

WHISTLEBLOWING FOR GOOD GOVERNANCE: ISSUES FOR CONSIDERATION

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ABSTRACT

One of the key obstacles in the fight against corruption is the fact that, without legal protection, individuals are often too intimidated to speak out or blow the whistle. *The Protected Disclosures Act 2000* (Act 26 of 2000) provides protection against occupational detriment to those who disclose information of unlawful or corrupt conduct. This law is therefore an important weapon in the anti-corruption struggle to encourage honest employees to report wrongdoing.

The presumed benefits of whistleblowing for good governance should be seen against the possible negative consequences of whistleblowing. Whistleblowers are both citizens and managers, and are therefore exposed to dilemmas in both roles. As citizens, they want to see the termination of wrongdoing. As managers, they would prefer whistleblowing incidents to go through internal channels only. However, if whistleblowing is ineffective, it benefits no one.

There is an increasing focus on good (and bad) corporate governance and institutions that are transparent and open will benefit from more favourable investor perceptions. Improved relationships with the public show that a substantial effort has been made to endow public administration with a legal framework that encourages the players involved to assume a greater sense of responsibility and develop practices to promote transparency and to protect whistleblowers.

Government has to overcome numerous difficulties caused largely by the burden of history, unethical and corruptive constraints and government secrecy. In the face of these difficulties, efficient administration that serves the needs of all citizens is one prerequisite for strengthening the rule of law and the credibility of the state, both internally and externally. Such administration must be transparent, responsible and accountable, and served by honest officials. In the current context of the globalisation of the world economy and the fluidity of cultural boundaries. Administrations in all countries also face a variety of issues, including the ethical problems concerned with the protection of employees who expose malpractice or misconduct in the workplace, transparent administration and good governance.

This article will focus on the role of the whistleblower as well as the formal structure for whistleblowing in the organisation in sustaining good governance.

INTRODUCTION

The focus of this article is on the dilemmas faced by individuals in blowing the whistle as well as the establishment of a formal structure within the organisation for whistleblowing. Whistleblowing is seen as the unauthorised disclosure of information when whistleblowers report wrongdoing in the wrong way, *i.e.* using the wrong channels; the information is of a sensitive nature (Uys and Senekal 2005:8). Unauthorised whistleblowing causes negative responses from the organisation. As Uys (2005:7) states, "It is precisely the unauthorised nature of the whistleblower's disclosure that exposes him/her to the accusation of treachery". In addition, while whistleblowing is becoming more regulated, and legislated by the *Protected Disclosures Act 2000* (Act 26 of 2000) (hereafter referred to as the PDA, this will not necessarily mean that the organisation will consider it as authorised action (Uys 2005:7).

Most definitions identify whistleblowing as perceived organisational wrongdoing. In order for a disclosure to take place, the whistleblower must witness an incident or practice, or set of incidents or practices, as incorrect and improper behaviour. This observation then causes the whistleblower to disclose the perceived wrongdoing (Miceli and Near 1992:156), and the disclosure may only take place once such a perception exists.

THE IMPORTANCE OF *THE PROTECTED DISCLOSURES ACT, 2000* (ACT 26 OF 2000)

Parliament, through the promulgation of acts, seeks to combat crime and corruption by encouraging whistleblowing by employees regarding an impropriety, *i.e.* unlawful and irregular conduct, committed by employers and fellow-employees. Employees who take such action are to be protected from unreasonable treatment by their employers. The intention is to create a culture which will facilitate the disclosure of information by employees relating to criminal and other irregular conduct in the workplace in a responsible manner, by providing comprehensive statutory guidelines for the disclosure of such information and protection against any retaliation as a result of such disclosures (Landman 2001:37).

The preamble to the PDA asserts that:

Criminal and other irregular conduct in organs of state and private bodies is detrimental to good, effective, accountable and transparent governance in organs of state and open and good corporate governance in private bodies and can endanger the economic stability of the Republic and have the potential to cause social damage.

In South Africa, subject to specific conditions, blowing the whistle constitutes protected disclosure under the PDA, with legal protection for whistleblowers against reprisals by employers (if the disclosure is made by following the correct legal procedures). The Act provides protection against retaliation for good faith whistleblowing on perceived wrongdoing. It gives directions to the employee toward seeking confidential advice and blowing the whistle internally. Provided there is good evidence to support the concern, it also protects whistleblowing to regulatory authorities and broader whistleblowing, where the circumstances justify it and the particular disclosure is sound.

