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GOVERNMENT GAZETTE

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THE PRESIDENCY

No. 785.

7 August 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 26 of 2000: Protected Disclosures Act, 2000.

DIE PRESIDENSIE

No. 785.

7 Augustus 2000

Hierby word bekend gemaak dat die President sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 26 van 2000: Wet op Beskermdse Bekendmakings, 2000.

*(English text signed by the President.)
(Assented to 1 August 2000.)*

ACT

To make provision for procedures in terms of which employees in both the private and the public sector may disclose information regarding unlawful or irregular conduct by their employers or other employees in the employ of their employers; to provide for the protection of employees who make a disclosure which is protected in terms of this Act; and to provide for matters connected therewith.

PREAMBLE

Recognising that—

- the Bill of Rights in the Constitution of the Republic of South Africa, 1996, enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;
- section 8 of the Bill of Rights provides for the horizontal application of the rights in the Bill of Rights, taking into account the nature of the right and the nature of any duty imposed by the right;
- criminal and other irregular conduct in organs of state and private bodies are detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage;

And bearing in mind that—

- neither the South African common law nor statutory law makes provision for mechanisms or procedures in terms of which employees may, without fear of reprisals, disclose information relating to suspected or alleged criminal or other irregular conduct by their employers, whether in the private or the public sector;
- every employer and employee has a responsibility to disclose criminal and any other irregular conduct in the workplace;
- every employer has a responsibility to take all necessary steps to ensure that employees who disclose such information are protected from any reprisals as a result of such disclosure;

And in order to—

- create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner by providing comprehensive statutory guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures;
- promote the eradication of criminal and other irregular conduct in organs of state and private bodies,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

*(Engelse teks deur die President geteken.)
(Goedgekeur op 1 Augustus 2000.)*

WET

Om voorsiening te maak vir prosedures ingevolge waarvan werknemers in beide die privaat en die openbare sektor inligting in verband met onwettige of onreëlmatige optrede deur hul werkgewers of ander werknemers in die diens van hul werkgewers kan bekend maak; om voorsiening te maak vir die beskerming van werknemers wat 'n bekendmaking doen wat ingevolge hierdie Wet beskerm word; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

AANHEF

Met erkenning dat—

- die Handves van Regte in die Grondwet van die Republiek van Suid-Afrika, 1996, die regte van alle mense in die Republiek bewaar en die demokratiese waardes van menswaardigheid, gelykheid en vryheid bevestig;
- artikel 8 van die Handves van Regte voorsiening maak vir die horisontale toepassing van die regte in die Handves van Regte, met inagneming van die aard van die reg en die aard van enige verpligting wat deur die reg opgelê word;
- kriminele en ander onbehoorlike optrede in staatsorgane en privaatliggame nadelig is vir goeie, effektiewe, verantwoordbare en deursigtige staatsbestuur in staatsorgane en oop en goeie korporatiewe bestuur in privaatliggame, en die ekonomiese stabiliteit van die Republiek in gevaar kan stel en die potensiaal inhou om sosiale leed te berokken;

En gedagtig daaraan dat—

- nóg die Suid-Afrikaanse gemene reg nóg die statutêre reg voorsiening maak vir meganismes of prosedures ingevolge waarvan werknemers, sonder vrees vir vergelding, inligting kan bekend maak wat verband hou met vermoedelik of beweerde kriminele of ander onreëlmatige gedrag deur hul werkgewers, hetsy in die privaat of die publieke sektor;
- elke werkgever en werknemer 'n verantwoordelikheid het om kriminele en ander onreëlmatige gedrag in die werkplek bekend te maak;
- elke werkgever 'n verantwoordelikheid het om alle nodige stappe te doen ten einde te verseker dat werknemers wat sodanige inligting bekend maak van weerwraak as gevolg van sodanige bekendmaking beskerm word;

En ten einde—

- 'n kultuur te skep wat die bekendmaking van inligting deur werknemers met betrekking tot kriminele en ander onreëlmatige optrede in die werkplek op 'n verantwoordelike wyse sal fasiliteer deur die daarstelling van omvattende statutêre riglyne vir die bekendmaking van sodanige inligting en beskerming teen vergelding as gevolg van sodanige bekendmakings;
- die uitwissing van kriminele en ander onreëlmatige optrede in staatsorgane en privaatliggame te bevorder,

WORD DAAR DERHALWE BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Definitions

