REPUBLIC OF SOUTH AFRICA

INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE BILL

(As agreed to by the Mediation Committee)

(MINISTER OF POLICE)

[B 15F—2010]

ISBN 978-1-77037-804-9

No. of copies printed 1 800

GENERAL EXPLANATORY NOTE:

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

BILL

To make provision for the establishment of an Independent Police Investigative Directorate and to regulate the functions of the Directorate, to provide for the establishment of a Management Committee and Consultative Forum and their respective functions; to provide for the appointment and powers of investigators; to provide for reporting obligations and cooperation by members of the South African Police Service and Municipal Police Services; to provide for transitional arrangements; to provide for the repeal and amendment of certain laws; and to provide for matters connected therewith.

PREAMBLE

WHEREAS section 206(6) of the Constitution provides that, on receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police service in the province;

AND WHEREAS there is a need to ensure effective independent oversight of the South African Police Service and Municipal Police Services;

AND WHEREAS Chapter 2 of the Constitution provides for the upholding and safeguarding of fundamental rights of every person,

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

ARRANGEMENT OF SECTIONS

CHAPTER 1

DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT, INDEPENDENCE AND IMPARTIALITY 5

1. Definitions
2. Objects of Act
3. Establishment
4. Independence and impartiality 10

CHAPTER 2

NATIONAL OFFICE

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

CHAPTER 3

MANAGEMENT COMMITTEE 10

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

CHAPTER 4 15

CONSULTATIVE FORUM

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

CHAPTER 5

PROVINCIAL OFFICES

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

CHAPTER 6

APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS

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

CHAPTER 7

REPORTING OBLIGATIONS AND COOPERATION BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE AND MUNICIPAL POLICE SERVICE AND DISCIPLINARY RECOMMENDATIONS

29. Reporting obligations and cooperation by members 40
30. Disciplinary recommendations

CHAPTER 8

FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT

31. Finances and accountability
32. Annual report

CHAPTER 9

OFFENCES AND PENALTIES

33. Offences and penalties

CHAPTER 10

REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT

34. Regulations
35. Transitional arrangements
36. Amendment and repeal of laws
37. Short title and commencement
Schedule 1
Schedule 2

CHAPTER 1

DEFINITIONS, OBJECTS OF ACT, ESTABLISHMENT, INDEPENDENCE AND IMPARTIALITY

Definitions

1. In this Act, unless the context indicates otherwise—

"Committee" means the Management Committee established under section 11;

"Constitution" means the Constitution of the Republic of South Africa, 1996;

"Directorate" means the Independent Police Investigative Directorate established in terms of section 3;

"Executive Director" means the Executive Director appointed in terms of section 6(1);

"financial year" means the period from 1 April in any year to 31 March in the ensuing year;

"fixed date" means the date of commencement of this Act;

"forum" means the Consultative Forum established under section 15;

"investigator" means a person appointed under section 22;

"MEC" means the Member of the Executive Council of a province who is responsible for policing in that province;

"Minister" means the Minister of Police;

"municipal police service" means a municipal police service established under section 64A of the South African Police Service Act;

"organ of state" means an organ of state as defined in section 239 of the Constitution;

"provincial head" means a person appointed under section 20;

"Public Finance Management Act" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"Public Service Act" means the Public Service Act, 1994 (Proclamation No. 103 of 1994);

"Secretariat" means the Civilian Secretariat for Police Service established in terms of section 4(1) of the Civilian Secretariat for Police Service Act, 2010;

"'Secretary" means the Secretary for the Police Service appointed in terms of section 7(1) of the Civilian Secretariat for Police Service Act, 2010;

"security clearance certificate" means an official document issued by the Executive Director indicating the degree of security competence of a person;

"South African Police Service Act" means the South African Police Service Act, 1995 (Act No. 68 of 1995); and

"this Act" includes the Schedule and regulations.

Objects of Act

2. The objects of this Act are—

(a) to give effect to the provision of section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;

(b) to ensure independent oversight of the South African Police Service and Municipal Police Services;

(c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;

(d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;

(e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;

(f) to provide for close co-operation between the Directorate and the Secretariat; and

(g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.

Establishment

3. (1) The Independent Police Investigative Directorate, to be structured at national level, with provincial offices, is hereby established.

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

(3) The Directorate is financed from money that is appropriated by Parliament.