Whistleblowing is (a) deliberate action(s) that follows on the whistleblower's moral need to protect the organisation and the public from harm (Alant and Uys 1999:7). Each of the prescribed procedures in the PDA is designed to ensure that the discloser is protected and calls for particular requirements to be complied with.

Camerer (2001:5) quotes Richard Calland, Executive Chair of the Open Democracy Advice Centre (ODAC), as having said:

At the heart of the Act is the notion that prevention is better than cure. It strongly encourages whistleblowers to disclose first of all to their employer, in order that the employer should have the opportunity to remedy the wrongdoing. Potential whistleblowers need to know that they must first through this door, where the test is that of good faith, rather than making a broader disclosure which would require higher tests.

If employers respond appropriately to the good faith concerns raised by their employees, the Act should be invoked rarely rather than regularly. Ultimately, the law protects both employers and employees. Through informing employees that it is acceptable to blow the whistle and putting procedures in place for them to do so, employers receive early warnings of potential problems in their organisations and can address them before they spill over into the public realm. An employee, who raises legitimate concerns in an environment of trust to those able to address those concerns, cannot be discriminated against in terms of his or her occupation for doing so.

Any concerns that the Act favours employees are unsupported as was illustrated in the case of Communication Union (CWU) vs. Mobile Telephone Networks (Pty) Ltd in which case the court found that the protection to employees under the PDA is not unconditional and that an electronic-mail message that was not sent in good faith to all employees would not be considered as a protected disclosure. The Act is specifically structured in a way that best serves the interests of accountable organisations. Only when internal channels have been exhausted or fail are broader disclosures to external bodies protected, meaning that the disclosure must be made in accordance with the prescribed process.

The objectives of the Act are threefold. *Firstly*, it aims to provide for procedures in terms of which an employee can, in a responsible manner, disclose information regarding improprieties committed by his or her employer. *Secondly*, it protects an employee, whether in the private or the public sector, from being subjected to occupational

detriment on account of having made a protected disclosure. *Thirdly*, it provides for particular remedies in connection with any occupational detriment suffered on account of having made a protected disclosure.

According to Le Roux (2000:41, 44) common law contract principles stipulate that an employee has a duty to act in good faith towards, and generally to further the interests of, his or her employer. A person making the disclosure will be protected if it is done in good faith and according to prescribed procedures, provided that such a procedure for the reporting and remedying of an impropriety has been prescribed or authorised by an employer.

In section 6(2), the Act also makes provision for confidential hotlines, with some companies encouraging their employees to make use of them: "Any employee who, in accordance with a procedure authorised by his or her employer, makes a disclosure to a person other than his or her employer is deemed, for the purposes of this Act, to be making the disclosure to his or her employer."

Employees are often in the best position to discover criminal activities or irregular conduct in the organisation. However, without any legal protection, their disclosures may be costing them too high a price in terms of the negative consequences. However, legislation, specifically the PDA, now makes provision for employees to blow the whistle or to disclose information relating to corruption, maladministration and other inappropriate conduct in the workplace, to public and private bodies without fear of retaliation.

The nature and scope of the PDA in creating protection for the disclosure of information makes provision for a number of avenues that can be utilised to blow the whistle. *Firstly* internally within the organisation to the employer or someone that represents the employer and *secondly* if the desired result is not achieved, external channels such as a legal advisor, minister, the Public Protector and the Auditor-General. If all avenues have been exhausted, then a disclosure can be made to the media (but not as an avenue for the first disclosure), as was done by Mike Tshishonga (employed at the Department of Justice as the managing director of the Master's Office Business Unit). If these prescribed provisions are applied and followed more ardently, more whistleblowers will be protected under the PDA from for example occupational detriment, provided that the disclosure is made in good faith.

The information disclosed must show or tend to show that a criminal offence has been committed or is likely to be committed, that a person failed to comply with a legal obligation, damage to the environment was done, and there was a miscarriage of justice, unfair discrimination or endangerment of health and safety. Disclosures not made according to the above provisions can still be protected if there is a reasonable belief that;

- the information is to a large extent true;
- the disclosure is not made for personal gain, the whistleblower reasonably belief that he or she will be subjected to occupational detriment if the disclosure is made to the employer; a previous disclosure on the same matter that was made to the employer was not addressed within a reasonable period of time; and
- that the impropriety is of exceptionally serious nature.

