

TOOLKIT

FOR PUBLIC SERVANTS

PARI
PUBLIC AFFAIRS
RESEARCH INSTITUTE



**OPEN SOCIETY FOUNDATION
FOR SOUTH AFRICA**

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The documents and legislation referred to in this toolkit are available on the PARI website at:

<https://pari.org.za/toolkit-for-public-servants-resources/>



INTRODUCTION

The Constitution envisions a public administration that maintains a high standard of professional ethics, is developmentally orientated, and treats citizens in a fair and equitable way, without bias. Many public servants in South Africa have worked hard to support this vision, but corruption in the South African state over the past ten to fifteen years has arguably reached endemic levels. This means that corruption and impropriety are not simply observable in particular incidences; they seem to have become part of the state's institutional fabric, including within the public service. The most prominent media scandals have covered high levels of corruption and 'state capture' at the major state-owned enterprises (SOEs) such as Eskom and Transnet, often because of the large amounts of money involved. But these phenomena have also occurred within the public service.

This project of patronage and corruption – as media reports and academic studies have shown¹ – has hollowed out the personnel and capacity of key public service institutions. This is manifested in the often dubious and spurious dismissals of competent public servants who comply with the rules and regulations that govern the public service, and the appointment of individuals whose interests do not match with those of the state and the public. Positions in the public service are used as political capital where, as a PARI study shows, senior positions in the public service are used as currency or reward for loyalty within patronage networks.²

This occurs in the context of a general economic decline, thus narrowing the already limited access to resources in the private sector. The state and the public service have access to resources through procurement and other avenues of revenue extraction. Therefore, they become an increasingly attractive prospect for nefarious people looking to make a profit. Furthermore, competition between different interest groups for access to avenues of enrichment in the state perpetuates factionalism in the governing party. Increasingly, the state and its apparatus are used to expand patronage networks; there is an interaction and exchange between corrupt public officials and citizens, which further entrenches wrongdoing and unethical behaviour.

There is an urgent need to restore an ethos of compliance and capacity. Public servants should be equipped with information and knowledge resources to support them in pushing back against corruption in their own organisations. This booklet aims to support public servants in this regard.

Who is this toolkit for?

This is an information **Toolkit for Public Servants**³ who believe they have witnessed corruption or unethical conduct, or have been asked to commit unlawful or unethical acts. If you are thinking about reporting something you have witnessed, or been asked to perform an action you believe to be unlawful, this toolkit will be of some use to you.

What are the aims of this resource?

There is a great emphasis on enhancing ethics within the public service to guard against corruption and maladministration. Key initiatives include: adopting the Public Administration Management Act (PAMA); the revision of the Public Service Regulations (PSR 2016) to incorporate a revised code of conduct; ethical duties for public servants; as well as establishing ethics committees within departments and strengthening the ethics unit at the Department of Public Service Administration (DPSA). Public servants are guided by a code of conduct and various regulations to ensure that they do the right thing. Senior Management Service (SMS) members and others in leadership positions are expected to lead by example.

Besides the duty that public servants have to adhere to legislative prescripts and regulations, they also need to do so because it is the *right thing to do*. There is a degree of disengagement and despondency among many public servants. But turning the tide against corruption, while broader and more structural reforms are undertaken in relation to **public service recruitment** and **public procurement**, requires each public servant to

play their part in acting ethically at a personal level and also against those who do not. It requires a collective shift – and the courage to start it. These are the choices that each person in society needs to make and be accountable for.

Living according to ethical principles and in line with our Constitution's values requires information about what is expected of each public servant, and it also requires courage.

Courage is needed because even when public servants want to do the right thing and take a stand against unethical conduct or corruption, they are often dissuaded from doing so.⁴

Although the old adage says silence is consent, public servants often have to weigh a number of factors before they take a stand and report any wrongdoing. Unfortunately, in many instances, public servants who took a stand were victimised as a result. They had to deal with difficulties at their workplace from superiors and peers, and from family members who were financially and emotionally affected as a result of their courageous actions. Yet, for many people in this situation, their courage, the support they received and their determination to live by their ethical principles and overcome their fears served to see them through the difficult times.

This resource is aimed at supporting those who have the courage to report impropriety or wrongdoing. It provides useful information and pointers on how to go about it and considering possible next steps.

Importantly – and because of the ethical actions of those who have reported corruption and unethical conduct – there have been a number of amendments to the Protected Disclosures Act (PDA) that strengthen the protections available to those who want to report or *blow the whistle* on wrongdoing. These amendments are covered in this guide to help you make an informed decision, should you decide to make a report.

... any advantage gained improperly by public officials...leads to the breakdown in trust between public officials and the citizenry... This leads to fertile ground for corruption to occur which in turn will undermine the ability of government to deliver services fairly and equitably. Integrity is, therefore, the sine qua-non for effective service delivery in a developmental state like South Africa.

PSC News (2010), Reflections on an Ethical Public Service and Society, p.4

This toolkit has two important objectives:

1. To provide quick and easy access to useful information that will help you determine whether you have been asked to break the law or violate public service codes of conduct.
2. To provide relevant information to guide you in the process of making a disclosure about what you witnessed or were asked to perform. This booklet outlines the regulatory context, and provides a guide and options for reporting corruption or resisting pressure to commit corrupt acts.

We hope that this toolkit will equip you with the knowledge to face whatever you may encounter on this journey.

What to consider when you want to make a report or disclosure

There are some important issues to consider for public servants who have noticed something they think is unethical or are being requested to perform actions that they believe are unethical or unlawful.

The stigma and fear of being labelled a traitor or snitch is a burden that you, as the one making the report or disclosure, must recognise and may need to carry. This feeling that you are performing an act of betrayal can come from how other people relate to you, or may be something you take on internally and think of yourself.

Making a disclosure has the potential to expose the impropriety or wrongdoing of a colleague whether they are superior, subordinate or on the same level / salary-grading as you are. It can have serious consequences for that person or people involved, as well as for yourself. It must be acknowledged that, while there are many aspects of the relationship between employee and employer that are similar across the private sector and the state, there are some important differences to keep in mind. Making a disclosure is difficult enough in a private company or corporate setting, but it has the potential to take on a further intensity within the public service. There are numerous reasons for this that we may be able to identify.

Making a disclosure that involves another colleague could appear to be, in effect, going up against the entire state institution that you

and the person or people you are making the disclosure about, represent. In that action, it can feel as though you are being disloyal to or challenging part of the state apparatus that holds seemingly infinite powers. This becomes even more complex if you are a member of the party that governs in the province that you and the person or people you have noticed acting improperly, work in. More so, if they are a senior member of the party you belong to. It may feel like you are betraying your own organisation.

Messages are transmitted constantly about having personal integrity and calculating actions based on personal rationality. But there are also many aspects about being located within or belonging to a wider group or institution that ought to be recognised and dealt with. Nonetheless, it is difficult and sometimes impossible to ignore unethical behaviour.

These are all issues that must be considered very seriously before deciding to disclose information and there are numerous options in this toolkit that can be explored to mitigate or quell some of the fears and anxieties.

Why is it still important to make the disclosure?

- Making a disclosure can help safeguard state institutions and resources, and their ability to deliver services to the most vulnerable sectors of society.
- The disclosure may be used in a proceeding that will result in restoring integrity and in achieving justice.
- The information you provide will go towards protecting the integrity of the department where you are located, will assist in the maintenance of public trust and confidence in the government and will have positive effects for you and the people you care about, like your family.
- The disclosure may result in removing a negative and unwanted presence in the bureaucracy; thus your disclosure does not challenge the might of the state, but rather an individual who is misrepresenting the South African public.
- The code of conduct for the public service enjoins you to disclose any wrongdoing within the public service.

What are the limitations of this booklet?

The most important limitation is that this resource is not a legally binding document – it cannot provide any relief in a legal setting or proceeding. Simply put, **this document is not a replacement for seeking proper legal advice.**

This booklet is not focused on areas of the system in need of reform, but aims to be one among a number of resources that public servants can consult.

The rest of this toolkit is divided into a Part A and Part B.

Part A

The toolkit identifies the most relevant policies, legislation and measures that have been implemented to combat corruption, to foster an ethical culture within the public service and which regulate the conduct of public servants. There are extracts from the legislation itself, with explanations where required.

It identifies and provides information from other guides that have been developed.

Part B

There is a discussion about the factors to consider, should you decide to make a report or disclosure. A step-by-step process is provided on how to go about making a report or disclosure, and the types of protection that are outlined in law.

Practical dos and don'ts are provided, based on interviews with government officials, union representatives and findings from our courts in relation to the PDA – a piece of legislation that has been set up to safeguard the rights of persons who decide to make disclosures against victimisation and retaliation by those who might be implicated as a result of the disclosure.



Part A: Background to Ethics and Law

The trouble is that once you see it, you can't unsee it. And once you've seen it, keeping quiet, saying nothing, becomes as political an act as speaking out. There's no innocence. Either way, you're accountable

Arundhati Roy

efore the Law



This toolkit is intended for public servants who have been witness to or been asked to perform unethical acts. Therefore, we need to understand what an unethical act might look like. Ethics – closely related to morality – and illegality are two concepts that are often used interchangeably. The way that these concepts are understood within our current democratic society and state institutions make ethics and law seem to mean the same thing. For our purposes here, it is crucial to recognise the distinction between the two concepts.

How does the divergence between morality and the law play out in reality?

Think of the following example. Imagine a situation where employee salaries are paid late because, for whatever reason, the person who usually authorises the salary payment is not available. One person may find it unethical to forge the signature of a person who ordinarily authorises the timely release of salaries. Another may find the forgery of such a signature necessary, to ensure that all staff are paid timely and to comply with the organisation's contractual duty to pay salaries by a certain date.

The person forging such a signature could validly rely on the ethical consideration that employees should be paid as per their employment contracts and legally, by so doing, they would be ensuring that the organisation complies with its obligations in terms of all employment contracts, that is, the end justifies the means. On the other hand, many people would believe that the very act of forgery is, on its own, unethical and the ends *do not* justify the means.

There are myriad examples, but the inquiry into what constitutes ethical conduct is not always a simple exercise. The problem with an individual's assessment of ethics is that it is subjective and relative. Ethics can have further complexity because it is informed by society and across cultural and religious persuasions. Even siblings from the same home, raised with the same ethical values, can subscribe to their own ethical subjective standards.

