

11 May 2026

TO: The Director-General: Justice and Constitutional Development

C/O: [REDACTED]

PER: (Email) [REDACTED]

Dear Director General

PUBLIC COMMENTS PROTECTED DISCLOSURES BILL, 2026

1. INTRODUCTION

The Organisation Undoing Tax Abuse (OUTA) welcomes the opportunity to comment on the Protected Disclosures Bill 2026. OUTA has consistently advocated for stronger whistleblower protections as a critical tool in combatting corruption, maladministration, abuse of power and unlawful conduct in both the public and private sectors in South Africa.

OUTA recognises the limitations of the existing Protected Disclosures Act 26 of 2000 and supports the introduction of a more comprehensive legislative framework aimed at strengthening disclosure procedures, confidentiality safeguards, protections against retaliation and institutional accountability.

While the Bill contains several important and progressive reforms, OUTA remains concerned that the proposed framework does not yet provide sufficiently effective, practical and enforceable protection for whistleblowers. This submission therefore sets out OUTA's key comments, concerns and recommendations for strengthening the Bill and includes the establishment of the Whistleblower Protection and Integrity Authority as an independent oversight and protection body.

2. CHAPTER 1 – GENERAL PROVISIONS

Section 1 – Definitions

OUTA acknowledges the expanded scope of several key definitions within the Bill, particularly the inclusion of broader categories of employees, related persons, occupational detriment and improper conduct.

The broader inclusion of contractors, consultants, volunteers, temporary workers and related persons reflects the realities of modern whistleblowing and strengthens the overall disclosure framework.

However, further consideration may be required regarding the following definitions:

- a) Authorised person – which should include civil society organisations or media actors.
- b) Discloser - the Bill still remains too anchored in the employer–employee relationship.
- c) Disclosure - the definition of “disclosure” should cover wrongdoing in public-interest contexts even where there is no employment nexus, including citizen whistleblowers, contractors, journalists, civil society organisations, suppliers and affected communities.

Section 2 – Objects and Application of Act

OUTA acknowledges the stated objectives of the Bill, including expanded whistleblower protection, stronger investigative powers, improved disclosure procedures, confidentiality safeguards and protection against retaliation.

However, OUTA does not support the Bill in its current form. While the Bill contains several important and progressive reforms, significant concerns remain regarding

implementation, institutional capacity, oversight mechanisms, procedural accessibility, enforcement and the practical protection available to whistleblowers.

Section 3 – Central Database

OUTA acknowledges the intention behind the establishment of a central electronic database for disclosures. A coordinated disclosure-management system may improve accountability, assist with oversight and strengthen institutional coordination.

However, operational governance of the database, including the absence of independent oversight mechanisms, accountability measures for non-compliance and safeguards against under-reporting or improper data management are concerning.

It is also unclear whether the proposed database performs merely a storage and tracking function, or will it include intake, triage, and risk-assessment mechanisms capable of identifying urgent disclosures requiring immediate intervention or protection measures. Serious cybersecurity and data integrity concerns also arise from the establishment of a centralised disclosure database, particularly where whistleblower identities or sensitive investigative information may be exposed through breaches, misuse, or inadequate safeguards.

OUTA recommends that the central database not sit inside the Department of Justice but with the Whistleblower Protection and Integrity Authority and that consideration should be given to: introducing sanctions for failure to upload or manage disclosures appropriately, ensuring transparency regarding database administration, annual reporting obligations, cybersecurity safeguards, independent audits, intake and triage functions for urgent disclosures and identity protection protocols.

3. CHAPTER 2 – PROTECTED DISCLOSURES

Section 4–10 – Protected Disclosures and Reporting Channels

OUTA acknowledges the Bill’s attempt to provide multiple reporting pathways and broader access routes for whistleblowers but the Bill’s disclosure pathways are too restrictive. Civil society organisations and investigative journalists should be expressly recognised as legitimate disclosure recipients, given their proven role in exposing corruption where state and private institutions are compromised.

The reporting framework is also overly complex and unclear for ordinary disclosers, particularly for vulnerable or unrepresented individuals seeking to make disclosures.

Further consideration should therefore be given to:

- a) Cutting-edge technology to make reporting simpler, safe and secure like ExposeIT¹.
- b) standard templates and guidance documents;
- c) plain-language reporting procedures;

OUTA recommends the establishment of a Whistleblower Protection and Integrity Authority, structured as an independent regulatory public entity/SOC or constitutional-style institution with an independent board, protected budget, forensic capacity, legal capacity, emergency protection capacity and direct referral powers to the SIU, IDAC, Hawks, NPA, Public Protector and Auditor-General.