THE ROLE OF THE WHISTLEBLOWER

According to Calland (2004:2):

Whistleblowing is about basic issues which lie at the heart of human activity. It covers loyalty and the question of dubious practices. It concerns communication and silence. It is about practicing what one preaches and about leadership. It focuses on responsibility toward others and the accountability of those in charge. It is where public and private interests meet.

Whistleblowers have unfairly acquired a bad reputation as busy-bodies, disloyal employees and troublemakers (Camerer 2001:1). Whistleblowing is much more than disclosure because the person making the disclosure has to be specific. In addition, there is a difference between authorised (following the rules and regulations of the organisation) and unauthorised (not according to organisational channels or even in public, e.g. to the media) disclosures.

Ethical and general dilemmas facing the whistleblower

South Africans are concerned about integrity in government and they have the right to expect the highest ethical conduct of public officials. Public administration ought to operate within democratic prescriptions and values that impact upon the execution of public sector activities, and on the implementation of measures that promote ethical whistleblowing. Thus, when a government claims to accept the prescriptions of democracy, then it has to accept that the very same prescriptions also apply to the way in which policies that promote the protection of whistleblowers are implemented (Mbatha 2005:29).

Ethics indicate a set of principles or norms, the standards characteristic of an activity or profession, and make a further distinction between what is and what ought to be (Scruton 1996:176). According to Baai (1999:371) ethical predicaments arise when there is conflict between competing obligations or between a sense of duty and self-interest. The *White Paper on the Transformation of the Public Service* 1995 states that a high standard of professional ethics should be promoted and maintained in all spheres of public administration.

In addition, in the fulfilment of his or her duties, the public official is faced with ethical dilemmas which could influence whistleblowing in the decision-making process, and dilemmas such as policy, political activities, administrative secrecy, a weak institutional system and administrative discretion which could lead to criminal and irregular conduct. Unethical conduct materialises in, for example, election fraud, unauthorised disclosures of confidential information and kleptocracy. Kidder (1995:234) suggests that ethical dilemmas are conflicts between right and right, while moral temptations relate to conflicts between wrong and right. Moral temptations are, for example, bribery and improper bidding practices. Ethical dilemmas are issues such as economic growth versus environmental protection, or discipline versus compassion with employees. Conflicts

could exist between two or more human rights and/or values which lie at the heart of ethical decision-making. It is, therefore, imperative that public officials be clear about the content, purpose and basis of their decisions.

Disclosures, especially an external disclosure raise legal and ethical issues of confidentiality and business confidentiality and influence the process of whistleblowing in an organisational setting. If public officials had accepted the correct ethical values and behaviour, then whistleblowing can be an effective measure that can be used by the government in its drive against corruption.

According to Mbatha (2005:213) whistleblowers can be characterised as ordinary people who have a high standard of moral values expressed in ethical conduct; people with the ability to distinguish between right and wrong. Ethics clearly point out the difference between right and wrong behaviour and this can be viewed as the standard against which the behaviour and actions of public officials and political office-bearers can be measured.

A public official is often faced with the question of loyalty. One has to be loyal to the employer, but also to the public, as the public official works with the taxpayers' money. It is vital that public officials act morally and ethically at all times, as it is in the interest of the public at large, *i.e.* for the public good.

Public officials act within a political environment and must behave in a manner that is consistent with democratic and other values. It is against this background that the variables of ethics and values influence the ethical milieu of public organisations. There is also a relationship of trust within the organisation. The person who discloses the wrongdoing should feel that he or she will be protected and therefore that the person to whom the disclosure is made will always act consistently in similar situations and will be loyal to the discloser.

According to Westman and Modesitt (2004:29) one of the most important central duties of an employee is that of loyalty to the employer as this is implicit in the employment relationship. The duty of loyalty is a flexible concept that varies, depending on the specific conditions of the employment relationship concerned. The duty of loyalty requires the employee to act for the benefit of the principal in matters entrusted to him or her, and information acquired because of the position of the employee should not be used in a manner that would put the employee in an unfair advantageous position.

The duty of loyalty includes the obligation not to act on behalf of a person whose interest is in conflict with the employer's interest. A duty of confidentiality is implied by the duty of loyalty, since the latter requires an employee, *not to use or to communicate information confidentially given him by the principal ... to the injury of the principal ... unless the information is a matter of general knowledge* (Westman and Modesitt 2004:29-30). The duty of confidentiality recognises that the flow of necessary information might be impaired if employees made unauthorised disclosures of confidential information. The duty of confidentiality is qualified in that the employee may properly disclose information if his or her employer has committed or is about to commit a crime/illegal activity. The duties of loyalty and confidentiality arise in part from the trust that employers have in employees (Westman and Modesitt 2004:29-30).

