

REPUBLIC OF SOUTH AFRICA

**NATIONAL PROSECUTING
AUTHORITY BILL**

(As introduced in the National Assembly)

(MINISTER OF JUSTICE)

[B 113—97]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE
NASIONALE
VERVOLGINGSGESAG**

(Soos ingedien in die Nasionale Vergadering)

(MINISTER VAN JUSTISIE)

[W 113—97]

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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.
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BILL

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

PREAMBLE

WHEREAS section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 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 that the prosecuting authority performs 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 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 matters concerning the prosecuting authority must be determined by national legislation;

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

CHAPTER 1

*Introductory provisions***Definitions**

1. In this Act, unless the context otherwise indicates—
- (i) “*Constitution*” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (iv) 5
 - (ii) “*Deputy Director*” means a Deputy Director of Public Prosecutions appointed under section 14(1); (ii)
 - (iii) “*Director*” means a Director of Public Prosecutions appointed under section 12(1); (iii) 10
 - (iv) “*Minister*” means the Cabinet member responsible for the administration of justice; (vi)
 - (v) “*National Director*” means the National Director of Public Prosecutions appointed in terms of section 179(1)(a) of the *Constitution*; (vii)
 - (vi) “*prescribed*” means prescribed by regulation made under section 27; (xi) 15
 - (vii) “*previous Constitution*” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (xii)
 - (viii) “*prosecuting authority*” means the national prosecuting authority referred to in section 2(1); (x)
 - (ix) “*prosecutor*” means a prosecutor referred to in section 16(1) and includes a *Deputy Director*; (i) 20
 - (x) “*Public Service Act*” means the Public Service Act, 1994 (Proclamation R. 103 of 1994); (ix)
 - (xi) “*Republic*” means the Republic of South Africa, referred to in section 1 of the *Constitution*; and (viii) 25
 - (xii) “*this Act*” includes the regulations made under *this Act*. (v)

CHAPTER 2

*National Prosecuting Authority***Single national prosecuting authority**

2. (1) There is a single national prosecuting authority established in terms of section 179(1) of the *Constitution*. 30
- (2) Subject to subsection (3), the *National Director* is, for purposes of the powers, duties and functions conferred or imposed on or assigned to him or her, by the *Constitution*, *this Act* or any other law, the head of the *prosecuting authority*.
- (3) The *National Director* shall determine prosecution policy as contemplated in section 179(5)(a) of the *Constitution*, *this Act* or any other law with the concurrence of the *Minister* and after consulting the *Directors*. 35
- (4) 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*. 40

Composition of national prosecuting authority

3. The *prosecuting authority* comprises of—
- (a) the *National Director*;
 - (b) the *Directors* appointed under *this Act*;
 - (c) the Director: Office for Serious Economic Offences appointed under section 3(1) of the Investigation of Serious Economic Offences Act, 1991 (Act No. 117 of 1991), as well as an acting Director, assistant to the Director, an officer or a person appointed or designated under section 3(2), (3) and (4) of that Act; 45
 - (d) the *Deputy Directors* appointed under *this Act*; and
 - (e) the *prosecutors* appointed under *this Act*. 50

Power to institute criminal proceedings on behalf of State

- 4. The power to—
 - (a) institute criminal proceedings on behalf of the State as contemplated in section 179(2) of the *Constitution*;
 - (b) perform any necessary functions incidental to instituting 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*.

Impartiality of and oath and affirmation by members of national prosecuting authority

5. (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 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 relating to the institution, discontinuing and conducting of any prosecution.

(c) All organs of state shall afford the *prosecuting authority* such assistance as may be reasonably required for the protection of the impartiality of, and the prevention of improper interference with the *prosecuting authority* in respect of any prosecution.

(2) (a) A *National Director* and any person referred to in section 3 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 of Public Prosecutions/ 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*, a *Director* or *Deputy Director*, be taken or made before the most senior available judge of the provincial or local division of the High Court within which area of jurisdiction the seat of 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 area of jurisdiction 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.

CHAPTER 3

Composition of Office of National Prosecuting Authority

Office of National Director

6. (1) There is hereby established an Office to be known as the Office of the National Director of Public Prosecutions.

(2) The Office contemplated in subsection (1) shall consist of—

- (a) the *National Director*;

- (b) two or three *Directors*;
- (c) one or more *Deputy Directors*;
- (d) *prosecutors* assigned to the Office; and
- (e) members of the administrative staff of the Office.

(3) The *National Director* shall control the Office contemplated in subsection (1). 5

(4) The seat of the Office contemplated in subsection (1) shall be determined by the President.

