

GAUTENG PROVINCE

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**GAUTENG COMMUNITY SAFETY  
OVERSIGHT BILL**

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*(As introduced)*

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(John Moodey MPL)

[BXX—2020]

# BILL

To provide for the carrying out and the regulation of the functions of the Province and the Department of Community Safety under Chapter 11 of the Constitution of the Republic of South Africa, 1996; to provide for the support of and cooperation with the Civilian Secretariat and the Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act (No 2 of 2011); to provide for directives for the establishment of community police forums and boards in terms of the South African Police Service Act No 68 of 1995; to provide for the accreditation of organisations and associations as neighbourhood watches; to provide for partnerships with community organisations; to establish and maintain an integrated information system and a database of organisations; to provide for the voluntary registration of security service providers on the database of organisations; to establish the Office of the Gauteng Provincial Police Ombudsman to investigate complaints regarding the police; to regulate reporting on the police service; to establish the Provincial Safety Advisory Committee; and to provide for matters incidental thereto.

BE IT ENACTED by the Gauteng Provincial Legislature, as follows:—

## Definitions

1. In this Act, unless the context otherwise indicates—

“**Civilian Secretariat**” means the Civilian Secretariat for the Police Service established by section 4 of the Civilian Secretariat for Police Service Act (No 2 of 2011);

“**Committee**” means the Provincial Safety Advisory Committee established by section 25;

“**community police forums and boards**” means community police forums and boards established in terms of sections 19 to 21 of the South African Police Service Act (No 68 of 1995);

“**Constitution**” means the Constitution of the Republic of South Africa, 1996;

“**Department**” means the provincial Department of Community Safety responsible for the functions referred to in Chapter 11 of the Constitution and established under section 3A of the Public Service Act (No 103 of 1994) as reflected in Schedule 2 of that Act;

“**Head of the Department**” means the head of the provincial Department of Community Safety;

“**Independent Police Investigative Directorate**” means the Independent Police Investigative Directorate established by section 3(1) of the Independent Police Investigative Directorate Act (No 1 of 2011);

“**MEC**” means the Member of the Executive Council responsible for the functions referred to in Chapter 11 of the Constitution;

“**Minister**” means the national cabinet member responsible for policing as referred to in s206(1) of the Constitution;

**“municipal police service”** means a municipal police service established in the Province in terms of section 64A of the South African Police Service Act;

**“neighbourhood watch”** means an organisation or association contemplated in section 6(1) and accredited in terms of section 6(5);

**“Ombudsman”** means the Gauteng Provincial Police Ombudsman appointed in terms of section 11;

**“police”** means police officials of the police service;

**“police official”** means a member of the South African Police Service deployed in the Province or a member of a municipal police service;

**“police service”** means the South African Police Service deployed in the Province or a municipal police service;

**“policing”** means the functions performed by police officials;

**“prescribe”** means prescribe by regulation;

**“Province”** means the Province of Gauteng;

**“Provincial Commissioner”** means the provincial commissioner appointed for the Province in terms of section 207(3) of the Constitution;

**“Provincial Executive”** means the Provincial Executive Council as referred to in section 132 of the Constitution;

**“Provincial Secretariat”** means the provincial secretariat for the Province established in terms of section 16 of the Civilian Secretariat for Police Service Act (No 2 of 2011);

**“regulation”** means a regulation made under section 31;

**“security service provider”** means a security service provider as defined in section 1 of the Private Security Industry Regulation Act (No 56 of 2001);

**“South African Police Service”** means the South African Police Service established by section 5(1) of the South African Police Service Act and deployed in the Province; and

**“this Act”** includes the regulations made under section 31 and any directives made under sections 3(f) and 5.

## **Purpose of Act**

2. The purpose of this Act is to—

- (a) regulate and to provide for the carrying out of the functions of the Province referred to in sections 206(1), (3), (4), (5) and (9) and 207(5) and (6) of the Constitution, to—
  - (i) determine policing needs and priorities;
  - (ii) monitor police conduct;

- (iii) oversee the effectiveness and efficiency of the police service, including receiving reports on the police service;
  - (iv) promote good relations between the police and the community;
  - (v) assess the effectiveness of visible policing;
  - (vi) investigate any complaints of police inefficiency or a breakdown in relations between the police and any community;
  - (vii) require the Provincial Commissioner to report to and appear before the Provincial Legislature; and
  - (viii) institute proceedings for the removal or transfer of, or disciplinary action against the Provincial Commissioner;
- (b) support the objectives of the Civilian Secretariat and Provincial Secretariat; and
  - (c) further the power of oversight over the South African Police Service by allowing for the appointment of independent investigators into matters of community safety.

### **Functions of the MEC**

- 3.** The MEC may, in order to achieve the objectives of section 206(1), (3), (4) and (5) of the Constitution, exercise and perform the following powers and functions—
- (a) monitor police conduct;
  - (b) oversee the effectiveness and the efficiency of the police service;
  - (c) oversee the effectiveness of policies and directives implemented by the police service in relation to appointments, training and policing;
  - (d) promote good relations between the police and the community;
  - (e) identify causes of any breakdown in relations between the police and any community and establish measures to improve the relations;
  - (f) issue directives for the establishment and strengthening of community police forums and boards and to facilitate their proper functioning in order to promote good relations between the police and the community;
  - (g) establish partnerships with any community aimed at promoting good relations between the police and the community;
  - (h) maintain a database of community organisations involved in the field of policing and related fields;
  - (i) assess the effectiveness of visible policing;