A dilemma experienced by the whistleblower specifically relates to loyalty as whistleblowers are sometimes perceived as disloyal employees. The whistleblower might be divided between his or her loyalty towards an employer, fellow employees and the interest of the public it serves. Whistleblowing is about basic issues which lie at the heart of human activity. It covers loyalty and the question of dubious practices. However, sometimes loyalty to the organisation is overruled by the conviction that a person should act first and foremost in the public interest as the public trust public officials to keep their interest at heart.

Sztompka in Binikos (2006:43) argue that trust is faith in the way in which the trustee (whether a person, group or body) will respond (or commit him or herself to respond) to the action of the trustor. This response or commitment to respond will vary, according to the strength of faith, strength of character and type of situation, which in turn implies judgment based on the situation, the characteristics of the trustee and the trustor's willingness to place him-/herself at the mercy of the response of the trustee, which is inherently unpredictable. This is a risk the trustor has to take. The stronger the trust, the greater the risk. South African business tycoon Anton Rupert has been quoted as saying: *Trust is risk. Mistrust is an even greater risk.* Also, the greater the expectation that the trustee will behave in a manner conducive to the well-being of the trustor, the more vulnerable the trustor is. It is because of this decision-making risk that Sztompka in Binikos (2006:43) defines trust as a *gamble based on an individual's judgement* and Bews (2000:19) defines it as a "voluntary action of the party, flowing from an evaluation, based on the social skills of that person concerning the potential of another, or others, not to take advantage of the vulnerability of the first party". A whistleblower needs to trust the organisation and the senior public officials. Questions posed on alleged wrongdoing should be answered in an honest and open manner.

At times public officials experience conflicting demands from the organisation within government itself. Public officials might even at times experience conflict between personal ethical preferences or the policy choices they would prefer to make on the one hand and the demands of the organisation on the other. The whistleblower, for example, may struggle between knowing of some form of wrongdoing and believing that it should be exposed on the one hand and loyalty to the person or group committing the wrongdoing on the other.

The dilemma of the potential whistleblower may in part be due to economic dependence and in part to a duty to keep the employer's business confidential (Borrie in Camerer 1996:2). Besides the real fear of victimisation resulting from disclosures, a primary dilemma involves the conflicting loyalties between the desire to follow intrinsic moral beliefs and expose misconduct, and the organisational pressures to conform to a culture of loyalty and confidentiality, even though these may be misplaced (Camerer 1996:2).

With regard to factors related to the individual, a number of issues may surface. The individual may be hesitant to blow the whistle because he or she may feel his or her *facts may be mistaken* or that *there could be an innocent explanation* (Dehn 1999:9). In addition, where others have the same uncertainties, or have also chosen to remain silent,

the individual will be prone to question why he or she should speak out if other members of the organisation did not (Dehn 1999:9).

Dehn (1999:9) argues that even though the response towards the wrongdoer is not in control of the individual, the individual may feel responsible for any outcome of the reporting with respect to the consequences it has for the wrongdoer. The individual needs to believe that the wrongdoing will be addressed, or it might seem better to remain silent (Dehn and Borrie 2001:2). Milliken, Morrison and Hewlin. (2003:1541) add to this by stating that employees are not always willing to share information that could be interpreted as threatening or negative by those higher up in the hierarchy and therefore remain silent out of fear. Research also suggests that the individual will refrain from taking action when considering the costs involved (Dehn and Borrie 2001:2; Milliken *et al.*, 2003:1452) and that the consideration of one's own interests are persuasive factors in choosing to keep silent (Dehn and Borrie 2001: 2).

The subject of the message may also prevent disclosure. Milliken *et al.*, (2003:1454) state that individuals in the organisation generally do not want to be the bearers of negative information and also because of the negative consequences that it may lead to. Also due to the nature of the wrongdoing, the individual may fear being negatively perceived as disloyal by colleagues whose trust and respect might be required in future (Dehn 2001:2).

The supervisor-subordinate relationship also creates dilemmas for those who uncover organisational wrongdoing. According to Milliken *et al.*, (2003:1455) this intensifies the mum-effect. The willingness to speak out to supervisors is found to be consistent with perceptions of how amenable and receptive the supervisors are. Milliken *et al.*, (2003:1455) found that upward communication of bad news occurs when individuals lack trust in their supervisor.