The difficulty arises because the reader is not always in a position to identify when they are actually in a position of witnessing and behaving unethically. One can only act with a full appreciation of the norms and standards of what appears to be *regular conduct*.

A question can arise from another practical scenario: can an entry-level administrative clerk call out a senior colleague at the level of director of a department if they come across documentation that appears to be tender fraud? How would that person be aware that it is tender fraud in the first place and secondly, is it the place of the employee to question it?

To assess the ethical and legal considerations of any conduct or instruction, in a state institution or elsewhere, there must be a clear understanding of the framework that one should ordinarily operate within. There are many guidelines and training manuals indicating steps to take to report any unethical or illegal conduct across all institutional levels. However, there is not enough focus on employees, particularly lower level employees or in this case public servants, or the process of identifying conduct or instruction that is out of the ordinary, irregular or improper. If this is the case, then the difficulty arises not only in identifying unethical conduct, but also in reporting it.

If it is difficult to recognise something as unethical, then we must instead turn to observe the legislation and regulations – a common agreement between people to govern their actions. There is perhaps a lack of implementation of what may well be sound and robust legislation. The widely held critique of the legislative framework is that it assumes a more coherent environment than the reality on the ground – the reality that people operate within. Persons who want to act ethically can be intimidated, face workplace discrimination or often have to seek protection from threats and attacks with limited legal protection.

Building an ethical, value-driven public service and combatting corruption

The early years of democracy

In 1999, the South African government held its first National Anti-Corruption Summit, and in 2002 it published the **Public Service Anti-Corruption Strategy**. This strategy called for a holistic and integrated approach to fighting corruption.

This was premised on a strategic mix of preventative and combative activities, and a consolidation of the institutional and legislative capabilities of government. Importantly, the nine interrelated considerations that made up the strategy included improved access to report wrongdoing; protection of whistle-blowers and witnesses; management of professional ethics and improved management practices.⁵

As part of the implementation of the strategy, in September 2003, Cabinet required all public service departments and entities to have a certain ‘minimum level of anti-corruption capacity’ (MACC).⁶

In early 2005, an audit established the extent to which departments and organisational components had implemented the MACC requirements.⁷

To enhance the departments’ ability to implement them, the DPSA produced **practical guidelines for setting up an integrated strategy** based on: prevention, detection, investigation and resolution of corruption.

As part of the prevention component, the MACC requirements emphasised that government departments should create and promote an ethical organisational culture and provide guidelines for how public servants should behave. The MACC also called for the appointment of an ethics champion in departments – responsible for driving ethics and anti-corruption initiatives.⁸

Unfortunately, however, there was no *formal* requirement for departments to establish this capacity. This meant that there was limited impetus to promote an ethical organisation culture within the public service. Instead, the focus fell on combatting corruption more narrowly.

Ideally, this toolkit – or any other resource of its kind – would not even be necessary if there were systems in place within the public service and their various institutions: where making disclosures are part of the culture of the organisation; where transparency has been established in the institution to enable people to voice their opinion; and where everyone is equipped with the necessary information to understand the nature of their working environment. In this case, public servants would be acutely aware of what is expected from them and their colleagues in terms of reporting problems and wrongdoing – which invariably occurs. This booklet is therefore useful when there is a problem that has already occurred and that points to a general systemic governance failure.

The guidelines set out an ethical administration in any organisation. Additionally, the steps to report any corruption or unethical behaviour are outlined. But before we delve into them, we must first understand the framework that regulates ethical conduct and the key values and principles that should govern the conduct and practice in the public service. Added to that are the initiatives by the state to promote an ethical culture within the public service, and to implement mechanisms to combat various forms of corruption and unethical conduct when it occurs. Knowing the current framework helps us to understand the duties and obligations on public servants to behave ethically.

A legal framework to combat corruption

To strengthen the legal framework to combat corruption government has adopted, among others, the following legislation:

The Public Finance Management Act (PFMA) (No. 1 of 1999) and the Municipal Finance Management Act (MFMA) (No. 56 of 2003): These Acts set out the requirements for dealing with public finances at the national, provincial and local government levels.

The Promotion of Access to Information Act (PAIA) (No. 2 of 2000): This Act gives effect to the constitutional right to access to information and enables anyone to get access to information held by the state, subject to some limitations, and thus enhance transparency.

The Financial Intelligence Centre Act (FICA) (No. 38 of 2001): This Act creates the Financial Intelligence Centre and was designed to combat money laundering.

The Promotion of Administrative Justice Act (PAJA) (No. 3 of 2000): This Act gives effect to the Constitutional right to have access to just administrative action and ensures that decisions that affect the public are taken in a way that is procedurally fair. It also gives people the right to request written reasons for decisions they disagree with (for example, why someone was not successful in a job promotion).

The Protected Disclosures Act (PDA) (No. 26 of 2000): This Act was passed to encourage people in both the private and public sectors to disclose information about unlawful and irregular behaviour in the workplace. It offers protection from victimisation for whistle-blowers, as long as they meet the requirements and follow the procedure set out in the Act. This Act was amended in 2017 and additional protections (discussed later) were introduced.

The Prevention and Combating of Corrupt Activities (PRECCA) Act (No. 12 of 2004): This Act provides the legal definition of corruption and creates a range of offences. It also allows for people found guilty of certain offences (such as those related to tenders) to be blacklisted and it requires persons who hold positions of authority (senior officials) to report cases of corruption involving R100 000 or more. Failure to do so is a criminal offence.

Measures to reinforce ethical values and principles

The Public Service Commission (PSC) is mandated by the Constitution to promote a high standard of professional ethics, and to investigate, monitor and evaluate public administration practices in the public service.

The PSC recognised that despite the number of measures established, efforts to fight corruption tended to be reactive in character, which watered down efforts at building national integrity.⁹ This was echoed in the guidelines to implement the MACC requirements.¹⁰

Increasingly, government realised that more focus was needed on developing and communicating the kind of organisational culture, values and principles required within the public service, rather than limiting anti-corruption strategies to fighting specific corruption cases, often after they occurred.

Section 195 of the Constitution states that “Public administration must be governed by our democratic values and principles” and lists the following principles:

- A high standard of professional ethics must be promoted and maintained;
- Services must be provided impartially, fairly, equitably and without bias;
- Public administration must be accountable;
- Transparency must be fostered by providing the public with timely, accessible and accurate information;
- Public administration must be broadly representative of the South African people, with employment and personnel management practices based on ability, objectivity, fairness and the need to redress the imbalances of the past to achieve broad representation.

**[Section 195,
Constitution of South Africa]**

Government has a duty to proactively promote a culture of honesty and good governance...This requires a public service that is professional, ethical and performs its duties and tasks with integrity.

***Dr Ralph Mgijima, Chairperson, PSC,
PSC News (2010), p.3***

The ***Public Service Code of Conduct*** and the ***Batho Pele Principles*** in 1997, were both developed according to these principles and values, to improve the level of professional ethics in the public service.

DPSA's minimum level of anti-corruption capacity (MACC)

An anti-corruption strategy will achieve little success if it is not part of a drive to be an ethical organisation. People should not merely refrain from corrupt behaviour because they fear getting caught – they should refrain from corrupt behaviour because they want to behave ethically. This will only be achieved in departments that actively strive to create an ethical organisational culture.

The Code of Conduct for the Public Service

The Code of Conduct for the Public Service sets the standards of integrity for public servants and operationalises the legal framework put in place to promote integrity. The code was developed by the PSC and a revised version has been incorporated as **Chapter II of the Public Service Regulations, 2016 (PSR 2016)**. It exemplifies the spirit in which public officials should perform their duties, points out how to avoid conflicts of interest and indicates what is expected of public officials in terms of their personal conduct and in serving the public.

Ethical conduct

Regulation 13 deals specifically with ethical conduct and reads as follows:

Regulation 13. Ethical conduct

An employee shall -

- a. not receive, solicit or accept any gratification, as defined in Section 1 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), from any employee or any person in return for performing or not performing his or her official duties;
- b. not engage in any transaction or action that is in conflict with or infringes on the execution of his or her official duties;
- c. not conduct business with any organ of state or be a director of a public or private company conducting business with an organ of state, unless such employee is in an official capacity a director of a company listed in schedule 2 and 3 of the Public Finance Management Act;
- d. recuse herself or himself from any official action or decision-making process which may result in improper personal gain, and this shall immediately be properly declared by the employee;
- e. immediately report to the relevant authorities, fraud, corruption, nepotism, maladministration and any other act which constitutes a contravention of any law (including, but not limited to, a criminal offence) or which is prejudicial to the interest of the public, which comes to his or her attention during the course of his or her employment in the public service;
- f. refrain from favouring relatives and friends in work-related activities and not abuse his or her authority or influence another employee, nor be influenced to abuse his or her authority;
- g. not use or disclose any official information for personal gain or the gain of others;
- h. not receive or accept any gift from any person in the course and scope of his or her employment, other than from a family member, to the cumulative value of R350 per year, unless prior approval is obtained from the relevant executive authority;
- i. if he or she has permission in terms of Section 30 of the Act to perform outside remunerative work, not –
 - i) perform such work during official work hours; and
 - ii) use official equipment or state resources for such work.
- j. deal fairly, professionally and equitably with all other employees or members of the public, irrespective of race, gender, ethnic or social origin, colour, sexual orientation, age, disability, religion, political persuasion, conscience, belief, culture or language; and
- k. refrain from party political activities in the workplace.

Official duties

Inasmuch as the code describes how employees *should not* conduct themselves, it also describes the duty of public servants to report corruption, fraud, nepotism, maladministration and any act that violates any law or which is prejudicial to the interest of the public. These duties are emphasised in Regulation 14 (among others) which enjoins employees to act ethically and report non-compliance with the **Public Service Act**. Relevant clauses are set out below.

Regulation 14. Performance of official duties

An employee shall –

- a. strive to achieve the objectives of his or her institution cost effectively and in the interest of the public;
[...]
- d. execute his or her official duties in a professional and competent manner;
- e. cooperate fully with other employees to advance the interest of the public;
- f. be honest and accountable in dealing with public funds and use the State's property and other resources effectively, efficiently, and only for authorised official purposes;
- g. use the appropriate mechanisms to deal with his or her grievances or to direct representations;
- h. be committed to the optimal development, motivation and utilisation of employees reporting to him or her and the promotion of sound labour and interpersonal relations;
[...]
- j. promote sound, efficient, effective, transparent and accountable administration;
- k. give honest and impartial advice, based on all available relevant information, in the execution of his or her official duties;
- l. honour the confidentiality of official matters, documents and discussions;
- m. not release official information to the public unless he or she has the necessary approval;
[...]
- p. not misrepresent himself or herself or use the name or position of any other employee or person to unduly or improperly influence any decision making process or obtain any undue benefit; and
- q. shall immediately report any noncompliance of the Act to the head of department.

