



African Policing Civilian Oversight Forum

and



**INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE**

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**GUARDIAN OF THE GUARDS**

## **Strengthening the Independence of the Independent Police Investigative Directorate 20 and 21 November 2017**

### **1. Overview**

The African Policing Civilian Oversight Forum (APCOF) and the Independent Police Investigative Directorate (IPID) held a workshop on 20 and 21 November 2017 at Burgers Park Hotel in Pretoria to discuss the forthcoming legislative amendments to the IPID Act.

The amendments result from a decision of the Constitutional Court on 6 September 2016 in the matter of *McBride v Minister of Police and Another* (CCT255/15) [2016] ZACC 30, which set aside the suspension and disciplinary action against IPID Executive Director, Mr Robert McBride, on the basis of constitutional invalidity.

The Constitutional Court decision declared certain sections of the IPID Act, the Public Service Act and the IPID Regulations to be invalid, 'to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of [IPID]'. The Constitutional Court instructed that Parliament 'cure the defects in the legislation' within 24 months.

The workshop was attended by a range of state and non-state organisations as per the attached attendance list.

The amendment to the IPID Act is being drafted. The workshop provided an opportunity to discuss the draft text and follows an earlier discussion held in July 2017.

## **2. Presentation on strengthening the independence of IPID and what it means for independent police oversight – Mr Robert McBride, Executive Director, IPID**

Mr Robert McBride, Executive Director of IPID welcomed all participants to this follow up on the discussions held on the 13 – 14 July 2017.

Continuing he said IPID and its partners from both the state and non-state sector had an important role to play in the professionalising of the police and the implementation of the National Development Plan more broadly. The Amendment of the IPID Act was a critical step in this process. He stressed that IPID has exactly 11 months to effect the amendments. In this process South Africans needed to find ways to insulate IPID from political interference.

The initial drafters of the IPID Act had very few yardsticks on how to reform the then Independent Complaints Directorate (ICD) into IPID. The notion of the police being investigated was still new and in many instances had not filtered into all of police culture in South Africa. In this regard the Constitutional Court judgment assisted IPID in identifying key deficits in the IPID Act. The input from practitioners and including the members of the South African Police Services (SAPS) and the National Prosecuting Authority (NPA) in this meeting would go along way to finalising an initial draft of the Bill for consideration first by cabinet and then Parliament.

## **3. Securing the independence of Independent Police Complaints Commission of England and Wales – a comparative example - Commissioner Cindy Butts Independent Police Complaints Commission**

Commissioner Cindy Butts thanked IPID for the opportunity to present at the workshop.

Continuing she said that the IPCC in its current form was born from a long history of community dissatisfaction with the police and brought to a head through high profile incidents like the Brixton Riots and the death of Stephen Lawrence. The IPCC was at arms length from Government but did report to the Home Office and to Parliament.

While the IPCC provided redress in instances of police misconduct, 11 years of the IPCC had demonstrated the value of the system to provide insight into police conduct and so provide early warning to risks of criminality, abuse of power and misconduct by errant officers.

Over the years the workload of the IPCC has increased. Allegations have risen by 24% in the last three years and the IPCC will investigate 500 cases in 2017. This is expected to increase to 1500 in 2019, made possible through additional budget.

She then went on to speak to issues of complaints handling more specifically. The IPCC identifies four aspects of effective complaints handling, namely access, the strength of the initial complaints handling process, appeals and learning.

In the first instance a complaints system must be accessible and easy to use and operate. Currently the system is far from simple. A complainant must complain at a police station.

Often complaints are not recorded by the police on the basis that it doesn't qualify as a complaint. However on appeal to the IPCC 42 % of cases initially not accepted as a complaint have been overturned.

While there was general confidence by the UK public to use the system, the IPCC was aware that certain groups particularly Black, Ethnic and Minorities had less confidence in the system. As a result the IPCC also used other potential sources of complaints such as municipal offices, and social media.

