

**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

**NOTICE 187 OF 2018**

**INVITATION FOR PUBLIC COMMENTS  
PROPOSED REGULATIONS RELATING TO PROTECTED DISCLOSURES, 2018**

1. The Department of Justice and Constitutional Development (the Department) invites interested parties to submit written comments on the proposed draft Regulations Relating to Protected Disclosures, 2018.
2. Section 8(a) of the Protected Disclosures Amendment Act, 2017 (Act No. 5 of 2017)(the Amendment Act) amended section 8(1) of the Protected Disclosures Act, 2000 (Act No. 26 of 2000), which deals with the persons and bodies to whom protected disclosures may be made. The amended section 8 provides that a protected disclosure may be made by an employee or worker to the Public Protector, the South African Human Rights Commission, the Commission for Gender Equality, the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities, the Public Service Commission, the Auditor-General or a person or body prescribed by regulation for purposes of section 8 of the Act. Prior to the amendment, a protected disclosure in terms of section 8 of the Act could only be made to the Public Protector or the Auditor-General and a person or body prescribed by regulation for purposes of section 8 of the Act.
3. In order to give effect to the amended section 8(1) of the Act, draft regulations, prescribing the persons or bodies to whom protected disclosures may be made, in addition to the persons and bodies listed in section 8(1) of the Act, have been prepared. In determining to whom a protected disclosure should, in addition to the persons and bodies listed in section 8(1) of the Act, be made, the Report from the South African Law Reform Commission (SALRC), Project 123 with regards to Protected Disclosures was used as a starting point. In the said report the SALRC recommends that in addition to the proposals contained in the discussion paper and the proposals received from respondents, the Department should give consideration to the inclusion of persons or bodies to whom disclosures may be made in terms of other legislation.
4. A copy of the draft Regulations Relating to Protected Disclosures, 2018 to give effect to the amended section 8(1) of the Act is available on the website of the Department at <http://www.justice.gov.za>.
5. The comments on the draft Regulations Relating to Protected Disclosures, 2018 must be submitted to Ms A Van der Walt, on or before 21 May 2018. The contact details are:
  - (a) Postal address:  
The Director-General: Justice and Constitutional Development  
Private Bag X 81  
Pretoria  
0001;
  - (b) e-mail address:  
[alvanderwalt@justice.gov.za](mailto:alvanderwalt@justice.gov.za)
  - (c) Fax nr:  
0866480963
6. Further information can be obtained from Ms A van der Walt at 012 406 4767 or Mr LG Bassett at 012 406 4753.

**GOVERNMENT NOTICE**  
**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT**

No. R.

2018

**PROTECTED DISCLOSURES ACT, 2000 (ACT NO. 26 OF 2000)**  
**REGULATIONS RELATING TO PROTECTED DISCLOSURES, 2017**

I, Tshililo Michael Masutha, Minister of Justice and Correctional Services, have under section 10 of the Protected Disclosures Act, 2000 (Act No. 26 of 2000) and, after consultation with the Minister for the Public Service and Administration, made the regulations in the Schedule.

**SCHEDULE**

**Definitions**

1. In these regulations any word or expression to which a meaning has been assigned in the Act has the meaning so assigned to it and, unless the context otherwise indicates—

"**the Act**" means the Protected Disclosures Act, 2000 (Act No. 26 of 2000).

**Protected disclosures to certain persons and bodies**

2. (1) A disclosure contemplated in section 1 of the Act, can be made to the persons or bodies contemplated in section 8(1)(a), (aA), (aB), (aC), (aD), and (b) of the Act, listed in Column 1 of Annexure A to these Regulations, in respect of conduct set out in Column 2 of Annexure A to these Regulations.

(2) A disclosure contemplated in section 1 of the Act, can, in addition to the persons and bodies listed in section 8(1)(a), (aA), (aB), (aC), (aD) and (b) of the Act, also be made to the persons or bodies listed in Column 1 of Annexure B to these Regulations, in respect of conduct set out in Column 2 of Annexure B to these Regulations.

(3) If an employee or worker intends to make a disclosure of a matter which is based upon the same facts to two or more bodies referred to in subregulation (1) or (2) he or she must inform each person or body to whom such a disclosure is made of that fact.

**Short title**

3. These regulations are called the Regulations Relating to Protected Disclosures, 2018.

## ANNEXURE A

<b>COLUMN 1</b> <b>Person or body to whom or which disclosure can be made</b>	<b>COLUMN 2</b> <b>Conduct being disclosed</b>
The Public Protector	Any alleged irregular or improper conduct or impropriety with regard to state affairs or in the public administration, in any sphere of government.
South African Human Rights Commission	Any alleged irregular or improper conduct or impropriety with regard to human rights-related matters.
Commission for Gender Equality	Any alleged irregular or improper conduct or impropriety with regard to gender-related matters.
Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities	Any alleged irregular or improper conduct or impropriety with regard to the rights of cultural, religious and linguistic communities.
Public Service Commission	Any alleged irregular or improper conduct or impropriety with regard to— (a) ethics related issues such as dishonesty, favouritism, abuse of power, improper personal gain and conflicts of interest; (b) accountability related issues such as appointment, procurement and financial irregularities, non-compliance with public service legislation and policy (including departmental policies), lack of access to information and lack of confidentiality; (c) service delivery and professionalism related issues such as bias/impartiality. Unfairness, discrimination and prejudice; (d) performance related issues such as incapacity, incompetence, lack of training/capacitating and lack of representivity; (e) policy related issues such as the non-existence of policies and policies that may be in conflict with legislation; and (f) corruption and maladministration.
Auditor-General of South Africa	Any alleged irregular or improper conduct or impropriety with regard to the accounts,