1. In *this Act*, unless the context otherwise indicates—

- (i) “*disclosure*” means any disclosure of information regarding any conduct of an *employer*, or an *employee* of that *employer*, made by any *employee* who has reason to believe that the information concerned shows or tends to show one or more of the following:
 - (a) That a criminal offence has been committed, is being committed or is likely to be committed;
 - (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which that person is subject;
 - (c) that a miscarriage of justice has occurred, is occurring or is likely to occur;
 - (d) that the health or safety of an individual has been, is being or is likely to be endangered;
 - (e) that the environment has been, is being or is likely to be damaged;
 - (f) unfair discrimination as contemplated in the Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000); or
 - (g) that any matter referred to in paragraphs (a) to (f) has been, is being or is likely to be deliberately concealed; (i)
- (ii) “*employee*” means—
 - (a) any person, excluding an independent contractor, who works for another person or for the State and who receives, or is entitled to receive, any remuneration; and
 - (b) any other person who in any manner assists in carrying on or conducting the business of an *employer*; (x)
- (iii) “*employer*” means any person—
 - (a) who employs or provides work for any other person and who remunerates or expressly or tacitly undertakes to remunerate that other person; or
 - (b) who permits any other person in any manner to assist in the carrying on or conducting of his, her or its business, including any person acting on behalf of or on the authority of such employer; (ix)
- (iv) “*impropriety*” means any conduct which falls within any of the categories referred to in paragraphs (a) to (g) of the definition of “*disclosure*”, irrespective of whether or not—
 - (a) the impropriety occurs or occurred in the Republic of South Africa or elsewhere; or
 - (b) the law applying to the impropriety is that of the Republic of South Africa or of another country; (vi)
- (v) “*Minister*” means the Cabinet member responsible for the administration of Justice; (v)
- (vi) “*occupational detriment*”, in relation to the working environment of an *employee*, means—
 - (a) being subjected to any disciplinary action;
 - (b) being dismissed, suspended, demoted, harassed or intimidated;
 - (c) being transferred against his or her will;
 - (d) being refused transfer or promotion;
 - (e) being subjected to a term or condition of employment or retirement which is altered or kept altered to his or her disadvantage;
 - (f) being refused a reference, or being provided with an adverse reference, from his or her *employer*;
 - (g) being denied appointment to any employment, profession or office;
 - (h) being threatened with any of the actions referred to paragraphs (a) to (g) above; or
 - (i) being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities and work security; (ii)
- (vii) “*organ of state*” means—
 - (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or

