

REPUBLIC OF SOUTH AFRICA

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# **PUBLIC PROCUREMENT SECOND AMENDMENT BILL**

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*(As introduced in the National Assembly (proposed section 76); explanatory summary of  
Bill and prior notice of its introduction published in Government Gazette No. 53956 of  
16 January 2026)  
(The English text is the official text of the Bill)*

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(Ms MP KOBE, MP)

**GENERAL EXPLANATORY NOTE:**

[                    ]     Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_                Words underlined with a solid line indicate insertions in existing enactments.

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# BILL

**To amend the Public Procurement Act, 2024, so as to insert certain definitions; to provide for the making of whistleblower disclosures in respect of any infringement or offence in terms of the Public Procurement Act, 2024; to provide for the reward of a whistleblower disclosure, which leads to the recovery of funds by the State; to provide for offences in respect of whistleblower disclosures; to increase the penalty, which may be imposed in respect of certain offences; to make provision for the institution of a private prosecution; to provide for regulations related to whistleblower disclosures; to amend the arrangement of sections; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 28 of 2024**

1. Section 1 of the Public Procurement Act, 2024 (Act No. 28 of 2024) (hereinafter referred to as the “principal Act”), is hereby amended— 5

(a) by the insertion after the definition of “instruction” of the following definition:

“**law enforcement body**” means a law enforcement body including the—

(a) South African Police Service; 10

(b) Directorate for Priority Crime Investigation, established in terms of section 17C of the South African Police Service Act, 1995 (Act No. 68 of 1995);

(c) Special Investigation Unit, established in terms of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996); and 15

(d) Investigating Directorate against Corruption, established in terms of section 7(1A) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);”;

(b) by the insertion after the definition of “prescribed” of the following definition: 20

“**Prevention of Organised Crime Act**” means the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);”;

(c) by the insertion after the definition of “Promotion of Administrative Justice Act” of the following definition: 25

“**Protected Disclosures Act**” means the Protected Disclosures Act, 2000 (Act No. 26 of 2000);”;

- (d) by the deletion of the word “and” at the end of the definition of “Tribunal Rules”; and
- (e) by the insertion after the definition of “Promotion of Administrative Justice Act” of the following definition:
- “**whistleblower disclosure**’ means a disclosure of information made in terms of section 14A(1) or (2), excluding information in respect of a direction contemplated in section 14(1), regarding—
- (a) an offence, referred to in section 60, which has been, is being, or is likely to be committed;
  - (b) non-compliance with any provision of this Act, which has been, is being, or is likely to be committed; or
  - (c) an offence or infringement referred to in paragraphs (a) or (b) which has been, is being, or is likely to be deliberately concealed.”

#### **Amendment of section 14 of Act 28 of 2024**

2. Section 14 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:
- “(4) The affected person may not, despite any term of employment, be subjected to occupational detriment as defined in section 1 of the Protected Disclosures Act[, 2000 (Act No. 26 of 2000),] due to the non-compliance with the direction of the person with authority.”

#### **Insertion of sections 14A and 14B in Act 28 of 2024**

3. The following sections are hereby inserted in the principal Act after section 14:

##### **“Whistleblower disclosures**

- 14A.** (1)(a) Any person may, in the prescribed manner, make a whistleblower disclosure to the Public Procurement Office, which must, notwithstanding the provisions of section 54, investigate the disclosure.
- (b) The procedure to be followed in conducting any investigation in terms of paragraph (a) must be determined by the Public Procurement Office, with due regard to the circumstances of each case.
- (c) Should an investigation in terms of paragraph (a) reveal—
- (i) non-compliance with a provision of this Act, the provisions of section 54(2)(a) apply; or
  - (ii) the commission of an offence, referred to in section 60, the provisions of section 54(2)(b) apply.
- (2)(a) Notwithstanding the provisions of subsection (1), any person may, in the prescribed manner, make a whistleblower disclosure, if such disclosure concerns an offence referred to in section 60, to a relevant law enforcement body.
- (b) If a law enforcement body, to which a whistleblower disclosure has been made in terms of paragraph (a), is of the opinion that the matter would be more appropriately dealt with by another law enforcement body, it may, after consultation with the person who made the whistleblower disclosure, refer the matter to such other law enforcement body for investigation.
- (3) A whistleblower disclosure, in terms of subsection (1) or (2), made by an employee, or worker, as defined in section 1 of the Protected Disclosures Act, may qualify as a protected disclosure as defined in the said Act.
- (4) Any person making a whistleblower disclosure in terms of subsection (1) or (2) may, in the prescribed manner, do so anonymously.
- (5) The Public Procurement Office must keep the identity of a person who makes a disclosure in terms of subsection (1) confidential and may only disclose the person’s identity when—
- (a) the person who made the whistleblower disclosure provides consent; or
  - (b) a court has ordered that the person’s identity be disclosed.
- (6) Any person who intimidates, uses physical force, or improperly persuades or coerces a person, who has made or intends to make a whistleblower disclosure, with the intent to—

