



6 February 2014

## **Private Security Industry Regulation Amendment Bill [B27D – 2012] provisions that might require amendments or further clarification**

On 5 February 2014, General Jacobs, Head of Legal Services in the Department of Police, and accompanied by representatives of the Civilian Secretariat for the Police Service and the PSIRA, presented the Private Security Industry Regulation Amendment Bill [B27D-2012] to the Select Committee on Security and Constitutional Development. The presentation included a clause by clause reading of the consolidated document reflecting the Portfolio Committee on Police amendments in the Private Security Industry Regulation Act.

**The following areas and issues requiring further clarity were identified in relation to the current wording in the consolidated document (and thus the D-Bill); and in questions asked by delegates on 5 February 2014.**

### **1. References to Parliament in the Bill**

- Section 20 states that *regulations must be submitted to the National Assembly*. It is proposed that **the reference to National Assembly should be changed to Parliament** to ensure that the Select Committee also considers and approve such regulations.
- *The date (2013) in the Short title, Memorandum (2.2.43 Ad Clause 43) section 44A* should be changed to **Private Security Industry Regulation Amendment Act, 2014**.

### **2. Offences and penalties (prison term increased from 24 months to 5 years)**

- The Bill refers to a contravention of the regulations – this should read a **contravention of the Act**; alternatively **Act and Regulations**.
- ***What informs the period of 5 years?***
- The Bill should clearly indicate that offences and penalties in terms of the Act are not precluded from the operation of other applicable legislation like the Criminal Procedure Act No. 71 of 1977, etc. For e.g. rendering security services outside the country without being registered or accredited could possibly also be a contravention of existing anti-mercenary<sup>1</sup>, anti-terrorism<sup>2</sup> and national security<sup>3</sup> legislation.

<sup>1</sup> Prohibition of Mercenary Activities and Regulation of Certain Activities in Country of Armed Conflict Act No. 27 of 2006.

<sup>2</sup> Protection of Constitutional Democracy against Terrorist and Related Activities Act No. 33 of 2004.

<sup>3</sup> Protection of State Information Act No. 41 of 2013

### 3. Finances of Authority

- Public Entity: According to the Department the definitions in the bill are being aligned with legislation applicable to public bodies. According to its 2011/12 Annual Report PSIRA is listed as a public entity in Schedule 3A to the Public Finance Management Act. As a public entity, PSIRA must adhere to the statutory duties and responsibilities imposed by the Public Finance Management Act.
- **Financial Performance in 2011/12:** PSIRA posted a deficit of R9.2 million for the year ending 31 March 2012, compared to R23.0 million in 2010/2011. The financial performance results reflect continued deficits. *However, the deficit decreased by R13.7 million or 60% compared to 2010/11.*
- **Revenue and other Income:** Gross revenue for the year to 31 March 2012 was R128.7 million, an increase compared to the R97.1 million posted in 2010/11.
- **In 2013 the Northern Gauteng High Court in Pretoria dismissed with costs the 2011 application by Security Industry Alliance (SIA) to set aside Annual Fees Regulations of the private security industry.** SIA had successfully interdicted PSIRA from implementing reviewed Annual Fees Regulations so that PSIRA could not collect or force security companies to pay the new fees. The judgment means that **security businesses** (previously only security officers) must now also contribute towards the regulation of the industry.
- Mention was made that **the Levies Act of 2002 is not yet operational** due to the delays in promulgation of applicable legislation like the Promotion of Protection of Investment Bill, 2013 of the Department of Trade and Industry that is currently before Parliament: ***Will the operationalisation of the Levies Act not be a solution to solve the PSIRA's funding issues as it would compel security businesses and members to pay the prescribed levies?***
- Can an example be provided of a scenario in which it would be justified or appropriate for the PSIRA to receive funds appropriated by Parliament? Is it proposed, for example, that Parliament appropriate funds for the Authority until the **Levies Act becomes operational?** If so, would this not set an **undesirable precedent for other entities to expect Government funding?**

### 4. References to the South African Police Service

The Bill defines 'the Service' as referring to the South African Police Service. Section 38(d)(ii) makes reference to the municipal police service and 'the Service'.

- It is proposed that ***municipal police service be included in the definition of 'the service'*** or that ***both be included under a definition of 'police'***.

Alternatively it is proposed that *the definition 'the service' is deleted and the term South African Police Service is used in full* in the bill.