Woordomskrywings

1. In *hierdie Wet*, tensy uit die samehang anders blyk, beteken—

- (i) “*bekendmaking*” enige bekendmaking van inligting rakende enige optrede van ’n *werkgewer*, of ’n *werknemer* van daardie *werkgewer*, wat gedoen word deur ’n *werknemer* wat rede het om te glo dat die betrokke inligting een of meer van die volgende aantoon:
- (a) Dat ’n misdaad gepleeg is, gepleeg word of waarskynlik gepleeg gaan word;
 - (b) dat ’n persoon versuim het, besig is om te versuim of waarskynlik gaan versuim om aan ’n regsplig, waaraan daardie persoon onderhewig is, te voldoen;
 - (c) dat ’n onreg in die regspleging plaasgevind het, plaasvind of waarskynlik gaan plaasvind;
 - (d) dat die gesondheid of veiligheid van ’n individu in gevaar gestel is, in gevaar gestel word of waarskynlik in gevaar gestel gaan word;
 - (e) dat die omgewing beskadig is, beskadig word of waarskynlik beskadig gaan word;
 - (f) onbillike diskriminasie soos beoog in die “Promotion of Equality and Prevention of Unfair Discrimination Act, 2000 (Act No. 4 of 2000)”; of
 - (g) dat enige aangeleentheid bedoel in paragrafe (a) tot (f) opsetlik verberg is, verberg word of waarskynlik verberg gaan word; (i)
- (ii) “*beroepsnadeel*”, in verhouding tot die beroepsongewing van die *werknemer*—
- (a) om aan dissiplinêre stappe onderwerp te word;
 - (b) om ontslaan, geskors, gedegradeer, geteister of geïntimideer te word;
 - (c) om teen sy of haar wil verplaas te word;
 - (d) om verplasing of bevordering geweier te word;
 - (e) om aan ’n beding of voorwaarde van diens of aftrede onderwerp te word wat tot sy of haar nadeel verander, of onveranderd gehou, word;
 - (f) om ’n getuigskrif geweier te word, of van ’n nadelige getuigskrif voorsien te word, deur sy of haar *werkgewer*;
 - (g) om aanstelling in ’n werk, professie of amp geweier te word;
 - (h) om met enige optrede bedoel in paragrafe (a) tot (g) hierbo gedreig te word; of
 - (i) om andersins nadelig geraak te word met betrekking tot sy of haar diens, professie of amp, met inbegrip van werkgeleenthede en werksekerheid;
- (vi)
- (iii) “*beskermde bekendmaking*” ’n *bekendmaking* wat aan—
- (a) ’n regsadviseur ooreenkomstig artikel 5;
 - (b) ’n *werkgewer* ooreenkomstig artikel 6;
 - (c) ’n lid van die Kabinet of van die Uitvoerende Raad van ’n provinsie ooreenkomstig artikel 7;
 - (d) ’n persoon of liggaam ooreenkomstig artikel 8; of
 - (e) ’n ander persoon of liggaam ooreenkomstig artikel 9,
- gedoen word, maar sluit nie ’n *bekendmaking* in nie—
- (i) ten opsigte waarvan die *werknemer* ’n misdryf pleeg by die doen daarvan; of
 - (ii) wat gedoen word deur ’n regsadviseur aan wie die betrokke inligting bekend gemaak is in die loop van die inwin van regsadvies ooreenkomstig artikel 5; (ix)
- (iv) “*hierdie Wet*” ook ’n regulasie ingevolge artikel 10 uitgevaardig; (x)
- (v) “*Minister*” die Kabinetslid wat vir die regspleging verantwoordelik is; (v)
- (vi) “*onbehoorlikheid*” enige gedrag wat binne enige van die kategorieë bedoel in paragrafe (a) tot (g) van die woordomskrywing van “*bekendmaking*” val, ongeag of—
- (a) die *onbehoorlikheid* in die Republiek van Suid-Afrika of elders plaasvind of plaasgevind het; of
 - (b) die reg wat op die *onbehoorlikheid* van toepassing is dié van die Republiek van Suid-Afrika of van ’n ander land is; (iv)
- (vii) “*staatsorgaan*”—
- (a) enige staatsdepartement of administrasie in die nasionale of provinsiale regeringsfeer of enige munisipaliteit in die plaaslike regeringsfeer; of
 - (b) enige ander funksionaris of instelling wanneer—

- (b) any other functionary or institution when—
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public function in terms of any legislation; (vii) 5
- (viii) “*prescribed*” means prescribed by regulation in terms of section 10; (viii)
- (ix) “*protected disclosure*” means a *disclosure* made to—
 - (a) a legal adviser in accordance with section 5;
 - (b) an *employer* in accordance with section 6;
 - (c) a member of Cabinet or of the Executive Council of a province in accordance with section 7; 10
 - (d) a person or body in accordance with section 8; or
 - (e) any other person or body in accordance with section 9, but does not include a *disclosure*—
 - (i) in respect of which the *employee* concerned commits an offence by making that *disclosure*; or 15
 - (ii) made by a legal adviser to whom the information concerned was disclosed in the course of obtaining legal advice in accordance with section 5; (iii)
- (x) “*this Act*” includes any regulation made in terms of section 10. (iv) 20

Objects and application of Act

- 2. (1) The objects of *this Act* are—
 - (a) to protect an *employee*, whether in the private or the public sector, from being subjected to an *occupational detriment* on account of having made a *protected disclosure*; 25
 - (b) to provide for certain remedies in connection with any *occupational detriment* suffered on account of having made a *protected disclosure*; and
 - (c) to provide for procedures in terms of which an *employee* can, in a responsible manner, disclose information regarding *improprieties* by his or her *employer*.
- (2) *This Act* applies to any *protected disclosure* made after the date on which this section comes into operation, irrespective of whether or not the *impropriety* concerned has occurred before or after the said date. 30
- (3) Any provision in a contract of employment or other agreement between an *employer* and an *employee* is void in so far as it—
 - (a) purports to exclude any provision of *this Act*, including an agreement to refrain from instituting or continuing any proceedings under *this Act* or any proceedings for breach of contract; or 35
 - (b) (i) purports to preclude the *employee*; or
 - (ii) has the effect of discouraging the *employee*, from making a *protected disclosure*. 40

Employee making protected disclosure not to be subjected to occupational detriment

- 3. No *employee* may be subjected to any *occupational detriment* by his or her *employer* on account, or partly on account, of having made a *protected disclosure*. 45

