NATIONAL PROSECUTING AUTHORITY ACT 32 OF 1998

[ASSENTED TO 24 JUNE 1998] [DATE OF COMMENCEMENT: 16 OCTOBER 1998]
(Unless otherwise indicated)

(English text signed by the President)

as amended by
Judicial Matters Second Amendment Act 122 of 1998

ACT

To regulate matters incidental to the establishment by the Constitution of the Republic of South Africa, 1996, of a single national prosecuting authority; and to provide for matters connected therewith.

Preamble

WHEREAS section 179 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), provides for the establishment of a single national prosecuting authority in the Republic structured in terms of an Act of Parliament; the appointment by the President of a National Director of Public Prosecutions as head of the national prosecuting authority; the appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament;

AND WHEREAS the Constitution provides that national legislation must ensure that the Directors of Public Prosecutions are appropriately qualified and are responsible for prosecutions in specific jurisdictions;

AND WHEREAS the Constitution provides that national legislation must ensure that the prosecuting authority exercises its functions without fear, favour or prejudice;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions must determine, with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecutions, prosecution policy which must be observed in the prosecution process;

AND WHEREAS the Constitution provides that the National Director of Public Prosecutions may intervene in the prosecution process when policy directives are not being complied with, and may review a decision to prosecute or not to prosecute;

AND WHEREAS the Constitution provides that the Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority;

AND WHEREAS the Constitution provides that all other matters concerning the prosecuting authority must be determined by national legislation;

CHAPTER 1

INTRODUCTORY PROVISIONS (s 1)

Definitions

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

    1. '*Constitution*' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

    2. '*Deputy Director*' means a Deputy Director of Public Prosecutions appointed under section 15 (1);

    3. '*Deputy National Director*' means a Deputy National Director of Public Prosecutions appointed under section 11 (1);

    4. '*Director*' means a Director of Public Prosecutions appointed under section 13 (1);

    5. '*Investigating Director*' means a Director of Public Prosecutions appointed under section 13 (1) (b) as the head of an Investigating Directorate;

    6. '*Investigating Directorate*' means an Investigating Directorate established under section 7 (1);

    7. '*Minister*' means the Cabinet member responsible for the administration of justice;

    8. '*National Director*' means the National Director of Public Prosecutions appointed in terms of section 179 (1) (a) of the Constitution;

    9. '*Office of the National Director*' means the Office of the National Director of Public Prosecutions established by section 5;

    10. '*prescribed*' means prescribed by regulation made under section 40;

    11. '*prosecuting authority*' means the single national prosecuting authority referred to in section 2;

    12. '*prosecutor*' means a prosecutor referred to in section 16 (1);

    13. '*Public Service Act*' means the Public Service Act, 1994 (Proclamation 103 of 1994);

    14. '*Republic*' means the Republic of South Africa, referred to in section 1 of the Constitution;

15. '*Special Director*' means a Director of Public Prosecutions appointed under section 13 (1) (c);

16. '*this Act*' includes the regulations.

CHAPTER 2

STRUCTURE AND COMPOSITION OF SINGLE NATIONAL PROSECUTING AUTHORITY (ss 2-7)

Single national prosecuting authority

2. There is a single national prosecuting authority established in terms of section 179 of the Constitution, as determined in this Act.

Structure of prosecuting authority

3. The structure of the single prosecuting authority consists of-

(a) the Office of the National Director;
(2) the offices of the prosecuting authority at the High Courts, established by section 6 (1).

Composition of national prosecuting authority

4. The prosecuting authority comprises the-

(a) National Director;
(b) Deputy National Directors;
(c) Directors;
(d) Deputy Directors; and
(e) prosecutors.

Office of National Director of Public Prosecutions

5. (1) There is hereby established the National Office of the prosecuting authority, to be known as the Office of the National Director of Public Prosecutions.

(2) The Office of the National Director shall consist of the-

(a) National Director, who shall be the head of the Office and control the Office;
(b) Deputy National Directors;

(c) Investigating Directors and Special Directors;
(d) other members of the prosecuting authority appointed at or assigned to the Office; and
(e) members of the administrative staff of the Office.

(3) The seat of the Office of the National Director shall be determined by the President.

Offices of prosecuting authority at seats of High Courts

6. (1) There is hereby established an Office for the prosecuting authority at the seat of each High Court in the Republic.

(2) An Office established by this section shall consist of-

(a) the head of the Office, who shall be either a Director or a Deputy Director, and who shall control the Office;
(b) Deputy Directors;
(c) prosecutors;
(d) persons contemplated in section 38 (1); and
(e) the administrative staff of the Office.

(3) If a Deputy Director is appointed as the head of an Office established by subsection (1), he or she shall exercise his or her functions subject to the control and directions of a Director designated in writing by the National Director.

President may establish Investigating Directorates

7. (1) (a) The President may, by proclamation in the Gazette, establish not more than three Investigating Directorates in the Office of the National Director, in respect of specific offences or specified categories of offences.
(b) A proclamation referred to in paragraph (a) shall be issued with the concurrence of the Minister and the National Director.

(2) A proclamation referred to in subsection (1) (a) must specify the offences or the categories of offences for which an Investigating Directorate had been established.

(3) The head of an Investigating Directorate shall be an Investigating Director, and shall perform the powers, duties and functions of the Directorate subject to the control and directions of the National Director.

(4) (a) An Investigating Director shall be assisted in the exercise of his or her powers and the performance of his or her functions by-

(i) one or more Deputy Directors, to perform, subject to the control and directions of the Investigating Director, any functions of the Investigating

Director;

(ii) prosecutors;

(iii) officers of any Department of State seconded to the service of the Directorate in terms of the laws governing the public service;

(iv) persons in the service of any public or other body who are by arrangement with the body concerned seconded to the service of the Directorate; and

(v) any other person whose services are obtained by the Investigating Director for the purposes of a particular inquiry.

(b) For the purposes of subparagraphs (iv) and (v) of paragraph (a)-

(i) any person or body requested by the Investigating Director in writing to do so, shall from time to time, after consultation with the Investigating Director, furnish him or her with a list of the names of persons, in the employ or under the control of that person or body, who are fit and available to assist the Investigating Director as contemplated in the said subparagraph (iv) or (v), as the case may be; and

(ii) such a person or body shall, at the request of the Investigating Director and after consultation with the Investigating Director, designate a person or persons mentioned in the list concerned so to assist the Investigating Director.