The Batho Pele (People First) Principles

The Batho Pele (People First) Principles are eight principles of professional ethics in the delivery of public service. They ensure that public servants are service-orientated, and that they strive for excellence and continuous service delivery improvement. These principles represent a mechanism that allows members of the public to hold public servants accountable for the quality of their services; and to ensure that such provision is based on the principles of openness, transparency, value for money and redress.



1. CONSULTATION

You can tell us what you want from us.

You will be asked for your views on existing public services and may also tell us what new basic services you would like. All levels of society will be consulted and your feelings will be conveyed to Ministers, MECs and legislators.

THE PRINCIPLE: You should be consulted about the level and quality of the public services you receive and, wherever possible, should be given a choice about the services that are offered.



2. SERVICE STANDARDS

Insist that our promises are kept.

All national and provincial government departments will be required to publish service standards for existing and new services. Standards may not be lowered! They will be monitored at least once a year and be raised progressively.

THE PRINCIPLE: You should be told what level and quality of public services you will receive so that you are aware of what to expect.

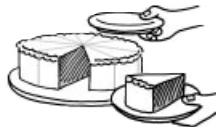


3. ACCESS

One and all should get their fair share.

Departments will have to set targets for extending access to public servants and public services. They should implement special programmes for improved service delivery to physically, socially and culturally disadvantaged persons.

THE PRINCIPLE: You and all citizens should have equal access to the services to which you are entitled.



4. COURTESY

Don't accept insensitive treatment.

All departments must set standards for the treatment of the public and incorporate these into their Codes of Conduct, values and training programmes. Staff performance will be regularly monitored, and discourtesy will not be tolerated.

THE PRINCIPLE: You should be treated with courtesy and consideration.

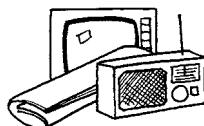


5. INFORMATION

You're entitled to full particulars.

You will get full, accurate and up-to-date facts about services you are entitled to. Information should be provided at service points and in local media and languages. Contact numbers and names should appear in all departmental communications.

THE PRINCIPLE: You should be given full, accurate information about the public services you are entitled to receive.



6. OPENNESS AND TRANSPARENCY

Administration must be an open book.

You'll have the right to know. Departmental staff numbers, particulars of senior officials, expenditure and performance against standards will not be secret. Reports to citizens will be widely published and submitted to legislatures.

THE PRINCIPLE: You should be told how national and provincial departments are run, how much they cost, and who is in charge.



7. REDRESS

Your complaints must spark positive action.

Mechanisms for recording any public dissatisfaction will be established and all staff will be trained to handle your complaints fast and efficiently. You will receive regular feedback on the outcomes.

THE PRINCIPLE: If the promised standard of service is not delivered, you should be offered an apology, a full explanation and a speedy and effective remedy. When complaints are made, you should receive a sympathetic, positive response.

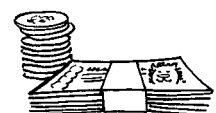


8. VALUE FOR MONEY

Your money should be employed wisely.

You pay income, VAT and other taxes to finance the administration of the country. You have the right to insist that your money should be used properly. Departments owe you proof that efficiency savings and improved service delivery are on the agenda.

THE PRINCIPLE: Public services should be provided economically and efficiently in order to give you the best possible value for money.



Members of the Senior Management Service

Public servants on salary levels 13 to 16 (director and upwards) are part of the Senior Management Service (SMS), and must adhere to Regulation 91 and Regulation 18 of the PSR 2016, as set out below, in addition to the Code of Conduct and the Batho Pele principles.

91. Ethics and conduct

Members of the SMS shall -

- a. display the highest possible standards of ethical conduct;
- b. set an example to those employees reporting to them and maintain high levels of professionalism and integrity in their interaction with political office bearers and the public;
- c. ensure that they minimise conflicts of interest and that they put the public interest first in the performance of their functions; and
- d. avoid any conflict of interest that may arise in representing the interests of his or her department and being a member of a trade union, as defined in Section 213 of the Labour Relations Act.

**Public Service
Regulations, 2016**

Since 2000, SMS members have also had an obligation to disclose, on a yearly basis, their financial interests. In terms of Regulation 18 of the PSR 2016, SMS members must provide details in relation to the following:

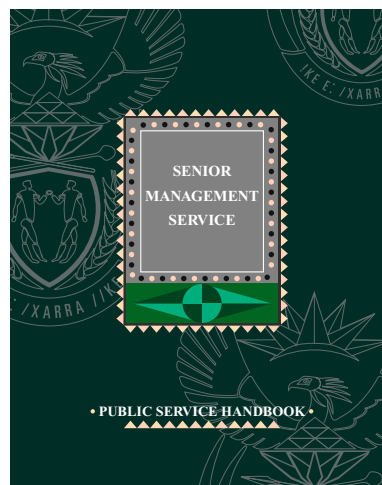
- Shares, loan accounts or any other form of equity in a registered private or public companies and other corporate entities recognised by law;
- Income-generating assets;
- Trusts;
- Directorships and partnerships;
- Remunerated work outside the employee's employment in her or his department;
- Consultancies and retainerships;
- Sponsorships;
- Gifts and hospitality from a source other than a family member;
- Ownership and other interests in immovable property; and
- Vehicles.

Senior managers must provide leadership in the area of ethics and “walk the talk”. They should give firm support to staff who raise problems of an ethical nature and ensure an openness on what constitutes correct conduct.

**Section 6.2, Chapter 6,
SMS Handbook 2003**

SMS members must also adhere to Chapter 6 of the **SMS Handbook (2003)**, which is dedicated specifically to ethics and conduct. While many of its provisions are regarded as advisory, SMS members are encouraged to:

- Ensure that decisions which they make are, and are seen to be, made impartially and free from any actual or apparent bias or prejudice in line with fair administrative action;
- Discharge their duty to report criminal offences that are committed, or if they suspect that such offences could have been committed;
- Be supportive of staff who make or intend to make protected disclosures;
- Take prompt and decisive disciplinary action as a means to reinforce high standards and to demonstrate to staff and the community that government is committed to eliminating unethical conduct;
- Blow the whistle or report any unethical behaviour or wrongdoing by any other official, which may include behaviour that they believe violates any law, rule or regulation, constitutes mismanagement, or is a danger to public health or safety.
- Be attuned to detect unhappiness amongst staff and deal with complaints and grievances in a prompt, fair manner and respect the timeframes prescribed by grievance procedures.



Strengthening implementation of integrity and good governance measures

Almost a decade into democracy, the government launched the *National Development Plan (NDP) 2030*. The NDP is a strategy intended to address poverty and inequality in South Africa by building a capable and developmental state (set out in Chapter 13 of the NDP). To this end, the plan outlines strengthened accountability and oversight mechanisms to be achieved by 2030.

The potential to develop such a state, and achieve many of the other NDP objectives, is linked to how effective efforts are to promote ethical conduct and address corruption – addressed in Chapter 14. Here, the National Planning Commission recognises that implementation of mechanisms to prevent and combat corruption are poor and stresses that overcoming corruption and lack of accountability requires political will, sound institutions, a solid legal foundation and an active citizenry that holds public officials accountable.¹¹

To address the shortcomings and align government activities to the aspirations of the NDP, a number of steps were followed. These were meant to build state capacity in order to strengthen the state's response to corruption.

... Corruption undermines good governance, which includes sound institutions and the effective operation of government in South Africa. The country needs an anti-corruption system that makes public servants accountable, protects whistle-blowers and closely monitors procurement.

**NDP 2030,
Chapter 14: Fighting Corruption, p.445**

The Public Service Integrity Management Framework (IMF)

It seems that the **Integrity Management Framework (IMF)** which was approved in October 2013 informed the gap analysis in the NDP. As part of the rationale for the framework, the DPSA acknowledged that there was a lack of enforcement and unsatisfactory implementation of certain aspects of the regulatory framework – those aimed at managing integrity and promoting good governance in the public sector.¹²

Key implementation gaps identified in the Integrity Management Framework (IMF)

- Limited adherence to the Code of Conduct for the Public Service
- Non-compliance with Financial Disclosure Framework
- Non-compliance with provisions in relation to remunerative ('paid') work outside of the public service
- Non-compliance with MACC requirements
- Non-compliance with supply chain management prescripts
- Weak enforcement and inconsistent application of disciplinary measures
- Resignation and transfer of public servants to other departments before disciplinary processes are instituted or concluded; and
- Ineffective implementation of the Protected Disclosures Act, 2000.

The IMF contains provisions for managing unethical conduct that may arise as a result of financial interests, gifts, hospitality and other benefits, remunerative work outside the public service and employment after someone has left the public service.

Echoing the earlier call for ethics champions, in 2006, the IMF contains proposals to establish an ethics management infrastructure at departmental level – including the deployment of ethics champions in the public service by departmental executive committees who are responsible to drive ethics and anti-corruption initiatives. In particular, it assigns ministers the responsibility to designate or appoint ethics officers to manage and implement the IMF at department level; to advise employees on ethical matters; and to identify and report unethical behaviour and corrupt practices to the head of department.¹³



The Public Service Charter

The IMF was followed by a new **Public Service Charter** – a social contract between the state and public servants setting out the roles and responsibilities to improve government performance and enhance service delivery. The charter calls for unbiased and impartial public servants, who do not engage in transactions that are in conflict with their official duties, and who act on fraud and corruption, nepotism, maladministration or other acts that are prejudicial to the public interest.¹⁴

The state, on the other hand, commits to institute national accountability and integrity systems to promote value-based societal behaviour and attitudes as a means of preventing corruption. Here, the state starts to give importance to fostering conduct that is *value-based* – therefore not just dependent on compliance with a rule or policy, as many of the measures had been up to this point.¹⁵

The Public Administration Management Act (PAMA)

The **Public Administration Management Act (PAMA) No.11 of 2014** puts in place a number of the proposals contained in the IMF and in Section 195(3) of the Constitution, which requires national legislation to ensure the promotion of the values and principles that must govern public administration.