Top-management might also be perceived to be unwilling to listen, where the culture is understood to be not very supportive, and where there is a fear of negative consequences. This is related to organisational norms and "the quality of one's relationship with senior management" (Milliken *et al.*, 2003:1455). According to Miceli and Near (1992:4) the failure to report does not necessarily imply non-action such as remaining silent. It could also include discussing the issue with fellow workers or consulting with others in terms of what action is best to pursue. Even where these impediments are overcome or reduced, the whistleblower will fear that he or she will be labelled as treacherous by those colleagues whose respect and trust he or she may want or need in future (Mbatha 2005:179-180).

FORMAL STRUCTURE FOR BLOWING THE WHISTLE

Whistleblowers have two ways of reporting organisational wrongdoing, namely to authorities within the organisation, or regulatory authorities outside the organisation (Uys 2005:8) and therefore two main forms of whistleblowing can be identified, namely internal and external whistleblowing (Near and Miceli 1996:509).

Internal whistleblowing refers to reporting to people or managers within the organisation who are higher up in the organisational hierarchy. Those who receive

internal complaints may be direct line managers, human resource representatives, chief executive officers, members of an executive council or board of directors. Internal whistleblowing may be *via* existing communication channels such as hotlines or *via* unauthorised communication channels e.g. e-mail if that is the only way (Johnson and Wright 2004:69) .

External whistleblowing refers to the disclosure of information outside the organisation and include media, politicians, public protectors, government bodies, regulatory bodies, interest groups and enforcement agencies (Miceli and Near 1994:774-775). According to Uys in Binikos (2006:22), the appropriate whistleblowing procedure is for the whistleblower to report *firstly* internally, *secondly*, if that does not succeed, to approach an external law enforcement agency, and *thirdly*, if that does not work, to report to the media, or to politicians, both of whom may also be considered external complaint recipients. However, where the media and politicians have received complaints of and exposed wrongdoing, they are not seen as whistleblowers since they are not members of the accused organisations. They are merely a way in which the whistleblower, a member or former member of the organisation concerned, can report and hopefully remedy the wrongdoing.

External disclosures raise legal and ethical issues of confidentiality and business confidentiality. Disclosures also affect relationships between business, the state and the media. An external disclosure usually involves at least some regulatory intervention and inconvenience and, at worst, unjustified negative publicity. This will cause unnecessary damage and disruption to the organisation, which would have dealt with the matter if it had known about it. As shown above, a culture where, in the absence of safe alternatives, a media disclosure is a legitimate first port of call, gives an open invitation to an aggrieved or malicious person to cause damage, rather than raise the issue responsibly (Dehn and Borrie 2001:6).

In most legal systems, there is no protection for an employee who makes an external disclosure – even if it is in good faith, justified and reasonable. Such disclosures are therefore often made anonymously. This raises a number of issues. Anonymity will be the cover preferred by a malicious person. Anonymous reporting also makes it difficult to investigate the matter, and even impossible to rectify it. Anonymity, however, is no guarantee that the source of the information will not be figured out. Where the person is identified, the fact that he or she acted anonymously will often be seen as a sign of bad faith, jeopardising the person's position, or at worst, costing the person his or her career. Their plight then attracts media attention, which can only discourage others from disclosing wrongdoing at all (Dehn and Borrie 2001:6).

The near certainty that an external disclosure will lead to serious reprisals means that the matter is often not raised until the employee leaves the organisation. By then the problem may be much worse, the evidence will be outdated, and the whistleblower may allow the information to be used to damage or even blackmail the organisation (Dehn and Borrie 2001:7).

It is apparent that the concept whistleblowing implies the presence of specific actors, identifiable actions and a process consisting of a number of steps, occurring in a particular order. According to Mbatha (2005:165), the whistleblower perceives an action

by the wrongdoer that is *inter alia* allegedly wrong, fraudulent, dangerous or illegal, which compels the whistleblower to make this action known. In brief, the process of whistleblowing includes (Uys and Senekal in Binikos 2006:16 and Bakman 2005:3).

- the whistleblower gathers information and evidence about the alleged wrongdoing;
- he or she reports it internally or externally;
- the organisation takes action to verify the evidence; and
- the organisation puts in place measures to redress the situation.

