

REPUBLIC OF SOUTH AFRICA

DIRECTORATE OF SPECIAL OPERATIONS BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill
published in Government Gazette No 21436 of 2 August 2000) (The English text is the
official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 39—2000]

ISBN 0 621 29553 1

No. of copies printed 1 800

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

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

To establish a Directorate of Special Operations for the effective investigation and prosecution of certain specified offences and the gathering of intelligence relating to such offences; and to provide for matters connected therewith.

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

Introductory provisions

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1. In this Act, unless the context indicates otherwise—
- “Agency” means the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);
- “Agent” means any member of the Directorate designated under section 12(2) as an agent by the Chief Investigating Officer; 10
- “Chief Executive Officer” means the Chief Executive Officer appointed under section 36(1);
- “Chief Investigating Officer” means the Chief Investigating Officer appointed under section 9(1);
- “Committee” means the Ministerial Coordinating Committee established by section 5; 15
- “contract member” means any person, other than a permanent or seconded member, whose services relating to the objects of this Act are obtained by the Chief Investigating Officer for a specific purpose or period of time;
- “crime intelligence” means crime intelligence as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994); 20
- “Director” means a Director of Public Prosecutions referred to in section 1 of the National Prosecuting Authority Act and assigned to the Directorate under section 7(1)(b);
- “Directorate” means the Directorate of Special Operations established by section 3; 25
- “member” means the Chief Investigating Officer, the Chief Executive Officer and any person appointed to the Directorate under section 11, but in Part III of Chapter 6, means only a permanent member;

- “Minister” means the Cabinet member responsible for the administration of Justice;
- “National Commissioner” means the National Commissioner of the South African Police Service;
- “National Director” means the National Director of Public Prosecutions appointed under section 179(1)(a) of the Constitution; 5
- “National Prosecuting Authority Act” means the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- “permanent member” means any person, other than a seconded or contract member, who has been appointed to a post on the establishment of the Directorate under section 11; 10
- “prescribed” means prescribed by regulation and “prescribe” has a corresponding meaning;
- “prosecutor” means any Deputy Director or prosecutor as defined in section 1 of the National Prosecuting Authority Act; 15
- “regulation” means a regulation made under section 37;
- “seconded member” means any—
- (a) serving member of the Agency or the Service who has been recruited by the Chief Investigating Officer and seconded to serve in the Directorate in terms of the laws governing such secondment; 20
 - (b) serving member of the South African Police Service who has been recruited by the Chief Investigating Officer and seconded to serve in the Directorate in terms of the laws governing such secondment;
 - (c) officer in the service of any Department of State who has been recruited by the Chief Investigating Officer and seconded to serve in the Directorate in terms of the laws governing such secondment; 25
 - (d) prosecutor seconded to serve in the Directorate;
 - (e) person in the service of any public or other body who has been seconded to serve in the Directorate;
- “Service” means the South African Secret Service established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994); 30
- “specified offence” means any offence contemplated in section 7(1)(a);
- “this Act” includes the regulations.

Objects of Act

2. (1) The purpose of this Act is to establish a specialised institution, called the Directorate of Special Operations, which will gather intelligence relating to specified offences and ensure that the investigation and prosecution of such offences is done in the best possible manner. To enable the Directorate to achieve these objects, this Act aims to ensure that— 35
- (a) the Directorate has an adequate infrastructure, including the necessary capacities for intelligence gathering and law-enforcement functions, and is assisted by the National Prosecuting Authority; 40
 - (b) persons with suitable skills and qualifications are appointed to and employed by the Directorate;
 - (c) all relevant governmental institutions give the necessary support to, and cooperate with, the Directorate; and 45
 - (d) the activities of the Directorate are coordinated with those carried out by the national police service and the intelligence services referred to in sections 205 and 209 of the Constitution.
- (2) Because it is recognised that the successful functioning and achievement of the aims of the Directorate will have a bearing on the portfolios of more than one member of the Cabinet, this Act is also aimed at ensuring that the Cabinet members concerned— 50
- (a) cooperate with one another to achieve the purposes referred to in subsection (1); and
 - (b) jointly determine policy matters regarding the functioning and administration of the Directorate. 55
- (3) Without derogating from the individual responsibilities of the members of Cabinet referred to in subsection (2), the Minister must exercise final responsibility over the Directorate.

CHAPTER 2

Establishment, composition and functions of Directorate and Committee

Establishment and composition of Directorate

3. (1) The Directorate of Special Operations is hereby established.
- (2) The Directorate comprises— 5
- (a) the National Director;
 - (b) other members of the Office of the National Director referred to in section 5 of the National Prosecuting Authority Act, who are assigned to the Directorate by the National Director;
 - (c) the Chief Investigating Officer; 10
 - (d) the Chief Executive Officer; and
 - (e) permanent, seconded and contract members.
- (3) (a) The President may, on the recommendation of the Committee, establish a Crime Intelligence Division for the Directorate.
- (b) The Minister must establish Divisions and Subdivisions for the Directorate. 15
- (4) The Minister must, in respect of any Divisions and Subdivisions established in terms of subsection (3)—
- (a) prescribe the post structures thereof;
 - (b) prescribe the functions of the structures referred to in paragraph (a);
 - (c) appoint managers to the structures referred to in paragraph (a); and 20
 - (d) in general, but subject to the provisions of this Act, determine and prescribe all matters that are necessary or expedient to be prescribed for the effective functioning of the Directorate and its organisational components.

Functions of Directorate

4. (1) The functions of the Directorate are— 25
- (a) to gather, keep and analyse crime intelligence relating to matters being investigated by the Directorate;
 - (b) to combat and to investigate specified offences; and
 - (c) to prepare and to adduce evidence in the prosecution of specified offences.
- (2) Subsection (1) shall not be construed so as to infringe upon any power or duty— 30
- (a) which relates to the combating or investigation of any offences; and
 - (b) which is generally bestowed upon any intelligence service or the South African Police Service in terms of any law.

Establishment and composition of Committee

5. (1) The Ministerial Coordinating Committee is hereby established. 35
- (2) The Committee is presided over by the President or, in the absence of the President, the Deputy President.
- (3) The other members of the Committee are—
- (a) the Cabinet members responsible for— 40
 - (i) the administration of Justice;
 - (ii) Intelligence;
 - (iii) Safety and Security;
 - (iv) Defence;
 - (v) Correctional Services; and
 - (vi) Finance; and 45
 - (b) any other Cabinet members designated from time to time by the President.

Functions of Committee

6. The functions of the Committee are—
- (a) to determine policy guidelines in respect of the combating and investigation of offences by the Directorate; and 50
 - (b) to coordinate the functions of the Directorate and those of other relevant government institutions.

