

REPUBLIC OF SOUTH AFRICA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE BILL

*(As introduced in the National Assembly (proposed section 76); explanatory summary of
Bill published in Gazette No. 33357 of 5 July 2010)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B 15—2010]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

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; 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:—

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS, ESTABLISHMENT AND INDEPENDENCE, IMPARTIALITY AND ACCOUNTABILITY 5

1. Definitions
2. Establishment
3. Independence, impartiality and accountability

CHAPTER 2**NATIONAL OFFICE**

4.	National office	
5.	Appointment of Executive Director	
6.	Responsibilities of Executive Director	5
7.	Composition of national office	
8.	Functions of national office	
9.	Reporting on cases	
10.	Delegations	

CHAPTER 3

10

MANAGEMENT COMMITTEE

11.	Establishment of Management Committee	
12.	Composition of Committee	
13.	Functions of Committee	
14.	Meetings of Committee	15

CHAPTER 4**CONSULTATIVE FORUM**

15.	Establishment of Consultative Forum	
16.	Composition of forum	
17.	Functions of forum	20
18.	Meetings of forum	

CHAPTER 5**PROVINCIAL OFFICES**

19.	Provincial offices	
20.	Appointment of provincial heads	25
21.	Responsibilities of provincial heads	

CHAPTER 6**APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS**

22.	Appointment of investigators	30
23.	Remuneration and conditions of service of investigators	
24.	Functions and investigative powers	
25.	Type of matters to be investigated	
26.	Conflict of interest and disclosure of interest	
27.	Integrity measures	35

CHAPTER 7**FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT**

28.	Finances and accountability	
29.	Annual report	

CHAPTER 8

40

OFFENCES AND PENALTIES

30.	Offences and penalties	
-----	------------------------	--

CHAPTER 9

REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT

31. Regulations	
32. Transitional arrangements	5
33. Amendment and repeal of laws	
34. Short title and commencement	
Schedule 1	
Schedule 2	

CHAPTER 1 10

DEFINITIONS, ESTABLISHMENT AND INDEPENDENCE, IMPARTIALITY AND ACCOUNTABILITY

Definitions

1. In this Act, unless the context indicates otherwise—
 - “**Committee**” means the Management Committee established under section 11; 15
 - “**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; 20
 - “**fixed date**” means the date of commencement of this Act;
 - “**forum**” means the Consultative Forum established under section 15;
 - “**investigator**” means a person appointed under section 22;
 - “**MEC**” means the Member of the Executive Council of a province who is responsible for safety and security in that province; 25
 - “**Minister**” means the Minister of Police;
 - “**organ of state**” means an organ of state as defined in section 239 of the Constitution;
 - “**provincial head**” means a person appointed under section 20; 30
 - “**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 Secretariat for Police established under section 2(1) of the South African Police Service Act; 35
 - “**Secretary**” means the Secretary of Police appointed under section 2(2) of the South African Police Service Act;
 - “**South African Police Service Act**” means the South African Police Service Act, 1995 (Act No. 68 of 1995); and 40
 - “**this Act**” includes the regulations.

Establishment

2. (1) The Independent Police Investigative Directorate, to be structured at national level, with branches in the provinces, is hereby established.
- (2) The Directorate must exercise its functions in accordance with this Act and any other relevant law. 45
- (3) The Public Finance Management Act applies to the Directorate.

Independence, impartiality and accountability

3. (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. 50

CHAPTER 2

NATIONAL OFFICE

National office

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

Appointment of Executive Director 5

5. (1) The Minister must, subject to the laws governing the public service, appoint the Executive Director.
- (2) The Minister must as soon as practically possible inform the relevant parliamentary committee of the name of the successful candidate.
- (3) In the event of an appointment being confirmed— 10
- (a) the 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 must be for a period not exceeding five years: Provided that the person appointed is eligible for a consecutive appointment not exceeding 15 two terms.
- (4) The Minister may appoint a person as acting Executive Director if—
- (a) the Executive Director is absent for a substantial period; or
 - (b) the appointment of the Executive Director is pending.
- (5) The Minister may remove the Executive Director from office on account of— 20
- (a) misconduct;
 - (b) ill health; or
 - (c) inability to perform the duties of that office effectively.

