

REPUBLIC OF SOUTH AFRICA

**PORTFOLIO COMMITTEE AMENDMENTS
TO**

**INDEPENDENT POLICE
INVESTIGATIVE
DIRECTORATE BILL**

[B 15—2010]

*(As agreed to by the Portfolio Committee on Police
(National Assembly))*

[B 15A—2010]

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AMENDMENTS AGREED TO

INDEPENDENT POLICE INVESTIGATE DIRECTORATE BILL [B 15—2010]

CLAUSE 1

1. On page 4, from line 11 to 12, to substitute the heading with the following heading:

“DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT, INDEPENDENCE AND IMPARTIALITY”.
2. On page 4, after line 27, to insert the following definition:

“ **‘municipal police service’** means a municipal police service established under section 64A of the South African Police Service Act”.
3. On page 4, in line 35, to omit the definition of **‘Secretariat’** and to substitute:

“ **‘Secretariat’** means the Civilian Secretariat for Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2010”.
4. On page 4, in line 37, to omit the definition of **‘Secretary’** and to substitute:

“ **‘Secretary’** means the Secretary for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2010”.
5. On page 4, after line 38, to insert the following definition:

“ **‘security clearance certificate’** means an official document issued by the Executive Director indicating the degree of security competence of a person”.
6. On page 4, in line 41, to omit the definition of **‘this Act’** and to substitute:

“ **‘this Act’** includes the Schedule and regulations”.

NEW CLAUSE

1. On page 4, after line 41, after section 1, to insert the following clause:

‘Objects of Act

2. The objects of this Act are—

 - (a) to give effect to section 206(6) of the Constitution by establishing and assigning functions to the Directorate on national and provincial level;
 - (b) to ensure independent oversight of the South African Police Service and Municipal Police Services;
 - (c) to align provincial strategic objectives with that of national offices to enhance the functioning of the Directorate;
 - (d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of

- the South African Police Service and Municipal Police Services;
- (e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;
 - (f) to provide for close co-operation between the Directorate and the Secretariat; and
 - (g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.”.

CLAUSE 2

1. On page 4, in line 44, to omit “branches in the provinces” and to substitute “provincial offices,”.
2. On page 4, in line 47, to omit subsection (3) and to substitute with the following subsection:

“(3) The Directorate is financed from money that is appropriated by Parliament.”.

CLAUSE 3

1. On page 4, in line 48, after “Independence” to omit the comma and to insert “and”.
2. On page 4, in line 48, after “impartiality” to omit “and accountability”.

CLAUSE 5

1. On page 5, from line 6 up to and including line 9, to omit subsections (1) and (2) and to substitute with the following subsections:

“(1) The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure to be determined by the Minister.

(2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination.”.

2. On page 5, from line 14 up to and including line 16, to omit paragraph (b) and to substitute with the following paragraph:

“(b) such appointment is for a term of five years, which is renewable for one additional term only.”.

3. On page 5, from line 17 up to and including line 19, to omit subsection (4) and to substitute with the following subsection:

“(4) When the Executive Director is unable to perform the functions of office, or during a vacancy in the Directorate, the Minister may designate another person to act as Executive Director until the Executive Director returns to perform the functions of office or the vacancy is filled.

(5) In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed one year.”.

CLAUSE 6

1. On page 5, in line 31, after “approval” to omit “and”.
2. On page 5, in line 33, after “Act”, to insert “; and”.
3. On page 5, after line 33, to insert the following paragraph:

“(d) an annual report is prepared as contemplated in section 32.”.
4. On page 5, from line 44 up until line 45, to substitute paragraph (e) with the following paragraph:

“(e) The Executive Director must give guidelines with regard to—

 - (i) the investigation and management of cases by officials within the respective provincial offices;
 - (ii) administration of the national and provincial offices; and
 - (iii) training of staff at national and provincial level.”.
5. On page 5, in line 46, to omit “may” and to substitute “must”.
6. On page 5, from line 46, to omit “matters investigated by the Directorate under this Act” and to substitute “criminal offences revealed as a result of an outcome of an investigation”.
7. On page 5, after line 47, to insert the following subsections:

“(5) The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy thereof to the Secretary.

(6) The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the relevant Provincial Commissioner.

(7) Once a month the Executive Director must submit to the Minister a summary of the disciplinary matters and provide a copy thereof to the Secretary.

(8) All recommendations which are not of a criminal or disciplinary nature must be referred to the Minister and provide a copy thereof to the Secretary.

(9) The Executive Director may upon receipt of a complaint, cause to investigate any offence allegedly committed by any member of the South African Police Service or Municipal Police Services, and may, where appropriate, refer such investigation to the National or Provincial Commissioner concerned.

(10) The Executive Director must refer criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation.”.

CLAUSE 7

1. On page 5, from line 52, up to and including line 4 on page 6, to omit subsections (1) and (2) and to substitute with the following subsections:

“(1) The national office consists of—

 - (a) the Executive Director who controls the office;
 - (b) the Corporate Services Unit;
 - (c) the Investigation and Information Management Unit;
 - (d) the Legal Services Unit; and
 - (e) any other unit established, subject to the approval of the Minister and Parliament.”.

