

"Lo(E)"

(3)

[Sub-s. (3) deleted by s. 15 (c) of Act 10 of 2012 (wef 14 September 2012).]

[(4) ¹² The Minister shall-

(a) determine, with the concurrence of Parliament-

(i) policy guidelines for the selection of national priority offences by the National Head of the Directorate referred to in section 17D (1) (a);

(ii) policy guidelines for the referral to the Directorate by the National Commissioner of any offence or category of offences for investigation by the Directorate referred to in section 17D (1) (b);

(b) submit to Parliament any policy guidelines referred to in this section for concurrence.]

[Sub-s. (4) substituted by s. 15 (d) of Act 10 of 2012 (wef 14 September 2012).]

(5) and (6)

[Sub-ss. (5) and (6) deleted by s. 15 (e) of Act 10 of 2012 (wef 14 September 2012).]

[(7) ¹³ The first policy guidelines issued under this Act shall be tabled in Parliament not later than six months after the commencement of the South African Police Service Amendment Act, 2012.]

[Sub-s. (7) added by s. 15 (f) of Act 10 of 2012 (wef 14 September 2012).]

[(8) ¹⁴ Any changes to the policy guidelines referred to in subsection (4) shall be submitted to Parliament for consideration and approval for implementation.]

[Sub-s. (8) added by s. 15 (f) of Act 10 of 2012 (wef 14 September 2012).]

(9) The Minister [shall] **must** report to Parliament on the appointment of the National Head of the Directorate.

[Sub-s. (9) added by s. 15 (f) of Act 10 of 2012 (wef 14 September 2012).]

[S. 17K inserted by s. 3 of Act 57 of 2008 (wef 20 February 2009).]

¹²

In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17K (4) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

¹³

In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17K (7) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

¹⁴

In *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* (CCT 07/14, CCT 09/14) [2014] ZACC 32 of 27 November 2014 the Constitutional Court declared s. 17K (8) inconsistent with the Constitution and therefore invalid, and deleted it from the date of the order

17L Complaints mechanism⁸⁸

⁸⁸ **NOTE:** The Portfolio Committee for Police indicated that a similar mechanism should be established in respect of the South African Police Service, for complaints: Should one expand the functions of the DPCI Judge and allow for more personnel, etc. or create duplicate structure? Comments have been requested from Judge Kgomo.

(1) (a) The Minister [shall] must, after consultation with the Minister of Justice and the Chief Justice, appoint a retired judge in order to investigate complaints referred to in subsection (4).

(b) For purposes of paragraph (a) 'retired judge' [shall mean] means a judge discharged from active service as referred to in the Judges' Remuneration and Conditions of Employment Act, 2001 (Act 47 of 2001).

(2) The performance of the functions provided for in respect of the retired judge does not derogate from the powers of the Independent [Complaints] Police Investigative Directorate [referred to in section 50] established in terms of section 3 of the Independent Police Investigative Directorate Act, 2011,⁸⁹ to investigate complaints in respect of any member, including members in the Directorate for Priority Crime Investigation.

(3) The retired judge [shall] must not investigate complaints about intelligence matters falling under the jurisdiction of the Inspector-General of Intelligence.

(4) The retired judge may receive complaints in the prescribed form and manner from-

- (a) any member of the public who can provide evidence of a serious and unlawful infringement of his or her rights caused by an investigation by the Directorate or the Service respectively; or
- (b) any member of the Directorate, or the Service, respectively, who can provide evidence of any improper influence or interference, whether of a political or any other nature, exerted upon him or her regarding the conducting of an investigation.

(4A) The retired judge may *mero moto*, where allegations referred to in section 17L(4)(a) and (b)-

- (a) are made on behalf of a complainant;
- (b) emerge from other related investigations with which the retired judge is involved,

investigate such allegations.⁹⁰

(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the Secretariat, the Independent [Complaints] Police Investigative Directorate, the National Commissioner, the Head of the Directorate, the relevant Provincial Commissioner, the National Director of Public Prosecutions, the Inspector-General of Intelligence, or any institution mentioned in chapter 9 of the Constitution [of the Republic of South Africa, 1996].⁹¹

(6) The retired judge [shall] must report the outcome of any investigation undertaken by him or her or any referral to the Minister.

⁸⁹ Proposed amendment by SAPS: Input 22 May 2018.

⁹⁰ See letter dated 10 April 2017, received from the Deputy Director Investigations by instruction of the DPCI Judge, addressed to the Secretary for Police Service. When the Office reported to the Portfolio Committee on Police, the Portfolio Committee advised the Office of the DPCI to make a formal request for the amendment of the section to the Secretary for Police Service.

⁹¹ Proposed amendment by SAPS: Input 22 May 2018.

(13) An annual operational budget [shall] must be prepared by the Secretary in consultation with the retired judge and provided for under the budget for the Secretariat for the specific and exclusive use of the official duties of the retired judge and may not be used for any other purpose.

[Sub-s. (13) added by s. 16 (c) of Act 10 of 2012 (wef 14 September 2012).]

(14) Subsection (11) [shall] must not be construed to inhibit the retired judge to investigate any matter which relates to an ongoing investigation.

[Sub-s. (14) added by s. 16 (c) of Act 10 of 2012 (wef 14 September 2012).]

(15) The Secretary, in consultation with the retired judge, [shall] must develop and implement a plan to promote awareness amongst the public and members of the Directorate on the functions and role of the complaints mechanism.

[Sub-s. (15) added by s. 16 (c) of Act 10 of 2012 (wef 14 September 2012).]

(16) Any interference with the retired judge in the performance of his or her functions and duties [shall] is be a criminal offence for which a person upon conviction may be sentenced to a fine or imprisonment of two years or to both such fine or imprisonment.

[Sub-s. (16) added by s. 16 (c) of Act 10 of 2012 (wef 14 September 2012).]

[S. 17L inserted by s. 3 of Act 57 of 2008 (wef 20 February 2009).]

CHAPTER 6B **SPECIALISED UNITS**

17M Establishment of specialised units

The National Commissioner –

- (a) must establish specialised units with the objective of the prevention, combating and investigation of organised crime, crime which requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof as referred to in section 16(1), read with section 16(2) as well as corruption, and which crimes are not being investigated by the Directorate referred to in Chapter 6A;
- (b) must establish a unit referred to in paragraph (a) must be established to ensure that crimes referred to in paragraph (a) are investigated on national level, where required; and
- (c) must ensure that a unit established in terms of this section has the capability, capacity and competence to fulfil their required purpose.
- (d) must establish a unit referred to in paragraph (a) after consultation with the Management Forum.

enormous Task to fulfill if functioning in respect of the whole police service, it must be considered whether the Inspectorate of the Police should not be used under the retired judge. See also the enhanced role envisaged for the Inspectorate of the SAPS and the view of a professional and accountable police service as envisaged in the White Paper on Policing. Should the Inspectorate of the SAPS be used to perform the investigative functions of the Judge, it might not have such a huge financial impact to extend the office of the Judge.