

**REPUBLIC OF SOUTH AFRICA**

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**NATIONAL PROSECUTING AUTHORITY AMENDMENT BILL**

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

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**(MINISTER OF JUSTICE AND CORRECTIONAL SERVICES)**

**[B – 2023]**

**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 National Prosecuting Authority Act, 1998, so as to insert certain definitions; to provide for the establishment of the Investigating Directorate against Corruption and its powers and functions; to provide for the appointment of investigators in the Investigating Directorate against Corruption; to provide for the appointment of investigators; to provide for the security screening of investigators; to provide for the remuneration and conditions of service of investigators; provide for the establishment of a mechanism to deal with complaints of a serious nature pertaining to persons appointed at or assigned to an investigating directorate; to provide for the powers and functions of investigators; to provide for transitional arrangements relating to the existing Investigating Directorate to become part of the Investigating Directorate against Corruption; to amend the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002, so as to make provision for applications for directions in terms of that Act by the head of the Investigating Directorate against Corruption; and to provide for matters connected therewith.**

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

**Amendment of Preamble to Act 32 of 1998, as substituted by section 1 of Act 61 of 2000 and amended by section 14 of Act 56 of 2008**

1. The Preamble to the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998) (hereinafter referred to the “principal Act”) is hereby amended by the addition after paragraph 8 of the following paragraphs:

"AND TO ENSURE that the national prosecuting authority fulfils its constitutional mandate in terms of the Constitution, to provide, without limiting the investigative powers of the South African Police Service or the Directorate for Priority Crime Investigation, for—

- the establishment of the Investigating Directorate against Corruption, with investigative capacity, to prioritise and to investigate particularly serious criminal or unlawful conduct committed in serious, high-profile, or complex corruption, commercial or financial crime; and
- the necessary infrastructure and resources to perform these functions.”.

**PARLIAMENT** of the Republic of South Africa enacts as follows:—

**Amendment of section 1 of Act 32 of 1998, as amended by section 2 of Act 61 of 2000 and section 1 of Act 56 of 2008**

2. Section 1 of the principal Act is hereby amended—

(a) by the substitution for the definition of “head of an Investigating Directorate” of the following definition:

“**head of an Investigating Directorate**” means an Investigating Director referred to in section 7(3)~~[(b)]~~;

(b) by the substitution in the definition of “Investigating Director” for paragraph (a) of the following paragraph:

“(a) means a Director of Public Prosecutions appointed under section 13(1)(b) as the head of an Investigating Directorate established in terms of section 7(1) or (1A); and”; and

(c) by the insertion after the definition “Investigating Directorate” of the following definitions:

“**Investigating Directorate against Corruption**” means the Investigating Directorate against Corruption established by section 7(1);

“**member of the prosecuting authority**” includes—

(a) a member referred to section 4;

(b) a member of the prosecuting authority appointed at or assigned to the Office of the National Director as contemplated in section 5(2)(d);

(c) an investigator referred to in section 5(2)(dA);

(d) financial investigators and analysts referred to in section 43B;

(e) a member of the administrative staff appointed and employed in the offices referred to in section 37;

(f) a person engaged to perform services contemplated in section 38(1) or (3); and

(g) a person performing services for the prosecuting authority in terms of a secondment or any other consultancy agreement in line with prosecutorial and investigation powers."

**Amendment of section 4 of Act 32 of 1998**

3. Section 4 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"The prosecuting authority comprises the~~---~~ following members:".

**Amendment of section 5 of Act 32 of 1998, as amended by section 3 of Act 61 of 2000 and section 2 of Act 56 of 2008**

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

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

"(d) other members of the prosecuting authority appointed at or assigned to the Office; **[and]**"; and

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

"(dA) investigators; and".

