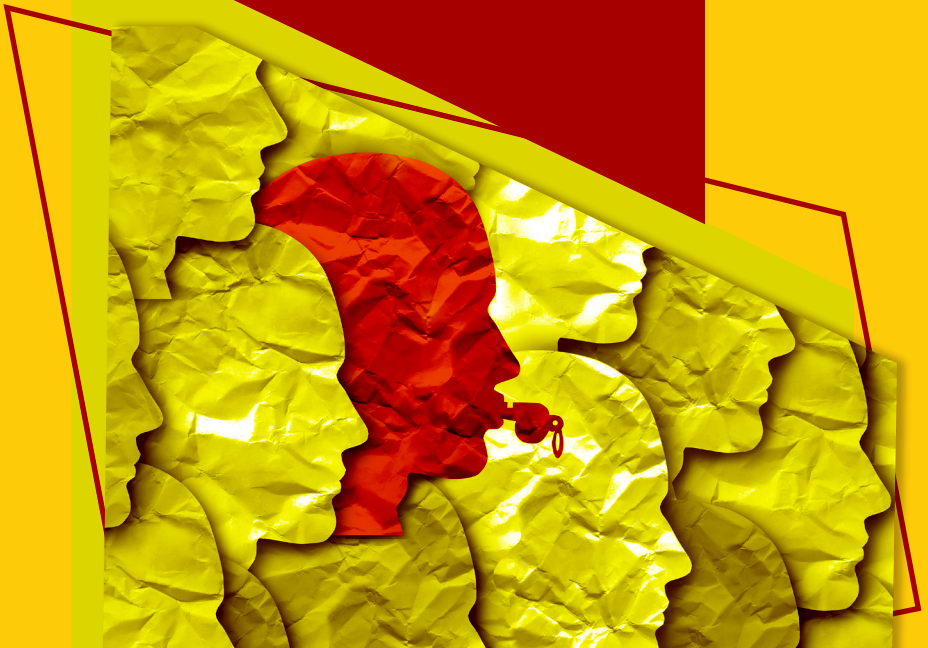





south african
**human
rights
commission**



Frequently **A**sksed **Q**uestions on
WHISTLEBLOWERS



“Whistleblowing is an essential weapon in the fight against corruption. The actions of whistleblowers have played a vital role in exposing many of the activities that were part of state capture. Whistleblowers need to be encouraged to report instances of fraud and corruption and need to be protected from victimisation, prejudice, or harm.” President Cyril Ramaphosa in response to The Report of the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud.¹

Who is a whistleblower?

A whistleblower is a person who discloses information about wrongdoing in the workplace and reasonably believes that there is evidence of gross mismanagement or activity that is illegal, criminal, unethical, corrupt or in violation of the law.

Why is whistleblowing important?

Whistleblowing can be regarded as a tool to promote integrity and accountability and discourage corruption. Whistleblowing is important as it encourages institutions or organisations in promoting transparency, compliance, fair treatment and address the causes of malpractice. Whistleblowing prevents the ripple effect of malpractice, make everyone aware that wrongdoers get punished and once employees and other workers note the consequences, they endeavor to keep away from malpractice. Importantly, the culture of whistleblowing can serve as an early warning system to assist in the management of possible risks to an entity.

What is the impact of corruption on human rights?

Corruption can be defined as the abuse of office or resources for personal gain. Corruption worsens inequality, weakens governance, transparency, and accountability; and erodes public trust in the State and private institutions. Corruption results in violation of human rights as it undermines the ability of the State to discharge its obligations to advance human rights and ensure a better life for all. Examples of corruption are when public funds that could have been spent to meet essential basic services such as water and sanitation, education and health care or developmental needs such as poverty alleviation, are either misused, misappropriated, or stolen. Corruption affects everyone negatively but more so, the poor and vulnerable in their enjoyment of human rights.

¹ <https://www.presidency.gov.za/press-statements-22-june-2022>



What are the rights of whistleblowers?