CHAPTER 3

Role of prosecuting authority

Powers and duties of National Director

7. (1) The National Director, as head of the National Prosecuting Authority, must—
- (a) in consultation with the National Commissioner, determine procedures for the referral to the Directorate of investigations into—
 - (i) any offence falling within a category of offences determined by the Minister—
 - (aa) after consultation with the Minister of Safety and Security; and
 - (bb) in accordance with guidelines formulated by the Committee; or
 - (ii) any other specific case which the National Director and the National Commissioner decide must be dealt with by the Directorate;
 - (b) assign a Deputy National Director and one or more Directors and prosecutors to the Directorate, in order to assist it in its investigations and in adducing evidence, in subsequent prosecutions; and
 - (c) advise the Committee regarding any steps which should be taken to enable the Directorate to perform its functions more effectively.
- (2) The National Director may issue directives and must give guidance with regard to the functions of the Directorate to the Deputy National Director, Directors and prosecutors referred to in subsection (1)(b) and the Chief Investigating Officer.

Powers and duties of Deputy National Director and Directors

8. (1) The Deputy National Director—
- (a) must exercise control over the Directors and prosecutors assigned to the Directorate; and
 - (b) may exercise any of the powers and must perform the duties of the National Director delegated or assigned to him or her by the National Director.
- (2) A Director must, in addition to the powers and duties referred to in the National Prosecuting Authority Act and subject to the control and direction of the Deputy National Director, exercise the powers and perform the duties referred to in Chapter 5.

CHAPTER 4

Appointment and functions of members of Directorate

Appointment and functions of Chief Investigating Officer

9. (1) The President must appoint a fit and proper person as the Chief Investigating Officer of the Directorate.
- (2) The Chief Investigating Officer must, subject to the control and directions of the National Director and the provisions of this Act, exercise control over the members of the Directorate.
- (3) The Chief Investigating Officer may, subject to the provisions of this Act, make such rules and issue such directions as he or she deems expedient for the effective control of the members of the Directorate.
- (4) The Chief Investigating Officer must, as far as is reasonably practicable, take steps to ensure that—
- (a) national security intelligence, crime intelligence, intelligence-collection methods, sources of information and, where applicable, the identity of members of the Directorate are protected from unauthorised disclosure;
 - (b) nothing is done to give rise to any reasonable suspicion that the Directorate is—
 - (i) prejudicing a political interest that is legitimate in terms of the Constitution;
 - (ii) in a partisan manner, involved in furthering, protecting or undermining the interests of any section of the population or any political party or organisation; and

- (c) the activities of the Directorate are limited to what is necessary for the discharge of its functions in terms of this Act.

General powers of Chief Investigating Officer

10. (1) The Chief Investigating Officer may, subject to the approval of the Minister, do or cause to be done all things which are necessary for the effective control and functioning of the members of the Directorate. 5

(2) The Chief Investigating Officer may delegate any power conferred upon him or her by or under this Act to any other member of the Directorate, and any power exercised in terms of such a delegation is deemed to have been exercised by the Chief Investigating Officer. 10

Appointment of members of Directorate

11. (1) Subject to section 3(4)(c), the Chief Investigating Officer may appoint any fit and proper permanent member, seconded member or contract member of the Directorate to a post on the establishment of the Directorate: Provided that this section does not prevent the Chief Investigating Officer from appointing a contract member without appointing him or her to a post on the said establishment. 15

(2) The Chief Investigating Officer may from time to time, in consultation with the National Director, appoint prosecutors as seconded members to the Directorate to assist with the functions of the Directorate.

(3) Any document in the prescribed form purporting to have been signed by the Cabinet member responsible for the administration of Justice and certifying that any person has been appointed as a member, is *prima facie* proof that such person has been so appointed. 20

Powers and duties of members of Directorate

12. (1) A member may 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. 25

(2) The Chief Investigating Officer may designate any suitably qualified member to act as an investigator of the Directorate and such investigator has the powers bestowed upon— 30

- (a) a peace officer referred to in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to—
 - (i) the investigation of offences;
 - (ii) the entry and search of premises; 35
 - (iii) the seizure and disposal of articles;
 - (iv) arrests;
 - (v) the execution of warrants;
 - (vi) the attendance of an accused person in court; and
 - (vii) such other matters as the Minister may determine from time to time by notice in the *Gazette*; 40
- (b) a police official appointed as a member of the police service referred to in section 199(1) of the Constitution.

CHAPTER 5

Powers and duties of Directors 45

Inquiries by Director

13. (1) (a) A Director may conduct an inquiry in respect of any specified offence.
 (b) If a Director, at any time during the conducting of an inquiry, considers it desirable to do so in the interests of the administration of justice or in the public interest, he or she may, subject to the decision of the National Director and the National Commissioner in 50

terms of section 7(1)(a)(ii), extend the inquiry so as to include any other offence which he or she suspects to be connected to the subject of the inquiry.

(2) (a) A Director may, at any time prior to or during the holding of an inquiry, designate any prosecutor to conduct the inquiry, or any part thereof, on his or her behalf and to report to him or her. 5

(b) A prosecutor so designated has the powers of the Director in terms of this section and section 14. The instructions issued by the Treasury, under the Public Finance Management Act, 1999 (Act No. 1 of 1999), in respect of commissions of inquiry, apply, with the necessary changes, to such a prosecutor.

(3) The procedure to be followed in conducting an inquiry must be determined by the Director, having regard to the circumstances of each case. 10

(4) The hearing of evidence during an inquiry may take place *in camera* if it is in the interests of the administration of justice.

(5) The proceedings at the hearing of evidence during an inquiry must be recorded in such manner as the Director determines. 15

(6) For the purposes of an inquiry—

(a) the Director may summon any person who is believed to be able to furnish any information on the subject of the inquiry or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the Director, at a time and place specified in the summons, to be questioned or to produce that book, document or other object; and 20

(b) the Director or a person designated by him or her may question the person referred to in paragraph (a) under oath or affirmation administered by the Director or designated person and examine or retain such book, document or other object for further examination or for safe custody. 25

(7) A summons referred to in subsection (6) must—

(a) be in the prescribed form; 30
(b) contain particulars of the matter in connection with which the person concerned is required to appear before the Director;
(c) be signed by the Director or a person authorised by him or her; and
(d) be served in the prescribed manner.

(8) (a) The law regarding privilege applicable to a witness summoned to give evidence in a criminal case in a magistrate's court, applies to the questioning of a person in terms of subsection (6): Provided that such a person is not entitled to refuse to answer any question on the ground that the answer could expose him or her to a criminal charge. 35

(b) No evidence obtained from the answers to questions posed to a person under subsection (6) is admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (10)(b) or (c), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955). 40

(9) A person appearing before a Director by virtue of subsection (6)—

(a) may be assisted at his or her examination by an advocate or an attorney; 45
(b) is entitled to such witness fees as he or she would have been entitled to if he or she were a witness for the State in criminal proceedings in a magistrate's court.