OUTA recommends that the Whistleblower Protection and Integrity Authority have the following core functions, to serve as the central coordinating and protection body for all whistleblower-related matters:

¹ ExposeIT is only an example flagship whistleblowing solution designed to encourage transparency and accountability within organisations, offering a 100% ANONYMOUS channel for whistleblowing and communication.

1. Receive complaints about disclosures made to authorised persons/bodies directly through secure, anonymous and protected channels.
2. Provide immediate and ongoing protection measures, including physical protection and relocation, emergency interim relief, income support and financial assistance, psychosocial and trauma support and legal representation and advisory services.
3. Monitor and oversee investigations conducted by authorised persons/ bodies in the event of a complaint received.
4. Intervene where investigations are delayed, compromised or inadequate upon receipt of a complaint.
5. Conduct independent investigations where necessary, supported by specialised forensic capacity.
6. Issue binding directives and remedial orders against authorised persons/bodies and prevent or halt retaliation against disclosers.
7. Refer matters for criminal prosecution or disciplinary action.
8. Impose administrative sanctions for non-compliance with whistleblower protection legislation.
9. Maintain secure systems for managing disclosures, including strict confidentiality protocols, restricted access controls, and protection against data breaches.
10. The central database should be housed within this entity, rather than within the Department of Justice.

11. Conduct awareness campaigns on whistleblower rights and reporting mechanisms.
12. Issue guidelines and standards for institutions.
13. Monitor systemic risks and recommend legislative or policy reforms.
14. Refer matters for criminal prosecution or disciplinary action.
15. This function should replace the current proposal for a central database housed within the Department of Justice, which raises significant security and trust concerns.

OUTA suggests that the Whistleblower Protection and Integrity Authority should consist of a multi-member board appointed through a transparent parliamentary process. The board members must have expertise in law, forensic investigation, labour relations, human rights and anti-corruption, and represent business and civil society. The terms of the board members should be fixed and non-renewable to safeguard its independence and clear criteria must exist for removal of the board members based on misconduct or incapacity.

Further to the above, the board should be appointed by a public nomination and vetting process. The appointment should be made by Parliament and not the Executive and the Authority should be financially independent.

The Authority should not replace existing investigative bodies (e.g. SIU, NPA, Auditor-General) but rather act as a central coordinating and oversight mechanism, ensuring that disclosures are directed to the appropriate bodies and hold those bodies accountable for timely and effective investigation.

This addresses the current fragmentation identified in the legislative framework.

Section 11–13 – Making disclosures and false information

OUTA acknowledges the inclusion of anonymous reporting, accessibility measures, multilingual accommodations, disability protections and provisions aimed at preventing contractual restrictions on whistleblowing.

From OUTA’s perspective, the failure of an authorised person to comply with section 12 of the Protected Disclosures Bill 2026 will undermine the fundamental purpose of whistleblower protection legislation and leaves disclosers vulnerable to retaliation without meaningful recourse. If there is no effective remedy or enforcement mechanism against a non-compliant authorised person, the protective framework becomes hollow and incapable of fostering a culture of accountability and transparency. The absence of clear sanctions will weaken deterrence and may embolden authorised persons to disregard their statutory obligations with impunity.

OUTA therefore supports the inclusion of stringent sanctions against authorised persons who fail to comply with section 12, including administrative penalties, compensation for affected disclosers, and adverse legal consequences, in order to ensure that whistleblower protections are practical, enforceable and aligned with the constitutional right to fair labour practices and the broader public interest in exposing corruption and maladministration.

OUTA recommends that the Bill make provision for a complaints procedure to the Whistleblower and Integrity Authority. OUTA further recommends that the Protected Disclosures Bill 2026 expressly provide that a discloser has the right to lodge a complaint against an authorised person who fails to comply with the obligations and protections set out in the Bill, and that such complaints be investigated.

Section 13 is overly broad and risks discouraging whistleblowing by criminalising not only intentional false disclosures but also those where a discloser “ought reasonably to have known” the information was false. This introduces a negligence standard that

is inappropriate in the whistleblowing context, where individuals often act on incomplete but reasonable information.

The provision creates a chilling effect, particularly given South Africa's history of retaliation against whistleblowers and may be abused by implicated parties to initiate counter-proceedings.