The law provides for the rights of whistleblowers, such as the right to:



1

Enjoy full employment under conditions safeguarding their fundamental freedoms and just and favorable work conditions.



2

Hold opinions without interference, communicate freely and maintain transparency.



3

Have their identity protected and the information they provide to be kept confidential.



4

Submit concerns of misconduct for consideration to a competent and impartial institution.



5

Due process and have a fair hearing to defend themselves.



6

An accelerated and timely decision when exercising their legal rights.



7

Be afforded sufficient time and facilities to communicate with a legal counsel of their choice.



8

Sanctions against retaliations and have their reputation protected.



What is the legal framework on whistleblowers?

South Africa has laws and policies that are applicable to the protection of whistleblowers. These include, amongst others:

a) The Constitution

The Constitution is the supreme law of the Republic; law or conduct inconsistent with it is invalid, and the obligations imposed by it be fulfilled. Section 9(1) of the Constitution provides that everyone is equal before the law and has the right to equal protection and benefit of the law.

Section 16(1)(b) provides for the right to freedom of expression, as well as freedom to receive or impart information or ideas and section 23(1) provides for the right to fair labour practices.

b) The Labour Relations Act 66 of 1995

The Labour Relations Act in sections 186(2)(d) and 187(1)(h) provides for protection against unfair labour practice and unfair dismissal. Section 191(3) empowers an employee whistleblower who suffers occupational detriment by an employer to refer this as a dispute of an unfair labour practice.

c) The Companies Act 71 of 2008

The Companies Act regulates the protection of whistleblowers within for profit and non-profit companies, particularly those registered in terms of the Companies Act. Section 159 of the Companies Act protects a whistleblower disclosure against any civil, criminal, or administrative liability.

d) The Protection Against Harassment Act 17 of 2008

The Protection Against Harassment Act (PAHA) outlines circumstances and procedures for obtaining a protection order and is relevant to whistleblowers who get harassed. Section 2 of PAHA provides for a whistleblower to get a protection order against a person harassing them and prohibits the perpetrator from harassing the victim.



e) The Prevention and Combatting of Corrupt Activities Act 12 of 2004 (4 of 2012)

The Prevention and Combatting of Corrupt Activities Act (PRECCA) is the primary law governing anti-bribery and prevention and enforcement of corruption. It is applicable to entities based in and outside the country but conducting business in South Africa. PRECCA imposes a statutory reporting obligation in instances where suspicion exists that an offence, including bribery, has been committed.

g) The Protected Disclosures Act 26 of 2000

The Protected Disclosures Act (PDA), commonly known as the Whistleblowers Act,² is the main legislation applicable to the protection of whistleblowers. The Protected Disclosures Act provides protection for individuals who blow the whistle on corrupt activities, whilst the Amendment Act expands the scope to provide greater protection and assistance to persons who make protected disclosures about irregularities and/or when they

decide to reveal unlawful activity in the workplace. In addition, the amendments broaden the list of bodies or institutions to whom disclosures may be made in terms of section 8 of the Act.

h) What is the purpose of Protected Disclosures Act (Whistleblowers Act)?

The PDA promotes clean corporate governance and gives protection to whistleblowers who disclose fraud, corruption, and criminal conduct in the workplace. Further, the Act encourages a culture of transparency and protection to whistleblowers from retaliation attacks arising from disclosures made.

The PDA sets out protection mechanisms for persons making disclosures. The purposes of the Act are:

- To protect an employee or worker, whether in the private or public sector from being subjected to an occupational detriment on account of having made a protected disclosure,
- To provide for certain remedies in connection with any occupational detriment suffered on account of having made protected disclosure, and
- To provide procedures in terms of which an employee or worker can in a responsible manner, disclose information regarding irregularities by their employer.

2

As amended by Act no 5 of 2017



What is the meaning of ‘disclosure’?