(10) Any person who has been summoned to appear before a Director is guilty of an offence if he or she—

(a) without sufficient cause, fails to appear at the time and place specified in the summons or to remain in attendance until he or she is excused by the Director from further attendance; or 50

(b) at his or her appearance before the Director—

(i) fails to produce a book, document or other object in his or her possession or under his or her control which he or she has been summoned to produce; or
(ii) refuses to be sworn or to make an affirmation after he or she has been asked by the Director to do so; or 55

(c) having been sworn or having made an affirmation—

(i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her; or

- (ii) gives false evidence knowing that evidence to be false or not knowing or not believing it to be true.

(11) If a Director considers it necessary to hear evidence in order to enable him or her to determine if there are reasonable grounds to conduct an inquiry in terms of subsection (1)(a), the Director may hold a preparatory inquiry. 5

(12) Subsections (2) to (10), inclusive, and section 17 apply, with the changes required by the context, to a preparatory examination referred to in subsection (11).

Entering upon premises

14. (1) A Director or any person authorised thereto by him or her in writing may, on the authority of a warrant contemplated in subsection (4), for the purposes of an inquiry, at any reasonable time and without prior notice, enter any premises on which anything connected with that inquiry is or is suspected to be, and may— 10

- (a) inspect and search those premises and there make such enquiries as he or she may deem necessary;
- (b) examine any object found on the premises which has a bearing or might have a bearing on the inquiry in question, and request information regarding that object from the owner or person in charge of the premises or from any person in whose possession or charge that object is; 15
- (c) make copies of or take extracts from any book or document found on the premises which has a bearing or might have a bearing on the inquiry in question, and request from any person suspected of having the necessary information, an explanation of any entry therein; 20
- (d) seize, against the issue of a receipt, anything on the premises which has a bearing or might have a bearing on the inquiry in question, or if he or she wishes to retain it for further examination or for safe custody. 25

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

- (a) a person's right to and respect for his or her dignity and the protection of such dignity;
- (b) the right of a person to freedom and security; and 30
- (c) the right of a person to his or her personal privacy.

(3) No evidence obtained from any answers to questions posed in terms of subsection (1) is admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired, if the answers incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (12). 35

(4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered and the acts referred to in subsection (1) may only be performed on the authority of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises are situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction. 40

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

- (a) the nature of the inquiry in question; 45
- (b) the suspicion which gave rise to the inquiry; and
- (c) the need, in regard to the inquiry, for a search and seizure in terms of this section,

that there are reasonable grounds for believing that anything referred to in subsection (1) is on such premises or suspected to be on or in such premises. 50

(6) A warrant issued in terms of this section may be issued on any day and remain in force until—

- (a) it has been executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with similar authority; or 55

(c) three months have expired from the day of its issue, whichever occurs first.

(7) (a) Any person who acts on the authority of a warrant issued in terms of this section, may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person must first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises. 5

(b) The proviso to paragraph (a) does not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search might be destroyed, tampered with or disposed of, if the provisions of the said proviso are complied with. 10

(8) A warrant issued in terms of this section must be executed by day, unless the person who issues it authorises the execution thereof by night at times which are reasonable in the circumstances. 15

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

(a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises; 20

(b) supply such person, at his or her request, with particulars regarding his or her authority to execute such a warrant.

(10) (a) A Director or any person referred to in section 3(2)(c) or (e) may, without a warrant, enter upon any premises and perform the acts referred to in subsection (1) if—

(i) the person who is competent to do so consents to such entry, search, seizure and removal; or 25

(ii) the Director or person referred to in section 3(2)(c) or (e) upon reasonable grounds believes that—

(aa) the required warrant would be issued to him or her in terms of subsection (4) if he or she were to apply for such warrant; and 30

(bb) the delay caused by obtaining such warrant would defeat the object of the entry, search, seizure and removal.

(b) Any entry and search in terms of paragraph (a) must be executed by day, unless the execution thereof by night is justifiable and necessary. The person exercising the powers referred to in the said paragraph must identify himself or herself at the request of the owner or the person in control of the premises. 35

(11) If during the execution of a warrant or the conducting of a search, in terms of this section, a person claims that any item found on the premises in question contains privileged information and for that reason refuses the inspection or removal of such item, the person executing the warrant or conducting the search must, if the item contains information which is necessary for the inquiry, request the registrar of the High Court which has jurisdiction or his or her delegate to seize and remove that item for safe custody until a court of law has made a ruling on the question whether or not the information is privileged. 40

(12) Any person is guilty of an offence if he or she — 45

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

(b) when asked in terms of subsection (1) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading. 50

Preservation of secrecy

15. (1) Notwithstanding any other law, but subject to subsections (2) and (3), no person may, without the permission of the Director concerned, disclose to any other person— 55

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

- (b) the contents of any book or document or any other item in the possession of the Director; or
- (c) the record of any evidence given at an inquiry.
- (2) Information contemplated in subsection (1) may be disclosed—
 - (a) by a person in performing his or her functions in terms of this Act; or 5
 - (b) when required to do so by order of a court of law.
- (3) A person from whom a book or document has been taken under section 13(6)(b) or 14(1)(d) must, while it is in the possession of the Director, at his or her request be allowed, at his or her own expense and under the supervision of the Director, to make copies thereof or to take extracts therefrom at any reasonable time. 10
- (4) Any person who contravenes subsection (1) is guilty of an offence.

Compensation regarding expenses

16. The Chief Executive Officer may, on the recommendation of the Director concerned and with the concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an inquiry, be paid from the funds of the Directorate. 15

CHAPTER 6

Remuneration and conditions of service of members

Part I

Chief Investigating Officer 20

Remuneration and conditions of service of Chief Investigating Officer

17. (1) The remuneration, allowances, service benefits and other terms and conditions of service of the Chief Investigating Officer are determined by the Minister, after consultation with the Minister for Public Service and Administration and with the concurrence of the Minister of Finance: Provided that— 25
- (a) the salary of the Chief Investigating Officer may not be less than the salary of a Director-General in the public service; and
 - (b) the Chief Investigating Officer is entitled to pension provisioning and pension benefits determined and calculated under all circumstances, as if he or she were employed as a Director-General in the public service. 30
- (2) If an officer or employee in the public service is appointed as the Chief Investigating Officer, the period of his or her service as Chief Investigating Officer is deemed to be part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other conditions of service. The provisions of any pension law applicable to him or her or, in the event of his or her death, to his or her dependants which are not inconsistent with this section, continue so to apply, with the necessary changes. 35
- (3) For the purpose of subsection (2), “public service” includes the Agency, the National Prosecuting Authority, the Service, and the South African Police Service.

Part II 40

Seconded and contract members

Remuneration and conditions of service of seconded member

18. (1) The remuneration and conditions of service of any seconded member are as determined in the terms of his or her secondment.
- (2) Notwithstanding any other law, the terms of such secondment may make provision for additional remuneration, allowances or other benefits to be determined in accordance with subsection (3). 45

(3) Additional remuneration, allowances and benefits referred to in subsection (2), may be determined by the Minister—

- (a) on the recommendation of the Chief Investigating Officer and, in respect of prosecutors, also after consultation with the National Director; and
- (b) with the concurrence of the Minister of Finance.