Office of Director at provincial or local division of High Court

7. (1) (a) There is hereby established an Office for the *prosecuting authority* at each of the provincial divisions of the High Court and the Witwatersrand Local Division of the High Court. 10

(b) The President may by proclamation in the Gazette and in consultation with the *Minister* and the *National Director*—

- (i) establish an Office of the *Director* at any local division of the High Court; and
- (ii) determine the name of that Office. 15

(2) An Office established by this section shall consist of the *Director*, one or more *Deputy Directors*, *prosecutors*, persons contemplated in section 25(1) and the members of the administrative staff of the Office.

(3) A *Director* shall control the Office contemplated in subsection (1).

(4) The seat of the provincial or local division of the High Court concerned shall be the seat of the Office contemplated in subsection (1). 20

CHAPTER 4

National Director

Appointment of National Director

8. (1) Any appropriately qualified, fit and proper person may be appointed as *National Director* in terms of section 179(1)(a) of the *Constitution*. 25

(2) Any person to be appointed in terms of subsection (1) shall be a South African citizen.

Term of office of National Director and appointment of Acting National Director

9. (1) The *National Director* shall hold office for such fixed term as the President may determine at the time of such appointment, but not exceeding seven years. 30

(2) A *National Director* whose term of office has expired and who is eligible, may be reappointed for one additional term, but must vacate his or her office on attaining the age of 65 years.

(3) If the *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. 35

(4) If the President is of the opinion that it is in the public interest to retain a *National Director* in his or her office beyond the age of 65 years, 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. 40

(5) The *National Director* shall not be suspended or removed from office except in accordance with the provisions of subsections (2), (6), (7) and (8).

(6) (a) The President may suspend the *National Director* and, subject to the provisions of this subsection, remove him or her from office—

- (i) for misconduct; 45
- (ii) on account of continued ill-health; or
- (iii) on account of incapacity to carry out his or her duties of office efficiently.

(b) The suspension of the *National Director*, the reason therefor and the representations of the *National Director* (if any) shall be communicated by message to Parliament within 14 days after such suspension 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. 50

(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* so suspended, is recommended.

(d) After a resolution has been passed by Parliament as contemplated in paragraph (c), the President shall restore the *National Director* to his or her office or remove him or her from office, as the case may be. 5

(e) The *National Director* so 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* from office if an address from each of the respective Houses of Parliament in the same session praying for such removal on the ground of misconduct of the *National Director* or on account of continued ill-health or his or her incapacity to carry out his or her duties of office efficiently, is presented to the President. 10

(8) (a) The President may allow the *National Director*, at his or her request, to vacate his or her office— 15

- (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. 20

(c) If the *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 he or she being instrumental thereto; or 25

- (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. 30

(9) If the *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*, 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. 35 40

(10) Whenever the *National Director* is absent or unable to perform his or her functions, the President may, subject to the provisions of section 8, appoint any person as acting *National Director* for the period of absence or inability of the *National Director*. 45

Powers, duties and functions of National Director

10. (1) In addition to any powers, duties and functions conferred or imposed on or assigned to the *National Director* in terms of section 179 of the *Constitution*, *this Act* or any other law, the *National Director*— 50

- (a) with a view to exercising his or her powers in terms of section 179(5)(c) and (d) of the *Constitution*, may—
 - (i) conduct any investigation he or she may deem necessary in respect of a prosecution or a prosecution process or 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 directions or guidelines; 55

- (ii) direct the submission and receipt of 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 criminal law matters; 5
 - (b) or a person authorised thereto by him or her, may bring proceedings, which may include the institution of criminal proceedings in a competent court or tribunal in the name of the State;
 - (c) shall maintain close liaison with the *Directors*, the *prosecutors*, the legal profession 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*; 10
 - (d) may consider such recommendations, suggestions and requests concerning the *prosecuting authority* as he or she may receive from any source;
 - (e) shall, in consultation with the *Directors*, recommend to the *Minister* the procedure to be *prescribed* for dealing with complaints about members and members of the administrative staff of the *prosecuting authority*; 15
 - (f) shall, in consultation with the *Directors*, frame a code of conduct which shall be complied with by *prosecutors*;
 - (g) shall develop, in consultation with the *Minister*, or a person authorised thereto by the *Minister*, and the *Directors*, training programmes for *prosecutors*; 20
 - (h) shall assist the *Directors* and *prosecutors* in achieving the effective and fair administration of criminal justice;
 - (i) shall assist the *Directors* and *prosecutors* in representing their professional interests; 25
 - (j) 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;
 - (k) shall prepare a comprehensive report in respect of the operations of the *prosecuting authority*, which includes a report on— 30
 - (i) the activities of the *National Director*, *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*; 35
 - (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; 40
 - (l) may have the administrative work connected with the exercise of his or her powers, the performance of his or her functions and the carrying out of his or her duties, carried out by persons referred to in section 24 of *this Act*; and
 - (m) may make recommendations to the *Minister* with regard to the *prosecuting authority* or the administration of justice as a whole. 45
- (2) Where the *National Director*, with the concurrence of the *Minister* and after consulting the *Directors*, determines the prosecution policy and issues policy directives under section 179(5)(a) and (b) of the *Constitution*, he or she shall—
- (a) as soon as practicable thereafter cause a copy of such prosecuting policy and policy directives to be published in the *Gazette*; and 50
 - (b) within 14 days after such determination and issuing, cause a copy of such prosecuting policy and policy directives to be tabled in Parliament, 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.