Feldman (1999:2-3) and Mbatha (2005:178) state that there are three stages in the process of whistleblowing. During the first stage, *causation*, a person needs to observe irregular or criminal conduct (or activity) taking place in the organisation. A decision must then be made as to whether to agree with the wrongdoing, to partake, to object or to walk away. These choices are not mutually exclusive as an individual's decision on how to behave at any given point in time may be reconsidered later.

Irrespective of personal demeanour, there may be no alternative but to proceed to the second stage, *disclosure*. In organisations regulated by legislation, which include all organisations in democratic societies, there may be rules and regulations requiring disclosure to an external regulator or auditor. Auditors and other compliance officers are themselves under strict rules of disclosure. In situations of disclosure, the response of some institutions is to get rid of the problem, not by addressing the disclosed wrongdoing, but by addressing the whistleblower.

Stage three of the whistleblowing process is *retaliation*. Disclosure is often by means of confidential information including documents, but even so, the whistleblower's identity may not be obvious if the disclosure is an anonymous disclosure. Consequently, identification of the whistleblower is a matter of great importance to the wrongdoer while preserving anonymity may perhaps be of greater importance to the whistleblower (Feldman 1999:2-3 and Mbatha 2005:178).

Barker and Dawood (2004:131-132) identify the following five steps in the stages of whistleblowing:

• **Step 1: Reduce opportunities to commit unethical or illegal conduct**

New employees must be screened effectively and there should be no opportunities that could motivate unethical or illegal conduct. Regular reinforcement should also be done to motivate employees to avoid wrongdoing through for example the enforcement of the *Public Service Code of Conduct*.

• **Step 2: Establish if the observed activity is actually wrong**

An activity will be wrong if it is illegal, unethical or illegitimate. The decision to report the perceived wrongful activity should be determined by the seriousness of the act; whether the reporting could be effective; there are no other actions that can be taken; and that the personal position of the whistleblower does not influence the decision.

• **Step 3: Use internal mechanisms in the organisation to raise concerns**

Critical information systems or internal reporting mechanisms must be in place in the organisation at an appropriate level to ensure that employees follow the correct internal channels and not damage external channels like a regulator or the media.

- **Step 4: Organisational policies/procedures must be used**

If the correct procedures/policies are used within the organisation, the damage and disruptions can be minimised and the situation rectified internally and rapidly. Once the whistle has been blown, the organisation should take action and investigate the matter, even if there is a dispute as to whether the activity is legitimate. The organisation might choose to take steps or ignore the whistleblower, depending on the policies/procedures of the organisation. Camerer (1996:48) states that there is a danger that an open door policy run by a corrupt management might work against the whistleblower and only serve the purpose of identifying the troublemaker to eject him/her.

- **Step 5: External whistleblowing**

As a last resort, one can justify external whistleblowing if all internal channels have been exhausted, are unavailable or unusable, or when organisational policies/procedures are not in place. Whistleblowers often choose the external channel if they are of the opinion that the case might be treated as more credible; that more attention will be attracted; and that corrective actions can be ensured.

In order to be protected by the PDA, a disclosure must be made in one of five ways:

- to a legal representative (section 5);
- to an employer (section 6);
- to a minister or member of the provincial executive council (section 7);
- to a specific person or body (section 8); or
- as a general protected disclosure (section 9).

The person disclosing the wrongdoing should feel that he or she will be protected and should therefore be able to expect that the person to whom the disclosure is made will always act consistently in similar situations and also be loyal to the discloser.

CONCLUSION

This *Protected Disclosures Act, 2000* legislation was enacted with a view to creating a culture in which employees may disclose information of criminal and other irregular conduct in the workplace in a responsible manner, and may generally promote the eradication of crime and misconduct in organs of state and private bodies. In terms of the Act, every employer and employee is now regarded as having a responsibility to address crime and any other irregular or unethical conduct in the workplace (although employees are not obliged to make disclosures). The employer must take all the necessary steps to ensure that employees who disclose such information are protected from retaliations as a result of having made disclosure.

Employers will need to familiarise themselves with the provisions of the Act and ensure that they are fulfilling their responsibilities in creating an environment in which unlawful activities can be exposed without fear of retaliation against the whistleblower. The provisions can be used to increase the level of understanding of disclosures of wrongdoing done in good faith if these provisions become part of the organisational

culture. After all, by curbing incidences of irregular conduct in this way, an organisation is better placed to protect itself from the devastating consequences of wrongdoing. It is imperative that the organisation put in place the necessary procedures to enable the employee to make a protected disclosure.

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