Independence and impartiality

4. (1) The Directorate functions independently from the South African Police Service.

(2) Each organ of state must assist the Directorate to maintain its impartiality and to perform its functions effectively.

CHAPTER 2

NATIONAL OFFICE

National office

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

Appointment of Executive Director

6. (1) The Minister must nominate a suitably qualified person for appointment to the office of Executive Director to head the Directorate in accordance with a procedure to be determined by the Minister.

(2) The relevant Parliamentary Committee must, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination.

(3) In the event of an appointment being confirmed—

(a) the successful candidate is appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and

(b) such appointment is for a term of five years, which is renewable for one additional term only.

(4) When the Executive Director is unable to perform the functions of office, or during a vacancy in the Directorate, the Minister may designate another person to act as Executive Director until the Executive Director returns to perform the functions of office or the vacancy is filled.

(5) In the case of a vacancy, the Minister must fill the vacancy within a reasonable period of time, which period must not exceed one year.

(6) The Minister may, remove the Executive Director from office on account of—

(a) misconduct;

(b) ill health; or

(c) inability to perform the duties of that office effectively.

Responsibilities of Executive Director

7. (1) The Executive Director is the accounting officer of the Directorate and must ensure that—

(a) proper records of all financial transactions, assets and liabilities of the Directorate are kept;

(b) the financial affairs of the Directorate comply with the Public Finance Management Act; and

(c) an annual report is prepared in the manner contemplated in section 32.

(2) The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in section 22(1).

(3)*(a)* The Executive Director must appoint such staff as may be necessary to enable the Directorate to perform its functions in terms of this Act.

(b) The staff component must be established in accordance with the Public Service Act.

(c) The conditions of service, including remuneration and allowances of such staff, are regulated in terms of the Public Service Act.

(d) The Executive Director must direct that a register of declaration of interest by managers and investigators be kept in the prescribed form and manner.

(e) The Executive Director must give guidelines with regard to—

(i) the investigation and management of cases by officials within the respective provincial offices;

(ii) administration of the national and provincial offices; and

(iii) training of staff at national and provincial level.

(4) The Executive Director must refer criminal offences revealed as a result of an investigation, to the National Prosecuting Authority for criminal prosecution and notify the Minister of such referral.

(5) The National Prosecuting Authority must notify the Executive Director of its intention to prosecute, whereafter the Executive Director must notify the Minister thereof and provide a copy thereof to the Secretary.

(6) The Executive Director must ensure that complaints regarding disciplinary matters are referred to the National Commissioner and where appropriate, the relevant Provincial Commissioner.

(7) Once a month the Executive Director must submit to the Minister a summary of the disciplinary matters and provide a copy thereof to the Secretary.

(8) All recommendations which are not of a criminal or disciplinary nature must be referred to the Minister and provide a copy thereof to the Secretary.

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

(10) The Executive Director must refer criminal matters which fall outside the scope of the Directorate, to the appropriate authority for further investigation in terms of applicable legislation.

(11) The Executive Director must provide strategic leadership to the Directorate.

(12) The Executive Director must at any time when requested to do so by the Minister or Parliament, report on the activities of the Directorate to the Minister or Parliament.

Composition of national office

8. (1) The national office consists of—

(a) the Executive Director who controls the office;

(b) the Corporate Services Unit;

(c) the Investigation and Information Management Unit;
(d) the Legal Services Unit; and
(e) any other unit established, subject to the approval of the Minister and Parliament.

(2) The Executive Director must appoint members at the national office.

(3) A person may not be appointed as a member of the national office unless information with respect to that member has been gathered in an appropriate security screening investigation as prescribed by the Minister.

(4) The 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).

(5) The Executive Director 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.

(6) Any member of the national directorate may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3).

(7) The Executive Director, after consultation with the National Intelligence 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, causes him or her 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 discharge him or her from the Directorate.