Inquiries and decisions by National Director in respect of certain offences 55

11. (1) If the *National Director*—

- (a) has reason to suspect that a specific offence or a category or class of offences has been or is being committed or that an attempt has been or is being made to commit such offence or offences; and
- (b) considers it desirable in the national interest and in the administration of justice to do so, 5
- he or she may, after consulting the *Director* or *Directors* concerned, hold an inquiry on the matter in question.
- (2) Subject to this section, the provisions of the Investigation of Serious Economic Offences Act, 1991 (Act No. 117 of 1991), in respect of an inquiry by the Director: Office for Serious Economic Offences in terms of section 5 of that Act, are, with the necessary changes, applicable to an inquiry contemplated in subsection (1) of this section by the *National Director*. 10
- (3) Upon the completion of an inquiry in terms of subsection (1) the *National Director* or any person authorised thereto by him or her may, for the purposes of criminal prosecution— 15
- (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 *National Director* or the person authorised thereto by him or her.
- (4) Where the *National Director* deems it in the interests 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 No. 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*. 20 25

CHAPTER 5

Directors

Appointment of Directors and Deputy Directors

12. (1) The President— 30
- (a) may appoint two or three Directors of Public Prosecutions at the Office of the *National Director*;
- (b) shall appoint a Director of Public Prosecutions in respect of each provincial division of the High Court and the Witwatersrand Local Division of the High Court; 35
- (c) may appoint a Director of Public Prosecutions in respect of any other local division of the High Court; and
- (d) may appoint one or more Directors of Public Prosecutions 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 notice in the Gazette. 40
- (2) A person shall only be appointed as a *Director* if he or she—
- (a) has the right to appear in the High Court as contemplated in sections 2 and 3(4) of the Right of Appearance in Courts Act, 1995 (Act No. 62 of 1995);
- (b) has been concerned in the application of the law for a continuous period of at least 10 years after his or her admission to practise as an advocate or attorney; 45
- and
- (c) possesses such experience as, in the opinion of the President, renders him or her suitable for appointment as *Director*.
- (3) If a vacancy occurs in the office of a *Director* the President shall, subject to subsection (2), as soon as possible appoint another person to that office. 50
- (4) The *Minister* may from time to time, but subject to the laws relating to the public service and after consultation with the *National Director*, from the ranks of the *Deputy Directors* or a person who qualifies to be appointed as a *Deputy Director* as contemplated in section 14(2), appoint an acting *Director* to discharge the duties of the office of the *Director* whenever the *Director* 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 the *Director* is pending. 55

Term of office of Director

13. (1) A *Director* appointed under section 12(1) shall hold office for such fixed term as the President may determine at the time of such appointment, but not exceeding seven years.

(2) A *Director* whose term of office has expired and who is eligible, may be reappointed for one additional term but must vacate his or her office on attaining the age of 65 years. 5

(3) The provisions of section 9(3), (4), (6)(a) and (e), (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*. 10

Appointment of Deputy Directors

14. (1) The *Minister* may, in respect of each area or office for which a *Director* has been appointed, appoint one or more persons as Deputy Director 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 the High Court as contemplated in sections 2 and 3(4) of the Right of Appearance in Courts Act, 1995; and 15

(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, subject to subsection (2), as soon as possible, appoint another person to that office. 20

Powers, duties and functions of Directors and Deputy Directors

15. (1) Subject to the provisions of section 179 of the *Constitution*, *this Act* or any other law, a *Director* referred to in section 12(1)(b) or (c) has, in respect of the area for which he or she has been appointed, the power to—

(a) institute criminal proceedings on behalf of the State; 25

(b) prosecute in criminal proceedings on behalf of the State in any court in the said area, and prosecute any person in the name of the *Republic* in respect of any offence in regard to which any court in the said area has jurisdiction;

(c) perform any necessary functions incidental to instituting such criminal proceedings and prosecution in such criminal proceedings; 30

(d) subject to section 16, delegate to any person the authority to institute and conduct criminal proceedings on behalf of the State;

(e) supervise, direct and co-ordinate specific investigations; and

(f) 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*. 35

(2) In addition to any 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 12(1)(b) and (c)—

(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 sections 10(1)(a)(ii) and 11; 40

(b) shall submit annual reports to the *National Director* pertaining to matters referred to in section 10(1)(k);

(c) may give written directions or furnish guidelines to— 45

(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 50

(d) shall, subject to the directions of the *National Director*, be responsible for the day-to-day management of the *prosecutors*.