A disclosure means any disclosure of information about any conduct by an employer or an employee of that employer that intends to show that:

- a criminal offence has, or is likely to be committed,
- there has, or is likely to be a failure to comply with a legal obligation,
- A miscarriage of justice has, or is likely to occur,
- The health and safety of a person has, is being or is likely to be endangered,
- The environment has been, is being or is likely to be damaged,
- Unfair discrimination is taking place (either in terms of the Employment Equity Act 55 of 1998 or the Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000), and
- That any matter related to the above list has or is likely to be deliberately concealed.

Why should I make a disclosure?

The preamble of the PDA provides that:

- Every employer and employee have a responsibility to disclose criminal and any other irregular conduct in the workplace;
- Every employer has a responsibility to take all necessary steps to ensure that an employee who discloses such information is protected from any reprisals as a result of such disclosure.

What makes a disclosure protected?

The PDA provides that an employee or worker may not be subjected to any occupational detriment by their employer on account of, or partly, of having made a protected disclosure. A legally protected disclosure depends upon whether it is made:

- in good faith and is reasonably believed by the whistleblower to be true,
- according to a substantively correct procedure,
- not for purposes of personal gain,
- without committing a criminal offence,
- to the right authority.

What does a duty to act in good faith mean?

The duty to act in good faith is also known as acting bona fide and means acting honestly, sincerely and without an intention to deceive. Whistleblowers speak up with the sole purpose of exposing illegality, for public interest, accountability, transparency, and the well-being of the workplace and its employees.



What are the consequences of disclosure of false information?

Any employee or worker who intentionally discloses false information knowing that it is false and with the intention to cause harm to the affected party and where the affected party has suffered harm because of such disclosure, is guilty of an offence. The employee or worker will be liable on conviction to a fine or imprisonment for a period not exceeding two years or both.

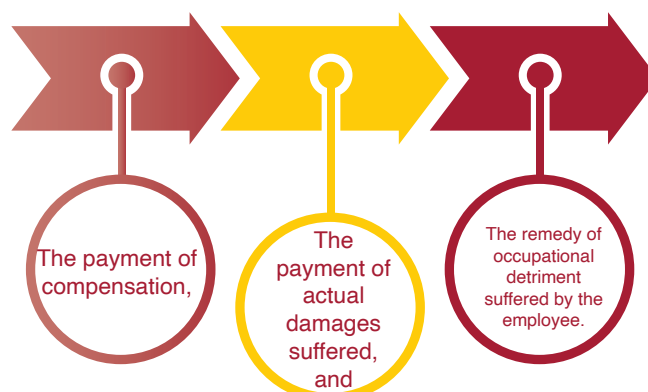
What constitutes 'occupational detriment'?

Occupational detriment relates to the working environment of an employee or worker as against the threat or action that impacts negatively in response to the employee's making of a protected disclosure which can result in:

- Disciplinary action,
- Dismissal, suspension, demotion, harassment, or intimidation,
- Transfer against an employee's will,
- Refusal of transfer or promotion,
- Disadvantageous alteration of a term or condition of employment or retirement,
- Refusal of or provision of an adverse reference,
- Denial of appointment to any employment, profession, or office,
- Being subjected to civil claim for the alleged breach of a duty of confidentiality arising from the disclosure of a criminal offence or a contravention or failure to comply with the law, and
- Being affected in respect of employment, profession, or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services.

What are the available recourse and remedies?

The protection provided by the Act is aimed at preventing acts causing occupational detriment, including acts such as dismissal, suspension, harassment, and intimidation. Recourse for any employee or worker who has been or may have been subjected to an occupational detriment is available. Affected persons may approach any court that has authority for relief, such as the Labour Court, or approach the Commission for Conciliation, Mediation and Arbitration (CCMA). The amendment Act provides for the following remedial action in the event of proven occupational detriment:





What are the gaps in the current framework?