- (j) establish and maintain integrated information systems in order to oversee the effectiveness and efficiency of the police service and to determine the policing needs and priorities of the Province;
- (k) liaise with the Minister regarding crime and policing in the Province;
- (l) record complaints relating to police inefficiency or a breakdown in relations between the police and the community;
- (m) receive and analyse reports, including quantitative and qualitative information on the police service;
- (n) collect empirical information on performance indicators and resource distribution;
- (o) identify indicators to monitor and assess the effectiveness and efficiency of the police service;
- (p) receive and analyse information about the funding, expenditure, activities, outputs and outcomes of policing;
- (q) analyse the competence and capacity of the police service, and patterns and practices of police conduct, and identify problems and shortcomings in the policing system and make recommendations to the Minister on how to remedy it;
- (r) advise the Provincial Executive on the policing needs and priorities of the Province as contemplated in section 23;
- (s) liaise with and make recommendations to the Minister regarding the policing needs and priorities of the Province as determined by the Provincial Executive;
- (t) evaluate how policing needs and priorities are reflected in national policing policy;
- (u) identify and address specific police oversight issues which other bodies involved in police oversight do not address;
- (v) table an annual report in the Provincial Legislature on the exercise and performance of the powers and functions in terms of this Act;
- (w) conduct research as may be required;
- (x) liaise with and facilitate cooperation amongst stakeholders with an interest in the exercise and performance of the powers and functions in terms of this Act;
- (y) oversee the functioning of the Provincial Secretariat;
- (z) monitor complaints referred by the Provincial Executive to the Independent Police Investigative Directorate;
- (aa) facilitate close cooperation between the Department and the Civilian Secretariat, the Provincial Secretariat, the Independent Police Investigative Directorate and the police in the performance of the functions in terms of this Act.

### **Monitoring, oversight and assessment of policing**

4. (1) The MEC may in the prescribed manner, subject to section 13(11) of the South African Police Service Act authorise employees of the Department to—
- (a) attend protests, crime scenes and any other scene of police activity to observe and record the interaction between the police and the community;
  - (b) monitor and evaluate the allocation, distribution and use of human and other resources for policing;
  - (c) inspect police stations, or other police premises in order to—
    - (i) monitor police conduct;
    - (ii) oversee the effectiveness and efficiency of the police service in the area;
    - (iii) oversee the effectiveness and efficiency of the police service in dealing with complaints from the community regarding policing in the area;
    - (iv) evaluate the relations between the community and the police;
    - (v) monitor the treatment and conditions of persons held in police custody in order to determine the recognition by the police of the rights of detained persons in terms of section 35(2) of the Constitution.
- (2) The MEC may authorise any other person in the prescribed manner to perform the functions referred to in subsection (1) at the remuneration determined by the MEC with the concurrence of the MEC responsible for finance.
- (3) In order to perform the functions in terms of this Act, the MEC or any employee or person authorised in terms of subsection (1) or (2)—
- (a) may request and obtain information and documents under the control of the police service or a municipality in question;
  - (b) may enter any building, premises, vehicle or property under the control of the police service or a municipality in question;
  - (c) is entitled to assistance by any member of the police service.
- (4) Any dispute relating to a request, access or assistance contemplated in subsection (3) must be reported to the MEC.

### **Directives for establishment of community police forums and boards**

5. (1) In order to promote good relations between the South African Police Service and the community, the MEC may issue directives regarding the establishment of community police forums and boards in terms of sections 19(1), 20(1) and 21(1) of the South African Police Service Act, including directives relating to—

- (a) the requirements for identifying relevant community organisations, institutions and interest groups to form part of a community police forum or board;
- (b) the procedures for the establishment of a community police forum or board;
- (c) the term of office of members of a community police forum or board;
- (d) the adoption of a constitution for a community police forum or board and the minimum content thereof;
- (e) dispute resolution procedures applicable to any dispute in respect of the establishment of a community police forum or board.

(2) The Head of the Department must—

- (a) evaluate the level of functionality of community police forums and boards and the relations between the police and the community police forums and boards;
- (b) consistently attend the meetings of the community police forums and boards in order to promote the objectives of section 18(1) of the South African Police Service Act, and
- (c) annually report his or her findings in respect of paragraphs (a) and (b) to the MEC.

(3) The Head of the Department may assist community police forums and boards by providing funding, training or resources.

#### **Accreditation of and support to neighbourhood watches**

6. (1) Any organisation or association that—

- (a) operates not for gain as a voluntary organisation or association;
- (b) comprises members who are residents, tenants or owners of immovable property or with any other relevant interest in the area where the organisation or association operates; and
- (c) has the purpose of safeguarding its members, their immovable and other property against crime and other safety concerns in the area where the organisation or association operates,

may apply to the MEC in the prescribed form for accreditation as a neighbourhood watch.

(2) The MEC—

- (a) must request the police official in charge of the police station in the area within which the organisation or association operates; and
- (b) may request any other organisation, to comment, within the period stated in the request, on the proposed accreditation of the organisation or association as a neighbourhood watch in that area.

- (3) If the police official or an organisation fails to comment within the stated period referred to in subsection (2), the police or the organisation is regarded as having no comment on the proposed accreditation of the organisation or association.
- (4) The MEC may require further information from the organisation or association in support of the application.
- (5) The MEC may accredit an organisation or association as a neighbourhood watch after considering, within the prescribed period—
- (a) an application;
  - (b) any further information provided by the applicant;
  - (c) any comment received from the police or an organisation as contemplated in subsection (2);
  - (d) whether the organisation or association conducts its activities according to the prescribed standards relating to—
    - (i) criteria for membership of a neighbourhood watch and the conduct of members;
    - (ii) the structures of a neighbourhood watch; and
    - (iii) the control and use of funds of a neighbourhood watch; and
  - (e) whether the organisation or association cooperates with the community police forum in the area.
- (6) If the MEC decides—
- (a) to accredit an organisation or association as a neighbourhood watch, the MEC must—
    - (i) enter the name of the neighbourhood watch in the register of neighbourhood watches;
    - (ii) issue a certificate of accreditation in the name of the neighbourhood watch stating the period of accreditation, the area within which the neighbourhood watch operates and other terms of accreditation; and
    - (iii) send the certificate of accreditation to the neighbourhood watch, the community police forum and the police official in charge of the police station in the area; or
  - (b) not to accredit the organisation or association as a neighbourhood watch, the MEC must advise the unsuccessful applicant in writing of his or her decision and the reasons for the decision.
- (7) The MEC must annually publish a list of neighbourhood watches in the Provincial Gazette.
- (8) The MEC may provide funding, training or resources to a neighbourhood watch.



(9) The MEC must keep a register of neighbourhood watches and make the register available for inspection to any interested person at his or her request and on payment of the prescribed fee.