Objects of the Public Administration Management Act (PAMA)

3. The objects of this Act are to –

- a. promote and give effect to the values and principles in Section 195(1) of the Constitution;
- b. provide for the transfer and secondment of employees;
- c. promote a high standard of professional ethics in the public administration;
- d. promote the use of information and communication technologies in the public administration;
- e. promote efficient service delivery in the public administration;
- f. facilitate the eradication and prevention of unethical practices in the public administration; and
- g. provide for the setting of minimum norms and standards to give effect to the values and principles of Section 195(1) of the Constitution.

The PAMA calls on every national and provincial department, municipality and national or provincial government component to promote the values and principles in Section 195(1) of the Constitution, including promoting and maintaining a high standard of professional ethics. It formalises ethical guidelines to support the creation of an ethical organisational culture. It also introduces sanctions for their violation.

In particular, Section 8 states that employees (persons appointed in terms of Section 8 of the Public Service Act, those performing similar functions in a municipality and those who are employed on policy considerations) are prohibited from doing business with the state or to be directors of a public or private company conducting business with the state. Contravention of this Section constitutes a criminal offence and serious misconduct that may result in termination of employment.

The Public Administration Management Act (PAMA)

Section 9 of the PAMA also requires employees to disclose their financial interests, and those of their spouses or partners, every year. Failure to do so constitutes misconduct. This Section extends the obligation to disclose financial interests, from members of the SMS to all employees. However, this Section has not yet come into force.¹⁶

Importantly, the PAMA establishes the Public Administration Ethics, Integrity and Disciplinary Technical Assistance (PAEIDTA) Unit within the DPSA with the following functions:

Functions of the Public Administration Ethics, Integrity and Disciplinary Technical Assistance (PAEIDTA) Unit

Section 15(4): The Unit has the following functions:

- a. to provide technical assistance and support to institutions in all spheres of government regarding the management of ethics, integrity and disciplinary matters relating to misconduct in the public administration;
- b. to develop the norms and standards on integrity, ethics, conduct and discipline in the public administration;
- c. to build capacity within institutions to initiate and institute disciplinary proceedings into misconduct;
- d. to strengthen government oversight of ethics, integrity and discipline, and where necessary, in cases where systemic weaknesses are identified, to intervene;
- e. to promote and enhance good ethics and integrity within the public administration; and
- f. to cooperate with other institutions and organs of state to fulfil its functions under this Section.

There are often protracted delays in disciplinary matters against public servants charged with misconduct arising from being involved in corruption and other unethical conduct. To address this, the PAMA requires that misconduct arising from criminal investigations must be reported to the Unit for initiation and institution of disciplinary proceedings and on steps taken in carrying out such proceedings.¹⁷

The PAMA also allows the DPSA minister to determine minimum norms and standards relating to: promoting the values and principles referred to in Section 195(1) of the Constitution; integrity, ethics and discipline; the disclosure of financial interests; and disclosure of information relating to pending disciplinary action, among other matters.¹⁸

The Act allows the minister, with Cabinet approval, to require the successful completion of specified education, training, examinations or tests as prerequisites for particular appointments, or transfers to support increased professionalism within the public service.¹⁹

It also allows for the establishment of the National School of Government – a higher education institution – to progressively realise the values and principles governing public administration and to develop the human resource capacity in the public administration.²⁰

In addition to prescribing minimum norms and standards, the PAMA enables an Office of Standards and Compliance to be established. Its main functions are to: evaluate the appropriateness of norms and standards and their basis of measurement; promote and monitor compliance with minimum norms and standards determined by the minister; and develop and implement an early warning system to detect public administration non-compliance.²¹ There are draft regulations for establishing this Office.

Public Service Regulations 2016 (PSR 2016)

As described earlier, Chapter 2 of the Public Service Regulations (Conduct, Financial Disclosure, Anti-Corruption and Ethics Management) contains an amended Code of Conduct for the Public Service.

It also includes requirements for financial disclosures by designated employees: SMS members; any other person in terms of Section 36 (3) of the Public Finance Management Act approved or instructed by the relevant treasury to be the accounting officer of a department, or any other employee or category of employees determined by the minister.

Draft regulations to PAMA refer to disclosure requirements by 'specified' employees, who are likely to include staff employed on salary levels 11 and 12, employees involved in financial and supply chain management processes, as well as those employed in municipalities.²²

A new Section in Chapter 2 deals with anti-corruption and ethics management.

To enhance accountability by senior leadership in relation to ethics management and anti-corruption, Regulations 22 and 23 place obligations on the head of department (a director-general in a national department) and on the executive authority (minister or MEC).

A head of department needs to assess risk in the area of ethics and corruption, and must also develop and implement strategies to prevent and mitigate against such risks, develop a reporting system and where necessary, report allegations of corruption to law enforcement authorities and take disciplinary steps (see box below).

The PSR 2016 Regulations (see below) go one step further than the PDA since the reporting system to be developed must ensure **confidentiality** of reporting.

PSR Regulation 22 Anticorruption and ethics functions

A head of department shall –

- a. analyse ethics and corruption risks as part of the department's system of risk management;
- b. develop and implement an ethics management strategy that prevents and deters unethical conduct and acts of corruption;
- c. establish a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct, and such system shall provide for
 - (i) confidentiality of reporting; and
 - (ii) the recording of all allegations of corruption and unethical conduct received through the system or systems;
 - (d) establish an information system that
 - (i) records all allegations of corruption and unethical conduct;
 - (ii) monitors the management of the allegations of corruption and unethical conduct;
 - (iii) identifies any systemic weaknesses and recurring risks; and
 - (iv) maintains records of the outcomes of the allegations of corruption and unethical conduct; and
- d. refer allegations of corruption to the relevant law enforcement agency and investigate whether disciplinary steps must be taken against any employee of the department and if so, institute such disciplinary action.

**Public Service
Regulations, 2016**

Public Service Regulations 2016 (PSR 2016)

Ethics management infrastructure

An encouraging aspect of the PSR 2016 is the obligation that rests on heads of department and executive authorities to formalise the ethics management infrastructure within government departments. This is set out in Regulation 23 of the PSR 2016, as seen below.

PSR Section 23 Designation of Ethics Officers

1. An executive authority shall designate such number of ethics officers as may be appropriate, for the department to -
 - a. promote integrity and ethical behaviour in the department;
 - b. advise employees on ethical matters;
 - c. identify and report unethical behaviour and corrupt activities to the head of department;
 - d. manage the financial disclosure system; and
 - e. manage the processes and systems relating to remunerative work performed by employees outside their employment in the relevant department.
2. The head of department shall establish an ethics committee or designate an existing committee, chaired by a Deputy Director General, to provide oversight on ethics management in the department.

***Public Service
Regulations, 2016***


In other words, this Section of the Regulations places an obligation on heads of department to establish ethics committees chaired by a deputy director general (an ethics champion), to provide oversight on ethics management, as well as an obligation on executive authorities to designate suitably qualified ethics officers to promote ethical behaviour, advise on ethical matters, and to monitor unethical and corrupt activities in the department. Since these regulations do not provide much detail on the composition of such committees and its representatives, the DPSA published an ***Ethics Committee Guide*** in September 2019 to assist departments in delineating the functions and terms of reference for such committees.

Concluding remarks

There is increased attention on implementing measures to enhance an ethical organisational culture in the public service. This includes tightening accountability measures for those who behave unethically or engage in corruption, and developing an infrastructure to implement ethics management functions.

These actions have the potential to promote a culture that values ethics and the principles enshrined in the Constitution, and an environment conducive for public servants to both report wrongdoing and feel safe to do so.





***If employees did not turn a blind eye or
were not afraid to rock the boat and if
employers did not turn a deaf ear or blame
the messenger instead of heeding the
message, many catastrophes could have
been averted.***

John Bowers QC, Jack Mitchell & Jeremy
Lewis, Whistleblowing: The New Law (Sweet &
Maxwell, London, 1999) Chapter 1



Part B:

Making a disclosure –
what you need to know

Building an ethical organisational culture in the public service requires public servants to speak up against practices or conduct that goes against the various policies, regulations and measures that have been instituted. It means being aware of what you, as a public servant, can do if you are asked to carry out an instruction or do something that might be unlawful or if you witness some form of wrongdoing or corrupt activity.

What to report

Following the amendment of the Public Service Regulations, the DPSA published a **Guide on the Reporting of Unethical Conduct, Corruption and Non-Compliance to the Public Service Act, 1994 and Public Service Regulations, 2016** (DPSA Guide, 2018).

This guide is a valuable resource with which all public servants should be familiar. It notes that, inasmuch as legislation such as PRECCA requires public servants in senior positions to report corruption above a certain threshold, Sections 13(e) and 14(q) of the PSR 2016 now set out duties for *all* employees not only to report corruption, fraud, nepotism, maladministration and the contravention of any law which prejudices the public interest, but also any non-compliance with the Public Service Act, 1994 and its regulations.

This means public servants have a duty to report tender fraud, or that someone is using a government vehicle for unauthorised purposes, or irregularities in appointment procedures, for example. It also means reporting if a public servant fails to disclose a certain financial interest, or is conducting paid work outside the public service without the required authorisation.

What is a disclosure?

To disclose is to make something known. Disclosure is more specifically defined in the PDA (see below).

The definition of disclosure in the Protected Disclosures Act

Disclosure – as defined in Section 1 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000) (PDA) – means any disclosure (i.e. making known) 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 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 Chapter II of the Employment Equity Act, 1998 (Act No. 55 of 1998), or 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.

**Protected Disclosures Act, 2000
(Act No. 26 of 2000) (PDA)**

In the DPSA Guide (2018), the term **report** refers to an official or formal statement of facts or proceedings, which may include a disclosure as described above.

The actual conduct that forms the subject matter of a disclosure is referred to in the PDA as **impropriety**. An impropriety therefore falls into categories (a) to (g) above, regardless of whether it occurred in South Africa or elsewhere, or the law that applies to it is South African or that of another country.

The difference between a disclosure and a grievance

When considering making a report or disclosure (blowing the whistle) about unethical conduct or possible corruption (in its broad sense), you should distinguish between a report/disclosure and a grievance, since you are likely to have to follow different procedures respectively.