It was important to try and resolve complaints as soon as possible. The initial complaints handling system didn't imply an investigation would automatically follow. Some of these complaints were resolved through issuing formal apologies.

Appeals were an important part of complaints handling as it enabled someone dissatisfied with the outcome to seek recourse. The current appeal process was complex and overly legalistic. The reform process which would see the IPCC transformed into the proposed new Independent Office of Police Complaints (IOPC) will provide a simplified system provide the Office more powers.

Learning and improvement were a key aspect of the complaints management system. The IPCC tried to balance holding to account and learning in line with its ultimate goal of contributing to more effective, rights compliant policing. Much emphasis has been placed on police recognising the importance of complaints as a barometer of customer satisfaction and as an early warning system. In this regard and in terms of improving the consistency of complaints handling, the IPCC has used its research learning and proactive oversight functions to for example develop guidance on complaints handling for the police. In the same way the IPCC has produced learning's on improving safety in road pursuits and in handling domestic violence. As the IPCC didn't have the power to enforce recommendations, their efficacy was built on an on going process of dialogue with the police. In this regard the IPCC also had a good working relationship with the college of policing and brought to the attention of the college issues where improved curriculum and training could have a pre-emptive benefit in dealing with later risk of errant behaviour.

#### **4. Presentation of the proposed legislative changes contemplated in the draft bill – Mr V Maoka, IPID.**

Mr Maoka tabled a draft Bill a copy of which is attached as appendix 1.

Continuing he said that it is important as a point of departure to refer to legislation that established IPID which goes as far back as the adoption of the Republic of South Africa Act, 1993 (200 of 1993) ("Interim Constitution").

Section 222 of the Interim Constitution provides that:

**"There shall be established and regulated by an Act of Parliament an independent mechanism under civilian control, with the object of ensuring that complaints in**

**respect of offences and misconduct allegedly committed by members of the Service are investigated in an effective and efficient manner.”**

The constitutional importance of this institution was affirmed by the Constitution of the Republic of South Africa, 1996. However, the distinction between section 222 of the Interim Constitution and the Constitution should be observed.

As a result section 206(6) of the Constitution provided as follows:

**“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.**

As a result, national legislation giving effect to the constitutional mandate referred to in section 206(6) of the Constitution was established, namely: **Independent Police Investigative Directorate Act, 2011 (“Act No. 1 of 2011.”)** which came into operation with effect from the 1 April 2012 after it was so proclaimed by the President of the Republic South Africa.

It is apparent from the orders and the judgment of the Constitutional Court in the *McBride v Minister of Police and Another (CCT255/16) [2016] ZACC 30* (“the McBride case”) that the legislation (the Act) regulating the establishment and operations of the IPID as an institution supporting constitutional democracy was inconsistent with the provisions of section 206(6) of the Constitution, when it was proclaimed into law. Hence the erstwhile former Minister of Police suspended and removed the Executive Director of IPID by invoking those provisions of the Act that are inconsistent with the provisions of section 206(6) of the Constitution, thereby, acting unlawfully.

The following provisions were declared unconstitutional and invalid to the extent that they authorise the Minister of Police to suspend, take any disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate—

1. section 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act 1 of 2011;
2. sections 16A(1), 16B, 17(1) and 17(2) of the Public Service Act, Proclamation 103 of 1994;
3. regulation 13 of the IPID Regulations for the Operation of the Independent Police Investigative Directorate (GN R98 of Government Gazette 35018 of 10 February 2012), (IPID Regulations).

Parliament was thus directed to cure the defects in the legislation within 24 months from the date of this order.

Although the Constitutional Court ordered the Legislature to cure the defects relating to those sections of the Act, challenged by the Executive Director, it is worth mentioning the following:

- Both the North Gauteng High Court and Constitutional Court emphasised on the institutional, structural and operational independence of the Independent Police Investigative Directorate;
- IPID must insulated from political interference in its structural and operational independence;
- IPID must be able to conduct independent and impartial investigations;
- IPID must be able to give effect to the provisions of section 206(6) of the Constitution; and
- Enhance accountability and transparency by the SAPS.