CHAPTER 3

APPOINTMENT, REMUNERATION AND CONDITIONS OF SERVICE OF MEMBERS OF THE PROSECUTING AUTHORITY (ss 8-19)

Prosecuting authority to be representative

8. The need for the prosecuting authority to reflect broadly the racial and gender composition of South Africa must be considered when members of the prosecuting authority are appointed.

Qualifications for appointment as National Director, Deputy National Director or Director

9. (1) Any person to be appointed as National Director, Deputy National Director or Director must-

(1) possess legal qualifications that would entitle him or her to practise in all courts in the Republic; and

(b) be 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.

(2) Any person to be appointed as the National Director must be a South African citizen.

[Date of commencement of s. 9: 1 August 1998.]

Appointment of National Director

10. The President must, in accordance with section 179 of the Constitution, appoint the National Director.

[Date of commencement of s. 10: 1 August 1998.]

Appointment of Deputy National Directors

11.(1) The President may, after consultation with the Minister and the National Director, appoint not more than three persons, as Deputy National Directors of Public Prosecutions.

(2) (a) Whenever the National Director is absent or unable to perform his or her functions, the National Director may appoint any Deputy National Director as acting National Director.

(b) Whenever the office of National Director is vacant, or the National Director is for any reason unable to make the appointment contemplated in paragraph (a), the President may, after consultation with the Minister, appoint any Deputy National Director as acting National Director.

(3) Whenever a Deputy National Director is absent or unable to perform his or her functions, or an office of Deputy National Director is vacant, the National Director may, in consultation with the Minister, designate any other Deputy National Director or any Director to act as such Deputy National Director.

Term of office of National Director and Deputy National Directors

12.(1) The National Director shall hold office for a non-renewable term of 10 years, but must vacate his or her office on attaining the age of 65 years.

(2) A Deputy National Director shall vacate his or her office at the age of 65.

(3) If the National Director or a Deputy National Director attains the age of 65 years after the first day of any month, he or she shall be deemed to attain that age on the first day of the next succeeding month.

(4) If the President is of the opinion that it is in the public interest to retain a National Director or a Deputy National Director in his or her office beyond the age of 65 years, and-

(1)the National Director or Deputy National Director wishes to continue to serve in such office; and

(2)the mental and physical health of the person concerned enable him or her so to continue,

the President may from time to time direct that he or she be so retained, but not for a period which exceeds, or periods which in the aggregate exceed, two years: Provided that a National Director's term of office shall not exceed 10 years.

(5) The National Director or a Deputy National Director shall not be suspended or removed from office except in accordance with the provisions of subsections (6), (7) and (8).

(6) (a) The President may provisionally suspend the National Director or a Deputy National Director from his or her office, pending such enquiry into his or her fitness to hold such office as the President deems fit and, subject to the provisions of this subsection, may thereupon remove him or her from office-

(i) for misconduct;

(ii) on account of continued ill-health;

(iii) on account of incapacity to carry out his or her duties of office efficiently; or

(iv) on account thereof that he or she is no longer a fit and proper person to hold the office concerned.

(b) The removal of the National Director or a Deputy National Director, the reason therefor and the representations of the National Director or Deputy National Director (if any) shall be communicated by message to Parliament within 14 days after such removal if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(c) Parliament shall, within 30 days after the message referred to in paragraph (b) has been tabled in Parliament, or as soon thereafter as is reasonably possible, pass a resolution as to whether or not the restoration to his or her office of the National Director or Deputy National Director so removed, is recommended.

(d) The President shall restore the National Director or Deputy National Director to his or her office if Parliament so resolves.

(e) The National Director or a Deputy National Director provisionally suspended from office shall receive, for the duration of such suspension, no salary or such salary as may be determined by the President.

(7) The President shall also remove the National Director or a Deputy National Director from office if an address from each of the respective Houses of Parliament in the

same session praying for such removal on any of the grounds referred to in subsection (6) (a), is presented to the President.

(8) (a) The President may allow the National Director or a Deputy National Director at his or her request, to vacate his or her office-

(i) on account of continued ill-health; or

(ii) for any other reason which the President deems sufficient.

(b) The request in terms of paragraph (a) (ii) shall be addressed to the President at least six calendar months prior to the date on which he or she wishes to vacate his or her office, unless the President grants a shorter period in a specific case.

(c) If the National Director or a Deputy National Director-

(i) vacates his or her office in terms of paragraph (a) (i), he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if his or her services had been terminated on the ground of continued ill-health occasioned without him or her being instrumental thereto; or

(ii) vacates his or her office in terms of paragraph (a) (ii), he or she shall be deemed to have been retired in terms of section 16 (4) of the Public Service Act, and he or she shall be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her if he or she had been so retired.

(9) If the National Director or a Deputy National Director, immediately prior to his or her appointment as such, was an officer or employee in the public service, and is appointed under an Act of Parliament with his or her consent to an office to which the provisions of this Act or the Public Service Act do not apply, he or she shall, as from the date on which he or she is so appointed, cease to be the National Director, or a Deputy National Director and if at that date he or she has not reached the age at which he or she would in terms of the Public Service Act have had the right to retire, he or she shall be deemed to have retired on that date and shall, subject to the said provisions, be entitled to such pension as he or she would have been entitled to under the pension law applicable to him or her had he or she been compelled to retire from the public service owing to the abolition of his or her post.

[Date of commencement of s. 12: 1 August 1998.]

Appointment of Directors and Acting Directors

13.(1) The President, after consultation with the Minister and the National Director-

(a) may, subject to section 6 (2), appoint a Director of Public Prosecutions in respect of an Office of the prosecuting authority established by section 6 (1);

(b) shall, in respect of each Investigating Directorate, appoint a Director of Public Prosecutions as the head of such an Investigating Directorate; and

(c) may appoint one or more Directors of Public Prosecutions (hereinafter referred

to as Special Directors) to exercise certain powers, carry out certain duties and perform certain functions conferred or imposed on or assigned to him or her by the President by proclamation in the Gazette.

(2) If a vacancy occurs in the office of a Director the President shall, subject to section 9, as soon as possible, appoint another person to that office.

(3) The Minister may from time to time, but subject to the laws governing the public service and after consultation with the National Director, from the ranks of the Deputy Directors or persons who qualify to be appointed as Deputy Director as contemplated in section 15 (2), appoint an acting Director to discharge the duties of a Director whenever the Director concerned is for any reason unable to perform the duties of his or her office, or while the appointment of a person to the office of Director is pending.