Despite the legal framework, the general concern pertains to the level of protection that whistleblowers experience in practice, which often includes the following:

- Employers viewing whistleblowing in a negative light with misconceptions of whistleblowers as ‘sell outs/ snitches/ impimpis’ or as saboteurs.
- Lack of legal assistance to whistleblowers seeking to protect themselves from harassment, bullying and victimization including dismissal, by public or private bodies.
- Inadequate or no trauma counselling, psychological or psychiatric assistance.
- Lack of financial assistance after being dismissed from employment post disclosure.
- No rewards or compensation for exposing official wrongdoing or other irregularities.
- Lack of guarantee of immunity from criminal or civil proceedings for disclosures made in good faith.
- The lack of public recognition for those who make significant contributions to integrity and protection of the public interest.
- Lack of a dedicated institution to oversee the implementation of existing legislation, or coordination and collaboration of efforts focusing on the protection and support of whistleblowers.

What more can be done?

Whistleblowers are an important source of information for agencies working to detect fraud and other wrongdoing; and play an essential role in the fight against corruption and the abuse of public resources. Due to the high risk of negative and far -reaching consequences, whistleblowers can be encouraged to consider seeking legal advice before making disclosures and the option of remaining anonymous can also be considered.

It is essential that whistleblowers are protected, supported and a conducive environment is created to encourage more people to act as whistleblowers. The eradication and combating of corruption are everyone’s responsibility and a call is therefore made to all to blow the whistle against wrongdoing, maladministration, fraud, and corruption.



Which institutions can an employee or worker make a protected disclosure to?

The employer has a duty to provide written internal guidelines or procedure for disclosures and all organs of State are required to provide every employee with a copy of the guidelines which explain procedures for receiving and dealing with information about irregularities; and take reasonable steps to bring these to the attention of every employee or worker.

The Regulations Relating to the PDA³ provide that whistleblowers may in good faith make protected disclosures to the following institutions:

- The Public Protector South Africa;
- The South African Human Rights Commission;
- The Commission for Gender Equality;
- The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;
- The Public Service Commission;
- The Auditor General, or
- a person or body prescribed for purposes of this section; and in respect of which the employee or worker concerned believes that the relevant impropriety falls within any description of matters which, in the ordinary course are dealt with by the person or body concerned; and the information disclosed, and any allegations contained in it, are substantially true.
- The Act provides that a protected disclosure can be made to a Minister or Member of the Executive Council (MEC) of a province, on condition that the disclosure is made in good faith and cannot be made to one's employer.





What are the contact details of the key relevant institutions?

The Public Protector South Africa	Public Protector Office Hillcrest Office Tel: 012 366 7000 012 366 7112 Toll-free: 0800112040 E: registration2@pprotect.org
The South African Human Rights Commission	JD House, 27 Stiemens Street, Braamfontein, 2017 Tel: 011 877 3600 E: info@sahrc.org.za www.sahrc.org.za
The Commission for Gender Equality	2 Kotze Street, Constitution Hill, Braamfontein, 2017 Tel: 011 403 7182 E: info@cge.org.za
The Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities	Braampark Office Park, 33 Hoofd Street Forum 4, Braamfontein Tel: 011 358 9100 E: info@crlcommission.org.za
The Public Service Commission	ABSA Towers, Cnr Lilian Ngoyi and Pretorius Streets, Pretoria Central Tel: 012 352 1000 Hotline: 0800 701 701 E: info@opsc.gov.za intergrity@publicservicecorruptionhotline.org
The Auditor-General	300 Middel Street, Brooklyn, Pretoria Tel: 012 426 8000 E: agsa@agsa.co.za www.agsa.co.za



What are the details of the list of bodies or institutions to whom disclosures may be made, in terms of the Regulations Relating to Protected Disclosure 2018?