Responsibilities of Executive Director

6. (1) The Executive Director is the accounting officer of the Directorate and must 25 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 30 question are prepared and submitted to the Minister for approval; and
 - (c) the financial affairs of the Directorate comply with the Public Finance Management Act.
- (2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section 20(1). 35
- (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, 40 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. 45
- (4) The Executive Director may refer matters investigated by the Directorate under this Act to the National Prosecuting Authority for criminal prosecution.
- (5) The Executive Director must provide strategic leadership to the Directorate.
- (6) 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. 50

Composition of national office

7. (1) The Executive Director must appoint members at the national office.
- (2) The national office consists of the—

- (a) Executive Director who controls the office;
- (b) Corporate Services Unit;
- (c) Investigation and Information Management Unit; and
- (d) Legal Services Unit.

(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 a security screening investigation by the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002). 5

(4) The Executive Director must issue a certificate of appointment 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. 10

(5) 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).

(6) The Executive Director, after consultation with the National Intelligence Agency, may withdraw a certificate referred to in subsection (4) 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. 15

(7) If the certificate referred to in subsection (6) 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. 20

Functions of national office

8. The functions of the national office are to—

- (a) give strategic leadership to the Directorate; 25
- (b) develop and implement policy for the Directorate;
- (c) oversee and monitor performance at provincial level and intervene to rectify challenges where necessary;
- (d) gather, keep and analyse information in relation to investigations;
- (e) identify and review legislative needs and report on such matters to the Secretariat; 30
- (f) do internal auditing of the Directorate;
- (g) provide administrative support to the Directorate;
- (h) strengthen the co-operative relationship between the Directorate and the Secretariat; 35
- (i) report to an MEC on matters referred to the head of that provincial directorate by the MEC;
- (j) submit an annual report to the Minister and to Parliament;
- (k) implement information measures to develop public awareness of the provisions of this Act; and 40
- (l) deal with any other matter referred to it by the Minister.

Reporting on cases

9. (1) The Directorate must provide reports to the Secretariat on an ongoing basis on the finalisation of investigations and on its findings and recommendations made.

(2) The Secretariat must monitor implementation by the South African Police Service of the recommendations made by the Directorate and provide the Executive Director with regular reports on steps taken by it to ensure compliance. 45

(3) The Directorate and the Secretariat must meet at least four times a year on issues of common interest.

Delegations

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10. (1) Subject to subsections (2) and (3), the Executive Director may delegate functions entrusted to the Executive Director under this Act to any other person with appropriate knowledge and experience who is under the control of the Executive Director.

(2) A delegation under subsection (1) must be in writing and— 55

- (a) may be subject to any conditions or restrictions determined by the Executive Director;

- (b) does not prevent the exercise of any power of the Executive Director; and
 - (c) may be withdrawn or amended by the Executive Director.
- (3) The Executive Director may not delegate any of the powers, functions or duties referred to in sections 6, 7, 20, 22, 28(2), 29(1) and (2) and 31 of this Act.

CHAPTER 3

5

MANAGEMENT COMMITTEE

Establishment of Management Committee

11. There is hereby established a Management Committee.

Composition of Committee

12. (1) The Committee established in terms of section 11 consists of— 10
- (a) the Executive Director; and
 - (b) the provincial head for each province.
- (2) The Executive Director is the chairperson of the Committee.
- (3) The Executive Director may invite any person not mentioned in subsection (1) to a meeting of the Committee. 15

Functions of Committee

13. (1) The Committee is responsible for the following functions:
- (a) To ensure co-ordination and alignment within each province regarding—
 - (i) strategic and performance plans;
 - (ii) priorities, objectives and strategies across national and provincial levels; 20
 - (iii) adherence to financial requirements prescribed in terms of the Public Finance Management Act; and
 - (iv) interaction between the various provincial directorates;
 - (b) to identify any other matter of strategic importance within each province;
 - (c) to discuss performance in the provision of services in order to detect failures 25
 - and to initiate preventative or corrective action when necessary;
 - (d) to raise matters of national interest; and
 - (e) to ensure regular reporting on matters specific to the performance of the functions of the respective provincial directorates.