Having studied the judgment and consulted with the relevant stakeholders it was decided that:

- The IPID should use this opportunity to amend those sections of the IPID act that stifle independence of IPID;
- Sections considered to be inconsistent with the Constitutional Court judgment should be amended; and
- Sections deemed to be inconsistent with the institutional, structural and operational independence of IPID should also be amended.

The following sections were considered and proposed as strengthening the independence of the IPID consistent with the provisions of section 206 of the Constitution:

#### **Section 1:**

Definition of **“Head of Programme”** and **“Programme Manager”** in order to align it with section 8(1) of the Act.

**“police service”** to align it with those provisions of the SAPS Act that define a police service or a member to ensure that there shall be no conflict between the mandate of the IPID and the rest of the Independent Police Investigative Directorate, 2011 (Act No. 1 of 2011) to section 206(6) of the Constitution in the following: Sections 214, 236(7) of the Interim Constitution.

#### **Section 4:**

In order to strengthen and give substance to the independence of the Independent Police Investigative Directorate and align it with the Constitutional Court’s judgment in the McBride case when it found that “... the threshold for satisfying independence in respect of IPID is arguably more stringent given that the Constitution expressly demands its independence.” to section 206 of the Constitution.

#### **Section 6:**

To comply with the order of the Constitutional Court declaring the provisions of subsection 6(3)(a) and 6(6) of the Independent Police Investigative Directorate Act, 2011 invalid to the

extent that they authorise the Minister of Police to suspend, take disciplinary steps pursuant to suspension, or remove from office the Executive Director of the Independent Police Investigative Directorate as follows:

6. The appointment of the Executive Director;
- 6A. Remuneration and conditions of service of the Executive Director;
- 6B. Suspension of the Executive Director; and
- 6c. Removal of the Executive Director.

#### **Section 7:**

To strengthen the structural and operational independence of the Executive Director and the IPID by ensuring that section 7(3)(b) (amended), 21(1)(Aa) (inserted) and 22(2)(c) (added) which permit for legislation regulating the conditions of services, remuneration and allowances of staff of the IPID to be determined under the Act, thereby, ensuring that independence of the IPID is consistent with the provisions of section 206(6) of the Constitution and Constitutional Court judgment.

#### **Section 10:**

To enable the Executive Director to delegate his powers in order to ensure that the Head of Investigation / Programme Manager is able to assist him with the performance of the Provincial Heads

#### **Section 24:**

To strengthen the powers of the investigators in order to align it with the provisions of section 206(6) of the Constitution and to ensure that members of the police service do not interfere or hinder or counter investigate the investigation of the IPID by using the resources of SAPS.

#### **Section 28:**

- Seeks to amend the provisions in the Act by distinguishing between assault and torture as contemplated in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013);
- Corruption as contemplated in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004); and
- The inclusion of Bribery and Attempted Murder.

#### **Section 29:**

Providing for the compulsory reporting of specific types of offences/matters committed by members of the police service to include the amended subsections.

### **Section 30:**

Seeks to align the provisions in the Act by providing for the definition of the “initiation” to ensure that there shall be no conflict between the mandate of the IPID and the rest of the Independent Police Investigative Directorate, 2011 (Act No. 1 of 2011) to section 206(6) of the Constitution.

In addition, to provide for the initiation of disciplinary inquiry for misconduct committed by National Commissioner, Provincial Commissioner, National Head of DPCI, Provincial Heads of DPCI and Head of Municipal Services as well as other Heads of Law Enforcement Officers.

### **Section 33:**

Seeks to amend the penalty clause in order to provide as an offence contravention by members of the police service who interferes or hinders the investigations of the IPID Investigators.