To address this, the section should be amended to:

- a) limit criminal liability to knowingly and intentionally false disclosures;
- b) require proof that the disclosure was made primarily to cause harm and not in the public interest;
- c) include a safe harbour for disclosures made on a reasonable belief in their truth; and
- d) strengthen safeguards to prevent abusive or retaliatory prosecutions.

Alternatively, criminal sanctions could be removed altogether in favour of existing legal remedies.

4. CHAPTER 3 – DEALING WITH PROTECTED DISCLOSURES

Section 14 – 15 – Investigations and court assistance

OUTA acknowledges the Bill’s attempt to establish structured investigation processes, mandatory acknowledgements, timelines for investigations and mechanisms for court-assisted preservation of evidence.

However, significant concerns remain regarding practical implementation.

The proposed 12-month investigation period may prove insufficient in complex, multi-jurisdictional, or corruption-related matters, as not all institutions designated to investigate disclosures possess the necessary investigative expertise, forensic capability, operational independence and specialist training required to manage complex whistleblower matters effectively.

OUTA therefore recommends the inclusion of stringent sanctions against authorised persons who fail to comply with section 14, including administrative penalties, compensation for affected disclosers and adverse legal consequences, in order to ensure that whistleblower protections are practical, enforceable and aligned with the constitutional right to fair labour practices and the broader public interest in exposing corruption and maladministration.

OUTA recommends that the Bill make provision for a complaints procedure to the Authority. OUTA further recommends that the Protected Disclosures Bill 2026 expressly provide that a discloser has the right to lodge a complaint against an authorised person who fails to comply with the obligations set out in the Bill, and that such complaints be investigated.

Sections 16 – 18 – Finalisation, enforcement and awards

OUTA welcomes the inclusion of investigation reports in section 16 but recommends that the Bill expressly provide for sanctions in cases of non-compliance with the procedures prescribed in this section. OUTA further proposes that, where a discloser is dissatisfied with the outcome or findings of an investigation report, the discloser should first be entitled to refer the matter to the Authority for review, assessment, or remedial intervention before pursuing any further legal or administrative processes.

OUTA recommends that the award criteria be broadened to provide for rewards in circumstances where a protected disclosure directly contributes to the conviction or finding of guilt of a person for an offence. OUTA further submits that public servants should not be excluded from eligibility for such rewards, as their inclusion would promote accountability, encourage disclosures in the public sector and recognise the significant personal and professional risks often assumed by whistleblowers in exposing corruption and wrongdoing.

5. CHAPTER 4 – PROTECTION OF PERSON MAKING PROTECTED DISCLOSURE

Section 19 – Confidentiality

OUTA acknowledges the strong confidentiality protections contained in the Bill, including restrictions on disclosure of identity and penalties for unlawful disclosure.

Section 20 – 23 – Liability, retaliation, witness protection and legal assistance

OUTA acknowledges the inclusion of protections against retaliation, access to witness protection, exclusion of liability for protected disclosures and access to legal assistance.

Concerns also remain regarding whether Legal Aid South Africa possesses sufficient institutional capacity, specialist expertise and confidentiality safeguards necessary to manage complex whistleblower matters effectively.

In practice, many whistleblowers may also fall outside ordinary Legal Aid qualification thresholds despite being financially incapacitated due to retaliation, loss of employment, frozen income or prolonged proceedings.

Concerns further remain that many of the protections contained in the Bill remain reactive rather than preventative.

The Bill also appears to lack sufficient immediate interim protection mechanisms capable of protecting whistleblowers during the period between making a disclosure and the activation of formal protection procedures. In high-risk matters, delays in accessing protection may expose whistleblowers to serious physical, financial or psychological harm.

Additional consideration must therefore be given to:

- a) immediate interim protection orders;
- b) emergency income support;
- c) relocation and physical security support;
- d) full legal funding, not only Legal Aid;
- e) protection for family members, colleagues, facilitators, CSOs and journalists;
- f) a complete reversal of the burden of proof in retaliation cases; and
- g) criminal penalties for retaliation, intimidation, blacklisting and identity disclosure.

OUTA submits that the Authority should be the entity vested with the above remedial powers, as this would provide a significant benefit to the discloser by ensuring access to independent, specialised and effective remedies aimed at protecting whistleblowers and addressing retaliation or non-compliance in a timely and accountable manner.

6. CHAPTER 5 – COMPLAINTS MECHANISM

Section 24 – 26 – Complaints and oversight

This chapter should be strongly criticised.

A single retired judge appointed by the President, reporting to the Minister, is vulnerable to political pressure, under-capacity and institutional weakness. The judge may request information and investigate complaints but this is not enough to prevent reprisals, secure evidence, fund legal defence, relocate a whistleblower or compel institutional reform.

