

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO
PROTECTED DISCLOSURES
AMENDMENT BILL**

[B 40—2015]

*(As proposed by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 40A—2015]

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AMENDMENTS AGREED TO

PROTECTED DISCLOSURES AMENDMENT BILL

[B 40—2015]

CLAUSE 1

1. On page 3, in line 14, after “receives” to insert “or received”.
2. On page 3, in line 44, after “not” to insert “, subject to section 9A,”.
3. On page 3, in line 46, after “commits” to omit “an” and to insert “**[an]** a criminal”.

CLAUSE 4

1. On page 5, in line 29, after “The” to omit “*employee or worker*” and to substitute “person or body, referred to in subsection (1) or (2)”.
2. On page 5, in line 30, to omit “be informed” and to substitute “inform the employee or worker”.
3. On page 5, after line 30, to insert:

“(5) The person or body, referred to in subsection (1) or (2), does not have to comply with—

<p style="margin-left: 20px;">(a) subsection (1)(b), (2)(b), (3) or (4) if that person or body does not know the identity and contact details of the <i>employee</i> or <i>worker</i> who has made the disclosure; or</p> <p style="margin-left: 20px;">(b) subsection (1)(b), (2)(b) or (3) if it is necessary to avoid prejudice to the prevention, detection or investigation of a <u>criminal offence</u>.”.</p>
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CLAUSE 5

1. On page 5, in line 35, after “is” to omit “subject” and to insert “**[subject]** subjected”.
2. On page 5, in line 49, after “*employer*”, to insert “or client, as the case may be,”.
3. On page 5, in line 51, after “*employer*”, to insert “or client, as the case may be,”.
4. On page 5, in line 53, after “*employer*”, to insert “or client, as the case may be,”.

CLAUSE 6

1. On page 6, in line 19, after “concerned”, to insert “and the employee or worker has been made aware of the procedure as required in terms of subsection (2)(a)(ii)”.

CLAUSE 8

1. On page 6, from lines 40 to 43, to omit all the words from “by” up to “that—”, and to insert:

“by the substitution for subsection (1) of the following subsection:

“(1) Any *disclosure* made in good faith to—

(a) the Public Protector;

(aA) the South African Human Rights Commission;

(aB) the Commission for Gender Equality;

(aC) the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities;

(aD) the Public Service Commission;

(b) the Auditor-General; or

(c) a person or body *prescribed* for purposes of this section; and

in respect of which the *employee* or *worker* concerned reasonably believes that—”; and”

CLAUSE 10

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

“Insertion of sections 9A and 9B in Act 26 of 2000

10. The following sections are hereby inserted after section 9 of the principal Act:

Exclusion of civil and criminal liability

9A. (1) A court may find that an *employee* or *worker* who makes a *protected disclosure* of information—

(a) referred to in paragraph (a) of the definition of *disclosure*;

or

(b) which shows or tends to show that a substantial contravention of, or failure to comply with the law has occurred, is occurring or is likely to occur,

shall not be liable to any civil, criminal or disciplinary proceedings by reason of having made the *disclosure* if such *disclosure* is prohibited by any other law, oath, contract, practice or agreement requiring him or her to maintain confidentiality or otherwise restricting the *disclosure* of the information with respect to a matter.

(2) Exclusion of liability as contemplated in subsection (1) does not extend to the civil or criminal liability of the *employee* or *worker* for his or her participation in the disclosed *impropriety*.

Disclosure of false information

9B. (1) An *employee* or *worker* who intentionally discloses false information—

(a) knowing that information to be false or who ought reasonably to have known that the information is false; and

(b) with the intention to cause harm to the affected party and where the affected party has suffered harm as a result of such disclosure,

is guilty of an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both a fine and such imprisonment.

(2) (a) The institution of a prosecution for an offence referred to in subsection (1) must be authorised in writing by the Director of Public Prosecutions.

(b) The Director of Public Prosecutions concerned may delegate his or her power to decide whether a prosecution in terms of this section should be instituted or not.".

CLAUSE 14

1. On page 8, in line 40, to omit "2015", and to insert "2016".