Functions of national office

9. The functions of the national office are to—
(a) give strategic leadership to the Directorate;
(b) develop and implement policy for the Directorate;
(c) oversee and monitor performance at provincial level and intervene to rectify challenges where necessary;
(d) gather, keep and analyse information in relation to investigations;
(e) identify and review legislative needs and report on such matters to the Secretariat;
(f) do internal auditing of the Directorate;
(g) provide administrative support to the Directorate;
(h) strengthen the co-operative relationship between the Directorate and the Secretariat;
(i) report to the relevant MEC on matters referred to the Executive Director by the MEC;
(j) submit an annual report to the Minister and to Parliament;
(k) implement information measures to develop public awareness of the provisions of this Act;
(l) deal with any other matter referred to it by the Minister;
(m) make recommendations to the South African Police Service resulting from investigations done by the Directorate; and
(n) report twice a year to Parliament on the number and type of cases investigated, the recommendations, the detail and outcome of those recommendations.

Delegations

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

(2) A delegation under subsection (1) must be in writing and—
(a) may be subject to any conditions or restrictions determined by the Executive Director;
(b) does not prevent the exercise of any power of the Executive Director; and
(c) may be withdrawn or amended by the Executive Director.

(3) The Executive Director may not delegate any of the powers, functions or duties referred to in sections 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.

CHAPTER 3

MANAGEMENT COMMITTEE

Establishment of Management Committee

11. There is hereby established a Management Committee.

Composition of Committee

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

Functions of Committee

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

Meetings of Committee

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

CHAPTER 4

CONSULTATIVE FORUM

Establishment of Consultative Forum

15. There is hereby established a Consultative Forum.

Composition of forum

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

Functions of forum

17. The functions of the forum are to—

(a) facilitate closer cooperation between the Secretary and the Executive Director; and

(b) discuss, amongst other, issues relating to trends, recommendations and implementation of such recommendations.

Meetings of forum

18. (1) The Secretary must convene the first meeting of the forum and preside at that meeting.

(2) The Secretary and the Executive Director must alternate as chairperson at meetings.

(3) The forum determines its own procedure and agenda for its meetings.

(4) The forum must meet at least four times a year on issues of common interest.

CHAPTER 5

PROVINCIAL OFFICES

Provincial offices

19. Each provincial office is headed by a provincial head who is appointed—

(a) at the level of Chief Director; and

(b) on a permanent basis in terms of section 20(1).

Appointment of provincial heads

20. (1) The Executive Director appoints the provincial head for each province in accordance with the laws governing the public service.

(2) The provincial head must conclude a written performance agreement with the Executive Director—

(a) within a reasonable time after the appointment of the provincial head; and

(b) thereafter, annually within one month of the commencement of each financial year.

(3) The performance agreement referred to in subsection (2) must include—

(a) measurable performance objectives and targets that must be met, and must provide for the time-frames within which those performance objectives and targets must be met;

(b) standards and procedures for evaluating performance and intervals for evaluation; and

(c) the consequences of substandard performance.

(4) When the provincial head is unable to perform the functions of office, or during a vacancy in the provincial office, the Executive Director may designate another person to act as provincial head until the provincial head returns to perform the functions of office or the vacancy is filled.

(5) In the case of a vacancy, the Executive Director must fill the vacancy within a reasonable period of time, which period shall not exceed six months.

Responsibilities of provincial head

21. (1) A provincial head is responsible for the following:

(a) Appointment and performance management of staff at provincial level;

(b) to facilitate investigation of cases and to perform any other function incidental to such investigations;

(c) to control and monitor active cases;

(d) to refer matters investigated by the provincial office under this Act to the National or relevant provincial prosecuting authority for criminal prosecution;

(e) to report to the Executive Director on matters investigated;

(f) to refer disciplinary matters to the Provincial Commissioner;

(g) to facilitate cooperation between the provincial head and the provincial police secretariat;

(h) to report to the Executive Director on recommendations and finalisation of cases;
(i) to report to the Executive Director on the management of provincial offices and their finances;
(j) to report to the relevant MEC on matters referred to the Provincial Head by that MEC;
(k) to ensure adherence to guidelines issued by the national office relating to the investigation and management of cases by officials within the respective provincial offices;
(l) to keep proper financial records in accordance with the prescribed norms and standards;
(m) to prepare financial statements for submission to the Executive Director within two months after the end of the financial year;
(n) to ensure compliance with administrative guidelines issued by the Executive Director; and
(o) to manage the provincial office.

CHAPTER 6

APPOINTMENT, REMUNERATION, FUNCTIONS AND POWERS OF INVESTIGATORS

Appointment of investigators

22. (1) The Executive Director, in consultation with the relevant provincial head, must appoint a fit and proper person as an investigator of the Directorate, subject to subsections (2), (3) and (4).