A **grievance** is a complaint about something that affects you personally or your individual employment contract. Examples include being asked to work overtime without pay, not being granted a performance bonus or your performance assessment that was conducted unfairly. Grievance procedures usually require that you try to address the grievance with your immediate manager or supervisor. A disclosure, on the other hand, might implicate your immediate supervisor and therefore such procedures would be inadequate. In making disclosures, as we will discuss later on, you are allowed to bypass your immediate supervisor.

When you make a **disclosure**, you are often the witness (or messenger) of some form of wrongdoing that can affect the wider public and which is in the public interest to raise. You make a complaint about something that does not affect you directly but which has negative repercussions for the delivery of services and the use of public money. Moreover, unlike in a grievance, you do not have to prove that the government is being defrauded or that a safety hazard is present, for instance. But you do need to show that there is reason to believe that this is happening and allow another entity to investigate it.

Gather information to inform your decision to make a disclosure

Before you decide to report something that might seem unethical or unlawful, be aware of the laws and regulations that are relevant to your specific job content, as well as those that bind you as a public servant. If, as a public servant, you do not have a good understanding of what you are expected to do and the accepted procedures, it will be very difficult to determine whether someone else's action is unethical or unlawful. You should consult relevant guidelines, laws and regulations, and also seek advice or assistance from your union, if you are a member.

As highlighted in this guide, departments are in the process of instituting ethics committees and ethics officers who are expected to provide advice on ethical matters and you should consider approaching them for guidance and clarity.

If you are not sure whether what you have been asked to do is lawful, ask the person instructing you to put it in writing. For instance, your supervisor might instruct you to secure catering services from a specific company, but you know that it is common practice to obtain three quotations for such services. You can write an email seeking clarity on what is expected of you to do. There is no need to be confrontational in such correspondence – it is best to keep it at the level of 'seeking information'. Once you receive a response, you will then be able to check the request against directives and regulations, and it will allow you to seek advice as to whether this might be a permissible 'deviation' or whether there is an attempt to benefit a particular recipient.

Putting it in writing also means you will have a record (or paper trail) of what occurred verbally, if you need to escalate the issue.

Familiarise yourself with the procedure to be followed in making a disclosure

Should you need to report corruption or unethical conduct, you will need to familiarise yourself with the policy that has been adopted in your particular department to do so. Both the PSR 2016 and the PDA require employers to set out such procedures. The management of such procedures is expected to become a responsibility of ethics committees.²³ Importantly, the PSR 2016 requires that confidentiality is assured in the reporting. Make use of the existing procedure because – as discussed below – it could affect the level of protection that you are entitled to if the employer (department) attempts to intimidate or victimise you after you make your disclosure.

Protect yourself from victimisation when making a disclosure

If you need to disclose a sensitive concern or information which might result in victimisation or retaliation by your employer, you should make sure that such reporting is protected. If you are a member of a union, find out if union organisers or shop stewards are willing to take up the complaints on your behalf and raise them through their union structures without personalising them.

Another way to safeguard yourself is to make an anonymous disclosure using existing hotlines. An anonymous disclosure is different to a confidential one in that you do not give any information about yourself (no name or contact details), whereas in a confidential disclosure you provide at least some personal details but such details are not disclosed to others.

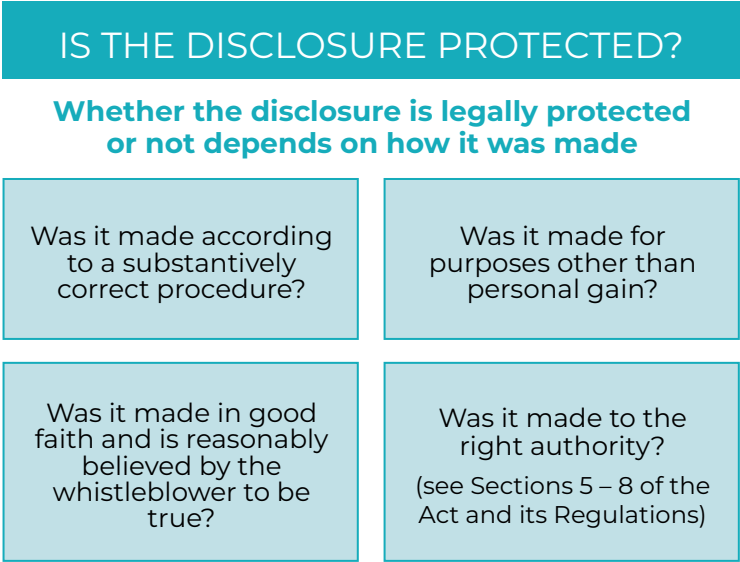
The **National Anti-Corruption Hotline (NACH)** is administered by the Public Service Commission. You can make complaints linked to non-compliance with the requirements of the Public Service Act, the Public Service Regulations; the PFMA and Treasury and Tender Board Regulations; as well as all other violations of the *Code of Conduct for the Public Service*. You can also report corruption in its various manifestations (fraud, nepotism, abuse of power, bribery, favouritism, embezzlement, insider training, conflict of interest, etc.). However, if you report anonymously, you must ensure that you provide a very detailed

complaint to enable its investigation; the complaint might not be pursued if additional information is required and it is not possible to contact you further.

Another way is to rely on the **PDA, 2006**. The PDA aims to create a culture that facilitates the disclosure of information by employees and workers of an employer, in a responsible manner. This is in both the public and private sectors, relating to criminal and other irregular conduct in the workplace. It provides both legal guidelines for the disclosure of such information and protection against any reprisals as a result of such disclosures.

In order to be protected under the PDA, the disclosure must be done in line with the procedures and principles it outlines.²⁴

These factors should become more apparent as we discuss what you can disclose, to whom, and how.



Procedures for protected disclosure

The PDA provides for five ways of making a disclosure to ensure that a whistle-blower receives protection against reprisals. It is not uncommon for employees or workers to be charged with misconduct, for instance, after disclosing information, even if they have a duty to disclose it. It is usually alleged that they breached a confidentiality agreement. Disciplinary action is one of the forms of what is considered in the PDA to be an **occupational detriment** resulting from the act of disclosure.

What actions can constitute occupational detriment?

Section 3 of the PDA states that **no employee or worker may be subjected to any occupational detriment by his or her employer on account, or partly on account, of having made a protected disclosure.**

The PDA, as amended, defines as occupational detriment the threat of or the carrying out of any of the following actions, having an adverse impact on the employment status of an employee or worker in response to their making a protected disclosure:

Occupational Detriment

- Any disciplinary action
- Dismissal, suspension, demotion, harassment or intimidation
- Transfer against the employee's will
- Refusal of transfer or promotion
- Disadvantageous alteration of a term or condition of employment or retirement
- Refusal of, or provision of, an adverse reference
- Denial of appointment to any employment, profession or office
- Subjection to civil claim for alleged breach of a duty of confidentiality arising from the disclosure of a criminal offence or a contravention or failure to comply with the law
- AND/OR being otherwise adversely affected in respect of his or her employment, profession or office, including employment opportunities, work security and the retention or acquisition of contracts to perform work or render services.

Protected Disclosures Act, 2000

The list is extensive and not exhaustive since an occupational detriment also includes any other way where you can show that you have been adversely affected in relation to your job, profession or office. An example might be constructive dismissal. One encouraging aspect of the revisions to the Act is that the PDA now includes, as an occupational detriment, a whistle-blower being subjected to any civil claim by the employer for an alleged breach of a duty of confidentiality or a confidentiality agreement that occurs as a result of the disclosure of a criminal offence or a violation or a failure to comply with the law. In terms of case law, employers have often relied on issues of confidentiality to charge whistle-blowers with misconduct so this addition should be welcomed.

Before we discuss the remedies that are available to you should you proceed with your disclosure, we will look at each of the five ways in which you can make a report and ensure that it is protected under the PDA.

To whom can you make a protected disclosure, and how?

Option 1: Protected disclosure to a legal adviser

Section 5 of the PDA states that a disclosure which is made to a legal practitioner or to someone involved in giving legal advice with the aim, or as part of the process, of getting legal advice is a **protected disclosure**. These disclosures can be made not only to an attorney, but also to a trade union or a whistle-blowing helpline.

You do not have to make a disclosure to a legal adviser, but if you are not sure about the law or regulations and what you should do, it is helpful to do so before you take the matter further.

Option 2: Protected disclosure to your employer

Section 6 of the PDA states that, as an employee or a worker, you can make a disclosure to your employer. It is encouraged for disclosures to be made internally first, but it might not always be adequate.

Remember that Regulation 22(c) of the PSR 2016 places a duty on heads of departments to set up a system that encourages and allows employees and citizens to report allegations of corruption and other unethical conduct **confidentially**. Section 6(2)(a) of the PDA also requires every employer to authorise appropriate internal procedures to receive and deal with information about improprieties and also to take reasonable steps to make every employee and worker aware of such procedures.

However, even though this duty exists, it is possible that an employer does not have a procedure in place. It is also possible that the employer has developed such a procedure but has not shared it with staff. It is therefore important to gather this information before you make a disclosure to your employer, because it could influence whether the disclosure that you make is protected or not. Let us see what your options are.

PDA Section 6: Conditions for protected disclosure to the employer

Section 6 of the PDA says that in order for disclosure to an employer to be protected it must be made:

- **in good faith and substantially** (in other words, for the most part or to a significant extent) according to any procedure that is authorised or set out by your employer to report or otherwise remedy the impropriety and the employee or worker has been made aware of the procedure;

OR

- **in good faith to the employer** of the employee or worker, where there is no procedure.

In essence, if your employer has set out a procedure and you have been made aware of it, then you need to follow that procedure.

However, in cases where the employer has not made procedures to report available, you can approach your direct supervisor – or someone more senior than you who is in a position to do something about the wrongdoing that you have experienced or witnessed.²⁵

What is meant by good faith?

The notion of **good faith** is integral to every disclosure, regardless of which of the options in the PDA you rely upon, except in cases where you approach someone for legal advice (Option 1 above). There is no universal definition of good faith because it is a subjective concept; however, our courts have assisted in providing some guidance on how to interpret it.