Term of office of Director

14.(1) Subject to subsection (2), a Director shall vacate his or her office on attaining the age of 65 years.

(2) A Special Director may be appointed for such fixed term as the President may determine at the time of such appointment, and the President may from time to time extend such term.

(3) The provisions of section 12 (3), (4), (6), (7), (8) and (9), in respect of the vacation of office and discharge of the National Director, shall apply, with the necessary changes, with regard to the vacation of office and discharge of a Director.

Appointment of Deputy Directors

15.(1) The Minister may, subject to the laws governing the public service and section 16 (4) and after consultation with the National Director-

(a) in respect of an Office referred to in section 6 (1), appoint a Deputy Director of Public Prosecutions as the head of such Office; and
(b) in respect of each office for which a Director has been appointed, appoint Deputy Directors of Public Prosecutions.

(2) A person shall only be appointed as a Deputy Director if he or she-

(a) has the right to appear in a High Court as contemplated in sections 2 and 3 (4) of the Right of Appearance in Courts Act, 1995 (Act 62 of 1995); and
(b) possesses such experience as, in the opinion of the Minister, renders him or her suitable for appointment as a Deputy Director.

(3) If a vacancy occurs in the office of a Deputy Director, the Minister shall, after consultation with the National Director, as soon as possible appoint another person to that office.

Appointment of prosecutors

16.(1) Prosecutors shall be appointed on the recommendation of the National Director or a member of the prosecuting authority designated for that purpose by the National Director, and subject to the laws governing the public service.

(2) Prosecutors may be appointed to-

(a) the Office of the National Director;
(b) Offices established by section 6 (1);
(c) Investigating Directorates; and
(d) lower courts in the Republic.

(3) The Minister may from time to time, in consultation with the National Director and after consultation with the Directors, prescribe the appropriate legal qualifications for the appointment of a person as prosecutor in a lower court.

(4) In so far as any law governing the public service pertaining to Deputy Directors and prosecutors may be inconsistent with this Act, the provisions of this Act shall apply.

Conditions of service of National Director, Deputy National Directors and Directors

17.(1) The remuneration, allowances and other terms and conditions of service and service benefits of the National Director, a Deputy National Director and a Director shall be determined by the President: Provided that-

(a) the salary of the National Director shall not be less than the salary of a judge of a High Court, as determined by the President under section 2 (1) of the Judges' Remuneration and Conditions of Employment Act, 1989 (Act 88 of 1989);
(b) the salary of a Deputy National Director shall not be less than 85 per cent of the salary of the National Director; and

(c) the salary of a Director shall not be less than 80 per cent of the salary of the National Director.

(2) If an officer or employee in the public service is appointed as the National Director, a Deputy National Director or a Director, the period of his or her service as National Director, Deputy National Director or Director shall be reckoned as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other conditions of service, and the provisions of any pension law applicable to him or her as such officer or employee, or in the event of his or her death, to his or her dependants and which are not inconsistent with this section, shall, with the necessary changes, continue so to apply.

(3) The National Director is entitled to pension provisioning and pension benefits determined and calculated under all circumstances, as if he or she is employed as a Director-General in the public service.

(4) The President may, whenever in his or her opinion it is necessary and after consultation with the Minister and the National Director, transfer and appoint any Director to any Office contemplated in section 6 (1) or Investigating Directorate, or as a Special Director.

[Date of commencement of s. 17: 1 August 1998.]

Remuneration of Deputy Directors and prosecutors

18.(1) Subject to the provisions of this section, any Deputy Director or prosecutor shall be paid a salary in accordance with the scale determined from time to time for his or her rank and grade by the Minister after consultation with the National Director and the Minister for the Public Service and Administration, and with the concurrence of the Minister of Finance, by notice in the Gazette.

(2) Different categories of salaries and salary scales may be determined in respect of different categories of Deputy Directors and prosecutors.

(3) A notice in terms of subsection (1) or any provision thereof may commence with effect from a date which may not be more than one year before the date of publication thereof.

(4) The first notice in terms of subsection (1) shall be issued as soon as possible after the commencement of this Act, and thereafter such a notice shall be issued if circumstances, including any revision and adjustment of salaries and allowances of the National Director and magistrates since the latest revision and adjustment of salaries of Deputy Directors or prosecutors, so justify.

(5) (a) A notice issued in terms of subsection (1) shall be tabled in Parliament within 14 days after publication thereof, if Parliament is then in session or, if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.

(b) If Parliament by resolution disapproves such a notice or any provision thereof, that notice or that provision, as the case may be, shall lapse to the extent to which it is so disapproved with effect from the date on which it is so disapproved.

(c) The lapsing of such a notice or provision shall not affect-

(i) the validity of anything done under the notice or provision up to the date on which it so lapsed; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred as at that date under or by virtue of the notice or provision.

(6) The salary payable to a Deputy Director or a prosecutor shall not be reduced except by an Act of Parliament: Provided that a disapproval contemplated in subsection (5) (b) shall, for the purposes of this subsection, not be deemed to result in a reduction of such salary.

Conditions of service of Deputy Directors and prosecutors, except remuneration

19. Subject to the provisions of this Act, the other conditions of service of a Deputy Director or a prosecutor shall be determined in terms of the provisions of the Public Service Act.

CHAPTER 4

POWERS, DUTIES AND FUNCTIONS OF MEMBERS OF THE PROSECUTING AUTHORITY (ss 20-25)

Power to institute and conduct criminal proceedings

20.(1) The power, as contemplated in section 179 (2) and all other relevant sections of the Constitution, to-

(a) institute and conduct criminal proceedings on behalf of the State;

(b) carry out any necessary functions incidental to instituting and conducting such criminal proceedings; and

(c) discontinue criminal proceedings,

vests in the prosecuting authority and shall, for all purposes, be exercised on behalf of the Republic.

(2) Any Deputy National Director shall exercise the powers referred to in subsection (1) subject to the control and directions of the National Director.

(3) Subject to the provisions of the Constitution and this Act, any Director shall, subject to the control and directions of the National Director, exercise the powers referred to in subsection (1) in respect of-

(a) the area of jurisdiction for which he or she has been appointed; and
(b) any offences which have not been expressly excluded from his or her jurisdiction, either generally or in a specific case, by the National Director.