#### 5. Powers of Minister to mediate between the Council and Members

The bill provides that **the Minister can mediate in event of a dispute between the Council and its members.**

- What would constitute a “dispute” and what are the factors that need to be taken into account? What if internal dispute resolution mechanisms exist or can be developed to achieve this without Ministerial intervention? ***It should perhaps provide that the Minister can only intervene after all internal dispute resolution mechanisms and processes have been exhausted.***



**STATE ATTORNEY AMENDMENT BILL**  
**[B52-2013]**

**A summary of key issues contained in the Bill**

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**1. Background:**

The State Attorney Amendment Bill is a step towards implementation of the Department of Justice "A framework for the transformation of the State Legal Service" which was developed in 2012 to address some challenges experienced in the sector, amongst these, the following:

- There is no comprehensive set of clearly defined rules governing how litigation services are to be dispensed, acquired, managed and monitored.
- The provision of quality legal services is a challenge due to the absence of a strategy to train and nurture skills, coupled with a reliance on external legal service providers.
- There is no strategic, co-ordinated approach to defend the state against litigation. expertise in critical areas of the law and policy that are peculiar to government.

There are no structured, effective alternative non-litigious methods to resolve legal disputes involving the state.

- There is an overreliance on private practitioners without developing in-house

The main objectives of this policy framework, amongst others, are the following:

- The consolidation, coordination and integration of state legal services across the government spectrum to ensure institutional efficiency.
- The creation of processes and infrastructure to provide for the strategic management of litigation, and achieve broader socio-economic transformation and alignment with the broader developmental objectives of government.
- The establishment of a mechanism and structure to coordinate the effective delivery of legal services by the state and its entities to enable the pooling of resources<sup>1</sup>.

**2. State Attorney Amendment Bill:**

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<sup>1</sup> <http://www.justice.gov.za/docs/other-docs/2012tsls.pdf>

**Main Objectives:**

- To amend the State Attorney Act, 1957 so as to provided for the establishment of offices of State Attorney;
- To provide for the appointment of a Solicitor-General and State Attorneys;
- To provide for the powers of the Minister relating to the functions of the offices of State Attorney;
- To provide for the powers and functions of the Solicitor-General;
- And to provide for matters connected therewith.

**Section 1:** Provides for the establishment by the Minister of offices of the State Attorney in Pretoria

**Section 2:** provides for the appointment of the Solicitor-General by the Minister of Justice and Constitutional Development for a period of 5 years.

**Section 2(6)** allows for the Minister to delegate any power conferred on him or her to the Solicitor-General.

**Comment:**

The Solicitor-General is awarded control over the office of the State Attorney and the Bill allows the Minister to delegate powers to the Solicitor-General.

- It may be useful to enquire as to the extent of the powers which the Minister will delegate?
- How the role of the Solicitor-General is envisaged in greater detail?
- To explain the relationship between the Solicitor-General and the State Attorney?

**Section 3: Functions of offices of State Attorney:**

- Performance in any court or in any part of the Republic of such work on behalf of the Government as is by law, practice or custom performed by attorneys, notaries and conveyancers **or by parliamentary agents: provided that the functions in regard to his or her duties as parliamentary agent shall be subject to the Standing Rules of the respective Houses of Parliament.** *(Portion in bold reflects the amended section)*
- Functions for and on behalf of the administration of any province and the South African Railways and Harbours administration.

- Functions in connection with Government or such administration
- The policy of the office of the State Attorney may include the following:
- The coordination and management of all litigation in which the State is involved;
- The briefing of advocates;
- The outsourcing of legal work, including the instruction of correspondent attorneys;
- Initiating, defending and opposing of matters; and
- Implementing alternative dispute resolution mechanisms in the resolution of litigation against the State.

The policies mentioned above must be approved by Cabinet and tabled in parliament by the Minister of Justice and Constitutional development. (Section 3(5)).

**Section 4:**

The amended Bill now introduces a new **Section 3 A: Powers and Function of Solicitor-General**

**Section 3A(c):** the Solicitor General will have the power to issue directives and standards regarding the functions of the office of the State Attorney.

**Section 3A(3):** The directives and standards “must be tabled in Parliament by the Minister of Justice and Constitutional Development.”

**Comment:**

This new Section sets out the power of the Solicitor General to issue directives and policies which must be tabled in Parliament. It is important to note that the power of the Solicitor General to issue directives and policies may not be delegated. .... **Section 3A(4)(c).**

- *Important to enquire as to exactly which functions of the Solicitor General are capable of delegation?*
- *To understand what the new structure of the Office of the State Attorney will look like so as to understand the delegation of powers and functions?*

It is also important to note that the Solicitor General may delegate his or her powers to any other person. The Solicitor General still however has the power to amend or set aside the decision of someone to whom such power has been delegated. .... **Section 3A(4)(b)**

**Recommendation for the Committee:**

*Given that the amendment of the State Attorney Amendment Bill, 2013, is the first step in the process of implementing the framework for the transformation of the state legal sector, it may be useful for the Committee in the 5<sup>th</sup> parliament to invite the Department to update the Committee on the implementation and the progress towards transformation of the state legal sector.*