(2) A person appointed as an investigator—

(a) must have at least a grade 12 certificate or a relevant diploma or degree; and

(b) must have—

(i) knowledge and relevant experience of criminal investigation; or

(ii) any other relevant experience.

(3) A person may not be appointed as an investigator unless information with respect to that person has been gathered in an appropriate security screening investigation as prescribed by the Minister.

(4) The 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).

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

(6) Any investigator may from time to time, or at such regular intervals as the Executive Director may determine, be subjected to a further security screening as contemplated in subsection (3).

(7) A person must be discharged from his or her position as an investigator if he or she fails to conform to the security clearance prescripts.

(8) An investigator is given policing powers contemplated in section 24(2) by the Minister, within three months after his or her appointment.

(9) The Executive Director must issue a document in the prescribed form, which shall serve as proof to certify that an investigator has been duly authorised to exercise the powers and perform the functions as contemplated in section 24.

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.

Functions and investigative powers

24. (1) An investigator may, subject to the control and direction of the Executive Director or the relevant provincial head, exercise such powers and must perform such

duties as are conferred or imposed upon him or her by or under this Act or any other law, and must obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions under this Act.

(2) An investigator has the powers as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), which are bestowed upon a peace officer or a police official, relating to—

(a) the investigation of offences;
(b) the ascertainment of bodily features of an accused person;
(c) the entry and search of premises;
(d) the seizure and disposal of articles;
(e) arrests;
(f) the execution of warrants; and
(g) the attendance of an accused person in court.

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

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

(4) A person questioned by an investigator conducting an investigation must answer each question truthfully and to the best of that person's ability, but—

(a) a person is not obliged to answer any question if the answer is self-incriminating; and
(b) the person asking the questions must inform that person of the right set out in paragraph *(a)*.

(5) No self-incriminating answer given or statement made by any person to an investigator exercising powers in terms of this Act will be admissible as evidence against that person in criminal proceedings instituted against that person in any court, except in criminal proceedings for perjury.

Conflict of interest and disclosure of interest

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

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

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

Integrity measures

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

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

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

Limitation of liability

27. An investigator is not liable in respect of any act or omission in good faith and without gross negligence in performing a function in terms of this Act.

Type of matters to be investigated

28. (1) The Directorate must investigate—

(a) any deaths in police custody;

(b) deaths as a result of police actions;

(c) any complaint relating to the discharge of an official firearm by any police officer;

(d) rape by a police officer, whether the police officer is on or off duty;

(e) rape of any person while that person is in police custody;

(f) any complaint of torture or assault against a police officer in the execution of his or her duties;

(g) corruption matters within the police initiated by the Executive Director 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

(h) any other matter referred to it as a result of a decision by the Executive Director, or if so requested by the Minister, an MEC or the Secretary as the case may be,

in the prescribed manner.

(2) The Directorate may investigate matters relating to systemic corruption involving the police.

CHAPTER 7

REPORTING OBLIGATIONS AND COOPERATION BY MEMBERS OF THE SOUTH AFRICAN POLICE SERVICE AND MUNICIPAL POLICE SERVICE AND DISCIPLINARY RECOMMENDATIONS

Reporting obligations and cooperation by members

29. (1) The Station Commander, or any member of the South African Police Service or Municipal Police Service must—

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

(b) within 24 hours thereafter, submit a written report to the Directorate in the prescribed form and manner of any matter as contemplated in paragraph *(a)*.

(2) The members of the South African Police Service or Municipal Police Services must provide their full cooperation to the Directorate, including but not limited to—

(a) the arrangement of an identification parade within 48 hours of the request made by the Directorate;

(b) the availability of members for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated; and

(c) any other information or documentation required for investigation purposes.