(4) Subject to the provisions of this Act, any Deputy Director shall, subject to the control and directions of the Director concerned, exercise the powers referred to in subsection (1) in respect of-

(a) the area of jurisdiction for which he or she has been appointed; and
(b) such offences and in such courts, as he or she has been authorised in writing by the National Director or a person designated by the National Director.

(5) Any prosecutor shall be competent to exercise any of the powers referred to in subsection (1) to the extent that he or she has been authorised thereto in writing by the National Director, or by a person designated by the National Director.

(6) A written authorisation referred to in subsection (5) shall set out-

(a) the area of jurisdiction;
(b) the offences; and
(c) the court or courts,

in respect of which such powers may be exercised.

(7) No member of the prosecuting authority who has been suspended from his or her office under this Act or any other law shall be competent to exercise any of the powers referred to in subsection (1) for the duration of such suspension.

Prosecution policy and issuing of policy directives

21.(1) The National Director shall, in accordance with section 179 (5) (a) and (b) and any

other relevant section of the Constitution-

(a) with the concurrence of the Minister and after consulting the Directors, determine prosecution policy; and
(b)issue policy directives,

which must be observed in the prosecution process, and shall exercise such powers and perform such functions in respect of the prosecution policy, as determined in this Act or any other law.

(2) The prosecution policy or amendments to such policy must be included in the report referred to in section 35 (2) (a): Provided that the first prosecution policy issued under this Act shall be tabled in Parliament as soon as possible, but not later than six months after the appointment of the first National Director.

Powers, duties and functions of National Director

22.(1) The National Director, as the head of the prosecuting authority, shall have authority over the exercising of all the powers, and the performance of all the duties and functions conferred or imposed on or assigned to any member of the prosecuting authority by the Constitution, this Act or any other law.

(2) In accordance with section 179 of the Constitution, the National Director-

(a) must determine prosecution policy and issue policy directives as contemplated in section 21;
(b) may intervene in any prosecution process when policy directives are not complied with; and

(c) may review a decision to prosecute or not to prosecute, after consulting the relevant Director and after taking representations, within the period specified by the National Director, of the accused person, the complainant and any other person or party whom the National Director considers to be relevant.

(3) Where the National Director or a Deputy National Director authorised thereto in writing by the National Director deems it in the interest of the administration of justice that an offence committed as a whole or partially within the area of jurisdiction of one Director be investigated and tried within the area of jurisdiction of another Director, he or she may, subject to the provisions of section 111 of the Criminal Procedure Act, 1977 (Act 51 of 1977), in writing direct that the investigation and criminal proceedings in respect of such offence be conducted and commenced within the area of jurisdiction of such other Director.

(4) In addition to any other powers, duties and functions conferred or imposed on or assigned to the National Director by section 179 or any other provision of the

Constitution, this Act or any other law, the National Director, as the head of the prosecuting authority-

(a) with a view to exercising his or her powers in terms of subsection (2), may-
    (i) conduct any investigation he or she may deem necessary in respect of a prosecution or a prosecution process, or directives, directions or guidelines given or issued by a Director in terms of this Act, or a case or matter relating to such a prosecution or a prosecution process, or directives, directions or guidelines;
    (ii) direct the submission of and receive reports or interim reports from a Director in respect of a case, a matter, a prosecution or a prosecution process or directions or guidelines given or issued by a Director in terms of this Act; and
    (iii) advise the Minister on all matters relating to the administration of criminal justice;
(b) shall maintain close liaison with the Deputy National Directors, the Directors, the prosecutors, the legal professions and legal institutions in order to foster common policies and practices and to promote co-operation in relation to the handling of complaints in respect of the prosecuting authority;
(c) may consider such recommendations, suggestions and requests concerning the prosecuting authority as he or she may receive from any source;
(d) shall assist the Directors and prosecutors in achieving the effective and fair administration of criminal justice;
(e) shall assist the Deputy National Directors, Directors and prosecutors in representing their professional interests;
(f) shall bring the United Nations Guidelines on the Role of Prosecutors to the attention of the Directors and prosecutors and promote their respect for and compliance with the above-mentioned principles within the framework of national legislation;
(g) shall prepare a comprehensive report in respect of the operations of the prosecuting authority, which shall include reporting on-
    (i) the activities of the National Director, Deputy National Directors, Directors and the prosecuting authority as a whole;
    (ii) the personnel position of the prosecuting authority;
    (iii) the financial implications in respect of the administration and operation of the prosecuting authority;
    (iv) any recommendations or suggestions in respect of the prosecuting authority;
    (v) information relating to training programmes for prosecutors; and
    (vi) any other information which the National Director deems necessary;
(h) may have the administrative work connected with the exercise of his or her powers, the performance of his or her functions or the carrying out of his or her duties, carried out by persons referred to in section 37 of this Act; and
(i) may make recommendations to the Minister with regard to the prosecuting authority or the administration of justice as a whole.

(5) The National Director shall, after consultation with the Deputy National Directors and the Directors, advise the Minister on creating a structure, by regulation, in terms of which any person may report to such structure any complaint or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of a member of the prosecuting authority, and determining the powers and functions of such structure.

(6) (a) The National Director shall, in consultation with the Minister and after consultation with the Deputy National Directors and the Directors, frame a code of conduct which shall be complied with by members of the prosecuting authority.

(b) The code of conduct may from time to time be amended, and must be published in the Gazette for general information.

(7) The National Director shall develop, in consultation with the Minister or a person authorised thereto by the Minister, and the Directors, training programmes for prosecutors.

(8) The National Director or a person designated by him or her in writing may-

(3)if no other member of the prosecuting authority is available, authorise in writing any suitable person to act as a prosecutor for the purpose of postponing any criminal case or cases;

(b) authorise any competent person in the employ of the public service or any local authority to conduct prosecutions, subject to the control and directions of the National Director or a person designated by him or her, in respect of such statutory offences, including municipal laws, as the National Director, in consultation with the Minister, may determine.

(9) The National Director or any Deputy National Director designated by the National Director shall have the power to institute and conduct a prosecution in any court in the Republic in person.

Powers, duties and functions of Deputy National Directors

23. Any Deputy National Director may exercise or perform any of the powers, duties and functions of the National Director which he or she has been authorised by the National Director to exercise or perform.