- (a) delay or prevent that person from making a whistleblower disclosure;
- (b) influence or induce that person to make an intended whistleblower disclosure in a particular manner or fashion, other than in the manner as prescribed, or to give or withhold certain details in respect of such disclosure; or
- (c) threaten or dissuade that person from further cooperating with a law enforcement body, the Public Procurement Office, or from giving testimony in respect of that person's whistleblower disclosure in court or other proceedings,

is guilty of an offence in terms of section 60(1)(e).

(7) A person making a whistleblower disclosure in terms of subsection (1) or (2) must do so in good faith and must reasonably believe that the allegations and information contained in the disclosure is substantially true.

(8)(a) Subject to subsection (7), a court may find that a person who makes a whistleblower disclosure in terms of subsection (1) or (2) is exempt from any civil, criminal or disciplinary proceedings, if such disclosure is prohibited by any other law, oath, contract, practice or agreement requiring such person to maintain confidentiality, or otherwise restricting the disclosure of the concerned information.

(b) The exemption referred to in paragraph (a) does not extend to a person who participated in the offence or infringement alleged in that person's disclosure.

(9) Any person who makes a whistleblower disclosure, knowing that the information contained in such disclosure is false, is guilty of an offence in terms of section 60(1)(a).

(10) This section applies to any whistleblower disclosure made after the date on which this section comes into operation, irrespective of whether the alleged offence or infringement disclosed therein occurred before or after the said date.

### **Reward for disclosure**

**14B.** (1) For purposes of this section "recovery of funds by the State" includes the value of the realisation of any assets recovered by the State.

(2)(a) Where a person's whistleblower disclosure, made in terms of section 14A(1) or (2), leads to the recovery of funds by the State as a result of—

- (i) a criminal conviction, including a confiscation order made in terms of section 18 of the Prevention of Organised Crime Act; or
- (ii) a civil forfeiture order made in terms of section 50 of the Prevention of Organised Crime Act,

a court may, subject to subsection (4), order that such person be paid a monetary reward.

(b) Should a court decide to grant a monetary reward referred to in paragraph (a), the reward may, subject to subsection (4), be for an amount not less than 15 per cent and not more than 25 per cent of any such funds recovered by the State, which amount may not exceed R15 million.

(3)(a) Where a person's whistleblower disclosure leads to the recovery of funds by the State in terms of subsection (2), as a result of a private prosecution instituted in terms of section 60A, a court may, subject to subsection (4), order that such person be paid a monetary reward.

(b) Should a court decide to grant a monetary reward referred to in paragraph (a), the reward may, subject to subsection (4), be for an amount not less than 20 per cent and not more than 33 per cent of any such funds recovered by the State, which amount may not exceed R25 million.

(4) A court must, in its discretion, consider the following when determining whether an order for the payment of a reward should be granted, as well as when determining the percentage of such reward, in terms of subsection (2) or (3)—

- (a) the original nature of the information contained in the whistleblower disclosure;

- (b) the significance of the information provided in the whistleblower disclosure and whether such information contributed materially towards the recovery of the funds by the State;
- (c) the degree of cooperation provided by the person, who made the whistleblower disclosure, during an investigation or prosecution;
- (d) any expenses or costs incurred by the person as a result of his or her whistleblower disclosure; and
- (e) subject to subsections (8) and (9), whether the person who made the whistleblower disclosure was complicit in the commission of the offence or infringement alleged in that person's disclosure, as well as the extent of that person's complicity in the commission of the offence or infringement.

(5) Where more than one person's whistleblower disclosure leads to the recovery of funds by the State and a court orders the payment of a monetary reward in terms of subsection (2) or (3), the court, subject to subsection (4), may—

- (a) order that the reward be divided between such persons; and
- (b) determine the percentage of the reward which each person will receive, based on the value of each person's disclosure, which contributed towards the recovery of funds by the State.

(6)(a) Should a court grant a monetary reward in terms of subsection (2) or (3), the Minister must, in the prescribed manner, promptly pay the reward from the funds recovered by the State before such funds are paid into the Criminal Assets Recovery Account, established in terms of section 63 of the Prevention of Organised Crime Act.

(b) The remaining balance of the funds recovered by the State must be paid into the Criminal Assets Recovery Account after the payment of the reward in terms of paragraph (a).