Disciplinary recommendations

30. The National Commissioner or the appropriate Provincial Commissioner to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must—

(a) within 30 days of receipt thereof, initiate disciplinary proceedings in terms of the recommendations made by the Directorate and inform the Minister in writing, and provide a copy thereof to the Executive Director and the Secretary;

(b) quarterly submit a written report to the Minister on the progress regarding disciplinary matters made in terms of paragraph *(a)* and provide a copy thereof to the Executive Director and the Secretary; and

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

CHAPTER 8

FINANCES AND ACCOUNTABILITY AND ANNUAL REPORT

Finances and accountability

31. (1) The Executive Director—

(a) must, subject to the Public Finance Management Act— 5

(i) be charged with the responsibility of accounting for money received or paid out for or on account of the office of the Directorate;

(ii) cause the necessary accounting and other related records to be kept; and

(b) may exercise such powers and perform such duties as may from time to time be conferred upon or assigned to him or her, and in respect thereof be accountable to the Minister. 10

(2) The records referred to in subsection (1)*(a)* must be audited by the Auditor-General.

Annual report

32. (1) The Executive Director must prepare and submit to the Minister an annual report in the form prescribed by the Minister within five months after the end of the financial year. 15

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

(a) The audited financial statements prepared in terms of this Act; 20

(b) the Auditor-General's report prepared in terms of this Act; and

(c) a detailed report on the activities of the Directorate undertaken during the year to which the audit relates.

(3) The Minister must table in Parliament a copy of the annual report and financial statements, and the audit report on those statements, within one month after receipt thereof if Parliament is then in session or, if Parliament is not then in session, within one month after the commencement of its next ensuing session. 25

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

CHAPTER 9 30

OFFENCES AND PENALTIES

Offences and penalties

33. (1) Any person or private entity, who interferes, hinders or obstructs the Executive Director or a member of the Directorate in the exercise or performance of his or her powers or functions, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding two years. 35

(2) Any member of the Directorate who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Directorate of the powers and functions, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 40

(3) Any police officer who fails to comply with section 29 is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any member who fails to make disclosure in accordance with section 25(2)*(a)*, or fails to withdraw in terms of section 25(2)*(b)*, as the case may be, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 45

(5) Any person who pretends to be an investigator in terms of this Act, is guilty of an offence and liable on conviction to a fine or to imprisonment for period not exceeding two years. 50

CHAPTER 10

REGULATIONS, TRANSITIONAL ARRANGEMENTS, REPEAL AND SHORT TITLE AND COMMENCEMENT

Regulations

34. (1) The Minister may, after consultation with the Executive Director, make regulations regarding—

(a) access and control of confidential information and records pertaining to investigations instituted in terms of this Act;
(b) the procedure to be followed when investigating matters referred to in section 28(1)*(a)* to *(h)*;
(c) the procedure to be followed when reporting on cases dealt with under this Act;
(d) the procedure to be followed for referring, receiving, registering, processing and disposing of complaints;
(e) the procedure to be followed when investigating criminal matters;
(f) the procedure to be followed for initiating special investigations;
(g) the measures for integrity testing of members of the Directorate as contemplated in section 26(1);
(h) the measures to ensure the confidentiality of information obtained as contemplated in section 26(3);
(i) any issues to be contained in the annual report contemplated in section 32;
(j) the procedure and format to be followed regarding reporting to the Directorate as contemplated in section 29(1);
(k) the procedure to be followed for the arrangement and the holding of identification parades, as contemplated in section 29(2)*(a)*;
(l) the procedure to be followed for the taking of an affidavit or an affirmed declaration or to give evidence or produce any document in that member's possession or under his or her control which has a bearing on the matter being investigated, as contemplated in section 29(2)*(b)*;
(m) the procedure to be followed for the submission of any other information or documentation required for investigation purposes, as contemplated in section 29(2)*(c)*;
(n) the procedure to be followed in respect of disciplinary recommendations as contemplated in section 30;
(o) the manner and procedure to secure a crime scene to be investigated by the Directorate; and
(p) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) The regulations referred to in subsection (1)*(a)* to *(o)* must be submitted to Parliament for scrutiny at least one month before promulgation—

(a) while it is in session; or
(b) after the next session starts.

(3) Regulations with regard to the implementation of this Act must be submitted to the Minister by the Executive Director within three months of the commencement of this Act.

Transitional arrangements

35. (1) As from the fixed date—

(a) all powers exercised and functions performed by investigators immediately before the fixed date, must be exercised and performed by the Directorate;
(b) any investigation instituted in terms of the previous Act which was pending must be disposed of as if this Act had not been passed; and
(c) the allocated budget, assets and liabilities of the Directorate as agreed upon between the accounting officers of the Independent Complaints Directorate and the Directorate, must be transferred to the Directorate in accordance of section 42 of the Public Finance Management Act.