### **Section 34:**

Seeks to amend the provisions in the Act in order to strengthen those provisions of the Act dealing with the structural and operational independence of the IPID by providing for Regulations that will deal with conditions of service, remuneration, allowances and discipline of the IPID. (This includes Administration and Investigators as employed in terms of the Act)

Already 14 months has passed and there is only 10 months remaining to comply with the Constitutional Court judgment. As a result the following should happen in the next five (5) months before the deadline of 5 September 2018;

- Seek Minister’s support approval on the proposed amendments;
- Comments by the State Law Advisors;
- Presentation at DEVCOM and seek its approval;
- Presentation at DG’s Forum and seek its approval;
- Presentation to the JCPS Cabinet Committee and its approval;
- Presentation to the Cabinet and its approval;
- Publication for comments;
- Involvement of the State Law Advisors;
- Presentation to the JCPS Cabinet Committee and its approval;
- Presentation to Cabinet and its approval; and
- Presentation to the Parliament.

## **5. Plenary workgroups reflecting on substantive amendments**

Participants were divided into two groups to discuss the draft text in detail. Both groups reported back to the plenary. Several suggestions were made to the draft text as per the document attached as appendix 2.

## **6. Closure**

Mr Moses Dlamini closed the workshop and thanked all participants for their inputs.

## Participants

### Strengthening the Independence of the Independent Police Investigative Directorate

|    |                                |  |
|----|--------------------------------|--|
| 1  | Mr. Sean Tait                  | African Policing Civilian Oversight Forum (APCOF)              |
| 2  | Mr Chumile Sali                | African Policing Civilian Oversight Forum (APCOF)              |
| 3  | Mr Sebasa Mehlape              | Civilian Secretariat of Police Service (CSPS)                  |
| 4  | Mr Sifiso Zikhali              | Civilian Secretariat of Police Service (CSPS)                  |
| 5  | Adv Zaiboonisa Khan            | Department of Community Safety - WC                            |
| 6  | Tebogo Phokanoka               | Department of Home Affairs (DHA)                               |
| 7  | Ms Gwen Dereymaeker            | Dullah Omar Institute - African Criminal Justice Reform (ACJR) |
| 8  | Prof Lukas Muntingh            | Dullah Omar Institute - African Criminal Justice Reform (ACJR) |
| 9  | Ms Felicity Harrison           | Goedgedacht Forum  |
| 10 | Mr T.S Leholo                  | Independent Police Investigative Directorate (IPID)- WC        |
| 11 | Mr Robert McBride              | Independent Police Investigative Directorate (IPID)            |
| 12 | Mrs Nkagabe Antonett Mphago    | Independent Police Investigative Directorate (IPID)            |
| 13 | Mr Garricks Thabo Mmusi        | Independent Police Investigative Directorate (IPID)            |
| 14 | Mr Robert Mmapheto<br>Mamabolo | Independent Police Investigative Directorate (IPID)            |
| 15 | Mr Glen Angus                  | Independent Police Investigative Directorate (IPID)            |
| 16 | Mr Moses Dlamini               | Independent Police Investigative Directorate (IPID)            |
| 17 | M.H Molope                     | Independent Police Investigative Directorate (IPID)            |
| 18 | Mr Matthews Seseko             | Independent Police Investigative Directorate (IPID)            |
| 19 | Ms Moroasui                    | Independent Police Investigative Directorate (IPID)            |
| 20 | P .M Setshedi                  | Independent Police Investigative Directorate (IPID)            |
| 21 | F A Ntshangase                 | Independent Police Investigative Directorate (IPID)            |