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Remuneration and conditions of service of contract members

19. The remuneration and conditions of service of contract members are as determined by agreement between the Chief Investigating Officer and the member concerned, with the concurrence of the Minister and the Minister of Finance.

Part III

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Permanent members

Application of this Part

20. This Part is only applicable to permanent members, but the terms of secondment of a seconded member or the terms of agreement of a contract member may by reference include any condition of service contained in this Part, to the extent that it may be applicable to such seconded or contract member.

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Terms of appointment, promotion, discharge, demotion and transfer of permanent members

21. Permanent members are appointed subject to the provisions of this Act, and any such member may only be promoted, discharged, reduced in rank or grade or transferred in accordance with the said provisions.

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Remuneration, allowances and benefits of permanent members

22. (1) The remuneration, allowances and other service benefits of permanent members are determined by the Minister, with the concurrence of the Minister of Finance.

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

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(3) For the purposes of this section, “public service” includes the Agency, the National Prosecuting Authority, the Service, and the South African Police Service.

Security screening and discharge of permanent members

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23. (1) Subject to subsection (2), no person may be appointed as a permanent member before—

- (a) information with respect to that person has been gathered in the prescribed manner in a security screening investigation by the Directorate or the Agency; and
- (b) the Chief Investigating Officer, after evaluating the collected information, is satisfied that such person may be appointed as a permanent member without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to the security interests of the Republic.

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(2) If the Chief Investigating Officer is so satisfied, he or she must issue a document in respect of such person in which it is certified that such person has successfully undergone a security clearance: Provided that the Chief Investigating Officer may

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withdraw such certificate if he or she should obtain information which, after evaluation by him or her, causes him or her to believe that the member could be a security risk or could possibly act in any manner prejudicial to the security interests of the Republic.

(3) If—

- (a) the certificate referred to in subsection (2) is withdrawn; or 5
- (b) the Chief Investigating Officer obtains information regarding a permanent member which causes him or her to suspect that such member could be a security risk or could possibly act in any manner prejudicial to the security interests of the Republic,

the member concerned is deemed unfit for further membership of the Directorate and the Chief Investigating Officer may discharge such member from the Directorate, or, after consultation with the Public Service Commission, transfer such member to another department of state on the conditions determined by the said Commission. 10

Discharge of permanent members on account of long absence without leave

24. (1) Any permanent member who absents himself or herself from his or her official duties without the permission of the Chief Investigating Officer, for a period exceeding 30 calendar days, is deemed to have been discharged from the Directorate on account of misconduct, with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty. 15

(2) If any permanent member absents himself or herself from his or her official duties without the permission of the Chief Investigating Officer and accepts other employment, he or she is deemed to have been discharged as contemplated in subsection (1), even if he or she has not yet so absented himself or herself for a period of 30 calendar days. 20

(3) If a member who is deemed to have been discharged in terms of subsection (1) or (2) again reports for duty, the Chief Investigating Officer may, notwithstanding any other law, but subject to the approval of the Minister, reinstate him or her in his or her former post or appoint him or her to any other post or appointment in the Directorate, as the case may be, on such conditions as the Chief Investigating Officer may deem fit. In that event the period of his or her absence from his or her official duties is deemed to have been absence on vacation leave without pay, or leave on such other conditions as the Chief Investigating Officer may determine. 25 30

(4) If the Chief Investigating Officer refuses to reinstate a member in accordance with subsection (3), the member concerned may appeal to the Minister, stating the reasons why he or she should be so reinstated, and the Minister, after consideration of the appeal, may turn down the appeal or direct the Chief Investigating Officer to take such steps as the Minister deems appropriate for the re-instatement of the member. 35

Discharge of permanent members on account of ill-health

25. (1) Any permanent member may be discharged from the Directorate by the Chief Investigating Officer if, after enquiry in the prescribed manner as to his or her state of health, the Chief Investigating Officer is satisfied that he or she is, by reason of ill-health, unfit to remain in the Directorate. 40

(2) Any permanent member discharged in terms of subsection (1) may, in the prescribed manner, appeal to the Minister, who may thereupon set aside or confirm his or her discharge.

Discharge or reduction in rank or grade of permanent members on account of inefficiency 45

26. (1) A permanent member may be discharged from the Directorate or reduced in rank or grade by the Chief Investigating Officer if, after enquiry in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, the Chief Investigating Officer is satisfied that such member is incapable of performing his or her duties efficiently. 50

(2) A permanent member who has been discharged from the Directorate or reduced in rank or grade in terms of subsection (1), may, in the prescribed manner, appeal to the Minister, who may thereupon set aside or confirm his or her discharge or reduction in rank or grade, as the case may be.

Transfer and discharge on account of public interest, and secondment of permanent members 5

27. (1) If the public interest so requires, the Chief Investigating Officer may, with the concurrence of the Minister—

- (a) transfer any permanent member from the post held by him or her to any other post— 10
 - (i) in the Directorate; or
 - (ii) if the Minister concerned has concurred therein and the Public Service Commission has so recommended, in any other department of state, whether or not such post is of a lower grade than that of the post held by him or her, and whether or not such post is within or outside the Republic: Provided that— 15
 - (aa) upon such a transfer a permanent member's salary and salary scale may not be reduced without his or her consent;
 - (bb) such a transfer to another department must take place on such conditions as may be determined on the recommendation of the Public Service Commission; and 20
 - (cc) a permanent member may not without his or her consent be transferred to a post outside the Directorate, if such transfer will, save for his or her salary, result in a change in his or her conditions of service; 25
- (b) discharge of any permanent member from the Directorate, on such conditions as the Chief Investigating Officer may determine.

(2) Any permanent member may, with his or her consent and upon such conditions as may be approved by the Chief Investigating Officer, be seconded by the Chief Investigating Officer for the performance of a particular service or for a specified period, to the service of any other government or any other authority, or any board, institution or body, but, while so seconded, remains subject to the provisions of this Act and any other law which applies to him or her. 30

Labour provisions

28. (1) No permanent member of the Directorate may strike or induce or conspire with any other member of the Directorate to strike. 35

(2) The Directorate's services are, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act No. 66 of 1995), deemed to have been designated as an essential service in terms of section 71 of that Act.

(3) The Minister must, by regulation, make provision for mechanisms and grievance procedures, with a view to fair labour practices and proper consultation on conditions of service within the Directorate. 40

Retirement

29. A permanent member of the Directorate retires on the last day of the month during which he or she has attained the age of sixty years. 45

Restrictions on former members

30. (1) Subject to subsection (2), a permanent member whose employment by the Directorate has terminated, may not, for a period determined by the Minister, after such termination—

- (a) use, in the Republic or elsewhere, any skills acquired as a result of his or her employment by the Directorate to the detriment of the Directorate; or 50

- (b) in any way communicate with another member or representative or associate of the Directorate, or any other person or institution that cooperates with the Directorate, if such communication is likely to be detrimental to the achievement of the objects of this Act.