**Substitution of section 7 of Act 32 of 1998, as substituted by section 4 of Act 61 of 2000 and section 3 of Act 56 of 2008**

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

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

"(1) [The President may, by proclamation in the *Gazette*, establish one or more Investigating Directorates in the Office of the National Director, in respect of such offences or criminal or unlawful activities as set out in the proclamation.] There is hereby established, in the Office of the National Director, an Investigating Directorate to be known as the Investigating Directorate against Corruption, to—

(a) investigate, and carry out any functions incidental to investigations, relating to—

(i) serious, high-profile or complex corruption or commercial or financial crime cases arising from the recommendations of commissions of inquiry;

(ii) serious, high-profile or complex corruption or commercial or financial crime cases referred to the Investigating Director by the National Director in terms of section 28(1)(b);

(iii) serious, high-profile or complex corruption or commercial or financial crime cases referred to the Investigating Director in terms of section 27, subject to section 26(2);

(iv) such other existing offences or categories of offences as determined by the President by Proclamation No. 20 of 2019; and

(b) where appropriate, institute criminal proceedings and carry out any necessary functions incidental to instituting criminal proceedings, relating to the offences contemplated in paragraph (a)."; and

(b) by the insertion after subsection (1) of the following subsection:

"(1A) (a) The President may, by proclamation in the Gazette, establish one or more additional Investigating Directorates in the Office of the National Director, in respect of matters that exclude those contemplated in subsection (1).

(b) Any proclamation issued in terms of this section shall be issued and may be amended or rescinded by the President on the recommendation of the Minister, the Cabinet member responsible for police and the National Director."; and

(c) by the insertion in paragraph (a) of subsection (4) after subparagraph (ii) of the following subparagraph:

"(iiA) investigators;".

**Amendment of section 13 of Act 32 of 1998, as substituted by section 6 of Act 61 of 2000 and amended by section 4 of Act 56 of 2008**

6. Section 13 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) shall, in respect of any Investigating Directorate established in terms of section 7(1) or (1A)(a), appoint a Director of Public

Prosecutions as the head of such an Investigating Directorate;  
and".

### **Insertion of Chapter 3B in Act 32 of 1998**

7. The following Chapter is hereby inserted in the principal Act after Chapter 3A:

#### **"CHAPTER 3B**

#### **Appointment, remuneration and conditions of service of investigators**

##### **Appointment of investigators**

**19D. (1) The National Director may, on the recommendation of the head of an Investigating Directorate, appoint fit and proper persons as investigators of that Directorate.**

**(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 or forensic financial investigation; or**

**(ii) any other relevant experience.**

**(3) The National Director must, in the prescribed form, issue and sign an identity-type document to each person appointed as an investigator of that Directorate, which shall serve as proof that such person is an investigator.**



### **Vetting of investigators**

**19E.** (1) Subject to subsection (2), no person may be appointed as an investigator, unless the person has been issued with a security clearance following a vetting investigation conducted in terms of section 2A of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), as amended by the General Intelligence Laws Amendment Act, 2013 (Act No. 11 of 2013).

(2) Any investigator may from time to time, or at such regular intervals as the National Director may determine, be subjected to a further vetting investigation as contemplated in subsection (1).

(3) If the certificate referred to in subsection (2) is withdrawn, the investigator concerned shall be unfit to continue to hold such office and the National Director must discharge him or her from the Investigating Directorate.

### **Remuneration and conditions of service of investigators**

**19F.** (1) The remuneration, allowances and other service benefits of investigators are determined by the Minister, in consultation with the National Director, the Cabinet member responsible for public service and administration and the Cabinet member responsible for finance, by notice in the *Gazette*.

(2) (a) If an officer or employee in the public service is appointed as an investigator, the period of his or her service as an investigator shall be calculated as part of and continuous with his or her employment in the public service, for purposes of leave credits, pension benefits and any other

condition of service, and the provisions of any pension law applicable to him or her or, in the event of his or her death, to his or her dependants which are not inconsistent with this section, shall, with the necessary changes, continue so to apply to such officer or employee.

(b) If a member of the South African Police Service, or the Directorate for Priority Crime Investigation referred to in Chapter 6A of the South African Police Service Act, 1995 (Act No. 68 of 1995), or the Independent Police Investigative Directorate, is appointed as an investigator under this Act, the period of his or her service as a member shall be calculated as part of and continuous with his or her employment under the South African Police Service Act or the Independent Police Investigative Directorate Act, 2011 (Act No. 1 of 2011), as the case may be, for purposes of leave, deemed pensionable service accrued and any other condition of service, and the provisions of any pension law applicable to him or her or, in the event of his or her death, to his or her dependants which are not inconsistent with this section, shall, with the necessary changes, continue to apply to such officer or employee.