(10) A neighbourhood watch must—

- (a) renew its accreditation every two years in the prescribed manner, failing which the accreditation will lapse;
- (b) report in the prescribed manner and within the prescribed period to the MEC on—
  - (i) safety concerns and crime incidents in the area where the neighbourhood watch operates;
  - (ii) the activities of the neighbourhood watch; and
  - (iii) any prescribed matter required by the MEC to determine policing needs and priorities and the effectiveness and efficiency of the police service;
- (c) keep record of the matters contemplated in paragraph (b)(i) to (iii); and
- (d) preserve the records contemplated in paragraph (c) for at least five years from the date of recording.

(11) An employee of the Department, authorised by the MEC, has access to any records kept by or on behalf of a neighbourhood watch and may examine, make extracts from or copies of, the records to obtain further information in respect of a report made in terms of subsection (10)(b) and to verify whether the neighbourhood watch is complying with the standards contemplated in subsection (5)(d) and (e).

(12) If a neighbourhood watch fails to comply with the standards contemplated in subsection (5)(d) and (e) or with subsection (10)(b), (c) or (d), the MEC may by written notice direct the neighbourhood watch to comply with those sections within the period mentioned in the notice.

(13) If the neighbourhood watch fails to give effect to the notice within the period mentioned therein, the MEC may withdraw the accreditation of that neighbourhood watch.

#### **Database and partnerships with community organisations**

7. (1) To promote good relations between the police and communities in the Province, the Head of Department may—

- (a) maintain a database of community organisations involved in the field of policing, support of victims of crime, crime prevention or community safety;
- (b) assist community organisations on the database by providing support, information, training or resources;

- (c) subject to any law governing the award of contracts by the Province, with the concurrence of the MEC responsible for finance, enter into a contract with any party to design, finance or operate any community safety initiative or partnership to achieve the purpose of this Act;
  - (d) facilitate the establishment of specialised units in response to specific categories of crime.
- (2) A community organisation listed on the database must report to the Head of the Department, in the prescribed form, on safety concerns and crime incidents dealt with by the organisation.
  - (3) The MEC may facilitate the establishment of specialised units in response to specific categories of crime in order to promote good relations between the police and communities in the Province.

### **Integrated information system**

- 8. (1) The MEC must establish and maintain an integrated information system to oversee the effectiveness and the efficiency of the police service and to determine the policing needs and priorities of the Province.
- (2) The Head of the Department must authorise employees of the Department to collect information, and to administer and maintain the integrated information system.
- (3) The MEC may consult with the Civilian Secretariat and the Provincial Secretariat regarding the integrated information system to ensure the integration of information with any safety models and monitoring tools developed by the Provincial Secretariat as contemplated in section 17(2) of the Civilian Secretariat for Police Service Act, 2011.
- (4) The integrated information system must provide for—
  - (a) the collection of data from relevant organs of state or institutions, security service providers registered in terms of subsection (6) and the police service;
  - (b) the analysis of the data;
  - (c) the recording of safety concerns in communities of the Province;
  - (d) the incorporation of information in a report contemplated by sections 6(10)(b), 7(2) and 8(7)(a); and
  - (e) the analysis of the number and nature of complaints relating to the police received by the Ombudsman in terms of section 16, organs of state, community police forums and other institutions.
- (5) The Head of the Department may refer information relating to crime or criminal activities received through the integrated information system to the Provincial Commissioner.

- (6) The MEC may request a security service provider that operates in the Province to register on the database referred to in section 7.
- (7) A registered security service provider must—
- (a) report in the prescribed manner and within the prescribed period to the MEC on—
    - (i) safety concerns and crime incidents in the area where the security service provider operates;
    - (ii) firearms that are lost or stolen whilst in the possession of the security service provider; and
    - (iii) any prescribed matter required by the MEC to determine policing needs and priorities and to oversee the effectiveness and efficiency of the police service;
  - (b) keep record of the matters contemplated in paragraph (a)(i) to (iii); and
  - (c) preserve the records contemplated in paragraph (b) for at least five years from the date of recording.
- (8) An employee of the Department, authorised by the MEC, has access to any records kept by or on behalf of a security service provider in terms of subsection (7)(b), and may examine, make extracts from or copies of, the records for the purposes of obtaining further information in respect of a report made in terms of subsection (7)(a).

### **Confidentiality and disclosure**

9. (1) No personal information collected for the purpose of this Act by the MEC, the Head of the Department or an employee or person authorised in terms of this Act, concerning—
- (a) an individual;
  - (b) a household;
  - (c) a business; or
  - (d) a private organisation,
- may, subject to the laws regulating state information and subsections (2) and (3), be disclosed to any other person.
- (2) Subject to section 8(5), the information contemplated in subsection (1) may be disclosed—
- (a) to any organ of state—
    - (i) for a purpose relating to the functions in this Act;
    - (ii) in accordance with the directions of the MEC;
    - (iii) on condition that the name, address or any other means by which a specific individual, household, business or private organisation may be identified is deleted;

- (iv) if its disclosure is not reasonably expected to endanger the life or physical safety of an individual, or prejudice or impair the security of property; and
  - (v) the MEC is satisfied that the confidentiality of that information or data will not be impaired; or
- (b) to the person from whom the information was collected or his or her representative;
  - (c) with the prior written consent of the person from whom the information was collected or his or her representative;
  - (d) where the information is already available to the public from the individual, household, business or private organisation concerned; or
  - (e) if it is regarded as necessary or expedient in the interests of justice.
- (3) Despite the confidentiality constraints applicable to the MEC, the Head of the Department and authorised employees or persons, the Ombudsman is entitled to information or sight of documentation referred to in subsection (1) and in the MEC's possession which may be relevant in the consideration of a complaint.
- (4) The MEC, the Head of the Department and every employee or person authorised in terms of this Act—
- (a) must take all reasonable steps to ensure that—
    - (i) information which is collected for the purposes of this Act is accurate, up-to-date and as complete as possible;
    - (ii) the confidentiality of that information is protected; and
    - (iii) the information is secured against unauthorised access; and
  - (b) may not record or deal with information referred to in subsection (1) other than for the purposes of this Act and in accordance with this section.
- (5) The MEC must ensure that the confidentiality of information referred to in subsection (1) which is reflected in a record of the Department is protected when that record is disposed of.