	<p>financial statements and financial management of—</p> <ul style="list-style-type: none"><li>(a) all national and provincial departments and administrations;</li><li>(b) all constitutional institutions;</li><li>(c) the administration of Parliament and of each provincial legislature;</li><li>(d) all municipalities;</li><li>(e) all municipal entities; and</li><li>(f) any other institution or accounting entity required by national or provincial legislation to be audited by the Auditor-General.</li></ul>
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## ANNEXURE B

<b>COLUMN 1</b> <b>Person or body to whom or which disclosure can be made</b>	<b>COLUMN 2</b> <b>Conduct being disclosed</b>
Chairperson of the National Council of Provinces	Any alleged irregular or improper conduct or impropriety which has a bearing on the National Council of Provinces.
Competition Commission	Any alleged irregular or improper conduct or impropriety with regard to the promotion and maintenance of competition in South Africa, including the control and evaluation of mergers, the investigation and prosecution of price fixing, fixing of trading conditions, market allocation, collusive tendering, restricted vertical practices and abuse of dominant positions
Council for Debt Collectors	Any alleged irregular or improper conduct or impropriety with regard to the collection of debts.
Electoral Commission of South Africa	Any alleged irregular or improper conduct or impropriety with regard to free and fair elections of national, provincial and municipal legislative bodies.
Financial and Fiscal Commission	Any alleged irregular or improper conduct or impropriety with regard to- (a) the equitable division of revenue raised nationally among the national, provincial and local spheres of government; (b) the determinations of each province's equitable share of the provincial share of that revenue; and (c) any other allocations to provinces, local government or municipalities from the national government's share of that revenue and any condition on which those allocations may be made.
Financial Intelligence Centre	Any alleged irregular or improper conduct or impropriety with regard to money laundering activities or the financing of terrorist and related activities.
Financial Services Board	Any alleged irregular or improper conduct or impropriety with regard to financial institutions

<b>COLUMN 1</b> <b>Person or body to whom or which disclosure can be made</b>	<b>COLUMN 2</b> <b>Conduct being disclosed</b>
	and the provision of financial services.
Independent Communications Authority of South Africa	Any alleged irregular or improper conduct or impropriety with regard to – (a) broadcasting in the public interest; (b) electronic communications in the public interest; and (c) postal matters in the public interest.
Independent Police Investigative Directorate	Any alleged irregular or improper conduct or impropriety by a member of the South African Police Service.
Independent Regulatory Board for Auditors	Any alleged irregular or improper conduct or impropriety with regard to audits performed by registered auditors.
International Trade Administration Commission of South Africa	Any alleged irregular or improper conduct or impropriety with regard to the import or export of goods and customs duties.
Judicial Inspectorate for Correctional Services	Any alleged irregular or improper conduct or impropriety with regard to the treatment of inmates in correctional centres and the conditions in correctional centres.
Judicial Service Commission	Any alleged irregular or improper conduct or impropriety by a judge of a superior court.
Magistrates Commission	Any alleged irregular or improper conduct or impropriety by a magistrate.
National Consumer Commission	Any alleged irregular or improper conduct or impropriety with regard to the social and economic welfare of consumers.
National Energy Regulator of South Africa	Any alleged irregular or improper conduct or impropriety with regard to the regulation of electricity, piped gas and petroleum pipeline industries.
National Prosecuting Authority	Any alleged irregular or improper conduct or impropriety with regard to the institution and execution of prosecutions.
Office of the Chief Justice	Any alleged irregular or improper conduct or impropriety with regard to the judicial arm of government.
Pension Fund Adjudicator	Any alleged irregular or improper conduct or impropriety with regard to pensions or pension funds.

<b>COLUMN 1</b> <b>Person or body to whom or which disclosure can be made</b>	<b>COLUMN 2</b> <b>Conduct being disclosed</b>
Speaker of the National Assembly	Any alleged irregular or improper conduct or impropriety which has a bearing on the National Assembly.
Special Investigating Unit	Any alleged irregular or improper conduct or impropriety with regard to the affairs of any State institution.
South African Board for Sheriffs	Any alleged irregular or improper conduct or impropriety by a sheriff.
South African Health Professions Council	Any alleged irregular or improper conduct or impropriety with regard to the health professions.
South African Legal Practice Council (when it is established)	Any alleged irregular or improper conduct or impropriety by a legal practitioner.
South African Nuclear Energy Corporation Ltd/ National Nuclear Regulator	Any alleged irregular or improper conduct or impropriety with regard to nuclear energy and radiation sciences and technology.
South African Qualifications Association	Any alleged irregular or improper conduct or impropriety with regard to education and training.
South African Revenue Service	Any alleged irregular or improper conduct or impropriety with regard to tax and customs-related matters.