(2) The Executive Director must appoint members at the national office.”

2. On page 6, from line 5 up to and including line 8, to omit subsection (3) and to substitute with the following subsections:

“(3) A person may not be appointed as a member of the national office unless information with respect to that member has been gathered in an appropriate security screening investigation as prescribed by the Minister.

(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).”.

3. On page 6, in line 9, after “a” to insert “security clearance”.
4. On page 6, in line 9, after “certificate” to omit “of appointment”.
5. On page 6, in line 16, to omit “may” and to substitute “must”.
6. On page 6, in line 16, after “a” to insert “security clearance”.
7. On page 6, from line 18 up and including line 19, omit “objectives of the Directorate” and to substitute “objects of this Act”.
8. On page 6, in line 20, after the first “the” to insert “security clearance”.

CLAUSE 8

1. On page 6, in line 36, to omit “an” and to substitute “the relevant”.
2. On page 6, from line 36, to omit “head of that provincial directorate” and to substitute “Executive Director”.
3. On page 6, in line 40, to omit “and”.
4. On page 6, after line 41, to insert the following paragraphs:

“(m) make recommendations to the South African Police Service resulting from investigations done by the Directorate; and
 (n) report twice a year to Parliament on the number and type of cases investigated, the recommendations, the detail and outcome of those recommendations.”.

CLAUSE 9

1. Clause rejected.

CLAUSE 10

1. On page 7, in line 4, to omit “6, 7, 20, 22, 28(2), 29(1) and (2) and 31” and to substitute “7(1), (2), (3), (5), (6), (7), (8), (9) and (10), 8, 20, 22, 31(2), 32(1) and (2), and 34”.

CLAUSE 13

1. On page 7, in line 24, after “importance” to insert “to the functioning of the Directorate”.

2. On page 7, in line 27, to omit “matters of”.
3. On page 7, in line 27, to omit “interest” and to substitute “management issues within the Directorate”.

CLAUSE 16

1. On page 7, in line 42, after “Secretary” to insert “in consultation with one another”.

CLAUSE 17

1. On page 8, in line 5, after “discuss” to insert “amongst other, issues relating to”.
2. On page 8, in line 5, after “of” to insert “such”.
3. On page 8, in line 7, to omit paragraph (c).

CLAUSE 20

1. On page 8, after line 35, to insert the following subsections:

“(4) When the provincial head is unable to perform the functions of office, or during a vacancy in the provincial office, the Executive Director may designate another person to act as provincial head until the provincial head returns to perform the functions of office or the vacancy is filled.

(5) In the case of a vacancy, the Executive Director must fill the vacancy within a reasonable period of time, which period shall not exceed six months.”.

CLAUSE 21

1. On page 8, after line 41, to insert the following paragraph:

“(d) to refer matters investigated by the provincial office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution;”.
2. On page 8, after line 48, after “and” to insert “their”.
3. On page 8, after line 48, to insert the following paragraph:

“(i) to report to the relevant MEC on matters referred to the Provincial Head by that MEC.”.

CLAUSE 22

1. On page 9, from line 19 up and including line 20, to omit subparagraphs (ii) and (iii).

2. On page 9, from line 22 up and including line 25, to omit subsection (3) and to substitute with the following subsections:

“(3) A person may not be appointed as an investigator unless information with respect to that person has been gathered in an appropriate security screening investigation as prescribed by the Minister.

(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).”.

3. On page 9, in line 27, before certificate, to insert “security clearance”.
4. On page 9, in line 27, to omit “of appointment”.
5. On page 9, in line 33, to omit “may” and to substitute “must”.
6. On page 9, in line 35, after “24(2)” to insert “by the Minister”.
7. On page 9, after line 36, to add the following subsection:

“(9) The Executive Director must issue a document in the prescribed form, which shall serve as proof to certify that an investigator has been duly authorised to exercise the powers and perform the functions as contemplated in section 24.”.

CLAUSE 24

1. On page 9, in line 43, after “Director” to insert “or the relevant provincial head”.
2. On page 10, after line 11, to add the following subsections:

“(4) A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person’s ability, but—

- (a) a person is not obliged to answer any question if the answer is self-incriminating; and
- (b) the person asking the questions must inform that person of the right set out in paragraph (a).

(5) No self-incriminating answer given or statement made by any person to an investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings instituted against that person in any court, except in criminal proceedings for perjury.”.

CLAUSE 25

1. Clause rejected.

NEW CLAUSES

1. On page 11, after line 3, to insert the following clauses:

“**Limitation of liability**

27. An investigator is not liable in respect of any act or omission in good faith and without gross negligence in performing a function in terms of this Act.

Type of matters to be investigated

- 28.** (1) The Directorate must investigate—
- (a) any deaths in police custody;
 - (b) deaths as a result of police actions;
 - (c) any complaint relating to the discharge of an official firearm by any police officer;
 - (d) rape by a police officer, whether the police officer is on or off duty;
 - (e) rape of any person while that person is in police custody;
 - (f) any complaint of torture or assault against a police officer in the execution of his or her duties;
 - (g) corruption matters within the police initiated by the Executive Director on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
 - (h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be,
- in the prescribed manner.
- (2) The Directorate may investigate matters relating to systemic corruption involving the police.”.