Powers, duties and functions of Directors and Deputy Directors

24.(1) Subject to the provisions of section 179 and any other relevant section of the Constitution, this Act or any other law, a Director referred to in section 13 (1) (a) has, in respect of the area for which he or she has been appointed, the power to-

(a) institute and conduct criminal proceedings and to carry out functions incidental thereto as contemplated in section 20 (3);

(b) supervise, direct and co-ordinate the work and activities of all Deputy Directors and prosecutors in the Office of which he or she is the head;
(c) supervise, direct and co-ordinate specific investigations; and
(d) carry out all duties and perform all functions, and exercise all powers conferred or imposed on or assigned to him or her under any law which is in accordance with the provisions of this Act.

(2) In addition to the powers, duties and functions conferred or imposed on or assigned to an Investigating Director, such an Investigating Director or any person authorized thereto by him or her in writing may, for the purposes of criminal prosecution-

(a) institute an action in any court in the Republic; and
(b) prosecute an appeal in any court in the Republic emanating from criminal proceedings instituted by the Investigating Director or the person authorized thereto by him or her:

Provided that an Investigating Director or the person authorized thereto by him or her shall exercise the powers referred to in this subsection only after consultation with the Director of the area of jurisdiction concerned.

(3) A Special Director shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her by the President, subject to the directions of the National Director: Provided that if such powers, duties and functions include any of the powers, duties and functions referred to in section 20 (1), they shall be exercised, carried out and performed in consultation with the Director of the area of jurisdiction concerned.

(4) In addition to any other powers, duties and functions conferred or imposed on or assigned to him or her by section 179 of the Constitution, this Act or any other law, a Director referred to in section 13 (1)-

(a) shall, at the request of the National Director, submit reports to the National Director or assist the National Director in connection with a matter referred to in section 22 (4) (a) (ii);
(b) shall submit annual reports to the National Director pertaining to matters referred to in section 22 (4) (g);
(c) may, in the case of a Director referred to in section 13 (1) (a), give written directions or furnish guidelines to-
(i) the Provincial Commissioner of the police service referred to in section 207 (3) of the Constitution within his or her area of jurisdiction; or
(ii) any other person who within his or her area of jurisdiction-
(aa) conducts investigations in relation to offences; or
(bb) other than a private prosecutor, institutes or carries on prosecutions for offences; and
(d) shall, subject to the directions of the National Director, be responsible for the day to day management of the Deputy Directors and prosecutors under his or

her control.

(5) Without limiting the generality of subsection (4) (c) and subject to the directions of the National Director, directions or guidelines under that subsection may be given or furnished in relation to particular cases and may determine that certain offences or classes of offences must be referred to the Director concerned for decisions on the institution or conducting of prosecutions in respect of such offences or classes of offences.

(6) The Director shall give to the National Director a copy of each direction given or guideline furnished under subsection (4) (c).

(7) Where a Director-

(a) is considering the institution or conducting of a prosecution for an offence; and
(b) is of the opinion that a matter connected with or arising out of the offence requires further investigation,

the Director may request the Provincial Commissioner of the police service referred to in subsection (4) (c) (i) for assistance in the investigation of that matter and where the Director so requests, the Provincial Commissioner concerned shall, so far as practicable, comply with the request.

(8) The powers conferred upon a Director under section 20 (1) shall include the authority to prosecute in any court any appeal arising from any criminal proceedings.

(9) (a) Subject to section 20 (4) and the control and directions of a Director, a Deputy Director at the Office of a Director referred to in section 13 (1), has all the powers, duties and functions of a Director.
(b) A power, duty or function which is exercised, carried out or performed by a Deputy Director is construed, for the purposes of this Act, to have been exercised, carried out or performed by the Director concerned.

Powers, duties and functions of prosecutors

25.(1) A prosecutor shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her-

(a) under this Act and any other law of the Republic; and
(b) by the head of the Office or Investigating Directorate where he or she is employed or a person designated by such head; or
(c) if he or she is employed as a prosecutor in a lower court, by the Director in whose area of jurisdiction such court is situated or a person designated by such Director.

(2) Notwithstanding the provisions of the Right of Appearance in Courts Act, 1995 (Act 62

of 1995), or any other law, any prosecutor who-

(a) has obtained such legal qualifications as the Minister after consultation with the National Director may prescribe; and
(b) has at least three years' experience as a prosecutor of a magistrates' court of a regional division,

shall, subject to section 20 (6), have the right to appear in any court in the Republic.

CHAPTER 5

POWERS, DUTIES AND FUNCTIONS RELATING TO INVESTIGATING DIRECTORATES (ss 26-31)

Definitions

26.(1) In this Chapter, unless the context otherwise indicates-

'*inquiry*' means an inquiry in terms of section 28 (1);

'*specified offence*' means any offence which in the opinion of the Investigating Director falls within the category of offences set out in the proclamation referred to in section 7 (1) in respect of the Investigating Directorate concerned.

(2) This Chapter only relates to the Investigating Directorates established under section 7 (1) of this Act.

Laying of certain matters before Investigating Director

27. If any person has reasonable grounds to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may lay the matter in question before the Investigating Director by means of an affidavit or affirmed declaration specifying-

(a) the nature of the suspicion;
(b) the grounds on which the suspicion is based; and
(c) all other relevant information known to the declarant.

Inquiries by Investigating Director

28.(1) (a) If the Investigating Director has reason to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may hold an inquiry on the matter in question, whether or not it has been laid before him or her in terms of section 27.
(b) If the National Director refers a matter in relation to the alleged commission or

attempted commission of a specified offence to the Investigating Director, the Investigating Director shall hold an inquiry, or a preparatory investigation as referred to in subsection (13), on that matter.

(c) If the Investigating Director, at any time during the holding of an inquiry on a matter referred to in paragraph (a) or (b), considers it desirable to do so in the interest of the administration of justice or in the public interest, he or she may extend the inquiry so as to include any offence, whether or not it is a specified offence, which he or she suspects to be connected with the subject of the inquiry.

(2) (a) The Investigating Director may, if he or she decides to hold an inquiry, at any time prior to or during the holding of the inquiry designate any person referred to in section 7 (4) to conduct the inquiry, or any part thereof, on his or her behalf and to report to him or her.

(b) A person so designated shall for the purpose of the inquiry concerned have the same powers as those which the Investigating Director has in terms of this section and section 29 of this Act, and the instructions issued by the Treasury under section 39 of the Exchequer Act, 1975 (Act 66 of 1975), in respect of commissions of inquiry shall apply with the necessary changes in respect of such a person.