Meetings of Committee 30

14. (1) The Committee meets as often as circumstances require, but at least four times every year, at such time and place as the Executive Director may determine.
- (2) The Committee may determine its own procedure for its meetings.

CHAPTER 4

CONSULTATIVE FORUM

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Establishment of Consultative Forum

15. There is hereby established a Consultative Forum.

Composition of forum

16. (1) The forum established in terms of section 15 consists of— 40
- (a) the Executive Director; and
 - (b) the Secretary.
- (2) The Executive Director or Secretary may invite any person not mentioned in subsection (1) to a meeting of the forum.

Functions of forum

17. The functions of the forum are to—
- (a) facilitate closer cooperation between the Secretary and the Executive Director;
 - (b) discuss trends, recommendations and implementation of recommendations; 5
 - and
 - (c) initiate special investigations.

Meetings of forum

18. (1) The Secretary must convene the first meeting of the forum and preside at that meeting. 10
- (2) The Secretary and the Executive Director must alternate as chairperson at meetings.
- (3) The forum determines its own procedure and agenda for its meetings.
- (4) The forum must meet at least four times a year on issues of common interest.

CHAPTER 5 15

PROVINCIAL OFFICES

Provincial offices

19. Each provincial office is headed by a provincial head who is appointed—
- (a) at the level of Chief Director; and
 - (b) on a permanent basis in terms of section 20(1). 20

Appointment of provincial heads

20. (1) The Executive Director appoints the provincial head for each province in accordance with the laws governing the public service.
- (2) The provincial head must conclude a written performance agreement with the Executive Director— 25
- (a) within a reasonable time after the appointment of the provincial head; and
 - (b) thereafter, annually within one month of the commencement of each financial year.
- (3) The performance agreement referred to in subsection (2) must include— 30
- (a) measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met;
 - (b) standards and procedures for evaluating performance and intervals for evaluation; and
 - (c) the consequences of substandard performance. 35

Responsibilities of provincial head

21. (1) A provincial head is responsible for the following:
- (a) Appointment and performance management of staff at provincial level;
 - (b) to facilitate investigation of cases and to perform any other function incidental to such investigations; 40
 - (c) to control and monitor active cases;
 - (d) to report to the Executive Director on matters investigated;
 - (e) to facilitate cooperation between the provincial head and the provincial police secretariat;
 - (f) to report to the Executive Director on recommendations and finalisation of cases; 45
 - (g) to report to the Executive Director on the management of provincial offices and finances;
 - (h) to ensure adherence to guidelines issued by the national office relating to the investigation and management of cases by officials within the respective provincial offices; 50

- (i) to keep proper financial records in accordance with the prescribed norms and standards;
- (j) to prepare financial statements for submission to the Executive Director within two months after the end of the financial year;
- (k) to ensure compliance with administrative guidelines issued by the Executive Director; and
- (l) to manage the provincial office.

CHAPTER 6

APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS 10

Appointment of investigators

22. (1) The Executive Director, in consultation with the provincial head, must appoint a fit and proper person as an investigator of the Directorate, subject to subsections (2) and (3).
- (2) A person appointed as an investigator— 15
- (a) must have at least a grade 12 certificate or a relevant diploma or degree; and
 - (b) must have—
 - (i) knowledge and relevant experience of criminal investigation;
 - (ii) knowledge and relevant experience of legal process;
 - (iii) knowledge and relevant experience of human rights; or 20
 - (iv) any other relevant experience.
- (3) A person may not be appointed as an investigator unless information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002). 25
- (4) The Executive Director or official so delegated by him or her must issue a certificate of appointment in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an investigator in terms of this Act.
- (5) Any investigator 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). 30
- (6) A person may be discharged from his or her position as an investigator if he or she fails to conform to the security clearance prescripts.
- (7) An investigator is given policing powers contemplated in section 24(2) within three months after his or her appointment. 35