- (3) Without limiting the generality of subsection (2)(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 specify—
- (a) an offence, being an offence, relating to a matter which is to be referred to the *Director* for the institution or carrying on of a prosecution for that offence; or 5
 - (b) a class of offences, being offences, relating to matters which are to be referred to the *Director* for the institution or carrying on of prosecutions for those offences.
- (4) The *Director* shall give to the *National Director* a copy of each direction given or guideline furnished under subsection (2)(c). 10
- (5) Where a *Director*—
- (a) is considering instituting or carrying on 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 (2)(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. 15
- (6) The powers conferred upon a *Director* under subsection (1)(b) shall include the authority to prosecute in any court any appeal arising from any criminal proceedings within the area of jurisdiction of the *Director* concerned. 20
- (7) (a) Subject to any directions of a *Director*, a *Deputy Director* at the Office of a *Director* referred to in section 12(1)(b) and (c), has all the powers, duties and functions of a *Director*, except a *Director's* powers of delegation of authority to *prosecutors* under section 16(1): Provided that if a *Director* is not available, a *Deputy Director* may delegate authority to a *prosecutor* as contemplated in section 16(1). 25
- (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.
- (8) A *Director* referred to in section 12(1)(a) may, subject to any directions of the *National Director*, exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her by the *National Director*, which may include the powers, duties and functions referred to in section 10(1). 30
- (9) A *Director* appointed by the President in terms of section 12(1)(d) 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 subsection (1), it shall be exercised, carried out and performed in consultation with the *Director* appointed in the Provincial or Local Division concerned. 35
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CHAPTER 6

Delegation by Director, and appointment of prosecutors

Delegation to institute criminal proceedings and conduct prosecutions

16. (1) A *Director* referred to in section 12(1)(b) and (c) may, in respect of the area of jurisdiction for which he or she has been appointed, in writing— 45
- (a) delegate to any person who has the right to appear in the High Court as contemplated in sections 2 and 3(4) of the Right of Appearance in Courts Act, 1995, subject to the control and directions of the *Director* concerned, the authority to—
- (i) institute criminal proceedings; 50
 - (ii) conduct on behalf of the State, as a *prosecutor*, any prosecution in criminal proceedings in any court within the area of jurisdiction of such *Director*; or

- (iii) prosecute in any court on behalf of the State any appeal arising from criminal proceedings within the area of jurisdiction of such *Director*;
 - (b) delegate, subject to subsection (2) and the control and directions of the *Director* concerned, the authority to—
 - (i) institute criminal proceedings; or 5
 - (ii) conduct on behalf of the State, as a *prosecutor*, any prosecution in criminal proceedings in any lower court within the area of jurisdiction of such *Director*; or
 - (c) delegate, subject to subsection (2) and the control and directions of the *Director* concerned and in consultation with the head of Department concerned, to any person in the employment of or designated by a national department or a provincial administration contemplated in section 7(2) of the *Public Service Act* the authority to— 10
 - (i) conduct on behalf of the State, as a *prosecutor*, any prosecution in criminal proceedings in respect of matters falling within the line function of the department or provincial administration concerned, in any court within the area of jurisdiction of such *Director*; or 15
 - (ii) prosecute in any court on behalf of the State any appeal arising from criminal proceedings within the area of jurisdiction of such *Director*.
- (2) A delegation in terms of subsection (1)(b) and (c) shall only be made in respect of persons who are appropriately qualified to be appointed as *prosecutor*: Provided that a delegation may be made in respect of a suitable person, if an appropriately qualified person is not available, for the purposes of postponing a criminal case or cases. 20
- (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. 25
- (4) A person to whom authority has been delegated in terms of subsection (1), may be assigned to the Office of the *National Director* or a *Director* referred to in section 12(1)(d) to exercise any of the powers, carry out any of the duties and perform any of the functions which the *National Director* or such *Director* may exercise, carry out or perform in terms of *this Act* or any other law relating to the institution and conducting of criminal proceedings on behalf of the State. 30