(3) All proceedings at an inquiry shall take place *in camera*.

(4) The procedure to be followed in conducting an inquiry shall be determined by the Investigating Director at his or her discretion, having regard to the circumstances of each case.

(5) The proceedings and evidence at an inquiry shall be recorded in such manner as the Investigating Director may deem fit.

(6) For the purposes of an inquiry-

(a) the Investigating Director may summon any person who is believed to be able to furnish any information on the subject of the inquiry or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the Investigating Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object;

(4)the Investigating Director or a person designated by him or her may question that person, under oath or affirmation administered by the Investigating Director, and examine or retain for further examination or for safe custody such a book, document or other object.

(7) A summons referred to in subsection (6) shall-

(a) be in the prescribed form;

(b) contain particulars of the matter in connection with which the person concerned is required to appear before the Investigating Director;
(c) be signed by the Investigating Director or a person authorized by him or her; and
(d) be served in the prescribed manner.

(8) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a person in terms of subsection (6): Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge.
(b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (10) (b) or (c), or in section 319 (3) of the Criminal Procedure Act, 1955 (Act 56 of 1955).

(9) A person appearing before the Investigating Director by virtue of subsection (6)-

(a) may be assisted at his or her examination by an advocate or an attorney;
(b) shall be entitled to such witness fees as he or she would be entitled to if he or she were a witness for the State in criminal proceedings in a magistrate's court.

(10) Any person who has been summoned to appear before the Investigating Director and who-

(a) without sufficient cause fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the Investigating Director from further attendance;
(b) at his or her appearance before the Investigating Director-
  (i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce;
  (ii) refuses to be sworn or to make an affirmation after he or she has been asked by the Investigating Director to do so;
(c) having been sworn or having made an affirmation-
  (i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her;
  (ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true,

shall be guilty of an offence.

(11) The Investigating Director may, whether or not he or she holds an inquiry, and, if he or she does hold an inquiry, at any time prior to, during or after the holding of the inquiry, if he or she is of the opinion that the facts disclose the commission of an offence by any person, notify the Director of the area of jurisdiction concerned accordingly.

(12) Upon the completion of an inquiry, the Investigating Director shall furnish the National Director with a report on his or her findings and recommendations, if any, and send a copy of the report to the Director of the area of jurisdiction concerned.

(13) If the Investigating Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an investigation in terms of subsection (1) (a), the Investigating Director may hold a preparatory investigation.

(14) The provisions of subsections (2) to (10), inclusive, and of sections 27 and 29 shall, with the necessary changes, apply to a preparatory examination referred to in subsection (13).

Entering upon premises by Investigating Director

29.(1) The Investigating Director or any person authorised thereto by him or her in writing may, subject to this section, for the purposes of an inquiry at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that inquiry is or is suspected to be, and may-

(a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
(b) examine any object found on or in the premises which has a bearing or might have a bearing on the inquiry in question, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
(c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the inquiry in question, and request from any person suspected of having the necessary information, an explanation of any entry therein;
(d) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the inquiry in question, or if he or she wishes to retain it for further examination or for safe custody.

(2) Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including-

(a) a person's right to, respect for and the protection of his or her dignity;

(b) the right of a person to freedom and security; and
(c) the right of a person to his or her personal privacy.

(3) No evidence regarding any questions and answers contemplated in subsection (1) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answers incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (12).

(4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.

(5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating-

(a) the nature of the inquiry in terms of section 28;
(b) the suspicion which gave rise to the inquiry; and
(5) the need, in regard to the inquiry, for a search and seizure in terms of this section,

that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.

(6) A warrant issued in terms of this section may be issued on any day and shall be of force until-
(a) it has been executed;
(b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
(c) the expiry of three months from the day of its issue,

whichever may occur first.

(7) (a) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.

(b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered with or disposed of if the provisions of the said proviso are first complied with.

(8) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.

(9) Any person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;
(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(10) (a) The Investigating Director or any person referred to in section 7 (4) (a) may without a warrant enter upon any premises and perform the acts referred to in subsection (1)-
(i) if the person who is competent to do so consents to such entry, search, seizure and removal; or
(ii) if he or she upon reasonable grounds believes that-
(aa) the required warrant will be issued to him or her in terms of subsection (4) if he or she were to apply for such warrant; and
(bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.

(b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary, and the person exercising the powers referred to in the said paragraph shall identify himself or herself at the request of the owner or the person in control of the premises.

(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that any item found on or in the premises concerned contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the item contains information which is relevant to the inquiry and that such information is necessary for the inquiry, request the registrar of the High Court which has jurisdiction or his or her delegate, to seize and remove that item for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

(12) Any person who-

(a) obstructs or hinders the Investigating Director or any other person in the performance of his or her functions in terms of this section;

(b) when he or she is asked in terms of subsection (1) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,

shall be guilty of an offence.

Preservation of secrecy and admissibility of evidence

30.(1) Notwithstanding any other law, but subject to subsection (3), no person shall without the permission of the Investigating Director disclose to any other person-

(a) any information which came to his or her knowledge in the performance of his or her functions in terms of this Act and relating to the business or affairs of any other person;

(b) the contents of any book or document or any other item in the possession of the Investigating Director; or

(c) the record of any evidence given at an inquiry,

except-

(i) for the purpose of performing his or her functions in terms of this Act; or
(ii) when required to do so by order of a court of law.

(2) Any person who contravenes subsection (1) shall be guilty of an offence.

(3) A person from whom a book or document has been taken under section 28 (6) (b) or 29 (1) (d) shall, as long as it is in the possession of the Investigating Director, at his or her request be allowed, at his or her own expense and under the supervision of the Investigating Director, to make copies thereof or to take extracts therefrom at any reasonable time.

Compensation regarding expenses

31. The Director-General: Justice may in his or her discretion, on the recommendation of the Investigating Director and with the concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an inquiry be paid from State funds to that person.

CHAPTER 6

GENERAL PROVISIONS (ss 32-42)

Impartiality of, and oath or affirmation by members of prosecuting authority

32.(1) (a) A member of the prosecuting authority shall serve impartially and exercise, carry

out or perform his or her powers, duties and functions in good faith and without fear, favour or prejudice and subject only to the Constitution and the law.

(b) Subject to the Constitution and this Act, no organ of state and no member or employee of an organ of state nor any other person shall improperly interfere with, hinder or obstruct the prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.

