

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**NATIONAL PROSECUTING
AUTHORITY AMENDMENT
BILL**

[B 29—2023]

*(As agreed to by the Portfolio Committee on Justice and Correctional Services
(National Assembly))*

[B 29A—2023]

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AGREED AMENDMENTS TO

NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL [B 29—2023]

CLAUSE 1

1. On page 2, in line 8, to delete all the words “AND TO ENSURE” up to and including “functions” and to replace with—

“AND WHEREAS systemic corruption in society requires specialised, dedicated multi-disciplinary measures to combat corruption;

AND TO ENSURE that the national prosecuting authority fulfils its constitutional mandate to provide, without limiting the investigative powers of the South African Police Service or the Directorate for Priority Crime Investigation, for—

 - the establishment of the Investigating Directorate against Corruption, with investigative capacity, to prioritise and to investigate particularly serious criminal or unlawful conduct committed in serious, high-profile, or complex corruption, commercial or financial crime; and
 - the necessary infrastructure and resources to perform these functions,”.

CLAUSE 2

1. On page 3, in line 4, to delete the words “head of an Investigating Directorate” and to replace with “*head of an Investigating Directorate*”.
2. On page 3, in lines 6 to 7, to delete all the words from “head” up to and including “[*(b)*];” and to replace with ““*head of an Investigating Directorate*’ means an Investigating Director referred to in section 7(3)[*(b)*];”.
3. On page 3, in line 8, to delete the words “Investigating Director” and to replace with “*Investigating Director*”.
4. On page 3, in line 12, to delete “7(1) or (1A)”, and to replace with “7[(1)]”.
5. On page 3, in lines 15 to 16, to delete the words “‘**Investigating Directorate against Corruption**’ means the Investigating Directorate against Corruption” and to replace with ““*Investigating Directorate against Corruption*’ means the *Investigating Directorate against Corruption*”.
6. On page 3, in line 24, to delete “(dA)” and to replace with “(f)”.

CLAUSE 3

1. Clause rejected.

CLAUSE 4

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:
 3. Section 5 of the principal Act is hereby amended—
 - (a) by the substitution in subsection (2) for paragraph (d) of the following paragraph:

“(d) other members of the prosecuting authority appointed at or assigned to the Office; **[and]**”; and
 - (b) by the substitution in subsection (2) for paragraph (e) of the following paragraph:

“(e) members of the administrative staff of the Office; and”; and
 - (c) by the insertion in subsection (2) after paragraph (e) of the following paragraph:

“(f) investigators.”

CLAUSE 5

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

“Amendment of section 7 of Act 32 of 1998, as substituted by section 4 of Act 61 of 2000 and section 3 of Act 56 of 2008

 4. Section 7 of the principal Act is hereby amended—
 - (a) by the deletion of subsection (1);
 - (b) by the insertion after subsection (1) of the following subsections:

“(1A) There is hereby established, in the Office of the *National Director*, an *Investigating Directorate* to be known as the *Investigating Directorate against Corruption* to investigate, and carry out, any functions incidental to investigations—

 - (a) relating to serious, high-profile or complex corruption, commercial or financial crime cases—
 - (i) arising from the recommendations of commissions of inquiry;
 - (ii) referred to the *Investigating Director* by the *National Director* in terms of section 28(1)(b); or
 - (iii) referred to the *Investigating Director* in terms of section 27, subject to section 26(2);
 - (b) relating to additional related offences or categories of offences, including common law offences of—
 - (i) fraud;
 - (ii) forgery;
 - (iii) uttering;
 - (iv) theft; and
 - (v) any offence involving dishonesty;
 - (c) relating to additional related statutory offences or categories of statutory offences, including contraventions of—
 - (i) the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004);
 - (ii) the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);