Powers, duties and functions of prosecutors

17. A *prosecutor* shall exercise the powers, carry out the duties and perform the functions conferred or imposed on or assigned to him or her— 35
- (a) under the laws of the *Republic*;
 - (b) by the *National Director* in terms of section 179 of the *Constitution* and *this Act*;
 - (c) by the *Director* in whose area of jurisdiction he or she has been appointed; or
 - (d) by the *Director* referred to in section 12(1)(d). 40

CHAPTER 7

Remuneration and other conditions of service of members of prosecuting authority

Conditions of service of National Director and Director

18. (1) The remuneration, allowances and other terms and conditions of service and service benefits of the *National Director* and a *Director* shall be determined by the President: Provided that— 45
- (a) the remuneration of the *National Director* shall not be less than the remuneration of a judge of the Supreme Court of Appeal; and
 - (b) the remuneration of a *Director* shall not be less than 80% of the remuneration of the *National Director*. 50
- (2) The remuneration of the *National Director* and a *Director* shall not be reduced during their continuation in office.

(3) If an officer or employee in the public service is appointed as the *National Director* or a *Director*, the period of his or her service as *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. 5

Remuneration of Deputy Directors and prosecutors

19. (1) Subject to the provisions of this section, a *Deputy Director* or as a *prosecutor* in terms of *this Act*, 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*, with the concurrence of the Minister of Finance, by notice in the Gazette. 10

(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. 15

(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 public servants and magistrates since the latest revision and adjustment of salaries of *Deputy Directors* or *prosecutors*, so justify. 20

(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. 25

(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 30

(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. 35

Conditions of service of Deputy Directors and prosecutors, except remuneration

20. 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*. 40

CHAPTER 8

General provisions

National Director's responsibility towards Minister

21. (1) To enable the *Minister* to exercise his or her power of final responsibility over the *prosecuting authority*, as contemplated in section 179 of the *Constitution*, the *National Director* shall, at the request of the *Minister*— 45

(a) furnish the *Minister* with information or a report with regard to any case, matter or subject dealt with by the *National Director* and a *Director* in the exercise of their powers, the carrying out of their duties and the performance of their functions; 50

- (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 179(5)(a) of the *Constitution*; 5
 - (d) furnish the *Minister* with information with regard to the policy directives referred to in section 179(5)(b) of the *Constitution*; and
 - (e) submit the reports contemplated in section 22(1)(c) and (2) to the *Minister*.
- (2) The *Minister* may co-ordinate the functions of the *National Director* and *Directors*. 10

Reports by National Director and Directors

22. (1) (a) 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.
- (b) 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. 15
- (c) A *Director* may, at any time, submit a report to the *National Director* or the *Minister* with regard to any matter relating to the *prosecuting authority*, if he or she deems it necessary.
- (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 10(1)(k). 20
- (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

23. (1) The expenses incurred in connection with— 25
- (a) the exercise of the powers, the carrying out of the duties and performance of the functions of the *prosecuting authority*; and
 - (b) 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. 30
- (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 No. 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*; 35
 - (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 40

24. The administrative staff of—
- (a) the Office of the *National Director*;
 - (b) the Offices of the *Directors*; and
 - (c) the Offices of *prosecutors* as determined by the *National Director*, in consultation with the *Director* concerned, 45
- shall be persons appointed or employed under the *Public Service Act*.

Engagement of persons to perform services in specific cases

25. (1) The *National Director* may, in consultation with the *Minister*, and a *Director* referred to in section 12(1)(b), (c) and (d) may, in consultation with the *Minister* and the *National Director*, on behalf of the State, engage, under agreements in writing, persons 50 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* or a *Director* under subsection (1) shall be as determined from time to time by the *Minister* in concurrence with the Minister of Finance.

Disclosure of interests and non-performance of other paid work

26. (1) The *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. 5

(2) The *National Director* and a *Director* shall not, without the consent of the President, perform any paid work outside his or her duties of office. 10

Regulations

27. (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 10(1)(f); or 15
- (c) matters necessary or convenient to be *prescribed* for carrying out or giving effect to *this Act*.

(2) Any regulation made under subsection (1) which may result in the expenditure of State monies shall be made in consultation with the Minister of Finance. 20

Offences and penalties

28. Any person who contravenes the provisions of section 5(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.

Transitional arrangements 25

29. (1) (a) Anyone holding office as an attorney-general and who was appointed in the rank of attorney-general when *this Act* took effect, becomes, subject to subsection (2), a *Director* under *this Act* at an Office contemplated in section 2(c) or 12(1)(a), (b) or (c), which Office shall be determined by the President, and such *Director* shall continue to function in terms of the legislation applicable to that Office if the rationalisation contemplated in item 16(6) of Schedule 6 to the *Constitution* has not been finalised. 30

(b) Anyone holding office as an acting attorney-general when *this Act* took effect, becomes an acting *Director* under *this Act* at the Office determined by the President and continues to function in that capacity in terms of the legislation applicable to that Office if the rationalisation contemplated in item 16(6) of Schedule 6 of the *Constitution* has not been finalised. 35

(2) (a) An attorney-general who becomes a *Director* in terms of subsection (1), shall continue in office for the unexpired portion of his or her term as fixed by section 13.