#### **Establishment of Office of Gauteng Provincial Police Ombudsman**

- 10.** (1) The Office of the Gauteng Provincial Police Ombudsman is established in the Department.
- (2) The staff members required for the performance of the functions of the Ombudsman are appointed in terms of the Public Service Act, 1994.
- (3) The police and employees of the Department and of any other organ of state must cooperate with and assist the Ombudsman and staff members of the Ombudsman in the performance of their functions in terms of this Act, which includes providing them with

reasonable access to any building, premises, vehicle, property, information or document under the control of the organ of state concerned.

### **Appointment of Ombudsman**

- 11.** (1) The Premier must appoint a suitably qualified fit and proper person, with experience in the field of law or policing, as the Gauteng Provincial Police Ombudsman.
- (2) The Ombudsman is appointed by the Premier—
- (a) after consultation with the MEC, the Provincial Commissioner and the executive heads of municipal police services; and
- (b) subject to approval by the Provincial Legislature's portfolio committee responsible for community safety by a resolution adopted in accordance with its rules.
- (3) The remuneration and other terms of appointment of the Ombudsman must be determined by the Premier with the concurrence of the MEC responsible for finance.
- (4) The Ombudsman is appointed for a non-renewable term not exceeding five years.
- (5) The Ombudsman may at any time resign by submitting a written resignation to the Premier at least three months prior to the intended date of vacation of office, unless the Premier allows a shorter period.
- (6) The Premier may on good cause shown—
- (a) after consultation with the persons referred to in subsection (2)(a); and
- (b) subject to approval by the Provincial Legislature's portfolio committee responsible for community safety by a resolution adopted in accordance with its rules, remove the Ombudsman from office on the ground of misbehaviour, incapacity or incompetence, after affording him or her a reasonable opportunity to be heard.
- (7) The Ombudsman may, in the performance of his or her functions, also be assisted by a person or body whose service the Ombudsman requires for the purpose of a particular investigation.
- (8) The Ombudsman must swear an oath to uphold the Constitution and the rule of the law in the Province, and take every step necessary to serve the people of the Province faithfully.

### **Finances of Ombudsman**

- 12.** (1) Expenditure in connection with the functions of the Ombudsman must be funded from monies appropriated by the Provincial Legislature for that purpose, as part of the budget vote of the Department.
- (2) The Department must, subject to the laws governing the public service, make available human and other resources to enable the Ombudsman to perform his or her functions.

### **Reporting by Ombudsman**

- 13.** (1) The Ombudsman must report annually to the MEC on the activities of the Ombudsman during the previous financial year including—
- (a) the number of complaints investigated;
  - (b) the number of complaints determined to be manifestly frivolous or vexatious under section 17(1);
  - (c) the outcome of investigations into the complaints; and
  - (d) the recommendations regarding the investigated complaints.
- (2) The Ombudsman must report to the MEC on his or her activities in terms of this Act as and when requested to do so by the MEC.
- (3) The MEC must table the report contemplated in subsection (1) in the Provincial Legislature.

#### **Independence and impartiality of Ombudsman**

- 14.** (1) The Ombudsman and staff members of the Ombudsman must serve independently and impartially and must perform their functions in good faith and without fear, favour, bias or prejudice, subject to the Constitution and the law.
- (2) The Ombudsman and staff members of the Ombudsman must preserve confidentiality in respect of any information acquired in terms of this Act.

#### **Functions of Ombudsman**

- 15.** (1) The Ombudsman must—
- (a) receive and may investigate complaints submitted in terms of section 16, regarding inefficiency of the police or a breakdown in relations between the police and any community; and
  - (b) perform the other functions assigned to him or her under this Act.
- (2) The Ombudsman may initiate an investigation into any matter regarding inefficiency of the police or a breakdown in relations between the police and any community.

#### **Submitting complaints**

- 16.** (1) Any person may submit a complaint in the prescribed manner and form to the Ombudsman regarding alleged police inefficiency or a breakdown in relations between the police and any community.
- (2) Any member of the Provincial Legislature may, on becoming aware of a complaint regarding alleged police inefficiency or a breakdown in relations between the police and any community, submit it to the Ombudsman for investigation.

- (3) The Ombudsman must issue guidelines that are publicly accessible in respect of the procedures to submit a complaint and the type of complaints that may be submitted to the Ombudsman.

### **Investigations by Ombudsman**

17. (1) The Ombudsman may, if a matter which is not manifestly frivolous or vexatious is submitted as a complaint or identified by the Ombudsman, initiate any investigation that is necessary into alleged police inefficiency or a breakdown in relations between the police and any community.
- (2) If a member of the Provincial Legislature refers a matter contemplated in subsection (1) to the Ombudsman, he or she must conduct an investigation into that matter.
- (3) The Ombudsman may by notice in the Provincial Gazette, make known any investigation which he or she is conducting and state that any person may, within a period specified in the notice, make written representations to the Ombudsman regarding the investigation.
- (4) If the Ombudsman is of the opinion that a complaint may more appropriately be dealt with by another competent authority, including a national authority, a community police forum, a constitutional institution or the Provincial Commissioner, he or she may at any time refer a complaint or aspect thereof to that other authority.
- (5) The Ombudsman may, after consultation with the authority to which the matter has been referred and if the matter could not be resolved by that authority, at any time resume the investigation into that matter.
- (6) If the Ombudsman is of the opinion that a complaint is of a serious nature or that it may more appropriately be dealt with by a commission of inquiry, the Ombudsman may recommend to the Premier that a commission of inquiry into the complaint be appointed in terms of section 206(8)(a) of the Constitution.
- (7) If the Ombudsman decides not to initiate an investigation, the Ombudsman must inform the complainant of his or her decision and the reasons therefor.
- (8) Upon completion of an investigation and if the matter could not be resolved, the Ombudsman must submit a recommendation on the investigation and his or her findings to the MEC and inform the complainant that he or she has done so.
- (9) The MEC must make a recommendation to the Minister on any investigated complaint that could not be resolved by the Ombudsman, and must inform the complainant of the recommendation made.
- (10) In order to avoid unnecessary duplication, the Ombudsman must coordinate his or her functions and activities in terms of this Act with other authorities that have jurisdiction in respect of the investigation of complaints against the police.