Person/body to whom or which disclosure can be made	Description of matters ordinarily dealt with by person/body	Contact details
Anti-Intimidation and Ethical Practices Forum	Any alleged irregular or improper conduct or impropriety as observed by professionals in their work environment.	P O Box 2290 Bedfordview, 2008 E: www.aepf.co.za
Chairpersons of Municipal Councils	Any alleged irregular or improper conduct or impropriety which has a bearing on a Municipal Council.	P O Box 2094 Pretoria, 0001 Tel: 012 369 8000
Competition Commission	Any alleged irregular or improper conduct or impropriety regarding the promotion and maintenance of competition in South Africa, including the control and evaluation of mergers, the investigation and prosecution of price fixing, fixing of trading conditions, market allocation, collusive tendering, restricted vertical practices and abuse of dominant positions.	Private Bag X 23 Lynwood Ridge, 0040 Tel: 012 394 3200 / 394 3328
Council for Debt Collectors	Any alleged irregular or improper conduct or impropriety regarding the collection of debts.	P O Box 35629 Menlo Park, 0102 Tel: 012 804 9808
Electoral Commission of South Africa	Any alleged irregular or improper conduct or impropriety regarding free and fair elections of national, provincial and municipal legislative bodies.	Private Bag X 112 Centurion, 0046 Tel: 012 622 5700
Estate Agency Affairs Board	Any alleged irregular or improper conduct or impropriety with regards to the conduct of an estate agent regarding trust monies, and irregular transactions that are being conducted.	Private Bag X10 Benmore, 2010 Tel: 087 285 3222 E: eab@eaab.org.za
Executive Authority, as contemplated in the Financial Management of Parliament and Provincial Legislatures Act, 2009 (Act No. 10 of 2009)	Any alleged irregular or improper conduct or impropriety which has a bearing on Parliament.	P O Box 15 Cape Town, 8000 Tel: 021 403 2911



Person/body to whom or which disclosure can be made	Description of matters ordinarily dealt with by person/body	Contact details
Financial and Fiscal Commission	<p>Any alleged irregular or improper conduct or impropriety with regard to—</p> <ol style="list-style-type: none"> 1. the equitable division of revenue raised nationally among the national, provincial and local spheres of government, 2. the determinations of each province's equitable share of the provincial share of that revenue; and 3. any other allocations to provinces, local government or municipalities from the national government's share of that revenue and any condition on which those allocations may be made. 	Private Bag X 69 Halfway House, 1685 Tel: 011 207 2300
Financial Intelligence Centre	Any alleged irregular or improper conduct or impropriety regarding money laundering activities or the financing of terrorist and related activities.	Private Bag X 177 Centurion, 0046 Tel: 012 641 6000
Financial Sector Conduct Authority and the Prudential Authority	Any alleged irregular or improper conduct or impropriety regarding financial institutions and the provision of financial services.	<p>P O Box 35655 Menlo Park, 0102 Tel: 012 428 8025</p> <p>P O Box 427 Pretoria, 0001 Tel: 012 399 3911</p>
Independent Communications Authority of South Africa	<p>Any alleged irregular or improper conduct or impropriety regarding—</p> <ol style="list-style-type: none"> 1. broadcasting in the public interest, 2. electronic communications in the public interest, and 3. postal matters in the public interest. 	Private Bag x 10002 Sandton, 2146 Tel: 011 566 3000 E: info@icasa.org.za
Independent Police Investigative Directorate	Any alleged irregular or improper conduct or impropriety by a member of the South African Police Service.	Private Bag X 941 Pretoria, 0001 Tel: 012 399 000



