
GOVERNMENT NOTICES • GOEWERMENTSKENNISGEWINGS

CIVILIAN SECRETARIAT FOR THE POLICE SERVICE

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NOTICE TO INTRODUCE THE INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL, 2023 AND PUBLICATION OF EXPLANATORY SUMMARY OF THE BILL

General B.H. Cele, the Minister of Police intends to introduce the Independent Police Investigative Directorate Amendment Bill, 2023 in the National Assembly shortly. The annexed Explanatory Summary of the Bill is hereby published in accordance with Rule 24(1) (c) of the Rules of National Assembly.

The Bill seeks to provide:

- (a) that the Independent Police Investigative Directorate (“Directorate”) is institutionally and operationally independent.
- (b) that the Directorate is independent, impartial and must exercise its powers and functions without fear, favour, prejudice, or undue influence, in order to give effect to the judgment of the Constitutional Court in the case of *McBride v Minister of Police and Another 2016 (2) SACR 585 (CC)*.
- (c) for determination of conditions of service of investigators of the Directorate, including their salary and allowances, by the Minister in consultation with the Minister of Finance.
- (d) for extension of the mandate of the Directorate to include investigation of allegations of rape and deaths that have been committed while off duty.
- (e) for strengthening of the provisions relating to the implementation of disciplinary recommendations of the Directorate, and for other matters connected therewith.

A copy of the Bill can be found on the website of the Civilian Secretariat for Police Service at <http://www.policesecretariat.gov.za/> and may after introduction also be obtained from Government Printers Cape Town: (Telephone number 021 405 7531).

REPUBLIC OF SOUTH AFRICA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL

*As introduced in the National Assembly (proposed section 75 Bill; explanatory
summary of Bill published in Government Gazette No ___ of ____ 2023)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B — 2023]

implementation of disciplinary recommendations; to provide for a transitional arrangement regarding the conditions of service of existing investigators and provincial heads; to amend other provisions of the Independent Police Investigative Directorate Act, 2011, so as to ensure that the Directorate executes its mandate effectively and efficiently; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 1 of 2011

1. Section 1 of the principal Act is hereby amended—
 - (a) by the insertion before the definition of "Committee" of the following definition:

" **'buccal sample'** means buccal sample as defined in section 15E(e) of the South African Police Service Act;";
 - (b) by the insertion after the definition of "Directorate" of the following definition:

" **'Directorate for Priority Crime Investigation'** means the Directorate for Priority Crime Investigation established in terms of section 17C of the South African Police Service Act;";
 - (c) by the insertion after the definition of "Executive Director" of the following definition:

" **'executive head of a municipal police service'** means the executive head of a municipal police service appointed in terms of section 64C of the South African Police Service Act;";
 - (d) by the insertion after the definition of "financial year" of the following definition:

" **'firearm'** means a firearm as defined in section 1 of the Firearms Control Act, 2000 (Act No. 60 of 2000);";

(e) by the insertion after the definition of "Minister" of the following definition:

" **'municipal manager'** means a municipal manager as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000);";

(f) by the insertion after the definition of "municipal police service" of the following definition:

" **'National Commissioner'** means the National Commissioner of the South African Police Service, referred to in section 6(1) of the South African Police Service Act;";

(g) by the insertion after the definition of "organ of state" of the following definitions, respectively:

" **'Programme Manager'** means a person appointed to head a Unit or Programme of the Directorate;

'Provincial Commissioner' means the Provincial Commissioner of a province as appointed in terms of section 6(2) of the South African Police Service Act;";

(h) by the insertion after the definition of "security clearance certificate" of the following definition:

" **'South African Police Service'** means the South African Police Service established under section 5 of the South African Police Service Act;"; and

(i) by the insertion after the definition of "South African Police Service Act" of the following definition:

" **'State Security Agency'** means the State Security Agency as referred to in section 3(1) of the Intelligence Services Act, 2002 (Act No. 65 of 2002);".

Amendment of section 3 of Act 1 of 2011

2. Section 3 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

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

Amendment of section 4 of Act 1 of 2011

3. Section 4 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Directorate **[functions independently from the South African Police Service]** is institutionally and operationally independent."; and

(b) by the addition of the following subsection:

"(3) The Directorate must be independent, impartial and must exercise its powers and perform its functions without fear, favour, prejudice, or undue influence."