### **Investigating powers and officers**

18. (1) For the purposes of an investigation, the Ombudsman may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question that person thereon.
- (2) The Ombudsman may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on the matter being investigated or to be investigated.
- (3) The Ombudsman may designate staff members of the Ombudsman or other suitable persons as investigating officers to perform the functions referred to in subsections (1) and (2).
- (4) An investigating officer who is not in the full-time service of the state must be appointed on the prescribed conditions and at the prescribed remuneration.
- (5) An investigating officer must be provided with a certificate of appointment signed by or on behalf of the Ombudsman in which it is stated that he or she is an investigating officer appointed in terms of this Act.
- (6) An investigating officer must have a certificate of appointment on his or her person when performing a function in terms of this Act.

#### **Reporting by Provincial Commissioner**

19. (1) In order for the MEC to oversee the effectiveness and efficiency of the police service and to monitor police conduct, the Provincial Commissioner must, within and in respect of the period prescribed, report in writing to the MEC on the following matters:
  - (a) with regard to the South African Police Service—
    - (i) the number of firearms issued to police officials which have been lost or stolen and the circumstances under which they have been lost or stolen;
    - (ii) the number of persons arrested by the police service, the number of cases relating to those arrests that have been referred to court, the number of those cases that have been prosecuted and the number of convictions in respect of those cases;
    - (iii) the allocation of funds and resources to safety objectives, the methods used to achieve the objectives and measurable outcomes achieved;
    - (iv) the number of disciplinary and criminal cases instituted against police officials, the names of those officials, the case reference numbers, the charges laid in respect thereof and the outcome of those cases;
    - (v) the number and nature of complaints received by the police regarding poor service delivery and police misconduct and how those complaints have been resolved;
    - (vi) statistical information regarding the number and nature of crimes reported to the police;



- (vii) the circumstances regarding incidents where the police fires a weapon, allows a weapon to be fired or orders the firing of a weapon;
  - (viii) the number of cases reported in terms of section 29 of the Independent Police Investigative Directorate Act and the outcome of the investigations into those cases; and
  - (ix) any other matter, as may be prescribed, relating to police conduct, efficiency and effectiveness of the police service or relations between the police and the community; and
- (b) with regard to a municipal police service, the number of persons arrested by the municipal police service, the number of cases relating to those arrests that have been referred to court, the number of those cases that have been prosecuted and the number of convictions in respect of those cases.
- (2) The Provincial Commissioner must without delay inform the MEC of any deaths of police officials in the execution of their duties, any deaths caused by police officials in the execution of their duties, any persons that have died whilst in police custody and the circumstances under which they have died.
- (3) The Provincial Commissioner must report to the Provincial Legislature on policing and the matters contemplated in this section.
- (4) The MEC may request the Provincial Commissioner to furnish any other report required by the MEC to perform his or her functions in terms of this Act.
- (5) The Provincial Legislature may require the Provincial Commissioner to appear before it or any of its committees to answer questions.
- (6) If the Provincial Commissioner fails to comply with any request by the MEC for information, the MEC must report the failure to the Provincial Legislature, which in turn must require the Provincial Commissioner to appear before it to explain the failure to comply with the request.

#### **Loss of confidence in Provincial Commissioner**

- 20.** If the Provincial Executive loses confidence in the Provincial Commissioner, the Provincial Executive must, except in exceptional circumstances, require the Provincial Commissioner to appear before it or a committee of its members, prior to instituting appropriate proceedings for the removal or transfer of, or disciplinary action against, the Provincial Commissioner as contemplated in terms of section 207(6) of the Constitution.

#### **Reporting by executive head of municipal police service**

- 21. (1)** In order for the MEC to oversee the effectiveness and the efficiency of a municipal police service and to monitor the conduct of the municipal police, an executive head of a municipal police service must, within and in respect of the period prescribed, report in writing to the

MEC on the following matters in respect of the municipal police service under his or her control—

- (a) the matters referred to in section 19(1)(a)(i) and (iii) to (ix) read with the necessary changes; and
  - (b) the number of persons arrested by the municipal police service.
- (2) An executive head of a municipal police service must without delay inform the MEC of any deaths of municipal police officials in the execution of their duties, any deaths caused by municipal police officials in the execution of their duties, any persons that have died whilst in the custody of municipal police officials and the circumstances under which they have died.
  - (3) The MEC may request an executive head of a municipal police service to furnish any other report required by the MEC to perform his or her functions in terms of this Act.
  - (4) The Provincial Legislature may require the executive head of a municipal police service to appear before it or any of its committees to answer questions.
  - (5) If the MEC is satisfied that a municipal police service has failed to comply with the conditions subject to which the municipal service was established or with national standards, the MEC may take the appropriate steps contemplated in section 64N of the South African Police Service Act, 1995.

#### **Recording of requests and recommendations**

**22.** (1) The MEC must keep a register recording the following—

- (a) any written report or recommendation made to the Minister in terms of this Act;
  - (b) any request for information given in writing to the Provincial Commissioner or an executive head of a municipal police service in terms of this Act; and
  - (c) any written comment or response received from the Minister, the Provincial Commissioner or an executive head of a municipal police service in respect of a report or recommendation referred to in paragraph (a) or a request referred to in paragraph (b).
- (2) The MEC must annually table a certified copy of the register in the Provincial Legislature.

#### **Policing needs and priorities**

- 23.** (1) The MEC must annually report to the Provincial Legislature on his or her functions in terms of this Act and the findings in relation thereto.
- (2) The Provincial Legislature must refer the report referred to in subsection (1) to its portfolio committee responsible for community safety.
  - (3) The portfolio committee must consider and debate the report and may hold public hearings and request representations from stakeholders with an interest in the report.

- (4) The Provincial Legislature must afford the Provincial Commissioner and the executive heads of municipal police services an opportunity to respond to the report, representations and any other comments received.
- (5) The findings and comments of the portfolio committee must be taken into account by the MEC when he or she formulates a recommendation on the policing needs and priorities of the Province for approval by the Provincial Executive.
- (6) The MEC must submit the approved policing needs and priorities of the Province to the Minister to be taken into account when the policing policies and plans for the Province are formulated, as contemplated in sections 206(1) and (2) of the Constitution.