Person/body to whom or which disclosure can be made	Description of matters ordinarily dealt with by person/body	Contact details
Independent Regulatory Board for Auditors	Any alleged irregular or improper conduct or impropriety regarding audits performed by registered auditors.	P O Box 8237 Greenstone, 1616 Tel: 087 940 8800
Information Regulator	Any alleged unlawful collection, retention, dissemination or use of personal information by public and private bodies.	Private Bag X 89 Pretoria, 0001 Tel: 012 406 4818
International Trade Administration Commission of South Africa	Any alleged irregular or improper conduct or impropriety with regard to the import or export of goods and customs duties.	Private Bag X 753 Pretoria, 0001 Tel: 012 394 3688 E:bramasodi@itac.org.za
Judicial Inspectorate for Correctional Services	Any alleged irregular or improper conduct or impropriety regarding the treatment of inmates in correctional centres and the conditions in correctional centres.	Private Bag X 9177 Cape Town, 8000 Tel: 021 421 1012
Judicial Service Commission	Any alleged irregular or improper conduct or impropriety by a judge of a superior court.	Private Bag X10 Marshall Town, 2107 Tel: 010 493 2500 E:enquiries@judiciary.org.za
Magistrates Commission	Any alleged irregular or improper conduct or impropriety by a magistrate.	P O Box 9096 Pretoria, 0001 Tel: 012 325 3951
National Consumer Commission	Any alleged irregular or improper conduct or impropriety regarding the social and economic welfare of consumers.	P O Box 36628 Menlo Park, 0102 Tel: 012 428 7000
National Energy Regulator of South Africa	Any alleged irregular or improper conduct or impropriety regarding the regulation of electricity, piped gas and petroleum pipeline industries.	P O Box 40343 Arcadia, 0001 Tel: 012 401 4600
National Gambling Board	Any alleged irregular or improper conduct or impropriety regarding matters relating to casinos, racing, gambling, and wagering.	Private Bag X 27 Hatfield, 0028 Tel: 010 003 3475
National Prosecuting Authority	Any alleged irregular or improper conduct or impropriety regarding the institution and execution of prosecutions.	Private Bag X 752 Pretoria, 0001 Tel: 012 845 6000



Person/body to whom or which disclosure can be made	Description of matters ordinarily dealt with by person/body	Contact details
Office of the Chief Justice	Any alleged irregular or improper conduct or impropriety regarding the judicial arm of the government.	Private Bag X10 Marshall Town, 2107 Tel: 010 493 2500 E:enquiries@judiciary.org.za
Pension Fund Adjudicator	Any alleged irregular or improper conduct or impropriety regarding pensions or pension funds.	P O Box 580 Menlyn, 0063 Tel: 012 748 4000
Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit	Any alleged irregular or improper conduct or impropriety regarding corruption related misconduct cases in the Public Administration.	Private Bag X 916 Pretoria, 0001 Tel: 012 336 1000/1183/1063
Special Investigating Unit	Any alleged irregular or improper conduct or impropriety regarding the affairs of any State institution.	Private Bag X 844 Silverton, 0127 Tel: 012 843 0000 0800 037 774 (whistleblower hotline)
South African Board for Sheriffs	Any alleged irregular or improper conduct or impropriety by a sheriff.	P O Box 15223 Vlaeberg, 8018 Tel: 021 426 0577
South African Council for Educators	Any alleged irregular or improper conduct or impropriety by educators, lecturers or management staff of colleges appointed— 1. in terms of the Employment of Educators Act, 1998 (Act No. 76 of 1998), 2. in terms of the South African Schools Act, 1996 (Act No. 84 of 1996). 3. in terms of the Further Education and Training Colleges Act, 2006 (Act No. 16 of 2006). 4. in terms of the Public Service Act, 1994 (Proclamation 103 of 1994), 5. at an independent school; or 6. at an adult learning centre.	Private Bag X 127 Centurion, 0046 Tel: 012 663 9517



Person/body to whom or which disclosure can be made	Description of matters ordinarily dealt with by person/body	Contact details
South African Health Professions Council	Any alleged irregular or improper conduct or impropriety regarding the health professions.	P O Box 205 Pretoria, 0001 Tel: 012 338 9300
South African Legal Practice Council (when it is established)	Any alleged irregular or improper conduct or impropriety by a legal practitioner.	P O Box 36626 Menlo Park, 0102 Tel: 012 366 8800
South African Nuclear Energy Corporation Ltd/ National Nuclear Regulator	Any alleged irregular or improper conduct or impropriety about nuclear energy and radiation sciences and technology.	P O Box 7106 Centurion, 0046 Tel: 012 674 7100 E: info@nnr.co.za
South African Qualifications Authority	Any alleged irregular or improper conduct or impropriety regarding education and training.	Private Bag X 06 Waterkloof, 0145 Tel: 086 010 3188
South African Revenue Service	Any alleged irregular or improper conduct or impropriety regarding tax and customs-related matters.	Private Bag X 923 Pretoria, 0001 Tel: 012 422 4000





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