- (iii) the Protection of Constitutional Democracy against Terrorist and Related Activities, 2004 (Act No. 33 of 2004);
 - (iv) the Public Finance Management Act, 1999 (Act No.1 of 1999);
 - (v) the Local Government: Municipal Finance Management Act, 2003 (Act No.56 of 2003);
 - (vi) the Financial Intelligence Centre Act 2001 (Act No. 38 of 2001), and
 - (vii) any other statutory offence involving dishonesty; and
- (d) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings relating to any offence contemplated in paragraphs (a) to (c).
- (1B) The President may, by proclamation in the *Gazette*, establish one or more additional *Investigating Directorates* in the *Office of the National Director*, in respect of matters that exclude those contemplated in subsection (1A).”;
- (c) by the deletion in subsection (2) of paragraph (a);
 - (d) by the substitution in subsection (2) for paragraph (b) of the following paragraph:
 - “(b) shall be issued and may [at any time] be amended or rescinded by the President on the recommendation of the *Minister*, the Cabinet member responsible for policing and the *National Director*; and;”;
 - (e) by the insertion in paragraph (a) of subsection (4) after subparagraph (ii) of the following subparagraph:
 - “(iiA) investigators;”.

CLAUSE 6

1. Clause rejected.

NEW CLAUSE

1. That the following be a new clause:

“Amendment of section 13 of Act 32 of 1998, as substituted by section 6 of Act 61 of 2000 and amended by section 4 of Act 56 of 2008

5. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) shall, in respect of any *Investigating Directorate* established in terms of section 7[1A] appoint a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, to be entrusted with the responsibilities of the office concerned, as a Director of Public Prosecutions as the head of such an *Investigating Directorate*; and”.

CLAUSE 7

1. On page 4, in line 40, to delete “7.” and to insert “6.”.

2. On page 5, in lines 9 to 10, to delete the words from “, as” up to and including “2013”).
3. On page 5, in lines 14 to 17, to delete all the words from “(3)” and to replace with

“(3) If the certificate referred to in subsection (1) is withdrawn, the *National Director*, after consultation with the State Security Agency and subject to section 2A(8) of the National Strategic Intelligence Act, 1994, may discharge the investigator concerned from the Investigating Directorate, following any disciplinary process.”.

CLAUSE 8

1. On page 6, in line 2, to delete “8.”, and to insert “7.”.

CLAUSE 9

1. On page 6, in line 8, to delete “9.”, and to insert “8.”.

CLAUSE 10

1. On page 7, in line 16, to delete “10.”, and to insert “9.”.

CLAUSE 11

1. On page 7, in line 50, to delete “11.”, and to insert “10.”.
2. On page 8, in line 4, to delete “Investigating Directorate against Corruption”, and to insert “*Investigating Directorate against Corruption*”.
3. On page 8, in lines 11 and 12, to delete “Investigating Directorate against Corruption”, and to insert “*Investigating Directorate against Corruption*”.
4. On page 8, in lines 15 and 16, to delete “Investigating Directorate against Corruption”, and to insert “*Investigating Directorate against Corruption*”.

CLAUSE 12

1. On page 8, in line 22, to delete “12.”, and to insert “11.”.

CLAUSE 13

1. On page 8, in line 26, to delete “13.”, and to insert “12.”.

CLAUSE 14

1. On page 8, in line 46, to delete “14.”, and to insert “13.”.

LONG TITLE

1. On page 2, to delete all the words from “To” up to and including “therewith” and to replace with “**To amend the National Prosecuting Authority Act, 1998, so as to insert certain definitions; and provide for the establishment of the Investigating Directorate against Corruption and its powers and functions; the appointment of investigators in the Investigating Directorate against Corruption; the vetting of investigators; the remuneration and conditions of service of investigators; the establishment of a mechanism to deal with complaints of a serious nature pertaining to persons appointed at or assigned to an investigating directorate; the powers and functions of investigators; to provide for transitional arrangements; and to provide for matters connected therewith.**”.
2. On page 2, in line 1 to 2, to delete all the words from “**BE**” up to and including “follows:—” and to replace with “**PARLIAMENT** of the Republic of South Africa enacts as follows:—”.

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