Remedies

- 4. (1) Any *employee* who has been subjected, is subject or may be subjected, to an *occupational detriment* in breach of section 3, may—
 - (a) approach any court having jurisdiction, including the Labour Court established by section 151 of the Labour Relations Act, 1995 (Act No. 66 of 1995), for appropriate relief; or 50
 - (b) pursue any other process allowed or prescribed by any law.
- (2) For the purposes of the Labour Relations Act, 1995, including the consideration of any matter emanating from this Act by the Labour Court—
 - (a) any dismissal in breach of section 3 is deemed to be an automatically unfair dismissal as contemplated in section 187 of that Act, and the dispute about such a dismissal must follow the procedure set out in Chapter VIII of that Act; and 55

- (i) ingevolge die Grondwet of 'n provinsiale grondwet 'n bevoegdheid uitgeoefen of 'n funksie verrig word; of
- (ii) ingevolge wetgewing 'n openbare bevoegdheid uitgeoefen of 'n openbare funksie verrig word; (vii)
- 5 (viii) "voorgeskryf" voorgeskryf by regulasie ingevolge artikel 10; (viii)
- (ix) "werkgewer" 'n persoon—
 - (a) wat 'n ander persoon in diens hou of werk aan die ander persoon verskaf en wat die ander persoon vergoed of uitdruklik of stilswyend onderneem om die ander persoon te vergoed; of
 - 10 (b) wat iemand anders toelaat om op enige wyse in die voortsetting of bedryf van sy of haar besigheid behulpsaam te wees, met inbegrip van 'n persoon wat namens of op gesag van sodanige werkgewer optree; (iii)
 - (x) "werknemer"—
 - 15 (a) 'n persoon, uitgesonderd 'n onafhanklike kontrakteur, wat vir iemand anders of vir die Staat werk en wat besoldiging ontvang of daarop geregtig is om besoldiging te ontvang; en
 - (b) enige ander persoon wat op enige wyse help om die besigheid van 'n werkgewer voort te sit of te bedryf. (ii)

20 Oogmerke en toepassing van Wet

- 2. (1) Die oogmerke van *hierdie Wet* is—
 - (a) om 'n *werknemer*, hetsy in die privaat of openbare sektor, te beskerm teen onderwerping aan 'n *beroepsnadeel* omrede hy of sy 'n *beskermde bekendmaking* gedoen het;
 - 25 (b) om voorsiening te maak vir sekere remedies in verband met 'n *beroepsnadeel* wat gely is as gevolg van 'n *beskermde bekendmaking* wat gedoen is; en
 - (c) om voorsiening te maak vir prosedures ingevolge waarvan 'n *werknemer*, op 'n verantwoordelike wyse, inligting aangaande *onbehoorlikhede* deur sy of haar *werkgewer* bekend kan maak.
- 30 (2) *Hierdie Wet* is van toepassing op enige *beskermde bekendmaking* na die datum van inwerkingtreding van hierdie artikel gedoen, ongeag of die betrokke *onbehoorlikheid* voor of na die genoemde datum plaasgevind het.
- (3) 'n Bepaling in 'n werkskontrak of ander ooreenkoms tussen 'n *werkgewer* en 'n *werknemer* is niegtig vir soverre dit—
 - 35 (a) die strekking het om 'n bepaling van *hierdie Wet*, met inbegrip van 'n ooreenkoms om regstappe kragtens *hierdie Wet* of regstappe vir kontrakbreuk in te stel of voort te sit, uit te sluit; of
 - (b) (i) die strekking het om die *werknemer* daarvan te weerhou; of
 - 40 (ii) die uitwerking het om die *werknemer* te ontmoedig, om 'n *beskermde bekendmaking* te doen.

Werknemer wat beskermde bekendmaking doen, word nie aan beroepsnadeel onderwerp nie

- 3. Geen *werknemer* mag deur sy of haar *werkgewer* aan 'n *beroepsnadeel* onderwerp
- 45 word op grond daarvan, of gedeeltelik op grond daarvan, dat hy of sy 'n *beskermde bekendmaking* gedoen het nie.