(2) The Minister must issue guidelines on how former permanent members must conduct themselves in order to avoid harming the interests of the Directorate and the achievement of the objects of this Act. 5

Reward for extraordinary diligence or devotion

31. The Chief Investigating Officer may, with the approval of the Minister, award to any person who is or was a member, for extraordinary diligence or devotion to duty, such monetary or other reward as he or she considers appropriate in the circumstances. 10

Exemption from training and compulsory service in South African National Defence Force

32. (1) The provisions of the Defence Act, 1957 (Act No. 44 of 1957), relating to service or the liability to undergo training do not apply to any permanent member. 15

(2) (a) Notwithstanding subsection (1), the Minister may, in the event of war or when a state of emergency exists and having regard to the requirements of the Directorate, second any permanent member for service or training in the South African National Defence Force.

(b) A member must, while so seconded for service or training, be subject to the discipline, command and control applicable to the South African National Defence Force or the South African Police Service, as the case may be, but shall not be exempted from the application of the provisions of this Act. 20

Discoveries, inventions and improvements by members

33. (1) The rights in respect of all discoveries and inventions and all improvements in respect of processes, apparatus and machinery, made by a member resulting from research undertaken by such member in the course of his or her employment as a member, vest in the Directorate. 25

(2) The Chief Investigating Officer may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest, subject to such conditions and the payment of such fees or royalties as the Chief Investigating Officer may determine. 30

(3) If the rights in and to any discovery, invention or improvement vest in the Directorate in terms of subsection (1), the Chief Investigating Officer may either award to the person responsible for the discovery, invention or improvement such bonus or make provision for financial participation by such person in the profits derived from the discovery, invention or improvement as determined by the Chief Investigating Officer with the concurrence of the Minister and the Minister of Finance. 35

(4) The Chief Investigating Officer may apply for a patent, in the name of the Directorate, in respect of any discovery, invention or improvement referred to in subsection (1). For the purposes of the Patents Act, 1978 (Act No. 57 of 1978), the Directorate is regarded as the assignee of the discoverer or inventor concerned. 40

Whole time of members to be at disposal of Directorate

34. (1) Unless otherwise provided for in this Act or in a particular employment contract— 45

- (a) every member must place all his or her time at the disposal of the Directorate;
- (b) no member may perform or enter into a contract to perform any remunerative work outside his or her employment; and
- (c) no member may claim, as of right, additional remuneration in respect of any official duty or work which he or she is required by a competent authority to perform. 50

(2) Notwithstanding subsection (1), the Minister may grant permission to a member to perform or enter into a contract to perform remunerative work outside his or her employment.

(3) (a) Where a member receives any remuneration, allowance or other reward in connection with the performance of his or her work, otherwise than in accordance with this Act or in contravention of subsection (1)(b), such member must pay to the Directorate an amount equal to the amount of such remuneration, allowance or reward or, where it does not consist of money, the value thereof as determined by the Chief Investigating Officer. If he or she does not do so, the Chief Investigating Officer may recover it from him or her by way of legal proceedings: Provided that—

(i) he or she may appeal to the Minister against any such determination by the Chief Investigating Officer; and

(ii) the Minister may approve the retention by the member concerned of the whole or a portion of that remuneration, allowance or reward.

(b) Where a member has received any remuneration, allowance or other reward as contemplated in paragraph (a), the Chief Investigating Officer may, in writing, require such member or any other person, or any other person or institution in whose possession it may be, not to dispose thereof, or, if it is money, to retain it, pending the outcome of any legal proceedings for the recovery of such remuneration, allowance or reward or the value thereof.

Missing members

35. (1) If, as a result of the performance in good faith of his or her duties in terms of this Act, a member's whereabouts become unknown, the absence of such member does not render him or her liable to dismissal on account of misconduct. Such a member remains in the service of the Directorate, while missing, until it is established, to the satisfaction of the Chief Investigating Officer, that such member's continued absence is no longer as a result of the member's performance of his or her duties, or until the date of a death certificate in respect of the member or the date of an order by a competent court in terms of which the death of the member is presumed, whichever occurs earliest.

(2) The salary or wages and allowances accruing to a member during his or her absence contemplated in subsection (1) shall, subject to subsection (4), be paid to his or her spouse. If he or she has no spouse, it must be paid to his or her other dependants, or to any person who is competent to receive and administer such salary or wages and allowances on behalf of his or her spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) is for all purposes deemed to be payment thereof to the member concerned.

(4) Notwithstanding the provisions of subsection (2), the Chief Investigating Officer may direct that only a portion of the salary or wages and allowances of a member be paid in terms of the said subsection or that no portion thereof be so paid.

CHAPTER 7

Finances, regulations and offences

Budget of Directorate

36. (1) The Minister must appoint a fit and proper person as the Chief Executive Officer of the Directorate.

(2) The Chief Executive Officer must, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999)—

(a) account for money received or paid out for or on behalf of the administration and functioning of the Directorate; and

(b) cause the necessary accounting and other related records to be kept, which records must be audited by the Auditor-General.

(3) Subject to the Public Finance Management Act, 1999, requests for the funds needed for the administration and functioning of the Directorate must be addressed to Parliament by the Minister in the manner prescribed for the budgetary processes of departments of state.

(4) The Minister may, in accordance with section 2(3) of the Secret Services Act, 1978 (Act No. 56 of 1978), request the Minister of Finance to make funds available from the Secret Services Account in respect of any secret service to be performed by the Directorate, and the Directorate is, for the purposes of that Act, deemed to be a Department of State.

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Regulations

37. (1) The Minister may make regulations as to—

- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, dismissal, suspension or reduction in rank or grade of members and the personnel management of those members in general; 10
- (b) the standards of physical and mental fitness and the medical examination of members and the medical, dental and hospital treatment of such members and their families;
- (c) the provision of medical, dental and hospital treatment of members who have retired on pension and their families, and of the families of members who have died or die; 15
- (d) the numerical establishment of the Directorate, the conditions of service of the members thereof, the salaries, salary scales, wages and allowances of members and the systems relating to the administration and determination thereof and the various divisions, branches, grades, ranks and designations in the Directorate; 20
- (e) the establishment and maintenance of training institutions or centres for members and the instruction, training, discipline and control of such members at such institutions or centres;
- (f) all matters relating to misconduct and discipline in the Directorate; 25
- (g) the deductions to be made from the salaries, wages or allowances of members;
- (h) the assembly of boards of enquiry in relation to misconduct proceedings, the procedure at the proceedings of such boards and the attendance of witnesses thereat;
- (i) procedures to be followed in respect of cases of alleged or presumed medical unfitness; 30
- (j) procedures to be followed in respect of cases of alleged or presumed inefficiency;
- (k) the recovery from a member of any deficiency, loss, damage or expense which he or she has unlawfully caused to the State; 35
- (l) the control of funds collected or received by members for the benefit of members or former members or their dependants;
- (m) the general management and maintenance of the Directorate;
- (n) the control over and administration of funds appropriated for the Directorate in order to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof; 40
- (o) the regulation of labour relations and the creation of accompanying structures;
- (p) the conditions for and procedures regarding the permission of access to any premises under the control of the Directorate and matters relating thereto;
- (q) a code of conduct to be adhered to by members; 45
- (r) the establishment of procedures regarding the presentation, consideration and adjudication of grievances of members;
- (s) the establishment and functioning of a structure to which any person may report any complaint or any alleged improper conduct on the part of a member of the Directorate; 50
- (t) any matter which must or may be prescribed in terms of this Act;
- (u) generally, all matters which are necessary or expedient to be prescribed in order to achieve the objects of this Act.

