organisations that ignore whistleblowers' disclosures, such as the Public Protector and the Public Service Commission.



## Whistle Blowing Cont. Future of Whistleblowing in South Africa

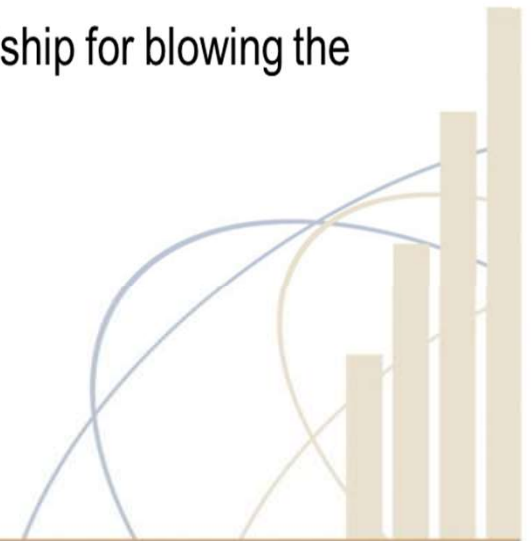
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## Whistle Blowing Cont.

### Future of Whistleblowing in South Africa

- ❑ Another proposal is to allow whistleblowers who believe that detrimental action has been taken against them to file complaints with the Human Rights Commission. The commission will have the authority to decide whether to investigate or dismiss the complaint or refer it to a court to determine whether detrimental action was indeed taken.
- ❑ The proposal rejects the idea of providing financial rewards to whistleblowers. It opts instead for a fund to assist those who are dismissed and who face severe financial hardship for blowing the whistle.



## Whistle Blowing Cont.

### What South Africa needs in terms of Whistleblowing

- ❑ South Africa need a consolidated legislative framework that deals with whistleblowing.
- ❑ This fragmented regulation creates confusion and results in inconsistent protection.
- ❑ The complexity and vagueness may also discourage people from disclosing wrongdoing.
- ❑ The act protects whistleblowers who are employees in the public and private sectors from being subjected to occupational detriments, such as being dismissed, demoted, suspended or disciplined.  
The Act needs to extend its protections to include persons who are not in an employer-employee relationship

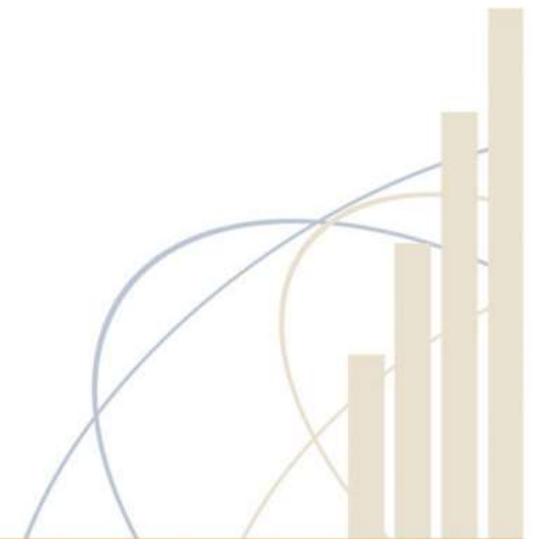


## Whistle Blowing Cont.

### What South Africa needs in terms of Whistleblowing



- ❑ The Public Protector needs to play a more active part in the protection of whistleblowers through the investigation of breaches in protection mechanism and the taking of remedial action to ensure that whistleblowers are placed in the position they were prior to the breach.





# Thank You!



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