

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 ___ 2022)
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

[B — 2022]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
_____ Words underlined with a solid line indicate insertions in existing enactments.
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BILL

To amend the Independent Police Investigative Directorate Act, 2011, so as to amend and insert certain definitions; to provide that the Directorate must be 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*; to provide for a more open and transparent process for the appointment of the Executive Director of the Directorate; to amend other provisions of the Act 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 by section 17C of the South African Police Service Act;"

- (c) by the insertion after the definition of "fixed date" of the following definition:

" ' Forensic DNA profile' means forensic DNA profile as defined in section 15E (m) of the South African Police Service Act;"

- (d) by the insertion after the definition of "municipal police service" of the following definition respectively:

" '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;"

- (e) 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;"

- (f) 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

- (g) 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 of the Republic of South Africa, 1996, 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 by the addition of the following subsection:

"(3) The Directorate must be 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:

"Appointment, remuneration and conditions of service of Executive Director

6.(1) (a) The Minister must nominate a suitably qualified person for appointment to the office of the Executive Director to head the Directorate in accordance with the responsibilities listed in section 7.

(b) The Minister must, by notice in the Gazette, and in at least two national newspapers and suitable electronic media, publish an invitation for applications for appointment to the office of the Executive Director.

(c) The Executive Director must —

(i) be a South African citizen;

(ii) be a fit and proper person;

(iii) must possess an appropriate qualification in law, administration of criminal justice or forensic investigation;

and

(iv) have knowledge of police management, public administration and public finance management for a cumulative period of at least 10 years.

(d) The Minister, subject to paragraphs (e) and (f), must appoint a panel consisting of reputable independent persons to conduct interviews of suitable candidates and to nominate a suitably qualified person for appointment as the Executive Director.

(e) The panel contemplated in paragraph (d) must consist of persons with extensive knowledge and experience in the field of law, administration of criminal justice or forensic investigation and policing environment.

(f) The members of the panel contemplated in paragraph (d) must consist of a broad representation of the South African population, and shall not be less than four members.

(2) (a) The Minister, with the concurrence of Cabinet, must appoint the nominated person as the Executive Director for a period not shorter than seven years and no longer than ten years.

(b) The Minister after the concurrence of Cabinet, must take steps to formalise the appointment of the Executive Director which must include the following —

(i) a letter of appointment;

(ii) an employment contract; and

(iii) the signing of a performance agreement with the appointed Executive Director within three months from the date of his or her appointment.

(3) 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 by means of a Notice in the Gazette."

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 MEC responsible for Community Safety in that Province.

(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.

Amendment of section 8 of Act 1 of 2011

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

(a) by the substitution of the heading of section 8 in the principal Act for the following:

“Appointment of members at national office”

(b) by the deletion of subsection (1).

(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] State Security Agency** must issue a security clearance certificate in respect of such person wherein it is certified that such person has successfully undergone a security clearance and is appointed as an employee of the Directorate.
- (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. The following section is hereby substituted for section 10 of the principal Act:

"(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."

Amendment of section 16 of Act 1 of 2011

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

" (2) The Executive Director or Secretary, in consultation with one another, may invite any person, 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 20 of Act 1 of 2011

10. Section 20 of the principal Act is hereby amended by the addition of the following subsection:

"(6) The conditions of service, including remuneration and benefits, of the staff referred to in subsection (1) are to be determined in terms of the Public Service Act."

Amendment of section 22 of Act 1 of 2011

11. Section 22 of the principal Act is hereby amended—

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

" (a) must have at least a grade 12 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.";

Amendment of section 23 of Act 1 of 2011

12. Section 23 is hereby substituted for the following section:

"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]** determined in terms of the Public Service Act."

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"; and

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

"(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 after subsection (5):

“(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.

(c) the disclosure is for purpose 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 by the substitution for subsection (1) for the following subsection:

"(1) The Directorate must investigate, whether on or off duty, allegations of —

- (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]** actions of a member of the South African Police Service, or a Municipal Police Service;
- (c) any complaint relating to the discharge of an official firearm by any **[police officer]** member of the South African Police Service, or a Municipal Police Service;
- (d) rape by a **[police officer]** member of the South African Police Service, [whether the police officer is on or off duty] or a Municipal Police Service;
- (e) rape of any person while that person is in **[police]** the custody of a member of the South African Police Service, or 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 Municipal Police Service;
and
 - (ii) assault of any person by a member of the South African Police Service, or 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 or the Secretary, as the case may be; **[and]**

(gA) attempted murder by a member of the South African Police Service, or 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 or the Secretary as the case may be, in the prescribed manner.”.

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) of paragraph (a) for the following paragraph:

“(a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(1)(a) to **[(f)] (h)**; 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 a Municipal Police Service, to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6)[**and (7)**], must —“;

- (b) by the deletion of the word “and” at the end of paragraph (b).
- (c) by the substitution for paragraph (c) for the following paragraph:

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

- (d) by the addition of the following paragraph:

“(d) the report contemplated in paragraph (c) must specify whether the disciplinary recommendations of the Directorate were implemented and the extent of implementation thereof, and if not implemented, the reasons for not implementing must be specified in the said report, as prescribed.”.

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);
- (b) by the deletion in subsection (1) of the full stop at the end of paragraph (p) and the insertion of a semi-colon; and
- (c) by the addition to subsection (1) of the following paragraphs:

"(q) the code of conduct for the employees of the Directorate;

(r) the human resource policies of the Directorate; and;

(s) the appropriate security screening investigation."

Repeal of section 35 of Act 1 of 2011

20. Section 35 of the principal Act is hereby repealed.

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 of the heading of section 8 in the principal Act for the following:

"Appointment of members at national office"

Short title and commencement

22. This Act is called the Independent Police Investigative Directorate Amendment Act, 2022, and comes into operation on a date determined by the President by proclamation in the *Gazette*.