(2) The Registrar of Deeds must make the necessary entries and endorsements for the transfer of any property in terms of this section.

(3) For the purposes of the Income Tax Act, 1962 (Act No. 58 of 1962), no change of the employer must be regarded as having taken place when the investigators and administrative and support personnel are transferred to take up employment with the Directorate.

(4) For as long as remuneration, allowances and other conditions of service under the South African Police Service Act are more favourable than those determined under this Act, the remuneration, allowances and other conditions of service under the South African Police Service Act prevails.

(5) A security clearance issued before the fixed date, remains valid until such time it is reissued in terms of this Act.

(6) *(a)* This Act does not affect the validity of any investigation or prosecution conducted, pending or under investigation by the Independent Complaints Directorate on or before the fixed date.

(b) All matters which relate to service complaints of the South African Police Service will be transferred to the South African Police Service and where appropriate, the Secretariat.

Amendment and repeal of laws

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

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

Short title and commencement

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

SCHEDULE 1

LAWS AMENDED

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

Number and year of law	Short title	Extent of repeal or amendment
Act 112 of 1998	Witness Protection Act	**Amendment of section 1 of Act 112 of 1998** **1.** Section 1 of the Witness Protection Act, 1998, is hereby amended— *(a)* by the substitution for the definition of **"Complaints Directorate"** of the following definition: **"Complaints Directorate"** means the Independent **[Complaints]** Police Investigative Directorate, established under section **[50]** 2 of the **[South African Police Service Act, 1995 (Act No. 68 of 1995)]** Independent Police Investigative Directorate Act, 2010;". **2.** The substitution for the words "**Complaints Directorate**", wherever they occur in the Act, of the word "**Directorate**".
Act 116 of 1998	Domestic Violence Act,1998	**Amendment of section 18 of Act 116 of 1998** **1.** Section 18 of the Domestic Violence Act, 1998, is hereby amended— *(a)* by the substitution in subsection (4) for the following subsection: "(4) *(a)* Failure by a member of the South African Police Service to comply with an obligation imposed in terms of this Act or the national instructions referred to in subsection (3), constitutes misconduct as contemplated in the South African Police Service Act, 1995, and the **[Independent Complaints Directorate]** Secretariat, established in terms of **[that Act]** section 4(1) of the Civilian Secretariat for Police Service Act, 2010, must forthwith be informed of any such failure reported to the South African Police Service. *(b)* Unless the **[Independent Complaints Directorate]** Secretariat directs otherwise in any specific case, the South African Police Service must institute disciplinary proceedings against any member who allegedly failed to comply with an obligation referred to in paragraph *(a)*."; 5 10 15 20 25 30 35 40 45 50 55

Number and year of law	Short title	Extent of repeal or amendment
		(b) by the substitution in subsection (5) for paragraphs *(c)* and *(d)* of the following paragraphs respectively: "(5) *(c)* The **[Independent Complaints Directorate]** Secretariat must, every six months, submit a report to Parliament regarding the number and particulars of matters reported to it in terms of subsection (4)*(a)*, and setting out the recommendations made in respect of such matters. *(d)* The National Commissioner of the South African Police Service must, every six months, submit a report to Parliament regarding— (iii) steps taken as a result of recommendations made by the **[Independent Complaints Directorate]** Secretariat.".
Act 70 of 2002	Regulation of Interception of Communications and Provision of Communication-Related Information Act	**Amendment of section 1 of Act 70 of 2002, as amended by the schedule of Act 36 of 2005 and section 1 of Act 48 of 2008** **1.** Section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002, is hereby amended— *(a)* by the substitution for the definition of **"Executive Director"** of the following definition: **"Executive Director"** means the Executive Director appointed in terms of section **[51]** 5(1) of the **[South African Police service Act]** Independent Police Investigative Directorate Act, 2010;"; *(b)* by the substitution for the definition of **"Independent Complaints Directorate"** of the following definition: **"Independent Complaints Directorate"** means the Independent **[Complaints]** Police Investigative Directorate established by section **[50(1)]** 2 of the **[South African Police Service Act]** Independent Police Investigative Directorate Act, 2010;". **2.** The substitution for the words "**Independent Complaints Directorate**", wherever they occur in the Act, of the word "**Directorate**".