(2) (a) A National Director and any person referred to in section 4 must, before commencing to exercise, carry out or perform his or her powers, duties or functions in terms of this Act, take an oath or make an affirmation, which shall be subscribed by him or her, in the form set out below, namely-

'I .....
(full name)
do hereby swear/solemnly affirm that I will in my capacity as National Director/Deputy National Director of Public Prosecutions/Director/Deputy Director of Public Prosecutions/prosecutor, uphold and protect the Constitution and the fundamental rights entrenched therein and enforce the Law of the Republic without fear, favour or prejudice and, as the circumstances of any particular case may require, in accordance with the Constitution and the Law. (In the case of an oath: So help me God.)'.

(b) Such an oath or affirmation shall-

(i) in the case of the National Director, or a Deputy National Director, Director or Deputy Director, be taken or made before the most senior available judge of the High Court within which area of jurisdiction the Office of the National Director, Director or Deputy Director, as the case may be, is situated; or

(ii) in the case of a prosecutor, be taken or made before the Director in whose Office the prosecutor concerned has been appointed or before the most senior judge or magistrate at the court where the prosecutor is stationed,

who shall at the bottom thereof endorse a statement of the fact that it was taken or made before him or her and of the date on which it was so taken or made and append his or her signature thereto.

Minister's final responsibility over prosecuting authority

33. (1) The Minister shall, for purposes of section 179 of the Constitution, this Act or any other law concerning the prosecuting authority, exercise final responsibility over the prosecuting authority in accordance with the provisions of this Act.

(2) To enable the Minister to exercise his or her final responsibility over the prosecuting

authority, as contemplated in section 179 of the Constitution, the National Director shall, at the request of the Minister-

(a) furnish the Minister with information or a report with regard to any case, matter or subject dealt with by the National Director or a Director in the exercise of their powers, the carrying out of their duties and the performance of their functions;
(b) provide the Minister with reasons for any decision taken by a Director in the exercise of his or her powers, the carrying out of his or her duties or the performance of his or her functions;
(c) furnish the Minister with information with regard to the prosecution policy referred to in section 21 (1) (a);
(d) furnish the Minister with information with regard to the policy directives referred to in section 21 (1) (b);
(e) submit the reports contemplated in section 34 to the Minister; and
(f) arrange meetings between the Minister and members of the prosecuting authority.

Reports by Directors

34.(1) A Director must annually, not later than the first day of March, submit to the National Director a report on all his or her activities during the previous year.

(2) The National Director may at any time request a Director to submit a report with regard to a specific activity relating to his or her powers, duties or functions.

(3) A Director may, at any time, submit a report to the National Director with regard to any matter relating to the prosecuting authority, if he or she deems it necessary.

Accountability to Parliament

35.(1) The prosecuting authority shall be accountable to Parliament in respect of its powers, functions and duties under this Act, including decisions regarding the institution of prosecutions.

(2) (a) The National Director must submit annually, not later than the first day of June, to the Minister a report referred to in section 22 (4) (g), which report must be tabled in Parliament by the Minister within 14 days, if Parliament is then in session, or if Parliament is not then in session, within 14 days after the commencement of its next ensuing session.
(b) The National Director may, at any time, submit a report to the Minister or Parliament with regard to any matter relating to the prosecuting authority, if he or she deems it necessary.

Expenditure of prosecuting authority

36.(1) The expenses incurred in connection with-

(a) the exercise of the powers, the carrying out of the duties and the performance of the functions of the prosecuting authority; and

(2)the remuneration and other conditions of service of members of the prosecuting authority,

shall be defrayed out of monies appropriated by Parliament for that purpose.

(2) The Department of Justice must, in consultation with the National Director, prepare the necessary estimate of revenue and expenditure of the prosecuting authority.

(3) The Director-General: Justice shall, subject to the Exchequer Act, 1975 (Act 66 of 1975)-

(a) be charged with the responsibility of accounting for State monies received or paid out for or on account of the prosecuting authority;

(b)cause the necessary accounting and other related records to be kept.

(4) The records referred to in subsection (3) (b) shall be audited by the Auditor-General.

Administrative staff

37. The administrative staff of-

(a) the Office of the National Director;

(b)the Offices of the Directors, including Investigating Directorates; and

(c) the Offices of prosecutors as determined by the National Director, in consultation with the Director concerned,

shall be persons appointed or employed under the Public Service Act.

Engagement of persons to perform services in specific cases

38.(1) The National Director may in consultation with the Minister, and a Deputy National Director or a Director may, in consultation with the Minister and the National Director, on behalf of the State, engage, under agreements in writing, persons having suitable qualifications and experience to perform services in specific cases.

(2) The terms and conditions of service of a person engaged by the National Director, a Deputy National Director or a Director under subsection (1) shall be as determined from time to time by the Minister in concurrence with the Minister of Finance.

[Date of commencement of s. 38: 23 April 1999.]

Disclosure of interest and non-performance of other paid work

39.(1) The National Director, a Deputy National Director and a Director shall give written notice to the Minister of all direct or indirect pecuniary interests that they have or acquire in any business whether in the Republic or elsewhere or in any body corporate carrying on any such business.

(2) The National Director, a Deputy National Director and a Director shall not, without the consent of the President, perform any paid work outside his or her duties of office.

Regulations

40.(1) The Minister may make regulations, not inconsistent with this Act, prescribing-

(a) matters required or permitted by this Act to be prescribed;
(b) the steps to be taken to ensure compliance with the code of conduct referred to in section 22 (6); or
(c) matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Any regulation made in terms of subsection (1) which may result in the expenditure of State monies shall be made in consultation with the Minister of Finance.

Offences and penalties

41.(1) Any person who contravenes the provisions of section 32 (1) (b) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

(2) Any person convicted of an offence referred to in section 28 (10), 29 (12) or 30 (2) shall be liable to a fine or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

Limitation of liability

42. No person shall be liable in respect of anything done in good faith under this Act.

CHAPTER 7

TRANSITIONAL ARRANGEMENTS (ss 43-46)

Transitional arrangements

43.(1) (a) Anyone holding office as an attorney-general in terms of the Attorney-General Act, 1992 (Act 92 of 1992), shall, subject to paragraph (b), be deemed to have been appointed as a Director in terms of this Act, and shall continue to function in terms of the laws applicable to his or her Office.