NEW CHAPTER

1. On page 11, after line 3, to insert the following Chapter:

“CHAPTER 7

REPORTING OBLIGATIONS AND COOPERATION BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE AND MUNICIPAL POLICE SERVICES AND DISCIPLINARY RECOMMENDATIONS

Reporting obligations and cooperation by members

- 29.** (1) The Station Commissioner, or any member of the South African Police Service or Municipal Police Service must—
- (a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(i)(a) to (h); and
 - (b) within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any matter as contemplated in paragraph (a).
- (2) The members of the South African Police Service or Municipal Police Services must provide their full cooperation to the Directorate, including but not limited to—
- (a) the arrangement of an identification parade within 48 hours of the request made by the Directorate;
 - (b) the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member’s possession or under his or her control which has a bearing on the matter being investigated; and
 - (c) any other information or documentation required for investigation purposes.

Disciplinary recommendations

- 30.** The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must—

- (a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary;
- (b) quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph (a) and provide a copy thereof to the Executive Director and the Secretary; and
- (c) immediately on finalisation of any disciplinary matter referred to it by the Directorate, to inform the Minister in writing of the outcome thereof and provide a copy thereof to the Executive Director and the Secretary.”.

CLAUSE 28

1. On page 11, from line 7 up until line 9, to omit subsection (1).

CLAUSE 29

1. On page 11, in line 28, after “a” to insert “detailed”.

CLAUSE 30

1. On page 11, after line 47, to insert the following subsections:

“(3) Any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any member who fails to make disclosure in accordance with section 25(2)(a), or fails to withdraw in terms of section 25(2)(b), as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

CLAUSE 31

1. On page 12, in line 20, to omit “and”.
2. On page 12, after line 20, to insert the paragraphs:
 - “(i) any issues to be contained in the annual report contemplated in section 32;
 - (j) the procedure and format to be followed regarding reporting to the Directorate as contemplated in section 29(1);
 - (k) the procedure to be followed for the arrangement and the holding of identification parades, as contemplated in section 29(2)(a);
 - (l) the procedure to be followed for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member’s possession or under his or her control which has a bearing on the matter being investigated, as contemplated in section 29(2)(b);
 - (m) the procedure to be followed for the submission of any other information or documentation required for investigation purposes, as contemplated in section 29(2)(c);
 - (n) the procedure to be followed in respect of disciplinary recommendations as contemplated in section 30;
 - (o) the manner and procedure to secure a crime scene to be investigated by the Directorate; and”.

3. On page 12, from line 23, up until line 25, to omit subsection (2) and to substitute with the following subsection:

“(2) The regulations referred to in subsection (1)(a) to (o) must be submitted to Parliament for scrutiny at least one month before promulgation—
 (a) while it is in session; or
 (b) after the next session starts.”.

CLAUSE 32

1. On page 12, after line 48, to insert the following subsection:

“(5) A security clearance issued before the fixed date, remains valid until such time it is reissued in terms of this Act”.

2. On page 12, in line 50, after the first “the” to insert “Independent Complaints”.
3. On page 12, in line 52, after “to” to insert “the South African Police Service and where appropriate,”.

SCHEDULE 1

1. On page 15, after the 21st line, to insert the following table:

No. and Year of Act	Short Title	Extent of Amendment
Act 116 of 1998	Domestic Violence Act, 1998	<p>Amendment of section 18 of Act 116 of 1998</p> <p>1. Section 18 of the Domestic Violence Act, 1998, is hereby amended—</p> <p>(a) by the substitution in subsection (4) for the following subsection:</p> <p>“(4) (a) Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the [Independent Complaints Directorate] Secretariat, established in terms of [that Act] section 4(1) of the <u>Civilian Secretariat for Police Service Act, 2010</u>, must forthwith be informed of any such failure reported to the South African Police Service.</p> <p>(b) Unless the [Independent Complaints Directorate] Secretariat directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph (a).”;</p>

No. and Year of Act	Short Title	Extent of Amendment
		<p>(b) by the substitution in subsection (5) for paragraphs (c) and (d) of the following paragraphs respectively:</p> <p>“(5) (c) The [Independent Complaints Directorate] <u>Secretariat</u> must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)(a), and setting out the recommendations made in respect of such matters.</p> <p>(d) The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding—</p> <p>(iii) steps taken as a result of recommendations made by the [Independent Complaints Directorate] <u>Secretariat</u>.”.</p>

SCHEDULE 2

1. On page 16, from the seventh line up until the eighth line to omit the following words:

“Act 116 of 1998 Domestic Violence Act, 1998 section 18”.

LONG TITLE

1. On page 2, in the fourth line, after “investigators;” to insert “to provide for reporting obligations and cooperation by members of the South African Police Service and Municipal Police Services;”.

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