Remedies

- 4. (1) 'n *Werknemer* wat in stryd met artikel 3 aan 'n *beroepsnadeel* onderwerp is, word of kan word, kan—
 - 50 (a) enige hof wat jurisdiksie het, met inbegrip van die Arbeidshof ingestel by artikel 151 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 van 1995), nader om gepaste regshulp; of
 - (b) enige ander proses aanwend wat deur 'n wet toegelaat of voorgeskryf word.
- (2) Vir die doeleindes van die Wet op Arbeidsverhoudinge, 1995, met inbegrip van
- 55 die oorweging van enige aangeleentheid wat uit hierdie Wet voortspruit deur die Arbeidshof—
 - (a) word 'n ontslag in stryd met artikel 3 geag 'n outomaties onbillike ontslag soos beoog in artikel 187 van daardie Wet te wees, en die geskil oor sodanige ontslag volg die prosedure in Hoofstuk VIII van daardie Wet uiteengesit; en

- (b) any other *occupational detriment* in breach of section 3 is deemed to be an unfair labour practice as contemplated in Part B of Schedule 7 to that Act, and the dispute about such an unfair labour practice must follow the procedure set out in that Part: Provided that if the matter fails to be resolved through conciliation, it may be referred to the Labour Court for adjudication.

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(3) Any *employee* who has made a *protected disclosure* and who reasonably believes that he or she may be adversely affected on account of having made that *disclosure*, must, at his or her request and if reasonably possible or practicable, be transferred from the post or position occupied by him or her at the time of the *disclosure* to another post or position in the same division or another division of his or her *employer* or, where the person making the *disclosure* is employed by an *organ of state*, to another *organ of state*.

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(4) The terms and conditions of employment of a person transferred in terms of subsection (2) may not, without his or her written consent, be less favourable than the terms and conditions applicable to him or her immediately before his or her transfer.

Protected disclosure to legal adviser

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5. Any *disclosure* made—

- (a) to a legal practitioner or to a person whose occupation involves the giving of legal advice; and
(b) with the object of and in the course of obtaining legal advice,
is a *protected disclosure*.

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Protected disclosure to employer

6. (1) Any *disclosure* made in good faith—

- (a) and substantially in accordance with any procedure *prescribed*, or authorised by the *employee's employer* for reporting or otherwise remedying the *impropriety* concerned; or
(b) to the *employer* of the *employee*, where there is no procedure as contemplated in paragraph (a),
is a *protected disclosure*.

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(2) Any *employee* who, in accordance with a procedure authorised by his or her *employer*, makes a *disclosure* to a person other than his or her *employer*, is deemed, for the purposes of *this Act*, to be making the *disclosure* to his or her *employer*.

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Protected disclosure to member of Cabinet or Executive Council

7. Any *disclosure* made in good faith to a member of Cabinet or of the Executive Council of a province is a *protected disclosure* if the *employee's employer* is—

- (a) an individual appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province;
(b) a body, the members of which are appointed in terms of legislation by a member of Cabinet or of the Executive Council of a province; or
(c) an *organ of state* falling within the area of responsibility of the member concerned.

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Protected disclosure to certain persons or bodies

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

- (a) the Public Protector;
(b) the Auditor-General; or
(c) a person or body *prescribed* for purposes of this section; and
in respect of which the *employee* concerned reasonably believes that—
(i) the relevant *impropriety* falls within any description of matters which, in the ordinary course are dealt with by the person or body concerned; and

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(b) word enige ander *beroepsnadeel* in stryd met artikel 3 geag 'n onbillike arbeidspraktyk soos beoog in Deel B van Bylae 7 tot daardie Wet te wees, en die geskil oor sodanige onbillike arbeidspraktyk volg die prosedure in daardie Deel uiteengesit: Met dien verstande dat indien die aangeleentheid nie deur versoening besleg word nie, dit na die Arbeidshof vir beregting verwys kan word.

(3) 'n *Werknemer* wat 'n *beskernde bekendmaking* gedoen het en wat redelikerwys glo dat hy of sy nadelig geraak kan word as gevolg van die *bekendmaking*, moet, op sy of haar versoek en indien dit redelikerwys moontlik of prakties is, verplaas word vanaf die pos of posisie wat hy of sy ten tyde van die *bekendmaking* beklee het, na 'n ander pos of posisie in dieselfde of 'n ander afdeling van sy of haar *werkgewer* of, waar die persoon wat die *bekendmaking* doen in diens van 'n *staatsorgaan* is, na 'n ander *staatsorgaan*.

(4) Die bedinge en voorwaardes van diens van 'n persoon wat ingevolge subartikel (2) verplaas word, mag nie sonder sy of haar skriftelike toestemming minder gunstig wees as die bedinge en voorwaardes wat onmiddellik voor sy of haar verplasing op hom of haar van toepassing was nie.