Whilst good faith and honesty may conceivably amount to the same thing, I am of the view that a case by case approach is the proper one for a court considering these issues. Factors such as reckless abandon, malice or the presence of an ulterior motive aimed at self-advancement or revenge, for instance, would lead to a conclusion of lack of good faith. A clear indicator of lack of good faith is also where disingenuity is demonstrated by reliance on fabricated information or information known by the employee to be false. The absence of these elements on the other hand is a strong indicator that the employee honestly made the disclosure wishing for action to be taken to investigate it.

*Radebe and Another v Premier,
Free State and Others (JA 61/09) [2012]
ZALAC 15, para 35*

Whistle-blowers who do not also have a personal grievance against the employer are exceptional. Caution has to be exercised in assessing the evidence of a whistle-blower who is consumed by ulterior motives. Such a person will not be as reliable as one who is driven by the singular desire to prevent or stop wrongdoing.

*Tshishonga v Minister of Justice and Constitutional
Development and Another (JS898/04) [2006]
ZALC 104, para 118*

... good faith entails in part the absence of an ulterior motive, revenge and malice in making the disclosure. In addition, it is also a requirement that the party making the disclosure intends thereby for the wrong disclosed to be remedied, or addressed, in some way.

*South African Municipal Workers Union National
Fund v Arbuthnot (JA73/11) [2014] ZALAC 23, para 25*

The quotes demonstrate that good faith has at least two qualities: (1) the absence of malice or an ulterior motive such as personal gain or revenge and (2) an intention for the wrongdoing to be remedied. While a public servant might want revenge for having been treated unfairly, if a disclosure is not made with good intentions, it is unlikely that it will be protected under the PDA.

Option 3: Protected disclosure to member of Cabinet or Executive Council

Section 7 of the PDA allows for disclosures, which are done in good faith, to a member of Cabinet (minister) or of the executive council of a province (MEC). Such disclosures are protected if the **employer** is:

- an individual appointed in terms of legislation by a member of Cabinet or of the executive council of a province;
- 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
- an organ of state falling within the area of responsibility of the member concerned.

The requirement of good faith is, once again, key. If you are thinking about relying on this Section, make sure that you understand **who your employer is**. For instance, if you work within a provincial department of education (which is an organ of state), the MEC for Education would likely be your employer. In such cases, you could make a disclosure to the premier of the province who appoints the MEC for Education.²⁶

Option 4: Protected disclosure to certain bodies or persons

As we have mentioned earlier, it is encouraged for concerns to be raised internally. However, the PDA also allows for circumstances where this might not be possible. In terms of this fourth option, you can make a disclosure to various bodies without having raised the matter with your employer. This can be done as long as it is in good faith and if you have a reasonable belief that the information that you disclose is, for the most part, true.

PDA Section 8: Conditions for protected disclosure to certain bodies or persons

Section 8: (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—
 - (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
 - (ii) the information disclosed, and any allegation contained in it, are substantially true, is a protected disclosure.

To report violations or wrongdoing specific to Covid-19, you are also able to submit your report to the Special Investigative Unit (SIU). The SIU has been designated, by special proclamation, to deal with public-sector corruption related to Covid-19. The SIU adheres to the PDA and ensures confidentiality in reporting.

There are many designated, specialised entities to approach to make a Section 8 protected disclosure. Make sure that you are familiar with their procedures and approach them if the subject of your disclosure is something which that body or entity deals with. This will avoid unnecessary delays. Nevertheless, if you submit your disclosure to any body or person mentioned or prescribed under this Section, that body or person must inform you if the matter might be better dealt with by another body or person. No matter who you approach, ensure that you do so in good faith and with the reasonable belief that the information is substantially true.

What does it mean to have a reasonable belief?

In having a **reasonable belief that the information is substantially true**, what must be reasonable is the *belief* that you have about the information that you want to disclose. It is possible for you to show that your belief is reasonable, even if the information turns out to be false.

The PDA provides that a disclosure is protected if, inter alia, the person who makes the disclosure reasonably believes that the information is true. The enquiry is not about the reasonableness of the information, but about the reasonableness of the belief vis à vis the truthfulness of the information. The requirement of “reasonable belief” does not entail demonstrating the correctness of the information, because a belief can still be reasonable even if the information turns out to be inaccurate.

South African Municipal Workers Union National Fund v Arbuthnot (JA73/11) [2014] ZALAC 23, para 15

DID YOU KNOW?

The Regulations Relating to Protected Disclosures, 2018 (14 September 2018) contain a list of over 30 bodies or persons (with a description of the matters that they ordinarily deal with) you can approach to make a disclosure under Section 8 of the PDA.

In holding that the [person] should prove the correctness of the facts for existence of the belief in order to enjoy protection, the court a quo elevated the requirement of the reasonableness of the belief to one of the accuracy of the facts upon which the belief was based. This sets a higher standard than what is required by the PDA, and such a requirement would frustrate the operation of the PDA.

All that is required is for the [person] to reasonably believe that the conduct is unlawful.

John v Afrox Oxygen Limited (JA90/15) [2018] ZALAC 4, paras 28-29

The requirement of 'reason to believe' cannot be equated to personal knowledge of the information disclosed. That would set so high a standard as to frustrate the operation of the PDA. Disclosure of hearsay and opinion would, depending on its reliability, be reasonable. A mistaken belief or one that is factually inaccurate can nevertheless be reasonable, unless the information is so inaccurate that no one can have any interest in its disclosure.

Radebe and Another v Premier, Free State and Others (JA 61/09) [2012] ZALAC 15, para 36

As demonstrated by the quotes, the emphasis is on the reasonableness of the belief that you might have, and less so on the accuracy of the facts or information that you provide.

Option 5: General Protected Disclosure

Under Section 9 of the PDA, you are allowed to make a general disclosure to anyone (including the media) and still qualify to be protected under the PDA. However, since this option involves making a *public* disclosure, there are more requirements to be met in order to ensure that your disclosure is protected.

The tests are graduated proportionately to the risks of making disclosure. Thus the lowest threshold is set for disclosures to a legal advisor. Higher standards have to be met once the disclosure goes beyond the employer. The most stringent requirements have to be met if the disclosure is made public or to bodies that are not prescribed, for example the media.

Tshishonga v Minister of Justice and Constitutional Development and Another (JS898/04) [2006] ZALAC 104, para 197

You may make a disclosure using this option and still receive the protections of the PDA, but only if:²⁷

- the disclosure is in good faith;
- you reasonably believe the information is substantially true;
- the disclosure is not being made for any personal reward or advantage unless a reward is payable by law;
- in all the circumstances of the case, it is reasonable to make the disclosure; **AND**

one or more of the following conditions also apply:

- you have reason to believe you will be subjected to occupational detriment if you tried to disclose to your employer as set out in Section 6 of the PDA;
- that where there are no bodies or persons prescribed in Section 8 that are relevant to deal with the impropriety that you want to disclose, you have reason to believe that it is likely the evidence relating to the impropriety will be destroyed or hidden if you make the disclosure to your employer;
- you have made a disclosure previously of substantially the same information to your employer or the bodies described or prescribed in Section 8, but no action was taken within a reasonable period; or
- the impropriety is of an **exceptionally serious** nature.

In deciding whether it is reasonable for the employee or worker to make the disclosure, a court will consider –

- (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;
- (e) in cases where a disclosure was made to the employer or body referred to or prescribed under Section 8 of the Act, 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 cases where a disclosure was made to the employer, whether in making such disclosure the employee or worker complied with any procedure which was authorised by the employer and
- (g) the public interest.

The third requirement that the disclosure should not be for “personal gain” should be construed to include any commercial or material benefit or advantage received by or promised to the employee as a quid pro quo for the disclosure and any expectation by the employee of a benefit or advantage that is not due in terms of any law... If the employee benefits incidentally from the disclosure it will be protected provided that was not the purpose of making the disclosure.

Tshishonga v Minister of Justice and Constitutional Development and Another (JS898/04) [2006] ZALC 104, para 208

There are a number of issues to keep in mind when relying on this Section. In addition to acting in good faith and having a reasonable belief that the information is substantially true, you need to make sure that you do not make the disclosure for personal gain but rather for the purposes of remedying the wrongdoing.

In addition, you will need to be able to have information (documents, or other forms of evidence) to meet at least one of the four conditions set out above. This is another reason why we mentioned earlier that it is important to **obtain instructions in writing** and to **gather information** about the issue that you want to raise. For instance, you might need to provide information to support your reason to believe that you will experience an occupational detriment if you tried to disclose the information to your employer (that is, evidence of previous victimisation or harassment). You might also need to show that despite the more than 30 bodies or entities that you can approach for your disclosure, there are none that can assist you. Further, that you have good reasons to believe that if you approached your employer, your employer would likely conceal or destroy the evidence. If you do make a disclosure to your employer or a person or body prescribed to deal with your disclosure, you need to keep a paper trail of when you submitted the information, and the time that has lapsed without receiving a response – in light of the timeframes set out in the procedures for disclosure of these respective entities.

In other words, if you decide to follow this route because the impropriety is of an exceptionally serious nature (such as corruption involving a Cabinet minister, environmental or health hazards, or massive tender fraud), you will need to prepare records and information to meet the conditions set out under this Section of the PDA.

Staying up-to-date after a disclosure

The recent amendments to the PDA introduced a new Section imposing duties on your employer, a member of Cabinet or executive council, or the body or person to whom you have made your disclosure in terms of Sections 6, 7 or 8 of the Act respectively, to keep you informed at different stages of the process. This duty arises if you have provided your identity and personal details when making the disclosure. It does not arise if you have done so anonymously. The Act also states that the entity or person to whom you have made the disclosure is not required to provide you with information that could compromise the ability to prevent, detect or investigate a criminal offence.

Acknowledgment of receipt and next steps

You must receive written acknowledgement of receipt no later than 21 days from the date when you made the report which also informs you about three possible next steps, namely:

- That an investigation is going to be undertaken, including information, where possible, about an estimated time-frame for such investigation;
- That no investigation is going to be undertaken, with an explanation as to why not; or
- That the matter is being referred to another person or body to decide.
- If the matter is referred, the new body or person assumes the obligation to inform you and must advise you, in writing, no later than 21 days, which of the three above actions has been decided.

After the first 21-day period, if the matter is not referred to another person or party for a decision, or after the second 21-day period if the matter is referred, you should be provided regular written feedback, at least every two months, until the matter is concluded. Within a maximum period of six months of submitting, or the referral of, your disclosure (if it was referred), you must be notified in writing of a decision to investigate your disclosure or not.