(2) Different regulations may be made with reference to different categories of members. 55

(3) A regulation relating to conditions of service of members may also be applied to a person who ceases to be a member, for a period of not more than two years, after such

person ceases to be a member: Provided that such a regulation does not apply in respect of a particular person if it would be to his or her detriment.

(4) Regulations under subsection (1)(c) may provide for benefits in respect of medical, dental and hospital treatment of members who have retired on pension and their families and of the families of members who have died, on the same basis as that which is applicable to serving members and their families. 5

(5) Any regulation made in terms of this section with reference to members, need not be published in the *Gazette*, but must be communicated to members to whom it applies in such manner as the Minister determines. 10

(6) (a) Any regulation made in terms of subsection (1) that may result in the expenditure of state monies must be made in consultation with the Minister of Finance. 10

(b) Any regulation made in terms of subsection (1) that may affect a function of the South African Police Service, the Agency or the Service, must be made in consultation with the Minister responsible for the South African Police Service, the Agency or the Service, as the case may be. 15

(7) Any regulation made in terms of this section may provide that any contravention thereof shall be an offence.

Prohibition of access to premises

38. (1) The Minister may, by notice in the *Gazette* or in any other manner which he or she deems sufficient in the circumstances, prohibit or restrict access to any premises under the control of the Directorate. 20

(2) The Chief Executive Officer may take or cause to be taken such measures as he or she deems necessary for the security of, or the application of a prohibition of or a restriction on access to, such premises, and may, in connection with any measures so taken, cause such notices to be published or such warning notices to be erected as he or she may in each particular case deem necessary. 25

(3) Any person who wilfully gains unauthorised access to any premises referred to in subsection (1) is guilty of an offence.

Unauthorised access to or modification of computer material

39. (1) Without derogating from the generality of subsection (2)— 30

(a) “access to a computer” includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Directorate; 35

(b) “contents of any computer” includes the physical components of any computer as well as any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Directorate; 40

(c) “modification” includes both a modification of a temporary or permanent nature; and

(d) “unauthorised access” includes access by a person who is authorised to use the computer but is not authorised to gain access to a certain program or to certain data held in such computer or is unauthorised, at the time when the access is gained, to gain access to such computer, program or data. 45

(2) Any person is guilty of an offence if he or she wilfully—

(a) gains unauthorised access to any computer which belongs to or is under the control of the Directorate or to any program or data held in such a computer, or in a computer to which only certain or all members have access in their capacity as members; or 50

(b) causes a computer which belongs to or is under the control of the Service or to which only certain or all members have access in their capacity as members, to perform a function while such person is not authorised to cause such computer to perform such function; or 55

- (c) performs any act which causes an unauthorised modification of the contents of any computer which belongs to or is under the control of the Directorate or to which only certain or all members have access in their capacity as members with the intention to—
 - (i) impair the operation of any computer or of any program in any computer or of the operating system of any computer or the reliability of data held in such computer; or 5
 - (ii) prevent or hinder access to any program or data held in any computer.
- (3) Any act or event for which proof is required for a conviction of an offence in terms of this section, and which was committed or took place outside the Republic, is deemed to have been committed or to have taken place in the Republic if— 10
 - (a) the accused was in the Republic at the time when he or she performed the act or any part thereof; or
 - (b) the computer, by means of which the act was performed, or which was affected in a manner contemplated in subsection (2) by the act, was in the Republic at the time when the accused performed the act or any part thereof; 15
 - or
 - (c) the accused was a South African citizen at the time of the commission of the offence.

Offences and penalties

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40. (1) Any person is guilty of an offence if he or she—
- (a) not being a member—
 - (i) by words, conduct or demeanor pretends to be a member;
 - (ii) persuades or attempts to persuade any member to fail to carry out his or her duty or to perform any act in conflict with his or her duty; or 25
 - (iii) is an accomplice to the commission of any act whereby any unlawful order is given to a member or any regulation is sought to be evaded; or
 - (b) without the approval of the Chief Investigating Officer, in connection with any activity carried on by him or her, takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or to infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Directorate, or is in any manner associated or connected with the Directorate; or 30
 - (c) improperly interferes with, hinders or obstructs the Directorate or a member in the performance of any functions in terms of this Act. 35
- (2) Any person convicted of an offence under this Act is liable, in the case of a contravention of—
- (a) any regulation or of subsection (1)(a) or (b), to a fine or to imprisonment for a period not exceeding two years; 40
 - (b) subsection 1(c), to a fine or to imprisonment for a period not exceeding three years;
 - (c) section 13(10), 14(12) or 15(4), to a fine or to imprisonment for a period not exceeding five years;
 - (d) section 38(3), to a fine or to imprisonment for a period not exceeding 15 years; 45
 - (e) section 39(2), to a fine or to imprisonment for a period not exceeding 20 years.

Saving

41. Nothing in this Act may be construed as indemnifying any member against prosecution in or conviction by any court of law in respect of any offence.

Extraterritorial application of Act in respect of offences

42. (1) Subject to section 39(3), any act constituting an offence or misconduct in terms of this Act, and which is committed outside the Republic by any South African citizen or any person domiciled in the Republic, is deemed to have been committed also in the Republic.

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(2) Any offence or misconduct in terms of this Act is, for the purposes of determining the jurisdiction of a court or board of enquiry to try the offence or misconduct, deemed to have been committed, besides the place where it was actually committed, also at any place where the accused happens to be.

CHAPTER 8

10

General provisions

Incorporation of sections of Act 68 of 1995

43. Sections 67 and 70 of the South African Police Service Act, 1995, apply, with the necessary changes, in respect of members of the Directorate.

Amendment of laws, and transitional arrangement

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44. (1) The laws specified in the Schedule are hereby amended to the extent indicated in the third column thereof.

(2) The President may by proclamation in the *Gazette*—

- (a) dissolve any Investigating Directorate established in terms of section 7 of the National Prosecuting Authority Act; and
- (b) direct that the functions of such Investigating Directorate must be transferred to the Directorate in accordance with the terms set out in the said proclamation.

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Short title and commencement

45. This is the Directorate of Special Operations Act, 2000, which comes into operation on a date fixed by the President by proclamation in the *Gazette*.