(b) For the purpose of determining the unexpired portion referred to in paragraph (a), a *Director's* date of appointment in the office he or she holds as attorney-general prior to the commencement of this section shall be deemed to be the date of appointment in terms of section 13. 40

(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 14(1). 45

(b) Any person who immediately before the commencement of this section was employed by the State as a state advocate or prosecutor and to whom the power has been delegated in terms of the Attorney-General Act, 1992 (Act No. 92 of 1992), to institute criminal proceedings and to conduct any prosecution in criminal proceedings on behalf of the State, shall continue in such employment and authority shall be deemed to have been delegated to him or her in terms of section 16(1). 50

(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 and who has taken the oath of office or has made a solemn affirmation under the *previous Constitution* is not obliged to repeat the oath of office or solemn affirmation under *this Act*. 5

(6) 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. 10 15

Amendment or repeal of laws

30. The laws mentioned in the Schedule are hereby amended or repealed to the extent indicated in the third column thereof. 20

Interpretation of certain references in laws

31. Any reference in any law to an attorney-general or deputy attorney-general in respect of the area of jurisdiction of a provincial or local division of the High Court, shall be construed as a reference to a *Director* or *Deputy Director*, respectively, appointed under *this Act*, of the provincial or local division of the High Court in respect of the area of jurisdiction of that division. 25

Short title and commencement

32. *This Act* shall be called the National Prosecuting Authority Act, 1997, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

SCHEDULE

(Laws amended or repealed by section 30)

Number and year of law	Title	Extent of amendment or repeal
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>(a) Repeal of sections 2 and 5.</p> <p>(b) Amendment of section 111 by the deletion of subsection (1) and the substitution for subsections (2), (3) and (4) of the following subsections:</p> <p>“[(2)](1) (a) The direction of the [Minister] National Director of Public Prosecutions contemplated in section 11(4) of the National Prosecuting Authority Act, 1997, shall state the name of the accused, the relevant offence, the place at which (if known) and the [attorney-general] Director in whose area of jurisdiction [the offence was committed and the attorney-general in whose area of jurisdiction] the relevant investigation and criminal proceedings shall [commence] be conducted and commenced.</p> <p>(b) A copy of the direction shall be served on the accused, and the original thereof shall, save as is provided in subsection [(4)](3) be handed in at the court in which the proceedings are to commence.</p> <p>[(3)](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.</p>

Number and year of law	Title	Extent of amendment or repeal
		<p data-bbox="1002 255 1262 629">[(4)](3) Where the [Minister] <u>National Director</u> issues a direction [under] <u>contemplated in</u> 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—</p> <p data-bbox="1002 636 1262 1263"><i>(a)</i> cause the accused to be brought before it, and when the accused is before it, adjourn the proceedings to a time and a date and to the court designated by the <u>Director</u> [attorney-general] 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;</p> <p data-bbox="1002 1270 1262 1581"><i>(b)</i> 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.”.</p>

Number and year of law	Title	Extent of amendment or repeal
Act No. 117 of 1991	Investigation of Serious Economic Offences Act, 1991	<p>(a) Amendment of section 1 by the insertion after the definition of “Minister” of the following definition: “ ‘National Director’ means <u>the National Director of Public Prosecutions appointed in terms of section 179(1)(a) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);</u>”.</p> <p>(b) Amendment of section 2 by the substitution for subsection (2) of the following subsection: “(2) The functions of the office shall be performed by the Director, subject to the control and directions of the [Minister] <u>National Director.</u>”.</p> <p>(c) The amendment of section 3—</p> <p>(i) by the substitution for subsection (1) of the following subsection: “(1) (a) The [Minister] <u>President</u> shall appoint a person to the office of Director: Office for Serious Economic Offences. (b) The person so appointed shall be a person who has been appointed as Director under section <u>12(1)(d) and (2) of the National Prosecuting Authority Act, 1997</u> [(i) has been appointed as attorney-general in terms of section 2A of the Attorney-General Act, 1992 (Act No. 92 of 1992); or</p>

