

REPUBLIC OF SOUTH AFRICA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE

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*(As introduced in the National Assembly (proposed section 76(1)), explanatory  
summary of Bill published in Government Gazette No. xxx of xxx (The English  
text is the official text of the Bill)*  
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(MINISTER OF POLICE)

[B 2010]

**BILL**

**To make provision for the establishment of an Independent Police Investigative Directorate and to regulate the functions of the Directorate, to provide for the establishment of a Management Committee and Consultative Forum and their respective functions; to provide for the appointment and powers of investigators; to provide for transitional arrangements; and to provide for the repeal and amendment of certain laws; and to provide for matters connected therewith.**

**PREAMBLE**

**WHEREAS** section 206(6) of the Constitution provides that, on receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province;

**AND WHEREAS** there is a need to ensure effective independent oversight of the South African Police Service and Municipal Police Services;

**AND WHEREAS** Chapter 2 of the Constitution provides for the upholding and safeguarding of fundamental rights of every person.

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:—

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**CHAPTER 1**  
**DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT INDEPENDENCE AND**  
**IMPARTIALITY**

**Definitions**

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

“**Committee**” means the Management Committee established under section 12;

“**Directorate**” means the Independent Police Investigative Directorate established in terms of section 2;

“**Executive Director**” means the Executive Director appointed in terms of section 5(1);

“**financial year**” means the period from 1 April in any year to 31 March in the ensuing year;

“**fixed date**” means the date of commencement of this Act;

“**forum**” means the Consultative forum established under section 16;

“**investigator**” means a person appointed under section 23;

“**MEC**” means the Member of the Executive Council of a province who is responsible for safety and security in that province;

“**Minister**” means the Minister of Police;

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

**“organ of state”** means an organ of state as defined in section 239 of the Constitution;

**“provincial head”** means a person appointed under section 19;

**“Public Finance Management Act”** means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

**“Public Service Act”** means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

**“Secretariat”** means the Civilian Secretariat for Police Service established in terms of section 3(1) of the Civilian Secretariat for Police Service Act, 2010;

**“Secretary”** means the Secretary for the Police Service appointed in terms of section 6(1) of the Civilian Secretariat for Police Service Act, 2010”.

**“security clearance certificate”** means an official document issued by the Executive Director indicating the degree of security competence of a person;

**“South African Police Service Act”** means the South African Police Service Act, 1995 (Act No. 68 of 1995); and

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

### **Objects of Act**

2. The objects of this Act are—

- (a) to give effect to the provision of the Constitution 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 national strategic objectives with that of provincial 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 the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate; and
- (f) to provide for close co-operation between the Directorate and the Secretariat.

### **Establishment**

**3.** (1) The Independent Police Investigative Directorate to be structured at national level, with provincial offices is hereby established.

(2) The Directorate must exercise its functions in accordance with this Act and any other relevant law.

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

**Independence and impartiality**

**4.** (1) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.

**CHAPTER 2**

**NATIONAL OFFICE**

**National office**

**5.** The national office is hereby established and is headed by the Executive Director.

**Appointment of Executive Director**

**6.** (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.

(3) In the event of the an appointment being confirmed—

(a) such successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and

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

(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 shall not exceed one year.

(6) The Minister may, remove the Executive Director from office on account of—

(a) misconduct;

(b) ill health; or

(c) inability to perform the duties of that office effectively.

### **Responsibilities of Executive Director**

7. (1) The Executive Director is the accounting officer of the Directorate and must ensure that—
- (a) proper records of all financial transactions, assets and liabilities of the Directorate are kept;
  - (b) as soon as is practical, but not later than four months after the end of each financial year, annual financial statements in respect of the financial year in question are prepared and submitted to the Minister for approval;
  - (c) the financial affairs of the Directorate comply with the Public Finance Management Act; and
  - (d) an annual report is prepared as contemplated in section 29.

(2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section 21(1).

(3) (a) The Executive Director must appoint such staff as may be necessary to enable the Directorate to perform its functions in terms of this Act.

(b) The staff component must be established in accordance with the Public Service Act.

(c) The conditions of service including remuneration and allowances of such staff are regulated in terms of the Public Service Act.

(d) The Executive Director must direct that a register of declaration of interest by managers and investigators be kept in the prescribed form and manner.

(e) The Executive Director must give guidelines with regard to training of staff at national and provincial level.

(4) The Executive Director must refer criminal offences revealed by the outcome of an investigation to the National Prosecuting Authority for criminal prosecution.

(5) Once a decision to prosecute is taken, the Executive Director must notify the Minister, of the National Prosecuting Authority's decision to prosecute.

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

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

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

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

(11) The Executive Director must provide strategic leadership to the Directorate.

(12) The Executive Director must at any time when requested to do so by the Minister or Parliament, report on the activities of the Directorate to the Minister or Parliament.

### **Composition of national office**

8. (1) The national office consists of the—

(b) Corporate Services Unit;

(c) Investigation and Information Management Unit;

(d) Legal Services Unit; and

(e) any other unit, subject to the approval of the Minister and Parliament.

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

(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 investigation as prescribed by the Minister.

subsection (3), must be done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2001 (Act No. 65 of 2002).

(5) The Executive Director must issue a security clearance certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an employee of the Directorate.

(6) Any member of the national directorate may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3).

(7) The Executive Director, after consultation with the National Intelligence Agency, may withdraw a security clearance certificate referred to in subsection (5) if he or she obtains information which, after evaluation by him or her, causes him or her to believe that the person in question could be a security risk or acted in any manner prejudicial to the objectives of the Directorate.

(8) If the security clearance certificate referred to in subsection (7) is withdrawn, the person concerned is unfit to continue to hold such office and the Executive Director must discharge him or her from the Directorate.

#### **Functions of national office**

9. The functions of the national office are to—