Substitution of section 6 of Act 1 of 2011, as amended by section 1 of Act 27 of 2019

4. The following section is hereby substituted for section 6 of the principal Act:

"Appointment, remuneration and conditions of service of Executive Director

6. (1) The Minister, with the concurrence of Cabinet, shall appoint a person as the Executive Director to head the Directorate in accordance with the responsibilities listed in section 7, for a non-renewable period of not less than seven years and not longer than 10 years.

(2) The Executive Director must—

(a) be a South African citizen;

(b) be a fit and proper person;

(c) must possess an appropriate qualification in law, safety and security, or in administration of criminal justice or forensic investigation;

(d) have knowledge of safety and security, the policing environment and public administration for a cumulative period of between eight to 10 years at Senior Management level, at least three years of which must be within an organ of state as defined in the Constitution; and

(e) with due regard to his or her experience, demonstrate high levels of conscientiousness, integrity and commitment to human rights to be entrusted with the responsibilities of the Directorate.

(3) The Minister shall report to Parliament on the appointment of the Executive Director within 14 days of the appointment 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.

(4) The remuneration, allowances, benefits and other terms and conditions of service of the Executive Director must be determined by the Minister, with the concurrence of the Minister of Finance.

(5) When the Executive Director is unable to perform the functions of office, or when the Executive Director position is vacant, the Minister may designate another person to act as Executive Director until the Executive Director returns to perform the functions of office, or until the vacancy post is filled.

(6) In the event of the Executive Director position being vacant, the position must be filled within six months from the date of such vacancy in accordance with the process contemplated in subsections (1) to (5)."

Amendment of section 7 of Act 1 of 2011

5. Section 7 of the principal Act is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section ~~[22(1)]~~ 20(1).";

(b) by the substitution for subsection (6) of the following subsection:

"(6) (a) The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, to the relevant Provincial Commissioner, National Head or Provincial Head of the Directorate for Priority Crime Investigation, the executive head of the relevant municipal police service, or the Minister.

(b) The Executive Director must ensure that complaints regarding disciplinary matters involving—

(i) a Provincial Commissioner are referred to the National Commissioner;

(ii) the Deputy National Head or Provincial Head of the Directorate for Priority Crime Investigation are referred to the National Head of the Directorate for Priority Crime Investigation;

(iii) the National Head of the Directorate for Priority Crime Investigation are referred to the Minister;

(iv) the National Commissioner are referred to the Presidency through the Minister; and

(v) the executive head of a municipal police service to the relevant municipal manager.

(c) In the event that the National Commissioner is being investigated by the Directorate, he or she may not directly or

indirectly exercise his or her executive functions or authority in relation to such matter."; and

(c) by the substitution for subsection 9 of the following subsection:

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

Amendment of section 8 of Act 1 of 2011

6. Section 8 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

"[Composition] Appointment of members of national office";

(b) by the deletion of subsection (1); and

(c) by the substitution for subsections (4), (5), (7) and (8) of the following subsections, respectively:

"(4) The pre-employment security screening investigation contemplated in subsection (3), must be **[done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002)]** conducted by the Directorate.

(5) The **[Executive Director]** Directorate must issue a security clearance certificate in respect of such person wherein it is

certified that such person has successfully undergone a security **[clearance]** screening and is appointed as an employee of the Directorate.

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

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

Amendment of section 9 of Act 1 of 2011

7. Section 9 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

"(e) identify and review legislative needs in consultation with the Secretariat and report on such matters to the **[Secretariat]** Minister;"

Amendment of section 10 of Act 1 of 2011

8. Section 10 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) The Executive Director may not delegate any of the powers, functions or duties referred to in sections 7(1), (2), (3), (5), (6), (7), (8) ~~[(9)]~~ and (10), 8, 20, 22, 31(2), 32(1) and (2), and 34 **[of this Act]**."

Amendment of section 16 of Act 1 of 2011

9. Section 16 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Executive Director or Secretary, in consultation with one another, may invite any person or a representative from a government Department or Institution, not mentioned in subsection (1), to a meeting of the forum if a particular matter concerns such a person, government Department or Institution."

