**1. Report of the Portfolio Committee on Police on the Independent Police Investigative Directorate (IPID) Amendment Bill [B25-2018], dated 4 July 2018.**

The Portfolio Committee on Police, having initiated the Independent Police Investigative Directorate Amendment Bill (‘the IPID Amendment Bill’), recommends that the House approves the Bill and reports as follows:

1. **Introduction**

The IPID Amendment Bill [B25-2018] was tabled as a Committee Bill in the National Assembly on 1 March 2018. In terms of National Assembly Rule 274(3), the draft IPID Amendment Bill, 2018, was published for public comments in the *Government Gazette*, number 41667 on 1 June 2018.

The purpose of the Bill is to give effect to the Constitutional Court judgment (McBride v Minister of Police and Another [2016] ZACC 30) with respect to the process for the removal of the Executive Director of the IPID. The Constitutional Court directed Parliament to rectify the defects in the IPID Act within 2 years from the date of the judgment. The timeline for Parliament to remedy the IPID Act expires on 5 September 2018.

1. **Constitutional Court Judgement**

On 24 March 2015, the then Minister of Police, Mr Nathi Nhleko, suspended and removed the Executive Director of the IPID by invoking sections 6(3)(a) and 6(6) of the Act. As a result, the Executive Director of the IPID approached the Constitutional Court challenging the constitutionality of the provisions of sections 6(3)(a) and 6(6) of the Act. The Executive Director’s contention was that the provisions of sections 6(3)(a) and 6(6) were inconsistent with the provisions of section 206(6) of the Constitution.

The Executive Director argued that the Minister’s decision to suspend and remove the Executive Director of IPID from his position without Parliamentary oversight was invalid and unconstitutional.

Following the judgment and orders of the Constitutional Court in the McBride v Minister of Police and Another (CCT255/16) [2016] ZACC 30 (“the McBride case”), it became clear that the provisions of the Act relating to the suspension and removal of the Executive Director of the IPID were inconsistent with the provisions of section 206(6) of the Constitution, when the Act was proclaimed into law.

The Constitutional Court declared the following sections inconsistent with the Constitution and invalid to the extent that they authorised the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate:

* section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;
* sections 16A (1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994;
* regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).

Parliament was directed to cure the defects in the legislation within 24 months from the date of the order.

The Court provided that pending the correction of the defects the following would apply:

* Section 6(6) of the IPID Act is to read as follows: “Subsections 17DA (3) to 17DA (7) of the South African Police Service Act 68 of 1995 apply to the suspension and removal of the Executive Director of IPID, with changes as may be required by the context.”
* Sections 16A (1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994 and regulation 13 of the IPID Regulations are declared inconsistent with section 206(6) of the Constitution and shall not apply to the Executive Director of the Independent Police Investigative Directorate.

1. **Reasons for the Portfolio Committee proceeding with a Committee Bill process**

The Portfolio Committee on Police received a letter from the Secretary of Police on 7 December 2017, indicating the process to remedy the defects in the IPID Act. In the letter the Secretary outlined the process which needed to be undertaken. It included consultations with the following stakeholders before the bill would be approved by Cabinet:

* Presentation to the Development Committee
* Engagement with State Law Advisers
* Presentation to the Justice, Crime Prevention and Security (JCPS) DG’s Cluster
* Presentation to JCPS Cabinet Committee
* Consideration of JCPS Cabinet Committee recommendations by Cabinet.

The Portfolio Committee on Police, given the time available to process the Bill, decided on a Committee Bill process in order to make sure that the defects in the Bill were cured as per the Constitutional Court judgement (McBride v Minister of Police and Another [2016] ZACC 30).

The Portfolio Committee noted that the Civilian Secretariat proceeded to draft a Bill which required substantial consultation processes with respect to processing and this has taken time. The process which was started by the Civilian Secretariat for Police would not allow for Parliament to proceed and comply with the deadline determined by the Constitutional Court. The judgement was 6 September 2016 and the deadline for the President to assent to an IPID Amendment Act to cure the defects as identified by the Constitutional Court, is 5 September 2018.

1. **Process followed**

On 16 March 2018, the Committee resolved to amend the IPID Act in order to strengthen the IPID Act (1 of 2011). The Committee accordingly submitted a legislative proposal to the National Assembly in terms of National Assembly Rule 273 seeking permission to proceed with the preparation of a draft Bill (Announcements, Tablings and Committee Reports,16 March 2018, p 3).

The Committee received permission from National Assembly on 24 April 2018 (Minutes of the National Assembly, 24 April 2018, No.14 - 2018) to process the Bill. The Committee advertised for public comments and submissions on the Bill in the *Government Gazette* (no 41667, 1 June 2018). The Committee received ten written submissions from the following organisations and held public hearings on the Bill on 28, 29 June 2018 and 3 and 4 July 2018. The following organisations made submissions:

* African Policing Civilian Oversight Forum;
* African Criminal Justice Reform;
* Mary De Haas, Independent Violence Monitor;
* Independent Police Investigative Directorate;
* Civilian Secretariat for Police Services;
* Department of Community Safety: Western Cape Provincial Government;
* Southern African Catholic Bishops Conference;
* Council for the Advancement of the South African Constitution (CASAC);
* Centre for Applied Legal Studies; and
* Helen Suzman Foundation.

The Independent Police Investigative Directorate and Civilian Secretariat for Police made a joint presentation. There was also an additional submission from the IPID. Both Departments attended all the hearings.

1. **Financial implications**

The Committee consulted the IPID on the funding of the additional functions. The implementation of the IPID Amendment Bill does not have cost implications for the state.

**6. Recommendations**

The Committee recommends that Parliament approves the amendments which will:

* allow Parliament to cure the defects via the IPID Amendment Bill (2018) as found in the Constitutional Court judgment in the McBride v Minister of Police [2016] ZACC 30).
* provide for greater independence of the Executive Director in fulfilling his obligations and mandate;
* provide for legal certainty on process for suspension and removal of the Executive Director; and
* provide for the exclusion of the laws and codes governing the public service in relation to the removal of the Executive Director of IPID.

1. **Acknowledgements**

The Committee wishes to express its gratitude to the individuals, organisations, and stakeholders who participated in the process, and contributed to the development of the Bill.

**Report to be considered.**