|    |                                |   |
|----|--------------------------------|---|
| 22 | Viceroy Maoka                  | Independent Police Investigative Directorate (IPID)                     |
| 23 | Mrs Bongiwe Pearl Tukela       | Independent Police Investigative Directorate (IPID)- EC                 |
| 24 | Mrs P Maharaj                  | Independent Police Investigative Directorate (IPID)- KZN                |
| 25 | Ms Miriaan Geerds              | Independent Police Investigative Directorate (IPID)- National Office    |
| 26 | Mr Oarabile Ishmael Mocwaledi  | Independent Police Investigative Directorate (IPID)- NC                 |
| 27 | Dr Chris Magobotiti            | Independent Police Investigative Directorate (IPID)- WC                 |
| 28 | Mr Innocent Khuba              | Independent Police Investigative Directorate (IPID)-Limpopo             |
| 29 | Ms Baatseba Motlhale           | Independent Police Investigative Directorate (IPID)-NW                  |
| 30 | Commissioner Cindy Butts       | Independent Police Complaints Commission                                |
| 31 | Adv Masenyani Andrew Chauke    | National Prosecuting Authority (NPA)                                    |
| 32 | Ms Nompumelelo Radebe          | National Treasury   |
| 33 | Ms Mary Rayner                 | SERI, Consultant and Researcher   |
| 34 | Brigadier Marga van Rooyen     | South African Police Service (SAPS): Division Legal and Policy Services |
| 35 | Colonel Mutondi Joseph Ratombo | South African Police Services: Division Visible Policing                |
| 36 | Ms Tracy Shaw                  | SWEAT   |
| 37 | Mr Lesly Mntambo               | SWEAT   |
| 38 | Ms Beulah Balie                | Western Cape Police Ombudsman   |

REPUBLIC OF SOUTH AFRICA

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**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 \_\_\_\_ 2017)  
(The English text is the official text of the Bill)*

(MINISTER OF POLICE)

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(a) by the substitution in subsection (2) for paragraph (b), (d), (e) and (g) of the following paragraphs, respectively:

“(b) to ensure independent oversight of the South African Police Service **[and Municipal Services]** as defined in terms of section 5 and the provisions of Chapter 12 of the South African Police Service Act, 1995.”

(d) to provide for independent and impartial investigation of identified criminal offences allegedly committed by members of the South African Police Service **[and Municipal Services]** as defined in terms of section 5 and the provisions of Chapter 12 of the South African Police Service Act, 1995.”

(e) to make disciplinary recommendations in respect of members of the South African Police Service **[and Municipal Police Services]** as defined in terms of section 5 and the provisions of Chapter 12 of the South African Police Service Act, 1995.” and

(g) to enhance accountability and transparency by the South African Police Service **[and Municipal Police Services]** as defined in terms of section 5 and the provisions of Chapter 12 of the South African Police Service Act, 1995.”.

#### **Amendment of section 3 of Act 1 of 2011**

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

“(2) The Directorate must exercise its functions in accordance with the Constitution, this Act and **[any other relevant]** the law.”.

#### **Amendment of section 4 of Act 1 of 2011**

4. Section 4 of the principal Act is amended –

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

“(1) The Directorate functions institutionally and operationally independent**[ly]** from the South African Police Service.”.

(b) by the addition of the following subsection after subsection (2) -

“(3) The Directorate has full legal capacity, independent and is subject only to the Constitution and the law, including this Act; and; and

“(4) The Directorate must be impartial, exercise the powers and perform the functions of office without fear, favour or prejudice,”.

#### **Amendment of 6 of Act 1 of 2011**

5. Section 6 of the principal Act is hereby amended -.

(a) Section 6 of the principal Act is hereby substituted for the following section:

**“Appointment of the Executive Director”**

6(1) Whenever there is a vacancy, a committee established by the National Assembly shall initiate the appointment of the Executive Director through an open, transparent and competitive recruitment process.

(2) The recruitment process referred to in subsection (1) shall be by way of applications, invitations or nominations.

(3) The Executive Director must -

(a) be a South African citizen;

(b) be a fit and proper person;

(c) be a suitably qualified person; and

(d) have knowledge and experience in the administration of justice, public administration and public finance management for a cumulative period of at least 10 years.

(4) The Executive Director shall be appointed for a period of non-renewable fixed term of not shorter than seven years and not exceeding ten years.