Amendment of section 21 of Act 1 of 2011

10. Section 21 of the principal Act is hereby amended by the deletion in subsection (1) of paragraph (m).

Amendment of section 22 of Act 1 of 2011

11. Section 22 of the principal Act is hereby amended—
(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

"(a) must have at least a grade 12 or equivalent certificate **[or] and** a relevant diploma or degree; and";

(b) by the substitution for subsection (4) of the following subsection:

"(4) The pre-employment security screening investigation contemplated in subsection (3), must be **[done in conjunction with the National Intelligence Agency, as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002)]** conducted by the Directorate."; and

(c) by the substitution for subsection (5) of the following subsection:

"(5) The **[Executive Director or official so delegated by him or her]** Directorate must issue a pre-employment security screening certificate in respect of such person wherein it is certified that such person has successfully undergone a pre-employment security **[clearance]** screening and is appointed as an investigator in terms of this Act."

Substitution of section 23 of Act 1 of 2011

12. The following section is hereby substituted for section 23 of the principal Act:

"Remuneration and conditions of service of investigators

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

South African Police Service Act] shall be determined by the Minister in consultation with the Minister of Finance."

Amendment of section 24 of Act 1 of 2011

13. Section 24 of the principal Act is hereby amended—

(a) by the insertion in subsection (2) after paragraph (b) of the following paragraph:

"(bA) the taking of buccal samples in terms of the South African Police Service Act;"

(b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:

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

(c) by the addition of the following subsections:

"(6) A directive referred to in subsection (3)(a) must be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the investigator, or relevant provincial director, and must be signed by the relevant provincial head.

(7) The subpoena referred to in subsection (6) must be served by a person authorised thereto by the relevant provincial director, as prescribed.

(8) The investigator, or a provincial director, may require any person appearing as a witness before him or her under subsection (6) to give evidence under oath or after having made an affirmation.

(9) Any person appearing before the Investigator or a provincial head by virtue of subsection (6) may be assisted at such examination by a legal representative.

(10) Notwithstanding anything to the contrary contained in any law, no person may disclose to any other person the contents of any document in the possession of a member of the office of the Executive Director, or his or her representative, or the record of any evidence given to the Executive Director, or his or her representative, during an investigation, unless—

(a) the Executive Director or his or her representative determines otherwise;

(b) the disclosure of such information is required by law; or

(c) the disclosure is for purposes of legal presentation.

(11) Notwithstanding anything to the contrary contained in any law, no person interviewed as a witness by the Directorate may disclose to any other person the contents of any interview or questioning by the Programme Manager, provincial director or an investigator

conducting an investigation in terms of this Act, unless it is required by law or for the purpose of legal presentation."

Amendment of section 27 of Act 1 of 2011

14. Section 27 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) A member of the Directorate is not liable in respect of anything reflected in any report, finding, point of view, recommendation or investigation made or expressed in good faith and without gross negligence in performing a function in terms of this Act, and submitted to Parliament, the National Prosecuting Authority, or any other relevant authority."

Amendment of section 28 of Act 1 of 2011

15. Section 28 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Directorate must investigate—

- (a) any deaths in **[police]** the custody of a member of the South African Police Service, or a Municipal Police Service;
- (b) deaths as a result of **[police]** the actions of a member of the South African Police Service or a member of a Municipal Police Service, whether such member was on or off duty;

- (c) any complaint relating to the discharge of an official firearm by any **[police officer]** member of the South African Police Service or a member of a Municipal Police Service;
- (d) rape by a **[police officer]** member of the South African Police Service or a member of a Municipal Police Service, whether **[the police officer is]** such member was on or off duty;
- (e) rape of any person while that person is in **[police]** the custody of a member of the South African Police Service or a member of a Municipal Police Service;
- (f) any complaint of **[torture or assault against a police officer in the execution of his or her duties]**—
 - (i) torture, as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013), committed by a member of the South African Police Service or a member of a Municipal Police Service; and
 - (ii) assault of any person, with the intention to cause grievous bodily harm, by a member of the South African Police Service or a member of a Municipal Police Service;
- (g) corruption **[matters]** as contemplated in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and any other applicable law, within the [police] South African Police Service, or a Municipal Police Service initiated by the Executive Director, or a provincial head, on his or her own, or after the receipt of a complaint from a member of the public, or referred to the Directorate by the Minister, an MEC, the National

Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, executive head of the relevant Municipal Police Service, municipal manager or the Secretary, as the case may be; [and]

(gA) attempted murder in relation to a discharge of a firearm by a member of the South African Police Service or a member of a Municipal Police Service; and

(h) any other matter referred to it as a result of a decision by the Executive Director, or a provincial head, or if so requested by the Minister, an MEC, National Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, executive head of the relevant Municipal Police Service, municipal manager, or the Secretary as the case may be,

in the prescribed manner."; and

(b) by the addition of the following subsection:

"(3) The Directorate shall investigate allegations of the commission of an offence which a member of the South African Police Service or a member of a Municipal Police Service committed together with any law enforcement agency or civilian."

Amendment of section 29 of Act 1 of 2011

16. Section 29 of the principal Act is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"The Station Commander, or any member of the South African Police Service, **[or Municipal Police Service]** a Municipal Manager, an executive head of a Municipal Police Service, or any member of a Municipal Police Service, must—"; and

- (b) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

"(a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(1)(a) to **[(f)](gA)**; and".

Amendment of section 30 of Act 1 of 2011

17. Section 30 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of the following words:

"The National Commissioner, or the appropriate Provincial Commissioner, National Head or the appropriate Provincial Head of the Directorate for Priority Crime Investigation, or the executive head of the relevant municipal police service, to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) **[and (7)]**, must—";

- (b) by the insertion after paragraph (a) of the following paragraph:

"(aA) only initiate disciplinary proceedings after the investigation of allegations has been finalised by the Directorate and upon receipt of an investigation report from the Directorate;"

(c) by the deletion of the word "and" at the end of paragraph (b);

(d) by the substitution for paragraph (c) of the following paragraph:

"(c) immediately on finalisation of any disciplinary matter referred to it by the Directorate, **[to inform]** submit a report, in the prescribed manner, to the Minister in writing of the outcome [thereof] and provide a copy thereof to the Executive Director and the Secretary[.]; and"; and

(e) by the addition of the following paragraph:

"(d) specify in the report contemplated in paragraph (c) whether the disciplinary recommendations of the Directorate were implemented and the extent of the implementation thereof and if not implemented, provide reasons in the report, in the prescribed manner, for the disciplinary recommendations not being implemented."

Amendment of section 31 of Act 1 of 2011

18. Section 31 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

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

Amendment of section 34 of Act 1 of 2011

19. Section 34 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) of the word "and" at the end of paragraph (o);
and
- (b) by the insertion in subsection (1) after paragraph (o) of the following paragraphs:

"(oA) the procedure to be followed in respect of the report contemplated in section 30(c) and (d), as well as the format of the said report;

(oB) the code of conduct for the employees of the Directorate;

(oC) the human resource policies of the Directorate;

(oD) the procedure to be followed for an appropriate pre-employment security screening investigation contemplated in sections 8 and 22;

(oE) any matter that must or may be prescribed in terms of this Act; and".

Substitution of section 35 of Act 1 of 2011

20. The following section is hereby substituted for section 35 of the principal Act:

"[Transitional arrangements] Savings

35. The conditions of service, including the remuneration and other benefits payable to the employees of the Directorate before the

commencement of the Independent Police Investigative Directorate Amendment Act, 2023, may not be less favourable upon the commencement of the said Act."

Amendment of Arrangement of sections of Act 1 of 2011

21. The Arrangement of sections of the principal Act is hereby amended—
- (a) by the substitution for item 6 of the following item:
- "6. Appointment, remuneration and conditions of service of Executive Director";
- (b) by the substitution for item 8 of the following item:
- "8. **[Composition]** Appointment of members of national office"; and
- (c) by the substitution for item 35 of the following item:
- "35. **[Transitional arrangements]** Savings".

Short title and commencement

22. This Act is called the Independent Police Investigative Directorate Amendment Act, 2023, and comes into operation on a date determined by the President by proclamation in the *Gazette*.