Beskernde bekendmaking aan regsadviseur

5. 'n *Bekendmaking* wat gedoen word—

(a) aan 'n regspraktisyn of aan 'n persoon wie se beroep met die verlening van regsadvies gemoeid is; en

(b) met die doel van, en in die loop van, die inwin van regsadvies, is 'n *beskernde bekendmaking*.

Beskernde bekendmaking aan werkgewer

6. (1) 'n *Bekendmaking* wat in goeie trou gedoen word—

(a) en wat wesenlik in ooreenstemming is met 'n prosedure wat *voorgeskryf* is, of wat deur die *werknemer* se *werkgewer* gemagtig is vir doeleindes van die aanmelding of ander regstelling van die betrokke *onbehoorlikheid*; of

(b) aan die *werkgewer* van die *werknemer*, waar daar geen prosedure soos in paragraaf (a) beoog is nie,

is 'n *beskernde bekendmaking*.

(2) 'n *Werknemer* wat, in ooreenstemming met 'n prosedure wat deur sy of haar *werkgewer* gemagtig is, 'n *bekendmaking* aan 'n ander persoon as sy of haar *werkgewer* doen, word, vir die doeleindes van hierdie Wet, geag 'n *bekendmaking* aan sy of haar *werkgewer* te doen.

Beskernde bekendmaking aan lid van Kabinet of van Uitvoerende Raad

7. 'n *Bekendmaking* wat in goeie trou aan 'n lid van die Kabinet of die Uitvoerende Raad van 'n provinsie gedoen is, is 'n *beskernde bekendmaking* indien die *werknemer* se *werkgewer*—

(a) 'n individu is wat ingevolge wetgewing deur 'n lid van die Kabinet of die Uitvoerende Raad van 'n provinsie aangestel is;

(b) 'n liggaam is waarvan die lede ingevolge wetgewing deur 'n lid van die Kabinet of die Uitvoerende Raad van 'n provinsie aangestel is; of

(c) 'n *staatsorgaan* is wat binne die verantwoordelikeheidsveld van die betrokke lid val.

Beskernde bekendmaking aan sekere persone of liggame

8. (1) 'n *Bekendmaking* wat in goeie trou gedoen word aan—

(a) die Openbare Beskermer;

(b) die Ouditeur-generaal; of

(c) 'n persoon of liggaam wat vir doeleindes van hierdie artikel *voorgeskryf* is; en

ten opsigte waarvan die betrokke *werknemer* redelikerwys glo dat—

(i) die betrokke *onbehoorlikheid* binne 'n beskrywing val van aangeleenthede wat in die gewone loop van sake deur die betrokke persoon of liggaam gehanteer word; en

(ii) the information disclosed, and any allegation contained in it, are substantially true,
is a *protected disclosure*.

(2) A person or body referred to in, or *prescribed* in terms of, subsection (1) who is of the opinion that the matter would be more appropriately dealt with by another person or body referred to in, or *prescribed* in terms of, that subsection, must render such assistance to the *employee* as is necessary to enable that *employee* to comply with this section.

General protected disclosure

9. (1) Any *disclosure* made in good faith by an *employee*— 10
- (a) who reasonably believes that the information disclosed, and any allegation contained in it, are substantially true; and
 - (b) who does not make the *disclosure* for purposes of personal gain, excluding any reward payable in terms of any law; 15
- is a *protected disclosure* if— 15
- (i) one or more of the conditions referred to in subsection (2) apply; and
 - (ii) in all the circumstances of the case, it is reasonable to make the *disclosure*.
- (2) The conditions referred to in subsection (1)(i) are—
- (a) that at the time the *employee* who makes the *disclosure* has reason to believe that he or she will be subjected to an *occupational detriment* if he or she makes a *disclosure* to his or her *employer* in accordance with section 6; 20
 - (b) that, in a case where no person or body is *prescribed* for the purposes of section 8 in relation to the relevant *impropriety*, the *employee* making the *disclosure* has reason to believe that it is likely that evidence relating to the *impropriety* will be concealed or destroyed if he or she makes the *disclosure* to his or her *employer*; 25
 - (c) that the *employee* making the *disclosure* has previously made a *disclosure* of substantially the same information to—
 - (i) his or her *employer*; or
 - (ii) a person or body referred to in section 8, 30
 - in respect of which no action was taken within a reasonable period after the *disclosure*; or
 - (d) that the *impropriety* is of an exceptionally serious nature.
- (3) In determining for the purposes of subsection (1)(ii) whether it is reasonable for the *employee* to make the *disclosure*, consideration must be given to— 35
- (a) the identity of the person to whom the *disclosure* is made;
 - (b) the seriousness of the *impropriety*;
 - (c) whether the *impropriety* is continuing or is likely to occur in the future;
 - (d) whether the *disclosure* is made in breach of a duty of confidentiality of the *employer* towards any other person; 40
 - (e) in a case falling within subsection (2)(c), any action which the *employer* or the person or body to whom the *disclosure* was made, has taken, or might reasonably be expected to have taken, as a result of the previous *disclosure*;
 - (f) in a case falling within subsection (2)(c)(i), whether in making the *disclosure* to the *employer* the *employee* complied with any procedure which was 45
 - authorised by the *employer*; and
 - (g) the public interest.
- (4) For the purposes of this section a subsequent *disclosure* may be regarded as a *disclosure* of substantially the same information referred to in subsection (2)(c) where such subsequent *disclosure* extends to information concerning an action taken or not 50 taken by any person as a result of the previous *disclosure*.