Furthermore, it is doubtful whether a single retired judge mechanism would be capable of managing potentially large volumes of disclosures, complaints, appeals, and confidentiality disputes without substantial institutional and personnel support.

OUTA acknowledges the inclusion of an independent complaints mechanism and external oversight structure but the retired judge should be replaced by the independent Authority.

7. CHAPTER 6 – MISCELLANEOUS

Section 27 – Revocation of protection

OUTA acknowledges that revocation mechanisms may be necessary in limited circumstances but concerns remain that revocation powers could be abused or applied in a manner that discourages whistleblowing.

OUTA recommends that the Bill make provision for a complaints procedure to the Authority, in the event that a discloser is aggrieved by a decision of the authorised person.

Section 28 – Remedies

OUTA acknowledges the broad remedial powers provided under the Bill, including labour protections and compensation mechanisms.

OUTA recommends that the Bill make provision for a complaints procedure to the Authority, in the event that the discloser or related person has been subjected to occupational detriment or detrimental action in breach of section 21, or anyone acting on behalf of a discloser or related person who is not able to act in their own name.

As recommended previously, the Authority ought to be authorised to provide immediate and ongoing protection/relief including, but not limited to physical protection and relocation, emergency interim relief, income support and financial assistance, psychosocial and trauma support and legal representation and advisory services.

Section 29 – Education and information

OUTA acknowledges the emphasis placed on public awareness, education campaigns and employer obligations relating to whistleblower protection.

The education and awareness provisions are useful but insufficient without sanctions.

OUTA submits that the absence of a clear remedial framework undermines the protective purpose of the legislation and weakens confidence in the whistleblower regime. In circumstances where an authorised person disregards its statutory obligations under section 29, the affected discloser should have the right to lodge a complaint with the Authority, which should be empowered to investigate the matter, issue binding remedial directives and impose appropriate sanctions or compensation measures to ensure accountability and meaningful protection for whistleblowers.

Section 30 – 33 – Regulations, transitional provisions and repeal

OUTA acknowledges the importance of a careful transition from the current Protected Disclosures Act framework.

OUTA recommends the inclusion of retrospective application provisions in the Protected Disclosures Bill 2026 to ensure that individuals who made protected disclosures prior to the enactment of the Bill and who continue to suffer occupational detriment, retaliation, financial prejudice or threats to their safety are not excluded from the protections and remedies contemplated in the legislation.

Limiting the application of the Bill only to future disclosures would unjustly deny relief to many whistleblowers who exposed corruption and maladministration in the public interest before the legislative framework was strengthened. OUTA therefore submits that the Bill should expressly provide for the retrospective recognition of protected disclosures and access to remedial mechanisms, particularly in ongoing matters where the harmful consequences of retaliation persist, in order to advance fairness, accountability and the constitutional values underpinning whistleblower protection in South Africa.

8. CONCLUSION

OUTA welcomes the introduction of the Protected Disclosures Bill 2026 as an important opportunity to strengthen whistleblower protection in South Africa and address the shortcomings of the current legislative framework. OUTA supports the objectives of the Bill and acknowledges the inclusion of important reforms aimed at expanding protections, improving disclosure mechanisms, strengthening confidentiality safeguards and protecting whistleblowers against retaliation.

However, OUTA submits that the Bill, in its current form, does not yet provide a sufficiently effective, practical, or independent protection framework for whistleblowers. Significant concerns remain regarding institutional independence, implementation capacity, enforcement mechanisms, reporting accessibility, sanctions

for non-compliance and the absence of immediate and comprehensive protection measures for disclosers and related persons.

OUTA therefore strongly recommends the establishment of the Whistleblower Protection and Integrity Authority as an independent oversight and protection body responsible for coordinating disclosures, investigating complaints, monitoring compliance, providing urgent protection and support measures and enforcing accountability across the whistleblower protection framework. OUTA further submits that the Bill should be amended to recognise a broader range of legitimate disclosure recipients, including civil society organisations and investigative journalists.

OUTA further submits that whistleblower protection should be recognised not merely as a labour or procedural issue but as a constitutional, governance, anti-corruption and human rights imperative central to strengthening accountability and the rule of law.

While OUTA does not support the Bill in its current form, it remains committed to constructive engagement with Parliament and other stakeholders to strengthen the Bill and ensure the creation of a credible, independent and effective whistleblower protection regime capable of safeguarding those who act in the public interest.

Yours sincerely



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