Remuneration and conditions of service of investigators

23. The conditions of service, including the salary and allowances payable to an investigator appointed under this Act, must be on par with members appointed as detectives in terms of the South African Police Service Act. 40

Functions and investigative powers

24. (1) An investigator may, subject to the control and direction of the Executive Director, exercise such powers and must perform such duties as are conferred or imposed upon him or her by or under this Act or any other law, and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions under this Act. 45
- (2) An investigator has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to—
- (a) the investigation of offences; 50
 - (b) the ascertainment of bodily features of an accused person;
 - (c) the entry and search of premises;
 - (d) the seizure and disposal of articles;

- (e) arrests;
- (f) the execution of warrants; and
- (g) the attendance of an accused person in court.

(3) (a) For the purposes of conducting an investigation, an investigator may direct any person to submit an affidavit or affirmed declaration or to appear before him or her to give evidence or to produce any document in that person's possession or under his or her control which has a bearing on the matter being investigated, and may question such person thereon. 5

(b) An investigator or any person duly authorised thereto by him or her may request an explanation from any person whom he or she reasonably suspects of having information which has a bearing on a matter being or to be investigated. 10

Type of matters to be investigated

25. (1) The Directorate must investigate—

- (a) any deaths in police custody, or deaths as a result of police actions;
- (b) rape by a police officer, whether the police officer is on or off duty; 15
- (c) rape of a detainee by other detainees while that detainee is in police custody;
- (d) any matter that is referred to it by the Minister or an MEC through the Executive Director;
- (e) any complaint of torture which is referred to it by a Station Commissioner, Magistrate, Judge, legal representative or the complainant in the case where the complainant is unrepresented; and 20
- (f) any other matter referred to it as a result of a decision of the Executive Director, or if so requested by the Minister, an MEC or the Secretary, as the case may be.

(2) The Directorate must investigate matters relating to— 25

- (a) deaths in custody or deaths as a result of police actions;
- (b) rape by a police officer; and
- (c) rape of a detainee by other detainees, in the prescribed manner.

(3) The Directorate may investigate matters relating to— 30

- (a) systemic corruption involving the police;
- (b) corruption matters within the police initiated by the Executive Director or referred to the Directorate by the Minister, an MEC or the Secretary, as the case may be; and
- (c) inefficiency of the police to carry out its duties. 35

Conflict of interest and disclosure of interest

26. (1) No member of the Directorate may conduct an investigation, or render assistance with an investigation, in respect of a matter in which he or she has a financial or any other interest which might preclude him or her from exercising or performing his or her powers, duties and functions in an objective manner. 40

(2) If, during an investigation, it appears to a member of the Directorate that a matter concerns a financial or other interest of that member as referred to in subsection (1), that member must—

- (a) immediately and fully disclose the fact and nature of that interest to the Executive Director; and 45
- (b) withdraw from any further involvement in that investigation.

Integrity measures

27. (1) The Minister may prescribe measures for integrity testing of members of the Directorate, which may include random entrapment, testing for the abuse of alcohol or drugs, or the use of a polygraph or similar instrument to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person. 50

(2) The necessary samples required for any test referred to in subsection (1) may be taken, but any sample taken from the body of a member may only be taken by a registered medical practitioner or a registered nurse.

(3) The Minister shall prescribe measures to ensure the confidentiality of information obtained through integrity testing, if such measures are prescribed in terms of subsection (1).

CHAPTER 7

FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT

5

Finances and accountability

28. (1) The Directorate is financed from—

- (a) money that is appropriated by Parliament; and
- (b) donor funding received from any other source inside or outside the Republic.

(2) The Executive Director—

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(a) must, subject to the Public Finance Management Act—

- (i) be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Directorate;
- (ii) cause the necessary accounting and other related records to be kept; and

(b) may exercise such powers and perform such duties as may from time to time be conferred upon or assigned to him or her, and in respect thereof be accountable to the Minister.

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(3) The records referred to in subsection (2)(a) must be audited by the Auditor-General.

Annual report

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29. (1) The Executive Director must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year.