(3) The services of investigators in the Investigating Directorate shall, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act No. 66 of 1995), be deemed to have been designated as an essential service in terms of section 71 of that Act.

(4) Subject to the provisions of this Act, the other conditions of service of investigators shall be determined in terms of the provisions of the Public Service Act: Provided that if a member of the South African Police Service, or the Directorate for Priority Crime Investigation, or the Independent Police Investigative Directorate, is appointed as an investigator under this Act,

the conditions of service, including remuneration, allowances, pension and other service benefits, applicable to such investigator, must be on a par with or not less favourable than those conditions of service applicable to such person under the South African Police Service Act or the Independent Police Investigative Directorate Act, as the case may be."

#### **Amendment of section 22 of Act 32 of 1998**

8. Section 22 of the principal Act is hereby amended the substitution for subsection (7) of the following subsection:

"(7) The National Director shall develop, in consultation with the Minister or a person authorised thereto by the Minister, and the Directors, training programmes for prosecutors and investigators."

#### **Insertion of section 22A in Act 32 of 1998**

9. The following section is hereby inserted in the principal Act after section 22:

##### **"Complaints mechanism and accountability**

**22A. (1) (a) The Minister shall, after consultation with the Chief Justice, appoint a retired judge in order to investigate complaints or any alleged improper conduct or any conduct which has resulted in any impropriety or prejudice on the part of any person referred to in section 7(4)(a).**

(b) For purposes of paragraph (a) 'retired judge' shall mean a judge discharged from active service as referred to in the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001).

(2) The performance of the functions provided for in respect of the retired judge does not derogate from the powers of the South African Police Service or Directorate for Priority Crime Investigation to investigate any criminal conduct in respect of any person referred to in section 7(4)(a).

(3) The retired judge shall not investigate complaints about intelligence matters falling under the jurisdiction of the Inspector-General of Intelligence.

(4) The retired judge may receive complaints in the prescribed form and manner from—

(a) any person who may provide evidence of a serious and unlawful infringement of his or her rights caused by the conduct of a person referred to in section 7(4)(a); or

(b) any person referred to in section 7(4)(a) who may provide evidence of any improper influence or interference, hindrance or obstruction, whether of a political or any other nature, exerted upon him or her in the exercise, carrying out or performance of his or her powers, duties and functions.

(5) The retired judge may upon receipt of a complaint investigate such complaint or refer it to be dealt with by, amongst others, the National Commissioner of Police, the relevant Director, the National Director, or the Inspector-General of Intelligence.

(6) The retired judge shall report the outcome of any investigation undertaken by him or her or any referral to the Minister.

(7) The retired judge may request and obtain information from any member of the prosecuting authority in so far as it may be necessary for the judge to conduct an investigation, and the refusal to comply with such a request shall be a criminal offence for which a person, upon conviction, may be sentenced to a fine or imprisonment or to both a fine and imprisonment of two years.

(8) To the extent that it is reasonably necessary for the performance of the functions of the retired judge, he or she—

(a) may obtain information and documents under the control of the prosecuting authority;

(b) may enter any building or premises under the control of the prosecuting authority in order to obtain such information and documents; and

(c) shall be entitled to all reasonable assistance by any person referred to in section 7(4)(a) or any other member of the prosecuting authority.

(9) The judge shall report to Parliament on the performance of his or her functions, annually.

(10) The National Director may request the retired judge to investigate any complaint or allegation referred to in subsections (1) and (4) relating to a prosecution or an investigation conducted by an Investigating Directorate.

(11) If a structure contemplated in section 22(5) receives any complaint or allegation referred to in subsections (1) and (4), such structure shall refer the complaint or allegation to the retired judge to investigate.

(12) Any person who makes a complaint in terms of this section shall not be entitled to use this section to establish whether there is an

investigation against him or her, nor be entitled to any delay, interference or termination of such investigation on the basis that such complaint has been made.

(13) The Minister shall ensure that the retired judge has sufficient personnel and resources to fulfil his or her functions."