(5) The period referred to in subsection (4) is to be determined at the time of the appointment.

(6) The committee must submit its report and recommendations relating to the provisions of subsections (1) and (4) to the National Assembly after concluding the recruitment process.

(7) The report and recommendations referred to in subsection (6) shall be submitted within 14 days to the National Assembly if Parliament is in session or if Parliament is not then in session, within 14 days after its next ensuing session.

(8) The National Assembly shall, within 30 working days of the receipt of the report and recommendation by the committee referred to in subsection (6), confirm or reject such recommendation which shall be adopted with a supporting vote of at least two thirds of the members of the National Assembly.

(9) The period of 30 working days referred to in subsection (8) shall mean the period when Parliament is in session.

(10) The Executive Director shall not perform remunerative work outside his or her official duties.

(11) The Minister shall after confirmation of the National Assembly take steps to formalise the appointment a person as the Executive Director.

(12) In the case of a vacancy, the National Assembly shall, fill the vacancy within a reasonable period of time, which must not exceed six months.

(13) While the appointment of a person to the office of the Executive Director is pending, any of the persons appointed in terms of section 8(1)(b), (c), (d), (f) or (g) respectively, shall be appointed by the Minister subject to the approval of the National Assembly to perform such functions.

(b) The following sections are hereby inserted after section 6 of the principal Act:

**“Remuneration and conditions of service of the Executive Director”**

6A. (1) The remuneration and other terms and conditions of employment of the Executive Director shall from time to time be determined by the National Assembly upon advice of the committee: Provided that such remuneration –

(a) shall not be lower than that of a National Commissioner of Police;

(b) shall not be reduced, nor shall the terms and conditions of employment be adversely altered, during his or her term of office or be lower than that of the National Commissioner of Police.

(2) The National Assembly or, if Parliament is not in session, the committee may allow the Executive Director to vacate his or her office –

(a) on account of continued ill health;

(b) inability to perform the duties of that office effectively;

(c) by mutual agreement between the National Assembly and the Executive Director;  
or

(d) at his or her request: Provided that such request shall be addressed to the Speaker of the National Assembly and copied to the Minister, as the case may be, at least three calendar months prior to the date on which he or she wishes to vacate such office, unless the National Assembly allows a shorter period in a specific case.

(3) If the committee recommends that the Executive Director may vacate his or her office in terms of subsection (2), the chairperson of the committee shall communicate the fact to the National Assembly within a period of 14 days from such decision been made: Provided that any decision taken by the committee in terms of this subsection must be ratified by the National Assembly.

(4) The Executive Director may, at any time, approach the Speaker with regard to any matter pertaining to his or her terms and conditions of office.

(5) In the case of the vacancy, the National Assembly must ensure that the vacancy is filled within six months of the vacancy arising.

(6) While the appointment of a person to the office of the Executive Director is pending, any of the persons appointed in terms of section 8(1)(b), (c), (d), (f) or (g) respectively, shall be appointed by the Minister subject to the approval of the National Assembly to perform such functions.

## “Suspension from office of the Executive Director”

6B (1) The Executive Director shall not be suspended from office except in accordance with the procedure as set out in the provisions of this section.

(2) The Executive Director may be suspended from office on allegations –

(a) of misconduct;

(b) of incapacity;

(c) of incompetence; or

(d) that he or she is no longer a fit and proper person to hold office concerned;

(3) Any complaints relating to allegations contemplated in subsection (2) must be communicated in writing to the Speaker of the National Assembly and copied to the Minister within 14 days after such complaint came to the attention of the complainant.

(4) The Speaker of the National Assembly must ensure that a committee is constituted within 30 days to deal with the complaint and matters related thereto.

5) The committee constituted in terms of subsection (4) must consider the complaint made against the Executive Director to determine whether there is substance in the complaint.