Notification on conclusion of investigation

Once the investigation into your matter is finalised, you need to be informed in writing about the outcome and any action taken.

As much as there is a duty to keep you informed, you must ensure that you receive feedback within the times set out above. If you do not receive it, remember that one of the conditions of protection for a general disclosure in terms of Section 9 of the PDA is that you previously made a disclosure of substantially the same information to your employer or the bodies described or prescribed in Section 8, but no action was taken within a reasonable period.

Remedies for occupational detriment

Exclusion of civil and criminal liability

The recent amendments to the PDA resulted in the introduction of a new Section 9A. This Section deals with the power of courts to find whistle-blowers not to be liable to civil, criminal or disciplinary proceedings if they make a disclosure that is prohibited by any other law, contract or agreement that requires them to maintain the information confidential or which restricts the sharing of that information. This is as long as they made a protected (in line with procedures of the Act) disclosure, or one which shows or tends to show that a substantial contravention or non-compliance with the law has occurred, is occurring or is likely to occur.

The importance of this new clause is that employers should be less able to charge public servants with misconduct as a result of issues of confidentiality or protection of state information, as long as public servants follow the set out procedures in the PDA. One significant caveat to this exclusion of liability is that it **does not extend** to employees or workers who might have **participated in the impropriety** that is being disclosed. At best, if a public servant admits to participation in the wrongdoing, but nonetheless comes forward, this action might act as a mitigating factor in deciding the matter.

Witness protection

The Witness Protection Act provides for protection of persons who have been **witness** to corrupt activities. However, such protection is only available for witnesses – defined as persons who give, might be required to give or have given evidence in criminal proceedings, and those before a commission or tribunal.²⁸ Witnesses may apply to the Office for Witness Protection located within the National Prosecuting Authority for protection for themselves and persons related to them if their fear for their safety.

The DPSA Guide (2018) also notes that government departments, and ethics committees (assisted by the security unit), may need to assist in identifying criteria and requesting protection for employees who make disclosures.²⁹

Request for a transfer

In addition to seeking legal routes as set out below, if you reasonably believe that you might be subject to an occupational detriment as a result of the disclosure made, you can request your employer to be transferred to another post or position in the same or another division. Your employer should honour this request if it is *reasonably practicable* and ensure that the terms and conditions are no less favourable than what you had before your transfer.

Approaching a court for temporary relief

In many instances, after public servants make disclosures following the procedures in the PDA, some employers try to silence or intimidate them by charging them with misconduct and issuing them with notices to attend a disciplinary hearing. They might also be issued with notices of intended suspension or of transfer against their will. In cases where the employer threatens such actions, you can approach the Labour Court (or High Court) on an urgent basis with an application for an interim interdict to stop the hearing, suspension or transfer or other occupational detriment. In some instances, the Labour Court has granted the interdict (see *Grieve v Denel (Pty) Ltd* 2003 (24) ILJ 551 (LC)) to enable the whistle-blower to refer the matter for conciliation, pending the resolution of the underlying dispute (that is, being subjected to an occupational detriment).

You can also approach a court to obtain relief in relation to the Protection from Harassment Act.

Making the link between the disclosure and the occupational detriment suffered

Being able to make the link between making of a disclosure and being subjected to any form of occupational detriment is critical in order to succeed with the legal remedies that are set out in the PDA.

For an employee to succeed, an employee must establish a causal link between his or her dismissal and the protected disclosure. Put it differently, an employee must produce evidence sufficient to raise the contravention of the PDA. Once that is done, the respondent bore the onus to prove that the applicant was dismissed for a fair reason.

Dorey v TSB Sugar RSA Ltd (JS287/2012) [2017] ZALCJHB, para 38

As our Labour Courts have stated, there needs to be a demonstrable nexus between the disclosure that is made and the alleged occupational detriment (*Communication Workers Union v Mobile Telephone Networks (Pty) Ltd 2003 (24) ILJ 1670 (LC) para 19*). In the case of *Grieve v Denel (Pty) Ltd 2003 (24) ILJ 551 (LC)*, the court concluded that the applicant had established a causal link between the charges that had been brought against him and the fact that he had made disclosures.

Legal remedies

If you have a claim of occupational detriment in terms of the PDA, you have recourse to any court with jurisdiction, including the Labour Court. There are two main tracks that you could follow, depending on the type of occupational detriment that you experience as a result of the disclosure.

In the case of dismissal

A dismissal arising from the exercise of your rights under the PDA constitutes an automatically unfair dismissal in terms of the Labour Relations Act (LRA). You may refer a dispute about the dismissal to the relevant bargaining council with jurisdiction over your sector or the Commission for Conciliation Mediation and Arbitration (CCMA) within 30 days of the dismissal. If the dispute is not resolved after conciliation, you may, within 90 days of the failure of the conciliation process, refer a dispute about the dismissal to the Labour Court alleging that the dismissal is automatically unfair because it amounts to an occupational detriment.

If a person earns less than the threshold set by the Minister of Labour in terms of the Basic Conditions of Employment Act, you may choose to have the dispute determined by arbitration by the CCMA rather than by adjudication in the Labour Court.

Occupational detriment short of dismissal

Any form of occupational detriment short of dismissal is deemed to be an unfair labour practice and may be referred to the CCMA or relevant bargaining council within 90 days of the date of the alleged act or omission (that is, the occupational detriment experienced).

Under Section 191(13)(a) of the LRA, an employee may refer a dispute concerning an alleged unfair labour practice to the Labour Court for adjudication. This is if the employee has been subjected to an occupational detriment by the employer in contravention of Section 3 of the PDA for having made a protected disclosure as defined in that Act.

Relief in case that occupational detriment is established

Any court or tribunal that is satisfied that you have been or will be subjected to an occupational detriment because of having made a protected disclosure, can make an order that is just and equitable including:

- payment of compensation by the employer or client, as the case may be, to that employee or worker;
- payment by the employer or client, as the case may be, of actual damages suffered by the employee or worker; or
- an order directing the employer or client, as the case may be, to take steps to remedy the occupational detriment.

Section 194(3) of the LRA caps compensation for an **automatically unfair dismissal** to 24 months. However, compensation ought to be just and equitable. Should the dismissal be found to be automatically unfair, the compensation must take all the circumstances into account, and may not exceed the equivalent of 24 months' remuneration, calculated at the employee's rate of remuneration as at the date of dismissal. In respect of an **unfair labour practice**, the compensation awarded must be just and equitable considering all the circumstances, and may not exceed 12 months' remuneration.

It is important to note that when the above compensation is ordered, it is done in addition to any other amount which the employee is entitled to in terms of any law, collective agreement or contract of employment. The above amounts, for instance, do not include legal costs.

Disclosure Dos and Don'ts

The following are some of the practical insights that we would like you to take away from the information that has been presented in this guide:

Dos	Don'ts
Get legal representation and/or advice if you are not sure of how to report corruption or unethical conduct or about what you have experienced	Keep quiet – if you are afraid, make use of the PDA procedures or use an anonymous or alternative way of reporting
Request clarity on instructions that you are not sure of and put this in writing	Rush and share your findings with too many people – walls have ears!
Know the legislation and directives that govern your conduct and actions as a public servant	Delay in making a report once you have decided to do so
Gather information about the concern that you have before taking further action to make sure that it is unethical or improper	Make a disclosure because you want to get back at someone – literally, revenge does not pay if you want to safeguard your protection under the PDA
Find out if your employer has a reporting or whistle-blowing procedure before you decide to report	Don't lose faith if you are personally attacked – personal attacks often flourish when you are on to something that is likely to be true
Proceed wisely and think strategically – follow your conscience	Expect a 'medal' or a pat on the back for doing the right thing
Make sure that you make notes of events, discussions, persons present, at the time that they happen so that you do not forget with time	Report rumours or information that you know to be false
Act as a collective, where possible to reduce individual vulnerability	Forget that there may be an innocent or good explanation – check your facts!
Read this guide and know the different options that are available to you under the PDA to ensure your disclosure is protected	Expect quick results – some of these processes require perseverance
Keep a paper trail and relevant documents – remember that you are protected in disclosing documents if you do so in good faith and if you have a reasonable belief that the information is substantially true	
Make explicit when you report that you are doing so under the PDA to safeguard its protections	
Demand feedback after you have submitted your report or disclosure	
Approach NGOs or university legal clinics if you need legal assistance	

Measures to improve whistle-blower protections

Protections for persons who report corruption and other unethical conduct were strengthened by the PDA amendments in 2017. However, according to stakeholders consulted, such protections could be enhanced by adopting preventative and other measures, including:

1. To be appointed, corporate services employees should be registered with their professional associations or bodies. For example, HR practitioners should be registered with the South African Board of People Practices (SABPP); financial services employees should be registered with their own bodies (SAICA and SAIPA); and so should legal staff (with the Legal Practice Council).
2. Staff awareness about the existence of internal reporting mechanisms and policies should be raised to ensure that they are followed – persons who report are more likely to know their organisation's procedures than those who do not.³⁰
3. PSC should monitor public sector compliance with the requirement to institute reporting mechanisms and make them known to staff in line with PSR 2016 regulations and Section 6(2)(a) of the PDA.
4. DPSA should include training on ethics and the reporting of unethical conduct, including the PDA, as part of its compulsory induction training programme.
5. Measures should be considered to institute personal liability for retaliation to deter repeat violations of the rights of those who speak up in the public interest.³¹ For instance, the Code of Conduct for the Public Service should explicitly incorporate a provision stating that retaliation is a form of misconduct and should any public servant engage in retaliation or victimisation against someone who reports wrongdoing, such person could be personally liable financially and subject to dismissal.
6. Public servants who engage in reporting should be eligible for legal assistance in any legal proceedings to vindicate their rights, should they not have the funds to do so. A special fund could be created within government (maybe with the Public Service Commission) to assist whistle-blowers in bearing the financial risks arising from legal exposure. The rules of such a fund could provide that funds received from costs orders in successful cases must be repaid to the fund as a way to improve its sustainability.³²
7. Alternatively, establish a house or centre for whistle-blowers, namely an independent entity that supports such persons by providing legal advice, psychological and financial support (this has been done in France and the Netherlands).³³
8. Consider adopting a system of financial incentives to actively encourage citizens to report wrong-doing. In such a scenario, citizens act on behalf of the state in matters related to corruption and if they are successful in recovering funds, they receive a reward for their efforts.³⁴

In cases where public servants are subjected to occupational detriments at work:

1. Failure by the employer to attend conciliations should result in the awarding of personal costs against the individual employer
2. Similarly, if cases are pursued to the Labour Court and it is established that a detriment has occurred, personal cost orders should be awarded against the employer to prevent the State Attorney from pursuing frivolous matters
3. The PSC should be granted enforceable remedial powers to enable a number of grievances to be resolved in a quicker and more cost-effective manner
4. In establishing whether an occupational detriment has occurred, courts should adopt a 'reverse onus' and place the burden on the employer to show that action taken against an employee was not related to whistle-blowing instead of requiring the employee who reports to establish a link or nexus in the first place.