- (ii) die inligting wat bekend gemaak word, en enige aantyging daarin vervat, wesenlik waar is,

is 'n *beskernde bekendmaking*.

- (2) 'n Persoon of liggaam bedoel in, of *voorgeskryf* ingevolge, subartikel (1) wat van mening is dat die aangeleentheid meer gepas gehanteer kan word deur 'n ander persoon of liggaam bedoel in, of *voorgeskryf* ingevolge, daardie subartikel, moet sodanige hulp aan die *werknemer* verleen as wat nodig is ten einde die *werknemer* in staat te stel om aan hierdie artikel te voldoen.

Algemene beskernde bekendmaking

- 10 9. (1) 'n *Bekendmaking* wat in goeie trou deur 'n *werknemer* gedoen word—
- (a) wat redelikerwys glo dat die inligting wat bekend gemaak word, en enige aantyging daarin vervat, wesenlik waar is; en
- (b) wat nie die *bekendmaking* vir doeleindes van persoonlike gewin, met die uitsondering van 'n beloning ingevolge 'n wet betaalbaar, doen nie,
- 15 is 'n *beskernde bekendmaking* indien—
- (i) een of meer van die voorwaardes in subartikel (2) bedoel van toepassing is; en
- (ii) in al die omstandighede van die geval, dit redelik is om die *bekendmaking* te doen.
- 20 (2) Die voorwaardes bedoel in subartikel (1)(i) is—
- (a) dat die *werknemer* wat die *bekendmaking* doen ten tye daarvan rede het om te glo dat hy of sy aan 'n *beroepsnadeel* onderwerp sal word indien hy of sy die *bekendmaking* aan sy of haar *werkgewer* ooreenkomstig artikel 6 sou doen;
- 25 (b) in die geval waar geen persoon of liggaam vir doeleindes van artikel 8 in verband met die betrokke *onbehoorlikheid* *voorgeskryf* is nie, dat die *werknemer* wat die *bekendmaking* doen rede het om te glo dat dit waarskynlik is dat bewysmateriaal met betrekking tot die *onbehoorlikheid* verberg of vernietig sal word indien hy of sy die *bekendmaking* aan sy of haar *werkgewer* sou doen;
- 30 (c) dat die *werknemer* wat die *bekendmaking* doen voorheen 'n *bekendmaking* van wesenlik dieselfde inligting gedoen het aan—
- (i) sy of haar *werkgewer*; of
- (ii) 'n persoon of liggaam bedoel in artikel 8,
- 35 ten opsigte waarvan geen stappe binne 'n redelike tyd na die *bekendmaking* gedoen is nie; of
- (d) dat die *onbehoorlikheid* van 'n buitengewone ernstige aard is.
- (3) By die vasstelling vir die doeleindes van subartikel (1)(ii) of dit redelik is vir die *werknemer* om die *bekendmaking* te doen, moet oorweging geskenk word aan—
- 40 (a) die identiteit van die persoon aan wie die *bekendmaking* gedoen word;
- (b) die erns van die *onbehoorlikheid*;
- (c) of die *onbehoorlikheid* steeds voortduur of waarskynlik in die toekoms sal plaasvind;
- (d) of die doen van die *bekendmaking* strydig is met 'n vertrouenspog van die *werkgewer* teenoor 'n ander persoon;
- 45 (e) in 'n geval vermeld in subartikel (2)(c), enige stappe wat die *werkgewer* of die persoon of liggaam aan wie die *bekendmaking* gedoen is, gedoen het, of redelikerwys verwag kon word om te gedoen het, as gevolg van die vorige *bekendmaking*;
- 50 (f) in 'n geval vermeld in subartikel (2)(c)(i), of die *werknemer* by die doen van die *bekendmaking* aan die *werkgewer* aan enige prosedure wat deur die *werkgewer* gemagtig is, voldoen het; en
- (g) die openbare belang.
- (4) Vir die doeleindes van hierdie artikel kan 'n daaropvolgende *bekendmaking* as 'n
- 55 *bekendmaking* van wesenlik dieselfde inligting bedoel in subartikel (2)(c) geag word, waar sodanige daaropvolgende *bekendmaking* uitgebrei is tot inligting aangaande stappe wat gedoen is of nie gedoen is nie deur 'n persoon as gevolg van die vorige *bekendmaking*.