### **Insertion of section 29A in Act 32 of 1998**

10. The following section is hereby inserted in the principal Act after section 29:

#### **"Powers and functions of investigators**

29A. (1) An investigator may, subject to the control and direction of a head of an Investigating Directorate, 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 receive from a person having the authority to give such directions.

(2) An investigator has the same powers as a peace officer or a police official as provided for in the Criminal Procedure Act, 1977 (Act No. 51 of 1977), including—

- (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;
- (g) the attendance of an accused person in court; and
- (h) the service or execution of any subpoena or summons.

(3) An investigator has the same powers as if he or she had been appointed deputy sheriff or deputy messenger or other similar officer of the court.

(4) (a) The Minister may, in consultation with the Cabinet member responsible for police, from time to time, by notice in the Gazette, confer any power—

- (i) which is conferred by applicable law upon specified persons or category of persons; and
- (ii) which relates to the prevention, investigation or combating of any offence or other criminal or unlawful activity,

upon investigators.

(b) Any notice referred to in paragraph (a)—

- (i) may from time to time be amended or rescinded by the Minister in consultation with the Cabinet member responsible for police; and
- (ii) must be submitted to Parliament before publication in the Gazette."

#### **Insertion of section 43C in Act 32 of 1998**

11. The following section is hereby inserted in the principal Act after section 43B:

**"Transitional arrangements relating to Investigating Directorates**

**43C.** (1) For purposes of this section the phrase "the Investigating Directorate" means the Investigating Directorate, established by Proclamation No. 20 of 2019.

(2) The Investigating Directorate shall, as from the date of the commencement of the National Prosecuting Authority Amendment Act, 2023, cease to exist as a separate Investigating Directorate and shall become part of the Investigating Directorate against Corruption.

(3) Proclamation No. 20 of 2019, in respect of existing offences or categories of offences as determined by the President therein, which had been issued under section 7(1) in respect of the Investigating Directorate prior to the amendment of section 7(1) by the National Prosecuting Authority Amendment Act, 2023, shall, as from the date of the commencement of that Act, be deemed to have been issued under section 7(1)(a)(iv) with the necessary changes in respect of the Investigating Directorate against Corruption.

(4) Subject to the provisions of this Act, the Investigating Director and all staff of the Investigating Directorate shall be retained, remain in office and continue their functions under this Act in the Investigating Directorate against Corruption.

(5) From the date of the commencement of the National Prosecuting Authority Amendment Act, 2023, all pending matters pertaining to the Investigating Directorate shall be dealt with as if that Act had at all times been in force."



## Law amended

12. The law referred to in the second column of the Schedule is hereby amended to the extent indicated in the third column of the Schedule.

### **Amendment of Index to Act 32 of 1998, as inserted by section 21 of Act 61 of 2000, and amended by Act 56 of 2008**

13. The Index to the principal Act is hereby amended—

(a) by the insertion after item 19 of the following heading and items:

“CHAPTER 3B

APPOINTMENT, REMUNERATION AND CONDITIONS OF SERVICE

OF INVESTIGATORS”

19D. Appointment of investigators

19E. Security screening of investigators

19F. Remuneration and conditions of service of investigators”; and

(b) by the insertion after item 22 of the following heading and item:

“22A. Complaints mechanism and accountability”; and

(c) by the insertion after item 29 of the following item:

“29A. Powers and functions of investigators”; and

(d) by the insertion after items 43B of the following item:

“43C. Transitional arrangements relating to Investigating Directorates”.

## Short title and commencement

14. This Act is called the National Prosecuting Authority Amendment Act, 2023, and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

## SCHEDULE

### AMENDMENTS

*(Section 12)*

<b>Number and year of law</b>	<b>Short title</b>	<b>Extent of amendment</b>
Act No. 70 of 2002	Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002	The amendment of section 1 by the substitution for the definition of "Directorate" of the following definition:  " <b>Directorate</b> ' means [ <b>the Directorate of Special Operations</b> ] <u>an Investigating Directorate or the Investigating Directorate against Corruption</u> referred to in section 1 of the National Prosecuting Authority Act;".