(2) The annual report referred to in subsection (1) must include the following documents:

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- (a) The audited financial statements prepared in terms of this Act;
- (b) the Auditor-General's report prepared in terms of this Act; and
- (c) a report on the activities of the Directorate undertaken during the year to which the audit relates.

(3) The Minister must table in Parliament a copy of the annual report and financial statements, and the audit report on those statements, within one month after receipt thereof if Parliament is then in session or, if Parliament is not then in session, within one month after the commencement of its next ensuing session.

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(4) The Executive Director must publish the annual report and financial statements, and the audit report on those statements.

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CHAPTER 8

OFFENCES AND PENALTIES

Offences and penalties

30. (1) Any person or private entity, who interferes, hinders or obstructs the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years.

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(2) Any member of the Directorate who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Directorate of the powers and functions, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

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(3) Any person who pretends to be an investigator in terms of this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for period not exceeding two years.

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CHAPTER 9

REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT

Regulations

- 31.** (1) The Minister may, after consultation with the Executive Director, make regulations regarding—
- (a) access and control of confidential information and records pertaining to investigations instituted in terms of this Act;
 - (b) the procedure to be followed when investigating matters referred to in section 25(1)(a), (b), (c) and (e);
 - (c) the procedure to be followed when reporting on cases dealt with under this Act;
 - (d) the procedure to be followed for referring, receiving, registering, processing and disposing of complaints;
 - (e) the procedure to be followed when investigating criminal matters;
 - (f) the procedure to be followed for initiating special investigations;
 - (g) the measures for integrity testing of members of the Directorate as contemplated in section 27(1);
 - (h) the measures to ensure the confidentiality of information obtained as contemplated in section 27(3); and
 - (i) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.
- (2) The regulations referred to in terms of in subsection (1)(a) to (h) must be submitted to Parliament, while it is in session, for Parliamentary scrutiny at least one month before promulgation.
- (3) Regulations with regard to the implementation of this Act must be submitted to the Minister by the Executive Director within three months of the commencement of this Act.

Transitional arrangements

- 32.** (1) As from the fixed date—
- (a) all powers exercised and functions performed by investigators immediately before the fixed date, must be exercised and performed by the Directorate;
 - (b) any investigation instituted in terms of the previous Act which was pending must be disposed of as if this Act had not been passed; and
 - (c) the allocated budget, assets and liabilities of the Directorate as agreed upon between the accounting officers of the Independent Complaints Directorate and the Directorate, must be transferred to the Directorate in accordance of section 42 of the Public Finance Management Act.
- (2) The Registrar of Deeds must make the necessary entries and endorsements for the transfer of any property in terms of this section.
- (3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of the employer must be regarded as having taken place when the investigators and administrative and support personnel are transferred to take up employment with the Directorate.
- (4) For as long as remuneration, allowances and other conditions of service under the South African Police Service Act are more favourable than those determined under this Act, the remuneration, allowances and other conditions of service under the South African Police Service Act prevails.
- (5) (a) This Act does not affect the validity of any investigation or prosecution conducted, pending or under investigation by the Directorate on or before the fixed date.
- (b) All matters which relate to service complaints of the South African Police Service will be transferred to the Secretariat.

Amendment and repeal of laws

33. (1) The laws mentioned in Schedule 1 are hereby amended to the extent set out in the third column of that Schedule.

(2) The laws set out in Schedule 2 are hereby repealed to the extent set out in the third column of that Schedule.

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Short title and commencement

34. This Act is called the Independent Police Investigative Directorate Act, 2010, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

LAWS AMENDED

Number and year of law	Short title	Extent of repeal or amendment
Act 68 of 1995	South African Police Service Act	Amendment of section 1 of Act 68 of 1995, as amended by section 1 of Act 41 of 1997 and section 1 of Act 83 of 1998 1. Section 1 of the South African Police Service Act, 1995 is hereby amended— (a) by the substitution for the definition of “secretariat” of the following definition: “secretariat” means the Secretariat for [Safety and Security] Police established under section 2(1);”; (b) by the substitution for the definition of “Secretary” of the following definition: “Secretary” means the Secretary [for Safety and Security] of Police appointed under section 2(2);”. Amendment of section 2 of Act 68 of 1995 1. Section 2 of the South African Police Service Act, 1995, is hereby amended by the substitution for subsection (1) of the following subsection: “(1) (a) The Minister shall establish a secretariat to be called the Secretariat for [Safety and Security] Police. (b) A provincial government may establish a provincial secretariat to be called the Provincial Secretariat for [Safety and Security] Police: Provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.”.