Regulations

10. (1) The *Minister* may, after consultation with the Minister for the Public Service and Administration, by notice in the *Gazette* make regulations regarding—
- (a) for the purposes of section 8(1), matters which, in addition to the legislative provisions pertaining to such functionaries, may in the ordinary course be referred to the Public Protector or the Auditor-General, as the case may be; 5
 - (b) any administrative or procedural matter necessary to give effect to the provisions of *this Act*; and
 - (c) any other matter which is required or permitted by *this Act* to be prescribed.
- (2) Any regulation made for the purposes of section 8(1)(c) must specify persons or bodies and the descriptions of matters in respect of which each person or body is prescribed. 10
- (3) Any regulation made in terms of this section must be submitted to Parliament before publication thereof in the *Gazette*.
- (4) (a) The *Minister* must, after consultation with the Minister for the Public Service and Administration, issue practical guidelines which explain the provisions of *this Act* and all procedures which are available in terms of any law to *employees* who wish to report or otherwise remedy an *impropriety*. 15
- (b) The guidelines referred to in paragraph (a) must be approved by Parliament before publication in the *Gazette*. 20
- (c) All organs of state must give to every *employee* a copy of the guidelines referred to in paragraph (a) or must take reasonable steps to bring the relevant notice to the attention of every *employee*.

Short title and commencement

11. This Act is called the Protected Disclosures Act, 2000, and commences on a date determined by the President by proclamation in the *Gazette*. 25

Regulasies

10. (1) Die *Minister* kan, na oorleg met die Minister vir die Staatsdiens en Administrasie, by kennisgewing in die *Staatskoerant* regulasies uitvaardig betreffende—
- 5 (a) vir die doeleindes van artikel 8(1), aangeleenthede wat, addisioneel tot die wetgewende bepalings wat op sodanige funksionariesse van toepassing is, in die gewone loop na die Openbare Beskermer of die Ouditeur-generaal, na gelang van die geval, verwys kan word;
- 10 (b) enige administratiewe of prosedurele aangeleentheid wat nodig is om aan die bepalings van *hierdie Wet* gevolg te gee; en
- 10 (c) enige ander aangeleentheid wat deur *hierdie Wet voorgeskryf* moet of kan word.
- (2) 'n Regulasie wat vir doeleindes van artikel 8(1)(c) uitgevaardig is, moet persone of liggame en die beskrywing van aangeleenthede ten opsigte waarvan elke persoon of
- 15 liggaam voorgeskryf word, spesifiseer.
- (3) 'n Regulasie ingevolge hierdie artikel uitgevaardig, moet aan die Parlement voorgelê word voor publikasie daarvan in die *Staatskoerant*.
- (4) (a) Die *Minister* moet, na oorleg met die Minister vir die Staatsdiens en Administrasie, praktiese riglyne uitreik ter verduideliking van die bepalings van *hierdie*
- 20 *Wet* en alle prosedures wat ingevolge enige wet beskikbaar is aan *werknemers* wat 'n *onbehoorlikheid* wil aanmeld of andersins wil regstel.
- (b) Die riglyne bedoel in paragraaf (a) moet deur die Parlement goedgekeur word voor publikasie daarvan in die *Staatskoerant*.
- (c) Alle *staatsorgane* moet aan elke *werknemer* 'n afskrif van die riglyne bedoel in
- 25 paragraaf (a) verskaf of moet redelike stappe doen om die betrokke kennisgewing onder die aandag van elke *werknemer* te bring.

Kort titel en inwerkingtreding

11. Hierdie Wet heet die Wet op Beskermdes Bekendmakings, 2000, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.