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SCHEDULE

Laws amended by section 44

Item	No. and year of law	Short title	Extent of amendment
Item No. 1	Act No. 127 of 1992	Interception and Monitoring Prohibition Act, 1992	1. The amendment of section 1: (a) by the insertion after the definition of “agency” of the following definition: <u>“ ‘Directorate’ means the Directorate of Special Operations referred to in section 1 of the Directorate of Special Operations Act, 2000;”</u>; and (b) by the addition to the definition of “serious offence” of the following paragraph: <u>“(c) any specified offence as defined in section 1 of the Directorate of Special Operations Act, 2000.”</u>. 2. The amendment of section 3(2) by the addition of the following paragraph: <u>“(d) for the purposes of the matters referred to in subsection (1)(b) or subsection (4), be made by an agent of the Directorate, if the agent obtained in advance the approval of another agent in the Directorate with at least the rank equivalent to, or above, a chief director in the public service, and who is authorised in writing by the Chief Investigating Officer of the Directorate to grant such approval;”</u>;

Item	No. and year of law	Short title	Extent of amendment
			3. The amendment of section 4— (a) by the substitution for subsection (1) of the following subsection: “(1) If a direction has been issued in terms of section 3, any member of the South African Police Service as defined in the South African Police Service Act, 1995 (Act No. 68 of 1995), or a member, excluding a member of a visiting force, as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), <u>a member of the Directorate</u> or a member of the Agency or the Service may execute that direction, provided that the member concerned has been authorized by the officer or member who made the application in terms of section 3(2) to execute that direction or to assist with the execution of the direction concerned.”; and (b) by the addition to subsection (2)(b) of the following subparagraph: “(iv) <u>a member of the Directorate holding a post of at least the rank equivalent to a chief director in the public service,</u>”.

Item	No. and year of law	Short title	Extent of amendment
Item No. 2	Act No. 39 of 1994	National Strategic Intelligence Act, 1994	4. The substitution in section 5 for subsection (2) of the following subsection: “(2) If a person, body or organisation has made a facility, device or telecommunications line available for the purposes mentioned in subsection (1)(b), the remuneration agreed upon by the person or organisation and the National Commissioner of the South African Police Service, the Chief of the South African National Defence Force, <u>the Chief Investigating Officer of the Directorate</u>, or the Director-General of the Agency or the Service, as the case may be, shall be paid to that person, body or organisation.”. 1. The amendment of section 1— (a) by the insertion after the definition of “departmental intelligence” of the following definition: “ ‘<u>Directorate</u>’ means the Directorate referred to in <u>section 1 of the Directorate of Special Operations Act, 2000</u>;”; and

Item	No. and year of law	Short title	Extent of amendment
			(b) by the substitution for the definition of “National Intelligence Structures” of the following definition: “ ‘National Intelligence Structures’ means— (a) Nicoc; (b) the Intelligence Division of the National Defence Force, established under the Defence Act, 1957 (Act No. 44 of 1957); (c) the intelligence division of the South African Police Service; (d) the Agency; [and] (e) the Service; and (f) the Crime Intelligence Division of the Directorate.”. 3. The amendment of section 3— (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph: “(b) other than a police service established under any Act of Parliament <u>or the Directorate</u>, when a member of such service <u>or the Directorate</u> is investigating any offence relating to the security of the Republic or is performing any other function relating to the security of the Republic,”; and

Item	No. and year of law	Short title	Extent of amendment
Item No. 3	Act No. 40 of 1994	Intelligence Services Control Act, 1994	(b) by the substitution for paragraph (ii) of subsection (1) of the following paragraph: “(ii) other than a police service established by any Act of Parliament or the Directorate, when a member of such a service or the Directorate is, with the knowledge and approval of Nicoc, investigating an offence relating to the security of the Republic or is performing any other function relating to the security of the Republic;”. 4. The amendment of section 4 by the addition to subsection (1) of the following paragraph: “(g) the Chief Investigating Officer of the Directorate,”. 1. The amendment of section 1— (a) by the insertion after the definition of “counter intelligence” of the following definition: “ ‘Directorate’ means the Directorate of Special Operations referred to in section (1) of the Directorate of Special Operations Act, 2000;”;

Item	No. and year of law	Short title	Extent of amendment
			(b) by the substitution for the definition of “Head of a Service” of the following definition: “ ‘Head of a Service’ means the Director-General of the Agency or of the South African Secret Service, the Chief of the National Defence Force, [or] the <u>National Commissioner of the South African Police Service, or the Chief Investigating Officer of the Directorate;</u>”; (c) by the substitution for the definition of “Minister” of the following definition: “ ‘Minister’ means the Minister to whom the portfolio of the Agency, the South African Secret Service, the National Defence Force, [or] the South African Police Service, <u>or the Directorate</u> has been allocated in terms of section [88] <u>92</u> of the Constitution;”; and (d) by the substitution for the definition of “Services” of the following definition: “ ‘Services’ means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force, [and] the [National Intelligence Service] Intelligence Division of the South African Police Service <u>and the Crime Intelligence Division of the Directorate;</u>”.

Item	No. and year of law	Short title	Extent of amendment
			2. The amendment of section 3 by the substitution for paragraphs (d) and (e) of the following paragraphs, respectively: “(d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), and regulations regarding the intelligence and counter-intelligence functions of a Service, made under section 29 of the Intelligence Services Act, 1994 (Act No. 38 of 1994), section 87 of the Defence Act, 1957 (Act No. 44 of 1957), <u>section 37 of the Directorate of Special Operations Act, 2000</u>, or section 24 of the South African Police Service Act, 1995 (Act No. 68 of 1995); (e) to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the South African Secret Service, the National Defence Force, <u>the Directorate</u> and the South African Police Service;”.

Item	No. and year of law	Short title	Extent of amendment
Item No. 4	Act No. 32 of 1998	National Prosecuting Authority Act, 1998	1. The amendment of section 11 by the substitution for subsection (1) of the following subsection: “(1) The President may, after consultation with the <i>Minister</i> and the <i>National Director</i>, appoint not more than [three] <u>four</u> persons, as Deputy National Directors of Public Prosecutions.”. 2. The amendment of section 13 by the substitution for paragraph (c) of subsection (1) of the following paragraph: “(c) may appoint one or more Directors of Public Prosecutions (hereinafter referred to as <i>Special Directors</i>) to exercise [certain] <u>the</u> powers, carry out [certain] <u>the</u> duties and perform [certain] <u>the</u> functions conferred or imposed on or assigned to him or her— (i) by the President by proclamation in the <i>Gazette</i>; or (ii) by or under <u>the Directorate of Special Operations Act, 2000.</u>”.

Item	No. and year of law	Short title	Extent of amendment
			3. The amendment of section 24 by the substitution for subsection (3) of the following subsection: “(3) A <i>Special Director</i> 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 <i>National Director</i>: Provided that if such powers, duties and functions include any of the powers, duties and functions referred to in section 20(1), they shall be exercised, carried out and performed [in] after consultation with the <i>Director</i> of the area of jurisdiction concerned.”.

