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**MINISTRY: JUSTICE AND CORRECTIONAL SERVICES**

**REPUBLIC OF SOUTH AFRICA**

**NATIONAL ASSEMBLY**

**QUESTION FOR WRITTEN REPLY**

**PARLIAMENTARY QUESTION NO: 2842**

**DATE OF QUESTION: 02 SEPTEMBER 2022**

**DATE OF SUBMISSION: 16 SEPTEMBER 2022**

**Prof C T Msimang (IFP) to ask the Minister of Justice and Correctional Services:**

1. Whether, with reference to the protection of whistleblowers in terms of the Protected Disclosures Act, Act 26 of 2000, his department has considered including other commercial relationships such as procurement corruption; if not, why not; if so, what are the relevant details;
2. Whether his department will consider (a) a less restrictive witness protection system to offer protection and/or security for more whistleblowers and (b) the formation of a centralised and dedicated whistleblower institution; if not, why not in each case; if so, what are the relevant details in each case?

**NW3439E**

**REPLY:**

1. The Protected Disclosures Act, 2000 (Act No. 26 of 2000), as amended with effect from 2 August 2017, does not provide for offence-specific disclosures. The term “disclosure” is defined as any disclosure of information regarding any conduct of an employer or of an employee or of a worker of that employer, made by any employee or worker who has reason to believe that the information concerned shows or tends to show one or more of, amongst others, the following:
2. That a criminal offence has been committed, is being committed or is likely to be committed;
3. That a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject; and
4. That a miscarriage of justice has occurred, is occurring or is likely to occur.

The Act governs disclosures in all employer/employee relationships. The Act was amended in 2017 to extend the ambit of the Act beyond the ordinary employee/employer relationship by the introduction of two (2) new definitions, namely: that of “worker” and “temporary employment service”.

The amendment of the definition of “employee” was intended to clarify that persons who have worked for another person (for example: former employees) or assisted in carrying on the business of an employer are also included within the meaning of the definition.

The ambit of the Act was also extended to include persons who are employed by temporary employment services. The introduction of the definition of “worker” was based on two (2) reasons. Firstly, independent contractors are not considered as employees in terms of labour legislation and are expressly excluded from the reach of the remedies contained in the labour legislation. Secondly, by defining the term “worker” separately the protection offered by the Act has now been extended to independent contractors, agents and consultants.

The Protected Disclosures Amendment Act, 2017 (Act No. 5 of 2017), also amended the definition of “occupational detriment” to introduce two (2) additional forms of occupational detriment that an employee may be subjected to as a result of having made a protected disclosure, namely:

1. reprisals such as defamation suits and suits based on the alleged breach of a confidentiality agreement or duty; and
2. to include a specific form of detriment typically experienced by contract workers, namely: the loss of a contract or the failure to be awarded a contract.

These amendments, among others, sought to provide protection to whistleblowers in any type of disclosure, not only procurement related, and intends to include the broadest possible protection when disclosures are made by not limiting it to specific actions. There is therefore no need to amend the Act to include procurement related matters as these matters may be disclosed in the context provided in the Act.

1. Research and a benchmarking exercise is being conducted by the Department into the current legal framework relating to witness protection. Proposals to include all whistleblowers within the ambit of the Witness Protection Act, 1998 (Act No. 112 of 2018), and not just witnesses, are being considered. There is currently an entity established in terms of this Act known as the Office for Witness Protection. We are considering the cost implications and an appropriate funding model for the expansion of the current framework.

**END**