SCHEDULE 2

LAWS REPEALED

No. and year of law	Short Title	Extent of repeal
Act 68 of 1995	South African Police Service Act, 1995	Chapter 10

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

1. BACKGROUND

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

> *"[o]n receipt of a complaint lodged by a provincial executive, an independent police complaints body established by national legislation must investigate any alleged misconduct of, or offence committed by, a member of the police services in the province"*

1.2 The establishment of the Independent Police Investigative Directorate (''the Directorate'') will ensure that section 206(6) of the Constitution is implemented. The Constitution requires that an independent complaints body must be established by national legislation to function. The Directorate will be independent from the police service and will report to the Cabinet member responsible for policing. The Directorate will ensure independent oversight of the South African Police Service and Municipal Police Services.

1.3 The current Independent Complaints Directorate (''ICD'') is established in terms of the South African Police Service Act (Act No. 68 of 1995), which pre-dates the Constitution. The Bill seeks to also change the name of the current ICD to the Directorate. The rationale behind the name change is to brand the Directorate as a body which functions independently from the police service and that its focus is to conduct investigations of offences by police members, rather than merely receiving complaints. The thrust of the work of the Directorate, in the process of conducting investigations, is to address systemic problems within the police service with a view to recommending appropriate interventions.

1.4 The work of the Directorate will contribute towards ensuring that the police service becomes a professional police service that operates within the spirit of our constitutional norms.

2. OBJECTS OF THE BILL

2.1 The objects of this Act are—

(a) to give effect to the provision of section 206(6) of the Constitution establishing and assigning functions to the Directorate on national and provincial level;

(b) to ensure independent oversight of the South African Police Service and Municipal Police Services;

(c) to align provincial strategic objectives with that of the national office to enhance the functioning of the Directorate;

(d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service and Municipal Police Services;

(e) to make disciplinary recommendations in respect of members of the South African Police Service and Municipal Police Services resulting from investigations conducted by the Directorate;

(f) to provide for close co-operation between the Directorate and the Secretariat; and

(g) to enhance accountability and transparency by the South African Police Service and Municipal Police Services in accordance with the principles of the Constitution.

2.2 Structure of Bill

(a) **Chapter 1: Definitions, Objects of Act, Establishment, Independence and Impartiality**

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

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

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

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

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

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

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

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

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

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

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

This Chapter provides for the appointment of investigators of the Directorate to investigate offences by police members, the types of matters to be investigated and the powers of the investigators. This

Chapter provides clarity and certainty in all these areas. To prevent poaching, the remuneration of investigators is to be commensurate with that of detectives in the South African Police Service.

(g) **Chapter 7: Reporting Obligations and Cooperation by members of the South African Police Services and Municipal Police Services and Disciplinary Recommendations**

This Chapter places and obligation on members of the South African Police Services and Municipal Police Services to immediately notify the Directorate of matters which falls within their mandate. It further provides that they must provide their full cooperation. It also provides that the National or appropriate Provincial Commissioner must initiate disciplinary proceedings within 30 days and must report to the Minister on the progress thereof.

(h) **Chapter 8: Finances and Accountability and Annual Report**

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

(i) **Chapter 9: Offences and Penalties**

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

(j) **Chapter 10: Regulations, Transitional Arrangements, Repeal and Short Title and Commencement**

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

3. DEPARTMENTS OR BODIES CONSULTED

3.1 The Secretariat of Police;

3.2 The Independent Complaints Directorate;

3.3 The Police MinMec;

3.4 The relevant Labour Unions;

3.5 The National Board of the Community Police Forum;

3.6 Civil society formations involved in policing issues;

3.7 The Department of Public Service and Administration; and

3.8 National Treasury.

4. FINANCIAL IMPLICATIONS FOR THE STATE

4.1 The establishment of the Independent Police Investigative Directorate, as a deemed department, will have financial implications. The appointment of staff in terms of the revised organisational structure, including the heads of the provincial Directorates, will be costed and budgeted for.

4.2 Any new assets, as well as identification cards, stationery and signage will require new or additional funding. This is possible within the restructuring of the existing ICD budget.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Ministry of Police are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution since it falls within a functional area listed in Schedule 4 of the Constitution, namely ''police''.

5.2 The State Law Advisers and the Ministry of Police are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

Printed by Creda Communications

ISBN 978-1-77037-804-9