(b) The President shall, as soon as reasonably possible after the commencement of this section, appoint each attorney-general referred to in paragraph (a) as a Director at the Office that, and for such term as the President, after consultation with the attorney-general concerned, may determine, but such term shall not extend beyond the date on which the attorney-general concerned will attain the age of 65 years.

(c) The provisions of section 12 (4) shall apply with the necessary changes in respect of a Director referred to in paragraph (b): Provided that the reference in section 12 (4) to the age of 65 years shall be construed as a reference to the date on which the Director's term of office as contemplated in paragraph (b) expires.

(d) If the term of office of a Director appointed under paragraph (b) expires before he or she has attained the age of 65 years, he or she shall be entitled to pension benefits determined and calculated under all circumstances as if he or she was employed as a Director-General in the public service, who served as a Director-General for five years.

(2) Anyone holding office as an attorney-general in terms of a law other than the Attorney-General Act, 1992, or holding an appointment as acting attorney-general, shall be deemed to have been appointed as an acting Director under this Act at the office where he or she holds such office or appointment, and shall continue to function in that capacity until otherwise determined under this Act or any other law.

(3) (a) Any person who immediately before the commencement of this section was employed by the State as a deputy attorney-general shall continue in such employment and shall be deemed to have been appointed as a Deputy Director in terms of section 15 (1).

(b) Any person who immediately before the commencement of this section was employed by the State as a state advocate or prosecutor and who has been delegated in terms of any law to institute criminal proceedings and to conduct any prosecution in criminal proceedings on behalf of the State-

(1) shall continue in such employment as a prosecutor; and

(ii) shall be deemed to have been authorised to exercise the powers referred to in section 20 (1): Provided that no prosecutor shall, by virtue of this section, have more powers than he or she would have had under the delegation concerned.

(4) Criminal proceedings which have been instituted before the commencement of this Act, must be disposed of as if the decision to institute and prosecute in such criminal proceedings had been taken by a member of the prosecuting authority appointed in terms of this Act.

(5) Any attorney-general, deputy attorney-general, state advocate or prosecutor who continues in office in terms of this section must, within three months after the commencement of this Act, take the oath or make the affirmation referred to in section 32 (2).

(6) As from the date of the commencement of this section, all offices of attorneys-general at the High Courts contemplated in item 16 (4) (a) of Schedule 6 to the Constitution, shall become offices of the prosecuting authority as referred to in section 6 (1) of this Act.

(7) (a) As from the date of the commencement of this section-

(i) the Office for Serious Economic Offences established by section 2 of the Investigation of Serious Economic Offences Act, 1991 (Act 117 of 1991), shall become an Investigating Directorate, which shall be deemed to have been established by the President under section 7 and which shall be known as the Investigating Directorate: Serious Economic Offences;

(ii) subject to the provisions of this Act, the Director and staff of the Office for Serious Economic Offences referred to in section 3 of the Investigation of Serious Economic Offences Act, 1991, shall remain in office and continue their functions under this Act; and

(iii) all pending matters pertaining to the Office for Serious Economic Offences shall be dealt with as if this Act had at all times been in force.

(b) Notwithstanding the repeal of the Investigation of Serious Economic Offences Act, 1991, the regulations made under section 10 of that Act shall remain in force pending the repeal or amendment thereof under section 40 of this Act.

(c) The President may, on the request of the National Director and by proclamation in the Gazette, further specify the categories of offences in respect of which the Investigating Directorate: Serious Economic Offences must exercise its functions.

(8) Subject to the Constitution and this Act, all measures which immediately before the commencement of this section were in operation and applied to attorneys-general, deputy attorneys-general, state advocates and prosecutors, including measures regarding remuneration, pension and pension benefits, leave gratuity and any other term and condition of service, shall continue in operation and to apply to the said attorneys-general, deputy attorneys-general, state advocates and prosecutors until amended or repealed by this Act: Provided that no such measure shall, except in accordance with an applicable law or agreement, be changed in a manner which affects such attorneys-general, deputy attorneys-general, state advocates and prosecutors to their detriment.

(9) Notwithstanding the commencement of this Act, all measures regulating the institution and conducting of prosecutions in any court shall remain in force until repealed or amended under this Act or by any competent authority.

Amendment or repeal of laws

44. The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof.

Interpretation of certain references in laws

45. Any reference in any law to-

(1)an attorney-general shall, unless the context indicates otherwise, be construed as a reference to the National Director; and

(b) an attorney-general or deputy attorney-general in respect of the area of jurisdiction of a High Court, shall be construed as a reference to a Director or Deputy Director appointed in terms of this Act, for the area of jurisdiction of that Court.

[S. 45 substituted by s. 13 of Act 122 of 1998.]

Short title and commencement

46. This Act shall be called the National Prosecuting Authority Act, 1998, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

Schedule
(Laws amended or repealed by section 44)

Number and year of law	Title	Extent of amendment or repeal
Act No 51 of 1977	Criminal Procedure Act, 1977	(a) Repeal of sections 2 and 5. (b) Amendment of section 111 by the "(1)(a) The direction of the National Director of Public Prosecutions contemplated in section 179 (1) (a) of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996), shall state the name of the accused, the relevant offence, the place at which (if known) and the Director in whose area of jurisdiction the relevant investigation and criminal proceedings shall be conducted and commenced. (b) A copy of the direction shall be served on the accused, and the original thereof shall, save as is provided in subsection (3) be handed in at the court in which the proceedings are to commence. (2) The court in which the proceedings commence shall have jurisdiction to act with regard to the offence in question as if the offence had been committed within the area of jurisdiction of such court.
		(3) Where the National Director issues a direction contemplated in subsection (1) after an accused has already appeared in a court, the original of such direction shall be handed in at the relevant proceedings and attached to the record of the proceedings, and the court in question shall- (a) cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time and a date

Number and year of law	Title	Extent of amendment or repeal
		and to the court designated by the Director in whose area of jurisdiction the said criminal proceedings shall commence, whereupon such time and date and court shall be deemed to be the time and date and court appointed for the trial of the accused or to which the proceedings pending against the accused are adjourned; (b) forward a copy of the record of the proceedings to the court in which the accused is to appear, and that court shall receive such copy and continue with the proceedings against the accused as if such proceedings had commenced before it.”.
Act No. 117 of 1991	Investigation of Serious Economic Offences Act, 1991	The whole
Act No. 92 of 1992	Attorney-General Act, 1992	The whole