(7) The Minister may, in consultation with the Minister responsible for the administration of justice, make regulations regarding the procedure for the payment of a monetary reward in terms of subsection (6).

(8) Subject to subsection (9), where a person was complicit in the commission of the offence or infringement alleged in that person's whistleblower disclosure, a court may, in its discretion, taking into account all relevant factors, including the person's motive and the extent of that person's complicity in the commission of the concerned offence or infringement, grant or refuse to grant a monetary reward to such person in terms of subsection (2) or (3).

(9) A monetary reward, in terms of subsection (2) or (3), will not be payable to a person who was complicit in the commission of the offence or infringement alleged in that person's whistleblower disclosure, or who intentionally failed to perform an official duty, for the purpose of receiving a monetary reward.

(10) A reward granted in terms of subsection (2) or (3) will only be payable after—

- (a) the finalisation of all court proceedings, including review and appeal proceedings; and
- (b) the realisation of any assets recovered by the State.

(11) In the event of the death of a person whose whistleblower disclosure leads to the recovery of funds by the State and the granting of a monetary reward by a court, in terms of subsection (2) or (3), and such person dies before the granting or payment of such monetary reward, the entitlement to such monetary reward will not lapse and must be paid to such person's deceased estate, subject to the Administration of Estates Act, 1965 (Act No. 66 of 1965), and, if applicable, the Intestate Succession Act, 1987 (Act No. 81 of 1987)."

#### **Amendment of section 60 of Act 28 of 2024**

4. Section 60 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (e) of the following paragraph:

- “(e) contravenes section 10(b) or (c), 12, 14A(6), or 15(11)(a); or”; and  
 (b) by the substitution in subsection (1) for the words following paragraph (f) of the following words:

“commits an offence and is liable on conviction to a fine or to imprisonment for a term not exceeding [10] 20 years or to both, and in addition to the penalty imposed in this section, the court may order that the amount of loss incurred by the complainant be compensated, failure of which the court may issue an order of confiscation of personal property of the person convicted in order to recover the loss.”.

#### Insertion of section 60A in Act 28 of 2024

5. The following section is hereby inserted in the principal Act after section 60:

##### “Private prosecution

**60A.** (1) Subject to subsection (2), any person may, in respect of any offence committed in terms of this Act, institute and conduct a private prosecution after giving written notice of the intended private prosecution to the relevant Director of Public Prosecutions who, within 30 days of receipt of such notice, has—

- (a) stated in writing that he or she does not intend to prosecute the alleged offence; or  
 (b) not responded in writing to the person’s written notice.

(2) A person who institutes a private prosecution in terms of subsection (1), must do so in accordance with section 8 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

(3) When a private prosecution is instituted in terms of this section, the relevant Director of Public Prosecutions will be barred from prosecuting the alleged offence except with the leave of the court concerned.”.

#### Amendment of section 63 of Act 28 of 2024

6. Section 63 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1)(a) of the word “and” at the end of subparagraph (xiii); and

- (b) by the addition to subsection (1)(a) of the following subparagraphs:

“(xv) a whistleblower disclosure made in terms of section 14A(1)(a);

(xvi) subject to subsection (2)(a), a whistleblower disclosure made in terms of section 14A(2)(a);

(xvii) an anonymous whistleblower disclosure made in terms of section 14A(4); and

(xviii) the procedure for the payment of a monetary reward in terms of section 14B;”.

#### Amendment of arrangement of sections of Act 28 of 2024

7. The arrangement of sections of the principal Act is hereby amended—

- (a) by the insertion after the item relating to section 14 of the following items:

“**14A.** Whistleblower disclosures

**14B.** Reward for disclosure”; and

- (b) by the insertion after the item relating to section 60 of the following item:

“**60A.** Private prosecution”.

#### Short title and commencement

8. This Act is called the Public Procurement Second Amendment Act, 2026, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE PUBLIC PROCUREMENT SECOND AMENDMENT BILL, 2026**