Number and year of law	Short title	Extent of repeal or amendment
Act 112 of 1998	Witness Protection Act	Amendment of section 1 of Act 112 of 1998 1. Section 1 of the Witness Protection Act, 1998, is hereby amended— (a) by the substitution for the definition of “Complaints Directorate” of the following definition: “Complaints Directorate” means the Independent [Complaints] Police Investigative Directorate, established under section [50] 2 of the [South African Police Service Act, 1995 (Act No. 68 of 1995)] <u>Independent Police Investigative Directorate Act, 2010;</u>”. 2. The substitution for the words “Complaints Directorate”, wherever they occur in the Act, of the word “Directorate”.
Act 70 of 2002	Regulation of Interception of Communications and Provision of Communication-Related Information Act	Amendment of section 1 of Act 70 of 2002, as amended by the schedule of Act 36 of 2005 and section 1 of Act 48 of 2008 1. Section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002, is hereby amended— (a) by the substitution for the definition of “Executive Director” of the following definition: “Executive Director” means the Executive Director appointed in terms of section [51] 5(1) of the [South African Police service Act] <u>Independent Police Investigative Directorate Act, 2010;</u>”; (b) by the substitution for the definition of “Independent Complaints Directorate” of the following definition: “Independent Complaints Directorate” means the Independent [Complaints] <u>Police Investigative Directorate</u> established by section [50(1)] 2 of the [South African Police Service Act] <u>Independent Police Investigative Directorate Act, 2010;</u>”. 2. The substitution for the words “Independent Complaints Directorate”, wherever they occur in the Act, of the word “Directorate”.

SCHEDULE 2**LAWS REPEALED**

No. and year of law	Short Title	Extent of repeal
Act 68 of 1995	South African Police Service Act, 1995	Chapter 10
Act 116 of 1998	Domestic Violence Act, 1998	Section 18

MEMORANDUM ON THE OBJECTS OF THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE BILL, 2010

1. BACKGROUND

- 1.1 The Constitution of the Republic of South Africa, 1996 (“the Constitution”), makes provision for the establishment of an Independent Police Investigative Directorate, in section 206(6), which stipulates that:

“[o]n 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 services in the province”

- 1.2 The establishment of the Independent Police Investigative Directorate (“the Directorate”) will ensure that section 206(6) of the Constitution is implemented. The Constitution requires that an independent complaints body must be established by national legislation to function. The Directorate will be independent from the police service and will report to the Cabinet member responsible for policing. The Directorate will ensure independent oversight of the South African Police Service and Municipal Police Services.
- 1.3 The current Independent Complaints Directorate (“ICD”) is established in terms of the South African Police Service Act (Act No. 68 of 1995), which pre-dates the Constitution. The Bill seeks to also change the name of the current ICD to the Directorate. The rationale behind the name change is to brand the Directorate as a body which functions independently from the police service and that its focus is to conduct investigations of offences by police members, rather than merely receiving complaints. The thrust of the work of the Directorate, in the process of conducting investigations, is to address systemic problems within the police service with a view to recommending appropriate interventions.
- 1.4 The work of the Directorate will contribute towards ensuring that the police service becomes a professional police service that operates within the spirit of our constitutional norms.

2. OBJECTS OF THE BILL

- 2.1 The Bill seeks to give effect to section 206(6) of the Constitution by making provision for the following:
- 2.2.1 The establishment, independence, impartiality and accountability of the Directorate.
 - 2.2.2 A national office and provincial offices and the appointment and responsibilities of the executive director and provincial heads.
 - 2.2.3 The composition, functions and reporting requirements of the national office.
 - 2.2.4 The establishment, composition and functions of the Management Committee and Consultative Forum.
 - 2.2.5 The appointment, remuneration, functions and powers of investigators.