Number and year of law	Title	Extent of amendment or repeal
		<p>(ii) is an officer of the State who by virtue of his qualifications is entitled to be admitted and authorized to practise and be enrolled as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and, after obtaining those qualifications, was concerned in the application of the law for a period of at least 10 years or periods which together amount to at least 10 years].”;</p> <p>(ii) by the substitution for subsections (2) and (3) of the following subsections:</p> <p>“(2) The Minister may from time to time, but subject to subsection (1) <u>and in consultation with the National Director,</u> appoint an acting Director to discharge the duties of the office of Director whenever the Director is for any reason unable to perform those duties, or while the appointment of a person to the office of Director is pending.</p> <p>(3) The Minister may, <u>in consultation with the National Director and</u> subject to the laws governing the public service, appoint a person as an assistant or two or more persons as assistants to the Director to perform, subject to the control and directions of the Director, any functions of the Director.”.</p>

Number and year of law	Title	Extent of amendment or repeal
		<p>(d) Amendment of section 5—</p> <p>(i) by the substitution for paragraph (b) of subsection (1) of the following paragraph:</p> <p style="padding-left: 40px;">“(b) If the [Minister] <u>National Director</u> refers a matter in relation to the alleged commission or attempted commission of a serious economic offence to the Director, the Director shall hold an inquiry on that matter.”;</p> <p>(ii) by the substitution for subsections (11) and (12) of the following subsections:</p> <p style="padding-left: 40px;">“(11) The 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 [attorney-general] <u>Director of Public Prosecutions</u> concerned accordingly.</p> <p style="padding-left: 40px;">(12) Upon the completion of an inquiry, the Director shall furnish the [Minister] <u>National Director</u> with a report on his or her findings and recommendations, if any, and send a copy of the report to the [attorney-general] <u>Director of Public Prosecutions</u> concerned.”.</p>

Number and year of law	Title	Extent of amendment or repeal
Act No. 92 of 1992	Attorney-General Act, 1992	<p>(e) Amendment of section 6A by the substitution for subsection (2) of the following subsection:</p> <p>“(2) The Director or any person authorized thereto by him or her shall exercise the powers referred to in subsection (1) after such powers have been delegated to the Director or authorized person concerned by the [Attorney-General] <u>National Director</u> in terms of section [6 of the Attorney-General Act, 1992 (Act No. 92 of 1992)] 11 of the <u>National Prosecuting Authority Act, 1997</u>, after consultation with the <u>Director of Public Prosecutions concerned</u>.”.</p> <p>The whole</p>

**MEMORANDUM ON THE OBJECTS OF THE NATIONAL
PROSECUTING AUTHORITY BILL, 1997**

1. The Bill emanates from the provisions of section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (the "Constitution"). Section 179 amongst others, provides for—

- * the establishment of a single national prosecuting authority in the Republic in terms of an Act of Parliament;
- * the appointment of a National Director of Public Prosecutions as head of the national prosecuting authority; and
- * the appointment of Directors of Public Prosecutions and prosecutors as determined by an Act of Parliament.

2. In respect of the appointment, powers and duties of the Directors, the Constitution further provides that—

- (a) national legislation must ensure that the Directors of Public Prosecutors are appropriately qualified;
- (b) the Directors are responsible for prosecutions in specific jurisdictions;
- (c) the prosecuting authority exercises its functions without fear, favour or prejudice; and
- (d) all matters concerning the prosecuting authority must be determined by national legislation.

3. The objects of the Bill are therefore to establish a single national prosecuting authority and to give effect to the abovementioned constitutional requirements. The Bill will also address the provisions with regard to the prosecutors' remuneration, the legitimacy of the prosecuting authority and uniformity in respect of prosecutions.

4. The main provisions of the Bill are the following:

4.1 In terms of clause 3 the National Prosecuting Authority shall consist of the National Director; Directors of Public Prosecutions ("Directors"); the Director: Office for Serious Economic Offences; Deputy Directors; and prosecutors.

4.2. An important aspect of the Bill is to ensure that the national prosecuting authority exercises its functions independently without interference from the executive and other sectors but subject only to the Constitution and the law. This principle is enshrined in clause 5. In the first instance clause 5(1)(a) provides that a member of the national prosecution 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. Clause 5(1)(b) prohibits any person to interfere with, hinder or obstruct the national prosecuting authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions relating to the institution and conducting of prosecutions. A contravention of this provision is an offence in terms of clause 28.

4.3 Chapter 3 of the Bill deals with the structure of the national prosecuting authority. In this regard the following provisions are important:

- (a) In clause 6(2)(b), (c) and (d) provision is made for the appointment of two or three Directors, one or more Deputy Directors and prosecutors at the Office of the National Director. In terms of these provisions it will be possible to appoint experienced personnel in the Office of the National Director with a view to assist him or her.
- (b) In terms of clause 7 an Office for the prosecuting authority is established at each of the provincial divisions of the High Court and the Witwatersrand Local Division of the High Court. The President may also by proclamation in the *Gazette* and in consultation with the Minister establish an Office of the Director of Public Prosecutions at any other local division of the High Court and may determine the name of the Office.

