



AUDITOR - GENERAL
SOUTH AFRICA

Mr H du Preez

HduPreez@justice.gov.za

4 July 2014

Dear Mr du Preez

Comments on Draft Protected Disclosures Bill

1. The Department of Justice and Correctional Services has invited interested parties to submit written comments on the proposed amendments to the Protected Disclosures Act 26 of 2000 ("the Act"). The draft Protected Disclosures Amendment Bill ("the Bill") has been circulated to the public and the comment period ends on the 4th of July 2014. In response to the comment period requirement please find our comments as the Auditor General of South Africa (AGSA).

2. The proposed inclusion of section 3B reads as follows:

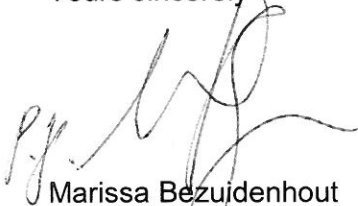
"Duty to investigate and notify employee or worker

3B. Any person or body to whom a *protected disclosure* has been made in terms of section 6, 7 or 8, respectively, must—

- (a) in writing and within 14 days after the *protected disclosure* has been made acknowledge receipt of the *disclosure* and notify the *employee* or *worker* of the steps to be taken in order to investigate the matter and, where possible, the timeframe within which the investigation will be completed; and
- (b) investigate such *disclosure* or, where necessary, refer the *disclosure* to another person or body if that *disclosure* could be more appropriately investigated or dealt with by that other person or body and such other person or body must, upon referral of such *disclosure*, notify the *employee* or *worker* of the steps to be taken in order to investigate the matter and, where possible, the timeframe within which the investigation will be completed."

3. This insertion gives AGSA a peremptory duty to investigate or refer disclosures to appropriate bodies. This peremptory duty rises from the use of the word "must". This is in conflict with section 5 (1)(d) of the Public Audit Act 25 of 2004 (PAA) which states that:
- "The Auditor-General may, at a fee, and without compromising the role of the Auditor-General as an independent auditor, ... carry out an appropriate investigation or special audit of any institution referred to in section 4 (1) or (3), if the Auditor-General considers it to be in the public interest or upon the receipt of a complaint or request."
4. The cited section gives the Auditor-General discretionary powers through the use of the word "may".
5. We kindly request that this apparent conflict be addressed during the consultative and legislative processes leading up to the promulgation of the amendments.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M. Bezuidenhout', written over a horizontal line.

Marissa Bezuidenhout

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