#### **Cooperation and intergovernmental relations**

24. (1) The MEC, the Head of the Department, authorised persons and employees of the Department, investigating officers and the Ombudsman must perform their functions in terms of this Act in accordance with the principles of cooperative government and intergovernmental relations referred to in Chapter 3 of the Constitution.
- (2) The MEC may make recommendations regarding the police and policing matters to the Civilian Secretariat or enter into agreements to strengthen the cooperation between the various role players as contemplated in section 6(1)(g) of the Civilian Secretariat for Police Service Act, 2011.
- (3) The MEC must regularly liaise and consult with the Civilian Secretariat and the Provincial Secretariat regarding any matter relating to mutual administrative support and the coordination of their respective functions to avoid unnecessary duplication.

#### **Provincial Safety Advisory Committee**

25. (1) The Provincial Safety Advisory Committee is established.
- (2) The Committee advises and make recommendations to the MEC at his or her request, with regard to—
  - (a) the functions of the Province in terms of Chapter 11 of the Constitution;
  - (b) strategies, policies, budgets and annual performance plans in respect of the functions in terms of Chapter 11 of the Constitution;
  - (c) regulations in terms of this Act that may be necessary; or
  - (d) any other matter arising from the application of this Act.

#### **Composition of Committee**

26. (1) The members of the Committee must be appointed by the MEC and consist of—
  - (a) a representative of the business community;
  - (b) a member of the judiciary, a suitable Bar of Advocates or Law Society in the province;

- (c) a senior member of an academic institution with experience in the field of criminology;
  - (d) a representative from a non-governmental organisation involved in policing or related areas; and
  - (e) the Head of the Department as an ex officio member.
- (2) Employees of the Department designated by the MEC must provide administrative support to the Committee.
  - (3) The members of the Committee referred to in subsection (1)(a) to (d) may only be appointed after the MEC, by notice in the Provincial Gazette and in other media that the MEC may consider appropriate, has invited all interested parties to submit, within the period mentioned in the notice, names of persons who are fit and proper persons to be so appointed.

**Term of office and conditions of service of members of Committee**

27. (1) A member, except for the ex officio member, is appointed for a term of three years, which is renewable once.
- (2) The office of a member becomes vacant if—
  - (a) the member is absent from two consecutive meetings of the Committee without the leave of the chairperson of the Committee;
  - (b) the member tenders his or her resignation in writing to the chairperson of the Committee;
  - (c) the member is removed from the Committee under subsection (3); or
  - (d) the member dies.
- (3) The MEC may remove any member of the Committee if, in the opinion of the MEC, sufficient reasons exist for his or her removal.
- (4) A vacancy on the Committee arising in terms of subsection (2) must be filled by the MEC in terms of section 26(1) and (3).
- (5) A member who is appointed by virtue of subsection (4) holds office for the unexpired portion of the period for which the member, who vacated his or her office, was appointed.
- (6) The MEC must designate one of the members of the Committee as chairperson.
- (7) The MEC may determine any other conditions of appointment not provided for in this section.
- (8) Members of the Committee referred to in section 26(1)(a) to (d) may be paid the allowances and be reimbursed for the expenses as determined by the MEC in concurrence with the MEC responsible for finance.

### **Meetings of Committee**

- 28.** (1) The Committee may, subject to the approval of the MEC, make rules in relation to decision-making by the Committee, the holding of and the procedure at meetings of the Committee.
- (2) Meetings of the Committee must be held at the time and place as may be determined by the chairperson of the Committee in accordance with the rules of the Committee.

### **Awards**

- 29.** (1) The MEC may, in accordance with the prescribed criteria, make an appropriate award including a monetary award to any member of a community or other person for meritorious service in promoting the purpose of this Act.
- (2) The MEC must keep a register of, and annually report to the Provincial Legislature on any award made in terms of subsection (1).

### **Offences**

- 30.** (1) Any person who—
- (a) without just cause, refuses or fails to comply with a direction or request under section 18(1) or (2) or refuses to answer any question put to him or her under that section or gives to such question an answer which to his or her knowledge is false; or
- (b) hinders or obstructs the Ombudsman or an investigating officer in the exercise or performance of his or her powers or functions in terms of this Act, is guilty of an offence and liable on conviction to a fine or imprisonment not exceeding three years or both.
- (2) Any person who contravenes section 9(1) or (4)(b) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or both.

### **Regulations**

- 31.** The MEC may make regulations regarding—
- (a) any matter in respect of which this Act requires or authorises regulations;
- (b) the functions and duties of the MEC or the Ombudsman;
- (c) the receipt and processing of complaints submitted in terms of section 16;
- (d) the methodology for conducting an investigation of complaints submitted in terms of section 16;
- (e) the format and the procedure to direct persons under section 18(1) or to request an explanation under section 18(2);
- (f) requirements for reporting by the Provincial Commissioner or an executive head of a municipal police service in terms of this Act;

- (g) the format of any report required in terms of this Act;
- (h) the determination of key indicators and types of empirical data that must be included in a report required in terms of this Act;
- (i) measures to ensure confidentiality, control of and access to information obtained through the integrated information system;
- (j) the requirements for authorisation and screening of employees, investigating officers and other persons authorised by the MEC to perform functions in terms of this Act;
- (k) indicators to oversee and assess the effectiveness and efficiency of the police service; or
- (l) any other matter necessary for the effective execution of the functions in terms of this Act.

### **Delegation**

- 32.** (1) The MEC may delegate any power conferred on or assign any duty imposed on him or her in terms of this Act, except the power to make regulations, to the Head of the Department.
- (2) The Head of the Department may delegate any power conferred on or assign any duty imposed on him or her in terms of this Act, to—
- (a) an employee of the Department; or
  - (b) the holder of a specific office or position in the Department.
- (3) A delegation or assignment referred to in subsection (1) or (2)—
- (a) must be in writing;
  - (b) may be made subject to conditions;
  - (c) may be withdrawn or amended in writing by the MEC or the Head of the Department, as the case may be;
  - (d) may include the power to sub-delegate or further assign that power or duty;
  - (e) does not prevent the MEC or the Head of the Department, as the case may be, from exercising that power or performing that duty; and
  - (f) does not divest the MEC or the Head of the Department, as the case may be, of the responsibility concerning the exercise of the delegated power or the performance of the assigned duty.