2.2 Structure of Bill

(a) **Chapter 1: Definitions, Establishment and Independence, Impartiality and Accountability**

This Chapter provides detailed definitions of all technical terms and references. In order to ensure that the Directorate operates in all provinces, the Bill seeks to structure the Directorate at a national level, with branches in the provinces. The independence from the police service will lend itself to giving the Directorate the necessary credibility.

(b) **Chapter 2: National Office**

The national office is established under this Chapter, with the Executive Director being appointed by the Minister through a transparent process. The responsibilities of the Executive Director are outlined and the reporting responsibilities to the Minister are listed. The composition of the national office is outlined to ensure that the Directorate is appropriately structured to carry out its mandate. Security screening of appointed members is to be done by the National Intelligence Agency to ensure integrity and security of information.

The functions of the Directorate are clearly spelt out to provide certainty, to ensure that the constitutional mandate is carried out and to ensure that its work contributes to the development of a professional police service that complies with the constitutional norms and standards.

(c) **Chapter 3: Management Committee**

This Chapter establishes a Management Committee comprised of an Executive Director and a provincial head of each provincial office of the Directorate. This Committee will ensure that there is proper coordination and alignment within each province with regard to the core mandate of the Directorate and the priorities, objectives and strategies across national and provincial levels.

(d) **Chapter 4: Consultative Forum**

This Chapter establishes a Consultative Forum comprising the Executive Director and the Secretary of Police. The underlying purpose is to facilitate closer co-operation between the Secretary of Police and the Executive Director, both of whom report to the Minister in conducting oversight of the police service. The Secretariat for the Police Service and the Directorate need to have a collaborative relationship in the context of their respective mandates. The Chapter further details the functions of the forum.

(e) **Chapter 5: Provincial Offices**

This Chapter provides for the appointment of the provincial heads of the Directorate and clear responsibilities of the provincial heads.

(f) **Chapter 6: Appointment, Remuneration, Functions and Powers of Investigators**

This Chapter provides for the appointment of investigators of the Directorate to investigate offences by police members, the types of matters to be investigated and the powers of the investigators. This Chapter provides clarity and certainty in all these areas. To prevent poaching, the remuneration of investigators is to be commensurate with that of detectives in the South African Police Service.

(g) **Chapter 7: Finances and Accountability and Annual Report**

This Chapter provides for financial reporting and accountability to ensure the integrity of financial spending and record-keeping and transparency. It further provides for an annual report.

(h) **Chapter 8: Offences and Penalties**

Criminal penalties are provided to ensure that there is no interference with or obstruction to the work of the Directorate and that information is protected and not abused.

(i) **Chapter 9: Regulations, Transitional Arrangements, Repeal and Short Title and Commencement**

This Chapter empowers the Minister to make regulations that will enable the Directorate to carry out its mandate and provides for transitional arrangements that will allow for the continuation of the responsibilities and work of the ICD pending the establishment of the Directorate in terms of the Independent Police Investigative Directorate Act.

3. DEPARTMENTS OR BODIES CONSULTED

- 3.1 The Secretariat of Police;
- 3.2 The Independent Complaints Directorate;
- 3.3 The Police MinMec;
- 3.4 The relevant Labour Unions;
- 3.5 The National Board of the Community Police Forum;
- 3.6 Civil society formations involved in policing issues;
- 3.7 The Department of Public Service and Administration; and
- 3.8 National Treasury.

4. FINANCIAL IMPLICATIONS FOR THE STATE

- 4.1 The establishment of the Independent Police Investigative Directorate, as a deemed department, will have financial implications. The appointment of staff in terms of the revised organisational structure, including the heads of the provincial Directorates, will be costed and budgeted for.
- 4.2 Any new assets, as well as identification cards, stationery and signage will require new or additional funding. This is possible within the restructuring of the existing ICD budget.

5. PARLIAMENTARY PROCEDURE

- 5.1 The State Law Advisers and the Ministry of Police are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely “police”.
- 5.2 The State Law Advisers and the Ministry of Police are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.