Entities, bodies and organisations that can assist

National Anti-Corruption Hotline (NACH) www.psc.gov.za/anti_corruption/anti_corruption.asp <p>The NACH, managed in-house by the Public Service Commission, is for reporting allegations of corruption in the Public Service. Disclosures can be made anonymously. Walk-in disclosure can be made at any Public Commission Office in the 9 provincial offices.</p>	<p>Toll free: 0800 701 701</p> <p>Public Service Commission House, 536 Francis Baard Street, Arcadia</p> <p>Private Bag x 121 PRETORIA 0001</p> <p>E-mail: nach@opsc.gov.za</p>
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Special Investigating Unit (SIU) www.siu.org.za <p>Report public sector corruption related to COVID-19 procurement</p>	<p>Toll-free: 0800 03774</p> <p>E-mail: siu@whistleblowing.co.za</p>
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Entities mentioned under Section 8 of the PDA

Office of the Auditor General www.agsa.co.za/ <p>Through its audit activities the Auditor General aims to ensure sound financial management and can take binding remedial action for mismanaging public resources.</p>	<p>Telephone: 012-426-8000</p> <p>Fax: 012-426-8257</p>
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Office of the Public Protector www.pprotect.org <p>The Public Protector has jurisdiction over organs of state and state functionaries and can help with complaints of improper prejudice experienced as a result of, among others:</p> <ul style="list-style-type: none"> ■ Abuse of power; ■ Unfair, discourteous or other improper conduct; ■ Undue delay; ■ Decision taken by the authorities; ■ Maladministration; ■ Dishonesty or improper dealing with respect to public money; ■ Improper enrichment; and ■ Receipt of improper advantage. 	<p>Toll-free: 0800112040</p> <p>Fax: 012 362 3473</p> <p>A complaint must be made to the Public Protector within two years of the date of the incident.</p>
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South African Human Rights Commission www.sahrc.org.za <p>The Commission is competent to investigate on its own initiative or on receipt of a complaint, any alleged violation of human rights. It should be lodged within three years of the violation having occurred.</p>	<p>Tel: 011 877 3600</p>
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Commission for Gender Equality www.cge.org.za <p>The CGE addresses complaints linked to gender discrimination and abuse</p>	<p>Complaints Line: 0800 007 709</p>
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Commission for the Promotion and Protection of Cultural, Religious and Linguistic Communities www.crlcommission.org.za <p>Any individual and cultural, religious or linguistic communities can approach the Commission for assistance when they believe that their cultural, religious or linguistic rights are denied or violated.</p>	<p>Tel: 011 358 9100</p> <p>Email: info@crlcommission.org.za</p> <p>A complaint should be made in writing, on prescribed forms via walk-in, fax, email, postal address, referrals, or telephone.</p>
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Relevant units or entities that are prescribed in the PDA Regulations

Public Administration Ethics, Integrity and Disciplinary Technical Assistance Unit (PAEIDTA Unit) - DPSA

www.dpsa.gov.za

Report any alleged irregular or improper conduct or impropriety with regard to corruption-related misconduct cases in the Public Administration.

Tel: 012 336 1000
Fax: 012 326 7802

South African Revenue Service

www.sars.gov.za

Report any alleged irregular or improper conduct or impropriety with regard to tax and customs –related matters.

SARS has two anonymous corruption hotlines for reporting:

- Tax, Customs and Excise Anonymous Fraud and Whistle Blowing Hotline (implicated SARS officials)
- Procurement and Tender Anonymous Fraud and Whistle Blowing Hotline

Toll-free: 0800 00 2870

Independent Police Investigative Directorate

www.ipid.gov.za

Report any alleged irregular or improper conduct or impropriety by a member of the South African Police Service

Tel: 012 399 0000
Fax: 012 326 0408
Email: Complaints@ipid.gov.za

Civil society organisations

Corruption Watch

www.corruptionwatch.org.za

- Report via WhatsApp
- Call-back service
- Report online

Corruption Hotline (toll-free from landline): 0800 023 456
072 013 5569
SMS "CALLME" TO 44 666

OUTA (Organisation Undoing Tax Abuse)

www.outa.co.za

You can make any report, including COVID-19 corruption

Tel: 0871700639
Email: info@outa.co.za

Legal Resources Centre

www.lrc.org.za

The LRC has an Openness & Accountability programme with Safeguarding public institutions as one of its sub-themes and can be a source of legal advice.

Tel: +27 11 038 9709
Fax: +27 11 838 4876

South African Society for Labour Law (SASLAW)

www.saslaw.org.za

SASLAW offers a quality advisory service and limited legal services on labour matters to those who otherwise do not have access to justice

Contact details of pro-bono administrators in different cities are available on the website

Legal Aid South Africa

www.legal-aid.co.za

Provides legal assistance to persons who cannot afford it, based on a means test

Toll free : 0800 110 110
(Monday to Friday 7AM - 7PM)
079 835 7179 (Please Call Me)
Contact details for regional/provincial offices are available on the website

ENDNOTES

1. PARI et al. (2017), *Betrayal of the Promise: How South Africa is Being Stolen*, (Cape Town: State Capacity Research Project)
2. Pearson, J and Ndlovu T (2018), 'I'm No Longer Applying Straight': Human Resource Practices in State Institutions: Perspectives of Public Servants, Working Paper Version 5, July 2018, (Johannesburg: Public Affairs Research Institute)
3. A public servant for our purposes here is someone whose employment duties falls under the prescripts of the Public Service Act.
4. See for instance, Corruption Watch (2015), *The Whistleblower's Handbook*, which contains stories and experiences of persons who have reported corruption.
5. DPSA (2002), *Public Service Anti-Corruption Strategy*, January 2002, pp.15-19.
6. Anti-Corruption Committee (2004), *Minimum Anti-Corruption Capacity for Departments and Organisational Components in the Public Service*.
7. DPSA (2006), *Anti-Corruption Capacity Requirements: Guidelines for Implementing the Minimum Anti-Corruption Capacity Requirements in Departments and Organisational Components in the Public Service*, January 2006.
8. Ibid, p.26.
9. PSC News (2010), 'State of professional ethics in the public service post 1994', in *Reflections on an Ethical Public Service and Society*, November/December 2010, p.3.
10. DPSA (2006), *Anti-Corruption Capacity Requirements: Guidelines for Implementing the Minimum Anti-Corruption Capacity Requirements in Departments and Organisational Components in the Public Service*, January 2006, p.23.
11. National Planning Commission (2012), *National Development Plan 2030: Our Future – Make it Work*, p.446.
12. DPSA (2013), *Public Sector Integrity Management Framework*, p.2.
13. Ibid, pp.11-12.
14. David Bruce (2013), 'Control, discipline and punish: Addressing Corruption in South Africa', *SA Crime Quarterly* No. 48, June 2014, (Pretoria: Institute for Security Studies), p. 49.
15. Public Service Commission (2020), Report on the outcomes of the SA-EU Dialogue on 'A values-driven public sector: Building state capacity through professional ethics and integrity', held on 30 September and 1 October 2019, p. 20.
16. In terms of Presidential Proclamation No. 15 of 2019, published on 29 March 2019, Sections 5, 6, 7, 9, 11, 12, and 19 of the PAMA Act have not yet come into effect. *Public Administration Management Act* No.11 of 2014, Section 15(5)(b).

17. Ibid, Section 16.
18. Ibid, Section 13.
19. Ibid, Section 11.
20. Ibid, Section 17.
21. See, 'Schedule 1: Specified Employees', (Draft) Public Administration Act Regulations on Conducting Business with the State, the Disclosure of Financial Interests, and the Ethics, Integrity and Discipline Technical Assistance Unit, 2019, p.23.
22. DPSA (2018), *Guide on the reporting of unethical conduct, corruption and non-compliance to the Public Service Act, 1994, and Public Service Regulations, 2016 in the public service*, August 2018, p.19.
23. The graphic that appears below is based on information obtained from SA Board of People Practices (2019), 'Fact Sheet: The Protected Disclosures Act - Obligations and Implications for South African Employers', Number 2019/4, May 2019, p.5.
24. Open Democracy Advice Centre (2012), *Whistleblowing manual: A Guide for Shopstewards to the Protected Disclosures Act* ("Whistleblowing Act"), p.10.
25. This issue was dealt with in the Labour Appeal Court case of Radebe and Another v Premier, Free State and Others (JA 61/09) [2012] ZALAC
26. The explanation of the factors involved in making a disclosure under this Section has been taken from Open Democracy Advice Centre (2017), *Code of Good Practice on Whistleblowing*, 2nd Edition, p.10.
27. Open Democracy Advice Centre (2014), *Empowering our Whistleblowers*, p.20.
28. DPSA (2018), *Guide on the reporting of unethical conduct, corruption and non-compliance to the Public Service Act, 1994, and Public Service Regulations, 2016 in the public service*, August 2018, p.21.
29. Transparency International Anti-Corruption Desk (2017), *Internal Whistleblowing Mechanism Topic Guide*, (Berlin: Transparency International), p.6.
30. UNODC (2015), *The United Nations Convention against Corruption Resource Guide on Good Practices in the Protection of Reporting Persons* (Vienna: UN Office), p.57.
31. Chereese Thakur (2018), 'Whistle-Blower protection: Does South Africa Match up? Part IV', 19 July 2018.
32. Public Service Commission (2020), *Report on the outcomes of the SA-EU Dialogue on 'A values-driven public sector: Building state capacity through professional ethics and integrity'*, held on 30 September and 1 October 2019, p.36.
33. Open Democracy Advice Centre (2014), *Empowering our Whistleblowers*, pp. 34-35.

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