4.4 Chapter 4 deals with qualifications, term of office and the powers, duties and functions of the National Director. In terms of clause 8 the National Director must be an appropriately qualified, fit and proper person. Furthermore the following provisions are important:

- (a) Clause 9(1) provides that the National Director shall hold office for a fixed term, determined by the President but not exceeding seven years. The National Director may be reappointed, if eligible, for one additional term, but

must vacate his or her office at the age of 65 years. Clause 9(5) to (8) regulates the suspension and removal from office of the National Director.

- (b) Clauses 10 and 11 provide for the powers, duties and functions of the National Director. It is important to note that the National Director may personally bring proceedings, which may include the institution of criminal proceedings, in a competent court in the name of the State (clause 10(1)(b)). This will include the power to appear in the Constitutional Court representing the interests of the prosecuting authority. Functions relating to his or her powers emanating from the Constitution, relating to the prosecuting authority as a whole, the interests of Directors and prosecutors, the training of prosecutors, the submission of reports, etc. are also included in this clause. In terms of clause 11 the National Director also has the power to hold inquiries in respect of certain offences or category of offences and to direct that the investigation and prosecution in respect of certain offences be transferred from one area of jurisdiction to another area of jurisdiction.

4.5 Chapter 5 of the Bill deals with matters relating to the Directors. The most important provisions in this regard are the following:

- (a) Clause 12 provides for the appointment of four different classes of Directors, namely Directors to be appointed—
 - (i) in the Office of the National Director (clause 12(1)(a));
 - (ii) in respect of each provincial division of the High Court and the Witwatersrand Local Division of the High Court (clause 12(1)(b));
 - (iii) in respect of any other local division of the High Court if necessary; and
 - (iv) to perform certain specific functions (clause 12(1)(d)).
- (b) The qualifications for Directors are set out in clause 12(2).
- (c) The provisions regarding the term of office, suspension and removal from office of a Director are similar to that of the National Director except that Parliament is not involved (clause 13).
- (d) Clause 14 provides for the appointment of Deputy Directors by the Minister.
- (e) Clause 15 provides for the powers, duties and functions of Directors and Deputy Directors. In this regard clause 15(2)(c) and (5) specifically make provision for interaction between the Directors and the Provincial Commissioners of the police service.

4.6 Chapter 6 deals with the delegation of authority to prosecutors by the Director. Prosecutors in the High Court will receive their delegations to prosecute under clause 16(1)(a), whereas prosecutors in the lower courts will receive their delegation under clause 16(1)(b). Delegations shall only be made in respect of persons who are appropriately qualified to be appointed as prosecutors (clause 16(2)). Where a prosecutor is not available, an unqualified person may be delegated for the purpose of postponing the cases. Clause 17 makes provision for the powers, duties and functions of prosecutors.

4.7 Chapter 7 deals with the remuneration and other conditions of service of members of the prosecuting authority. In this regard a clear distinction is drawn between the position of the National Director and Director on the one hand and the Deputy Directors and prosecutors on the other. The remuneration and other conditions of service of the National Director and the Director shall be determined by the President (clause 18), whereas the conditions of service of the Deputy Directors and prosecutors (except remuneration) shall be determined by the provisions of the Public Service Act (clause 20). In clause 19 provision is made that, in respect of the remuneration of Deputy Directors and prosecutors, the Minister of Justice shall, with the concurrence of the Minister of Finance, determine salary scales for prosecutors from time to time by notice in the *Gazette*.

4.8 Chapter 8 deals with general provisions such as—

- (a) the National Director's responsibility towards the Minister of Justice and the Minister's co-ordination functions (clause 21);
- (b) the submission of annual reports by the National Director and the Directors (clause 22(1)(a) and (b));

- (c) the expenditure of the prosecuting authority and accounting responsibility in respect of the national prosecuting authority (clause 23);
- (d) the appointment of administrative staff to the various offices of the national prosecuting authority (clause 24);
- (e) the making of regulations by the Minister (clause 27); and
- (f) transitional arrangements regarding the persons currently holding office as attorney-general or acting attorney-general (clause 29).

5. A draft Bill was circulated for comment to various stakeholders, for example, the judiciary, prosecutors associations, attorneys-general, regional offices of the Department of Justice, senior public prosecutors, State Attorneys, the Association of Law Societies, the General Council of the Bar, Nadel, BLA, the Director of OSEO, Chief Magistrates, magistrates and Justice College.

In the opinion of the Department of Justice and the State Law Advisers this Bill should be dealt with in terms of section 75 of the Constitution of the Republic of South Africa, 1996.