(6) Once the committee find that there is substance in the complaint the chairperson of the committee shall notify the Executive Director of the allegations against him or her and invite the Executive Director to make written representations within 14 days of receipt of the notification.

(7) The committee must consider the complaint and any representations submitted by the Executive Director within 30 days of receipt of the representations by the Executive Director.

(8) Any decision and the reasons therefor by the committee must be communicated to the complainant, the Executive Director, the Speaker of the National Assembly and the Minister.

(9) Where there is an intention to suspend, the chairperson of the committee must invite the Executive Director to submit representations, if any, within 14 days of receipt of the notice of intention to suspend why he or she should not be suspended.

(10) The committee must consider the representation by the Executive Director and make a decision on the suspension within 14 days of receipt of the representations.

(11) The recommendation by the committee whether or not to suspend the Executive Director shall be referred to the National Assembly for adoption.

(12) The Executive Director may be suspended from his or her office after a resolution of the National Assembly adopted with a supporting vote of at least two

thirds of the members of the National Assembly, pending an inquiry into his or her fitness to hold such office as the National Assembly deems fit and, subject to the provisions of this subsection.

(13) The Minister must inform the Executive Director of the National Assembly's decision to suspend him or her pending the disciplinary inquiry.

(14) The Executive Director provisionally suspended from office shall during the period of such suspension be entitled to such salary, allowances, privileges or benefits to which he or she is otherwise entitled, unless the National Assembly determines otherwise, which shall not include his or her salary.

(15) While the appointment of a person to the office of the Executive Director is pending, any of the persons appointed in terms of section 8(1)(b), (c), (d), (f) or (g) respectively, shall be appointed by the Minister subject to the approval of the National Assembly to perform such functions.

### **“Removal of the Executive Director from Office”**

**6C.(1)**The Executive Director may be removed from office –

- (a) on the ground of misconduct;
- (b) on the ground of incapacity;
- (c) on the ground of incompetence; or
- (d) on account that he or she is no longer a fit and proper person to hold office on a finding to that effect by a Committee.

(2) An inquiry referred to in this subsection—

- (i) shall be led by the chairperson of the committee constituted under section 6C(4).
- (ii) shall perform its functions subject to the provisions of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), in particular to ensure procedurally fair administrative action; and

(3) The Executive Director shall be informed in writing of any allegations against him or her.

(4) The committee shall determine its own procedure.

(5) The Executive Director may –

- (a) be assisted and represented by a legal representative;
- (b) be present at the inquiry;
- (c) make an opening statement;
- (d) cross-examine witnesses not called by him or her;
- (e) give evidence thereat;
- (f) call witnesses; and
- (g) have access to documents relevant to the inquiry;
- (h) make written representation at the conclusion of the hearing; and
- (i) may present mitigating factors.

(6) After the conclusion of the disciplinary inquiry, the committee must compile a report and refer its report, findings and recommendations to the National Assembly within 30 days for consideration and adoption.

(7) The adoption by the National Assembly of a resolution calling for the Executive Director's removal from office.

(8) A resolution of the National Assembly concerning the removal from office of the Executive Director shall be adopted with a supporting vote of at least two thirds of the members of the National Assembly.

(9) In the event of the removal of the Executive Director, the Minister must take steps to implement the decision of the National Assembly.

(10) While the appointment of a person to the office of the Executive Director is pending, one of the Programme Managers appointed in terms of section 8(1)(b), (c), (d), (f) or (g) respectively, shall be appointed by the Minister subject to the approval of the National Assembly to perform such functions.

#### **Amendment of section 7 of Act 1 of 2011**

6. Section 7 of the principal Act is amended –

(a) by the substitution in subsection (3) of the following paragraphs:

“(3)(b) the staff component must be established in **[accordance with Public Service Act]** terms of this Act; and

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

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

“(6) 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, Head or Chief of the Municipal Police Service.”.

