

MEMORANDUM

SOUTH AFRICAN POLICE SERVICE AMENDMENT BILL [B 30 - 2008]

The Parliamentary Committee of the General Council of the Bar has considered the South African Police Service Amendment Bill and offers the following comments:

1. The Bill provides *inter alia* for the relocation of special investigators of the Directorate of Special Operations, established in terms of the National Prosecuting Authority Act, 1998, to the South African Police Service (hereinafter referred to as "SAPS").

It provides, in Section 4 thereof, for the transfer to the SAPS of special investigators in accordance with the Labour Relations Act, No. 66 of 1995.

Sub-section 7(a) provides that such special investigators may be transferred to the SAPS "*only with their consent.*".

The Bill contains no provision dealing with the position of special investigators who either refuse to give their consent or who may prefer not to be transferred to the SAPS. It is suggested that this apparent *lacuna* be rectified.

2. Section 16A provides for the establishment of a Directorate for Priority Crime Investigation (hereinafter referred to as "*DPCI*"). In terms of subparagraph 2(b) of this section, the DPCI comprises *inter alia* selected officials, other than prosecutors who hold office as special investigators of the Directorate of Special Operations.

The Bill does not state by whom such selection is to be made, nor the *criteria* for such selection.

3. The provisions of Section 16A(15) read with Section 16B(1)(a) and 16B(1)(c) may cause uncertainty.

Section 16A(15) reads:

"The Directorate for Priority Crime Investigation must investigate any matter falling within the ambit of sub-section (1), assigned to it by the National Commissioner."

Section 16B(1)(a) provides:

"Subject to Section 16(4) [i.e. of the South African Police Service Act No. 68 of 1995 which inter alia vests the responsibility for the prevention and investigation of all crimes or alleged crimes committed in any province in the Provincial Commissioner concerned] the Head of the DPCI may conduct an investigation or a preparatory investigation if he or she has reason to suspect that an offence under Section 16(2) [i.e. organized crime, crime which requires national prevention or investigation, or crime which requires specialized skills in the prevention and investigation thereof] has been or is being committed, or that an attempt has been or is being made to commit such an offence. This section appears to vest a wide discretionary power in the Head of the DPCI to investigate offences as envisaged in Section 16(2) of the South African Police Service Act.

Section 16A(15) provides that the Directorate for Priority Crime Investigation *"... must investigate any matter falling within the ambit of sub-section (1) assigned to it by the National Commissioner."*

It is assumed that the reference to sub-section 1 is a reference to that sub-section of Section 16A, which in turn refers to Section 16(2).

The offences in respect of which the National Commissioner may assign the investigation to the Head of the DPCI are, it seems, the same offences in respect of which the Head of the DPCI has wide discretionary powers by virtue of Section 16B(1)(a) of the Bill.

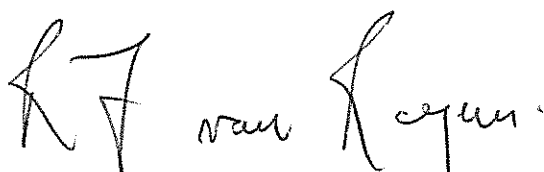
It is not clear from the provisions of the Bill whether the discretion vested in the Head of the DPCI in Section 16B(1)(a) is to be exercised only in respect of matters assigned to it by the National Commissioner. Section 16B(1)(c) seems to support such interpretation.

Insofar as Section 16A(15) was intended to confer powers on the National Commissioner as envisaged in paragraph 1.7 of the background to the Bill (which is contained in paragraph 1 of the Memorandum on the object of the Bill) the Section does not seem to do so.

4. Section 16B(6) provides that a summons in terms of Section 16B(5) may be served "*in the prescribed manner*". The Bill provides no directions in respect of such summons. It is assumed that the necessary regulations will be made under Section 24 of the SAPS Act.

5. The words "*in a magistrate's court*" in Section 16B(7)(a) dealing with the law regarding privilege appear to be superfluous.

DATED at Cape Town on this the 8th day of JULY 2008.

A handwritten signature in black ink, appearing to read 'R.F. van Rooyen', written in a cursive style.

R.F. VAN ROOYEN SC
CHAIRPERSON
PARLIAMENTARY COMMITTEE
GCB