

## MEMORANDUM

DATE : 26 AUGUST 2016

RE : SUBMISSIONS : PROTECTED DISCLOSURES AMENDMENT  
BILL [B4 – 2015]

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### INTRODUCTION

1. The Protected Disclosures Amendment Bill [B40-2015] (“the Bill”) seeks to introduce a number of amendments to the Protected Disclosures Act 26/2000 (“the PDA”). In summary the Bill proposes the following amendments :
  - i) The protection afforded to persons making protected disclosures is extended to “**workers**” and persons employed to assist in the conducting of the business of the empower;
  - ii) Regulate joint liability of employers and their clients;
  - iii) Introduce a duty to report back to employees/workers the outcome of reported disclosures made by them;
  - iv) Provide for immunity against civil and criminal liability flowing form a disclosure of information which tends to show that a criminal offence has been / is being committed or is reasonably likely to be committed;
  - v) To create an offence for the disclosure of false information.

## THE BILL

2. In view of the intended aims of the Bill, I closely examined whether the existing provisions of the PDA and the subsequent Bill afforded the now included “**worker**” effective and practical relief when claiming relief for a disclosure arising out of an occupational detriment. The reason being that in the event that the occupational detriments (for example dismissal) arises as a result of a protected disclosure, the dismissal may be classified a “**no fault**” dismissal as opposed to a dismissal referred to in the Labour Relations Act 66/1995 which deals with dismissals which arise from allegations of misconduct.
3. Bearing in mind that the PDA exists with the view to encouraging disclosure, the aim behind the PDA could be compromised if “**workers**” perceive the process to challenge the occupation detriment as being overly cumbersome and expensive. However, in terms of section 191(5)(b) of the LRA, dismissals arising out of protected disclosures are deemed automatically unfair dismissals and proceed directly to the Labour Court after an unsuccessful conciliation process as contemplated by the LRA. The above is repeated s5 of the Bill which deals with the amended s4 of the PDA.
4. In the circumstances it is submitted that the Bill adequately provides for a “**worker**” who makes a protected disclosure.
5. With reference to regulating joint liability of employers and their clients, the provisions of the Bill are unambiguous and uncontentious.

6. The Bill also introduces (via the insertion of s3B) an obligation on a body to whom a protected disclosure has been made to investigate the disclosure and report back to the worker in that regard.
7. When dealing with an administrative body, it is trite that the worker or discloser could apply to review the administrative body's (e.g. government's) decision taken in accordance with the proposed s3B(3) of the Bill. However, the Bill and PDA being wide enough to cover private enterprise, makes no provision to challenge the private entity's decision not to take further steps in terms of a disclosure. This may be gleaned from s3B(3) of the proposed amendment.
8. In the circumstances it is submitted that provision should be made to prevent private entities from properly investigating disclosures made to it by providing for its decision to be reviewed/appealed against if and when necessary.
9. As for the remainder of the amendments, they appear uncontentious and succinct in their intentions.

**CAPE BAR**

**GCB PARLIAMENTARY COMMITTEE**