MEMORANDUM ON THE OBJECTS OF THE DIRECTORATE OF SPECIAL OPERATIONS BILL

1. BACKGROUND

1.1 In his opening address in Parliament on 25 June 1999, the President announced “that a special and adequately staffed and equipped investigation unit will be established urgently to deal with all national priority crimes, including police corruption”. At the same time the President directed the Ministers of Safety and Security, Defence, Intelligence, Justice, Home Affairs and Finance to finalise all outstanding matters which relate to the activation of this specialised investigation unit.

1.2 A ministerial task team, supported by officials from the departments concerned, immediately after the announcement commenced an investigation into the establishment of a special investigation unit. On 9 July 1999 the Minister for Justice and Constitutional Development and the Minister of Safety and Security announced the creation of the Directorate of Special Operations. In September 1999 the Directorate was officially launched in Guguletu. At the launching of the Directorate, it was announced that the Directorate would, within four years, have the strength of about 2000 employees. At present the Directorate is operating with staff borrowed from other departments and Services. It is not possible for the Directorate to grow any further under such service arrangements. The legislation proposed by the Bill is of the utmost importance in order to enable the Directorate to—

- (a) establish an adequate infrastructure, including the necessary capacities for intelligence gathering and law-enforcement functions;
- (b) employ persons with suitable skills and qualifications;
- (c) obtain the support of all relevant governmental institutions; and
- (d) coordinate its activities with those of the South African Police Service and the Intelligence Services.

2. CONTENTS OF THE BILL

2.1 The Bill makes provision for a Directorate comprising two main components, namely—

- (a) members of the National Prosecuting Authority (NPA); and
- (b) permanent, seconded and contract members of the Directorate.

2.2 The National Director of Public Prosecutions (National Director) will (in addition to certain other functions) exercise control over both components of the Directorate.

2.3 The NPA component of the Directorate will consist of the following members of the Office of the National Director:

- * A Deputy National Director appointed by the President and assigned to the Directorate by the National Director.
- * Directors of Public Prosecutions appointed in terms of the National Prosecuting Authority Act and assigned to the Directorate by the National Director.
- * Deputy Directors and Prosecutors assigned to the Directorate by the National Director.

The Deputy National Director must exercise control over the Directors, Deputy Directors and Prosecutors assigned to the Directorate.

2.4 The non-prosecutorial component of the Directorate will consist of a Chief Investigating Officer appointed by the President and permanent, seconded and contract members of the Directorate. The Chief Investigating Officer must exercise control over the members of the Directorate.

2.5 The Bill seeks to allow the President to establish a Crime Intelligence Division for the Directorate and the Minister for Justice and Constitutional Development (the Minister) to establish Divisions and Subdivisions for the Directorate.

2.6 It is also proposed that the President may dissolve any Investigating Directorate established in terms of the National Prosecuting Authority Act, and transfer the functions of such an Investigating Directorate to the Directorate.

POLITICAL RESPONSIBILITY

2.7 The Bill seeks to give the Minister final responsibility over the Directorate.

2.8 Since the successful functioning and achievement of the aims of the Directorate will have a bearing on the area of responsibility of more than one member of the Cabinet, provision is made for the establishment of a Ministerial Coordinating Committee in order to ensure that the members concerned shall—

- * cooperate with one another towards the achievement of such aims; and
- * jointly determine policy matters regarding the functioning and administration of the Directorate.

The functions of this Committee will be to—

- * jointly determine policy guidelines in respect of the combating and investigation of offences by the Directorate;
- * coordinate the functions of the Directorate and those of other relevant government institutions; and
- * perform other functions assigned to it in terms of the Bill.

AIMS AND FUNCTIONING OF THE DIRECTORATE

2.9 The Directorate's principal aims are to investigate, and to gather intelligence in respect of, offences which are identified in terms of the Bill as being of a very serious nature, and, under the guidance of the National Director and with the support of the National Prosecuting Authority, to ensure that such offences are investigated and prosecuted as competently as possible.

2.10 Matters to be investigated: The Bill proposes that the National Director, as head of the National Prosecuting Authority, must, in consultation with the National Commissioner, determine procedures for the referral to the Directorate of investigations into—

- (a) any offence falling within a category of offences determined by the Minister—
 - (aa) after consultation with the Minister of Safety and Security; and
 - (bb) in accordance with guidelines formulated by the Committee; or
- (b) any other specific case which the National Director and the National Commissioner wish to be dealt with by the Directorate.

2.11 It is proposed that directors assigned to the Directorate will have the same powers that Investigating Directors have under the National Prosecuting Authority Act.

2.12 The Bill seeks to allow the Chief Investigating Officer to designate suitably qualified members to act as investigators of the Directorate, and such investigators will have the powers bestowed upon—

- (a) a peace officer referred to in the Criminal Procedure Act, 1977, relating to—
 - (i) the investigation of offences;
 - (ii) the entry and search of premises;
 - (iii) the seizure and disposal of articles;
 - (iv) arrests;
 - (v) the execution of warrants;
 - (vi) the attendance of an accused person in court; and
 - (vii) such other matters as the Minister may determine from time to time by notice in the *Gazette*;
- (b) a police official appointed as a member of the SAPS.

2.13 Intelligence: The Bill proposes that the Directorate may either rely on the support of the National Intelligence Agency, the South African Secret Service and the SAPS intelligence division in this regard, or the President may establish a Crime Intelligence Division for the Directorate.

ADMINISTRATIVE MATTERS

2.14.1 Chapter 6 of the Bill deals with the remuneration and conditions of service of members of the Directorate. The remuneration and conditions of service of the Chief Investigating Officer are to be determined by the Minister. The Chief Investigating Officer may not receive less than a Director-General. The remuneration and conditions of service of other members are determined by the Minister in consultation with the Minister of Finance. Members and seconded members may receive additional benefits for extraordinary diligence or devotion in the performance of their duties.

2.14.2 The provisions pertaining to permanent members are necessarily comprehensive and are largely based on the dispensation of members of the National Intelligence Agency.

2.14.3 With regard to the finances of the Directorate, the Bill proposes that the Minister must appoint a fit and proper person as the Chief Executive Officer of the Directorate, who will be the accounting officer thereof. Requests for funds needed for the administration and functioning of the Directorate must be addressed to Parliament by the Minister in the manner prescribed for the budgetary process of departments of state.

2.14.4 Provision is being made for comprehensive regulations to be made by the Minister, regarding such matters as conditions of service of members, the establishment of the Directorate, training, misconduct proceedings, labour relations, etc.

3. OTHER DEPARTMENTS/BODIES CONSULTED

All government departments falling under the auspices of the Inter-Ministerial Security Committee were consulted.

4. FINANCIAL IMPLICATIONS FOR STATE

The Departmental Medium Term Expenditure Framework allocations, as approved by Cabinet on 24 November 1999 in respect of the Directorate, for the period 2000/2001-2002/2003 are R150 million for 2000/2001; R200 million for 2001/2002; and R250 million for 2002/2003.

5. IMPLICATIONS FOR PROVINCES

None.

6. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.