### **Short title and commencement**

- 33.** This Act is called the Gauteng Community Safety Oversight Act, 2018, and comes into operation on publication in the Government Gazette or a date fixed by the Premier.

**MEMORANDUM ON THE OBJECTIVES OF THE  
GAUTENG COMMUNITY SAFETY OVERSIGHT BILL,  
2020**

*Submitted in terms of Section 119 of the Constitution  
read with Gauteng Legislature Standing Rule 196(2)*

# NOTICE

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Notice is hereby given of the introduction of a Member's Bill in terms of Section 119 of the Constitution read with Gauteng Legislature Standing Rule 196(1). In terms of Gauteng Legislature Standing Rule 196(2), a memorandum is hereby submitted to the Speaker by John MoodeyMPL, which:

- a) Sets out particulars of the proposed legislation;
- b) Explains the objects of the proposed legislation;
- c) States whether the proposed legislation will have financial implications for the State and, if so, whether those implications may be a determining factor when the proposed legislation is considered; and
- d) Additional information pertinent to the consideration of the proposed legislation

The Honourable Speaker is requested to deal with this Bill in terms of Gauteng Legislature Standing Rule 200.



## **1. Background**

The Gauteng Community Safety Oversight Bill seeks to develop and introduce provincial oversight models in respect of the police in compliance with the constitutional mandate of provinces to monitor police conduct and to oversee the effectiveness and efficiency of the South African Police Service (“SAPS”) and municipal police services in the Province. An effective and efficient police service will achieve increased levels of safety and an open society that is free from fear of crime. The functions of oversight are, in terms of the Bill, focussed on detecting patterns and practices of police conduct, identifying systemic failures in the police system and making recommendations on how best to improve policing in the Gauteng Province.

The oversight functions in respect of the monitoring of police conduct and assessment of the police service are also addressed in this Bill.

The manner in which the Province addresses complaints received from communities about police inefficiency will be significantly enhanced through the introduction of the Provincial Police Ombudsman, who is duly empowered by the Bill to effectively address such complaints. The Ombudsman will also be tasked to investigate any breakdown in the relations between the police and the community.

The introduction of an integrated information system will enable the Province to collect information to be considered by the Provincial Executive in determining the Province’s policing needs and priorities. The intention is to move away from the current practice of determining policing needs primarily on the basis of crime statistics and to follow a more holistic approach to determine policing needs based on information obtained in partnership with communities, civil society, other spheres of government, business and the like.

The Bill supports the development and establishment of partnerships with the business community and other role-players, and the accreditation and support of neighbourhood watches aimed at increasing capacity for innovation, cooperation and the development of safety initiatives to promote good relations between the police and communities.

The Bill will address other aspects such as the reporting to the MEC by the Provincial Commissioner of the SAPS and the various executive heads of municipal police services.

The legislative mandate given to the MEC in section 19(1), 20(1) and 21(1) of the South African Police Service Act, 1995 (Act 68 of 1995), enabling the MEC to issue directives for the establishment of community police forums and boards, is amplified in the Bill in order to promote good relations between the SAPS and communities.

In the spirit of the Constitution the Bill reiterates the principles of cooperative government and intergovernmental relations in general and more specifically between the Civilian Secretariat and the Province.

The Bill also establishes a Provincial Safety Advisory Committee to advise the MEC on functions, strategies, policies, etc.

## **2. Legislative framework**

Section 104(1), read with Schedule 4A of the Constitution of the Republic of South Africa, 1996 (“the Constitution”), provides that the Province has legislative competence in the

functional area of “police” to the extent that Chapter 11 (ss 205—208) confers such legislative power on the Province. Provincial legislative competence in respect of policing is further shared with the national sphere of government.

### **3. Purpose of the Bill**

The purpose of the Bill is therefore to give effect to the Province’s constitutional mandate and to regulate the Gauteng Provincial Government’s powers and functions with regard to its oversight function over the police.

### **4. Contents of the Bill**

#### **Clause 1**

This is the definition clause.

#### **Clause 2**

This clause states the purpose of the Bill namely, to regulate and provide for the carrying out of the functions of the Province and the Provincial Department of Community Safety (“the Provincial Department”) as provided for in sections 206(1), (3), (4), (5) and (9) and section 207(5) and (6) of the Constitution. These functions allow the Province to determine the policing needs and priorities of the Province, monitor police conduct; assess the effectiveness of visible policing; oversee the effectiveness and efficiency of the police service, including receiving reports on the police service, promote good relations between the police and communities, investigate any complaints of police inefficiency or a breakdown in relations between the police and any community, require the Provincial Commissioner or executive head of a municipal police to report and appear before the Provincial Legislature and to institute proceedings for the removal or transfer of, or disciplinary action against the Provincial Commissioner. The Bill also seeks to support the civilian oversight of police under the direction of the Minister of Police by the Civilian Secretariat and Provincial Secretariat established in terms of the Civilian Secretariat for Police Service Act (Act 2 of 2011). The Bill further clarifies and defines the provincial sphere of government’s oversight over national policing functions.

#### **Clause 3**

This clause deals with the functions of the MEC for Community Safety (“MEC”). These functions are derived from the abovementioned constitutional powers referred to in section 206(1), (3) to (5), read with section 104 and Schedule 4 of the Constitution.

#### **Clause 4**

This clause provides for the MEC to authorise employees of the Provincial Department and other persons to monitor police conduct, including conduct in respect of persons held in police custody, to oversee and assess the police service and to evaluate the relations between the police and the community.

#### **Clause 5**

This clause provides for the issuing of directives for the establishment of community police forums and boards as referred to in sections 19, 20 and 21 of the South African Police Service Act. This Act provides that the Provincial Commissioner may establish community police forums and boards subject to the MEC’s directives.

## **Clause 6**

This clause provides for the voluntary accreditation and support of neighbourhood watches in the Gauteng in order to promote good relations between the police and communities.

The MEC may also provide funding, training or resources to neighbourhood watches. This clause also provides for neighbourhood watches to submit reports to the MEC on:

- the activities of the neighbourhood watches; and
- safety concerns and incidents of crime in the areas in which neighbourhood watches operate.

In order to monitor the police's efficiency and effectiveness and to determine the Province's policing needs and priorities, as required by the Constitution, these requirements seek to create a database on the safety situation in the Province.