### **1. INTRODUCTION**

- 1.1 The Public Procurement Second Amendment Bill, 2026 (“Bill”), seeks to amend the Public Procurement Act, 2024 (Act No. 28 of 2024) (“principal Act”), to make provision for financial incentives or “encouragement” for whistleblowers whose disclosures result in the recovery of assets by the State.
- 1.2 South Africa’s experience with state capture, entrenched corruption networks, and the indispensable role played by whistleblowers during Judicial Commission of Inquiry into State Capture (“Zondo Commission”), highlights the urgent need to institutionalise whistleblower incentives in a sustainable, fair and appropriately scaled manner. Of particular concern and focus is the public procurement sector, which is estimated to account for over R800 billion in annual expenditure country wide.
- 1.3 Despite the vital contribution of whistleblowers in uncovering wrongdoing during the Zondo Commission, key recommendations relating to incentivising whistleblowers remain unimplemented. While sector-specific legislation such as the Marine Living Resources Act, 1998 (Act No. 18 of 1998), the National Forests Act, 1998 (Act No. 84 of 1998), and the National Environmental Management Act, 1998 (Act No. 107 of 1998), provide for financial rewards under limited conditions, these frameworks are narrow in scope and underutilised and do not offer a coherent systemic framework.
- 1.4 Of further concern is the National Prosecuting Authority’s (“NPA”) seeming repeated inability to effectively prosecute corruption and secure financial recoveries for the State. This systemic failure highlights the need to provide for private prosecutions whenever the NPA refuses or neglects to act.
- 1.5 There appears to be institutional hesitancy to effectively empower whistleblowers and to implement meaningful reward schemes capable of disrupting entrenched corruption networks. This may be attributed to capacity constraints, political sensitivity, and fear of unsettling entrenched patronage networks. Yet, research shows that whistleblower incentivisation coupled with private prosecution are highly effective anti-corruption tools, particularly in sectors marked by systemic corruption such as public procurement. For example, in the United States of America, the False Claims Act, 1863 (as amended), which provides for whistleblower incentivisation, enabled the recovery of \$2.9 billion (R52.2 billion) in 2024 alone. Similar models are now in place in the United Kingdom and several European jurisdictions.
- 1.6 In the Republic of South Africa, whistleblowers routinely face threats to their safety, livelihoods, and social standing. In tragic instances, such as the assassination of Babita Deokaran and Marius van der Merwe, the personal risks have proven fatal. It is unjust and unsustainable to expect whistleblowers to bear such burdens without meaningful support or recognition.

### **2. OBJECTIVES OF BILL**

The Bill proposes to amend the principal Act by providing for—

- (a) whistleblower disclosures in respect of any infringement or offence contemplated in the principal Act;
- (b) rewards for whistleblower disclosures which lead to the recovery of funds by the State;
- (c) offences in respect of whistleblower disclosures and increasing the penalty in respect of certain other offences;
- (d) the institution of private prosecutions; and
- (e) matters connected therewith.

### **3. CONTENTS OF BILL**

- 3.1 Clause 1 seeks to amend section 1 of the principal Act by inserting certain definitions.
- 3.2 Clause 2 seeks to amend section 14 of the principal Act by amending the reference to the Protected Disclosures Act, 2000 (Act No. 26 of 2000), due to the proposed definition of the said Act in clause 1 of the Bill.
- 3.3 Clause 3 seeks to insert section 14A in the principal Act which prescribes the process for the making of whistleblower disclosures in respect of any infringement or offence contemplated in the principal Act. The clause further proposes the insertion of section 14B in the principal Act which makes provision for monetary rewards to be awarded by a court for whistleblower disclosures which lead to the recovery of funds by the State.
- 3.4 Clause 4 seeks to amend section 60 of the principal Act by providing for an offence and penalty in respect of the conduct referred to in the proposed section 14A(6) concerning whistleblower disclosures and increases the penalty in respect of certain other offences contemplated in the principal Act.
- 3.5 Clause 5 seeks to insert section 60A in the principal Act which provides for the institution of private prosecutions.
- 3.6 Clause 6 seeks to amend section 63 of the principal Act by empowering the Minister of Finance to make regulations in respect of whistleblower disclosures and the procedure for the payment of monetary rewards.
- 3.7 Clause 7 seeks to amend the arrangement of sections of the principal Act.
- 3.8 Clause 8 provides for the short title and commencement of the envisaged Second Amendment Act.

### **4. DEPARTMENTS AND BODIES CONSULTED**

The Public Affairs Research Institute.

### **5. FINANCIAL IMPLICATIONS FOR STATE**

None.

### **6. PARLIAMENTARY PROCEDURE**

- 6.1 Section 76(4) of the Constitution provides that a Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution, if such Bill deals with legislation envisaged in Chapter 13 of the Constitution, which includes procurement contemplated in section 217. The Member therefore proposes that the Bill must be dealt with in accordance with the procedure established in section 76 of the Constitution.
- 6.2 The Member is further of the opinion that it is not necessary to refer the Bill to the National House of Traditional and Khoi-San Leaders in terms of section 39(1)(a)(i) of the Traditional and Khoi-San Leadership Act, 2019 (Act No. 3 of 2019), as the Bill does not contain any provisions which directly affect traditional or Khoi-San communities, or provisions which pertain to customary law or customs of traditional or Khoi-San communities.