## **Clause 7**

This clause provides for the maintenance of a database of community organisations that are involved in policing, support of victims of crime, crime prevention or community safety in the Province and to provide support to these organisations. It also provides for the entering into partnerships with community organisations to achieve the Bill's objectives, to improve the relations between the police and communities. Community organisations on the database must also report to the Head of Department on safety concerns and incidents of crime, to assist in the determination of the Province's policing needs and priorities.

## **Clause 8**

This clause provides for the establishment, administration and maintenance of an integrated information system by the MEC and the Provincial Department. This information system will enable the MEC to oversee the effectiveness and efficiency of the police service and to determine the Province's policing needs and priorities.

This clause also provides for the MEC to request security service providers to register on the database of community organisations and to submit information on safety concerns and incidents of crime in their areas of operation. It is foreseen that this will improve the relations between the police and communities and will assist in the determination of the Province's policing needs and priorities.

## **Clause 9**

This clause provides measures to ensure the confidentiality of personal information obtained from neighbourhood watches, security service providers and other organisations through the integrated information system.

## **Clauses 10 to 18**

These clauses provide for the establishment of the Office of the Gauteng Provincial Police Ombudsman and the appointment of the Ombudsman by the Premier after consultation with the MEC, the Provincial Commissioner and the executive heads of municipal police services, subject to the concurrence of the Provincial Legislature's portfolio committee responsible for community safety.

The Ombudsman's primary functions are to investigate complaints and matters regarding inefficiency of the police (SAPS and the municipal police services) or a breakdown in relations between the police and communities. The Province is authorised to perform these functions in terms of section 206(5) of the Constitution.

The Ombudsman may also refer complaints to any other competent authority if the complaints can be more appropriately dealt with by that authority.

Clause 18 also provides for the Ombudsman or designated investigators to direct any person to submit an affidavit or affirmed declaration, or to appear before him or her to give evidence, or to produce any document that has a bearing on a matter under investigation.

The Ombudsman must make recommendations to the MEC regarding any complaint under investigation, which may include that a commission of inquiry must be appointed by the Premier. The MEC must make a recommendation on any investigated complaint that could not be resolved by the Ombudsman, to the national Minister and inform the complainant of the recommendation made.

#### **Clause 19**

This clause provides for various mandatory reports to be submitted by the Provincial Commissioner of the SAPS to the MEC.

Among others, the reports address the loss or theft of official firearms in the possession of SAPS members, any deaths of police officials in the execution of their duties, any deaths caused by police officials in the execution of their duties, any persons that have died while in police custody and the circumstances of their death, statistics regarding the number of persons arrested, the number of cases referred to court, the number of cases prosecuted and the conviction rate, the number of complaints received and recorded, and any other matter relating to police conduct, efficiency or effectiveness or relations between the police and communities.

This clause also requires the Provincial Commissioner to submit an annual report regarding policing in the Province.

#### **Clause 20**

This clause refers to the power of the Provincial Executive in terms of section 207(6) of the Constitution if the Provincial Executive has lost confidence in the Provincial Commissioner.

#### **Clause 21**

This clause provides for similar reporting requirements to those referred to in clause 19, but in relation to a municipal police service established in terms of section 64A of the South African Police Service Act. It requires that the various executive heads of the municipal police services in the Province submit certain regular mandatory reports to the MEC.

#### **Clause 22**

This clause provides for the MEC to keep a register recording written reports and recommendations made to the Minister of Police, written requests for information directed to the Provincial Commissioner or any executive head of a municipal police service and any written comment or response received in respect thereof.

### **Clause 23**

This clause provides for the determination of the Province's policing needs and priorities. Section 206(1) of the Constitution provides that the national Minister responsible for policing must "determine national policing policy after consulting the provincial governments and taking into account the policing needs and priorities of the Provinces as determined by the provincial executives." Section 206(3)(e) of the Constitution provides that the province may liaise with the national Minister responsible for policing "with respect to crime and policing in the province".

In order for the Provincial Executive to determine the policing needs and priorities of the Province, this clause provides for the MEC to report to the Gauteng Provincial Legislature.

The Provincial Legislature's portfolio committee responsible for community safety must debate the report and may hold public hearings to receive comments from stakeholders. The findings and comments will then be considered by the Provincial Executive in its report on the Province's policing needs and priorities to the National Minister.

### **Clause 24**

This clause provides for the exercise of provincial oversight of police in accordance with the principles of cooperative government and intergovernmental relations referred to in Chapter 3 of the Constitution.

### **Clauses 25 to 28**

These clauses provide for the establishment of the Provincial Safety Advisory Committee, the Committee's composition, the terms of office of Committee members, and Committee meetings.

The Committee's purpose is to advise the MEC on the functions regarding the monitoring and oversight of the police's efficiency and effectiveness in the Province. It will also advise on strategies, policies, budgets and annual performance plans regarding the oversight functions, and on any other matters arising from the Bill's application.

### **Clause 29**

This clause provides for the making of appropriate awards (including monetary awards) to any community member or other person for meritorious service in furthering the purpose of the Bill and for the recording and reporting in respect of those rewards.

### **Clause 30**

This clause creates offences for hindering or obstructing the Ombudsman in exercising his or her functions in terms of this Act, in respect of a failure to adhere to a direction or request under clause 18(1) or (2) and for the contravention of the confidentiality measures in respect of personal information.

### **Clause 31**

This clause authorises the MEC to make regulations on various aspects of the Bill.

**Clause 32**

This clause provides for the delegation of any power conferred or duty imposed on the MEC to the Head of the Provincial Department, who may, if authorised to do so, further delegate those powers and duties to employees of the Provincial Department. Provision is also made for the Head of Department to delegate or assign any power or duty conferred or imposed on him or her in terms of the Bill to any other employee of the Provincial Department.

**Clause 33**

This clause contains the Bill's short title and provides for the proclamation of the date of its coming into operation.

**5. Financial implications**

The financial implications in respect of the implementation of the Bill will be incrementally budgeted for in forthcoming financial years.

**6. Legislative competence**

All the provisions of the Bill fall within the legislative competence of the Province.

A handwritten signature in black ink, appearing to read 'John Moodey', with a stylized flourish at the end.

**John Moodey MPL**