#### **Amendment of section 8 of Act 1 of 2011**

7. Section 8 of the principal Act is amended –

(a) by the substitution in subsection 1 of the following paragraphs:

“(b) **[the Corporate Services Unit]** Programme 1: Administration;

(c) **[the]** Programme 2: Investigation and Information Management [Unit]; and

(d) **[the]** Programme 3: Legal Services [Unit].”.

(b) by the addition in subsection 1 of the following paragraphs:

“(f) Programme 4: Compliance Monitoring and Stakeholder; and; and

(g) Programme 5: Office of the Chief Financial Officer.”.

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

“(3) A person may not be appointed as a member of the **[national office]** Directorate unless information with respect to that member has been gathered in an appropriate security screening investigation as **[prescribed]** determined by the [Minister] Executive Director.”.

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

“(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the National Strategic Intelligence Act, **[2002]** 1994 [(Act No. 65 of 2002) (Act No. 39 of 1994), as amended.”.

(e) by the substitution of subsection (7) for the following subsection:

“(7) The Executive Director**[, after consultation with the National Intelligence Agency]** may 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.”.

(f) by the addition of the following subsections after subsection (8):

“(9) The Executive Director may withdraw the security clearance certificate referred to in subsection (7), after recommendation by a Committee established in terms of section 10 this Act, which is responsible to evaluate and determine the information relating to an employee’s security clearance.; and

(10) The Ethics and Integrity Committee is hereby established to perform functions contemplated in subsection (9).”.

### **Amendment of section 9 of Act 1 of 2011**

8. Section 9 of the principal Act is hereby amended –

(a) by substitution of paragraph (e) for 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**

9. Section 10 of the principal Act is hereby amended –

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

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

### **Amendment of section 20 of Act 1 of 2011**

10. Section 20 of the principal Act is hereby amended by the substitution of the following subsections:

“(1) The Executive Director appoints the provincial head for each province in **[accordance with the laws of governing the public service]** terms of this Act.; and

(2) The provincial head must conclude a written performance agreement with the Executive Director or a person delegated by him or her - ”.

### **Amendment of section 21 of Act 1 of 2011**

11. Section 21 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (a) of the following paragraph:

“21(1)(aA) The conditions of service, including remuneration and allowances of such staff, are regulated in terms of section 7(3)(c);”.

### **Amendment of section 22 of Act 1 of 2011**

12. Section 22 of the principal Act is amended –

(a) by addition of a new paragraph after paragraph (b):

“22(2)(c) The conditions of service, including remuneration and allowances of such staff, are regulated in terms of section 7(3)(c);”.

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

“(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]** determined by the [Minister] Executive Director.”.

(c) by the substitution of subsection (4) of the following subsection:

“(4) The security screening investigation contemplated in subsection (3), must be done in conjunction with the **[National Intelligence Agency] State Security Agency.** As referred to in section 3 of the **[Intelligence Services Act, 2002 (Act No. 65 of 2002)] National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).**”.

(d) by the substitution of subsection (5) of the following subsection:

“(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.”.

(e) by the substitution of subsection (8) of the following subsection:

“(8) An investigator is given policing powers contemplated in section 24(2) by the **[Minister] Executive Director,** within **[three] one** month**[s]** after his or her appointment.”.

### **Amendment of section 23 of Act 1 of 2011**

13. Section 23 of the principal Act is hereby substituted for the following section:

“(23) The conditions of service and benefits, including the salary and allowances payable to an investigator appointed under this Act, **[must be on par with]** shall not be lower than members appointed as detectives in terms of the South African Police Service Act.”.

### **Amendment of section 24 of Act 1 of 2011**

14. Section 24 of the principal Act is hereby amended by -

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

“(bA) the taking of buccal samples in terms of the Criminal Law (Forensic Procedures) Amendment Act, 2013 (Act No. 37 of 2013).”

(b) the substitution of subsection (4) of the principal Act of the following paragraph:

“(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-]**”

(c) by the deletion of paragraphs (a) and (b) of subsection 4:

**[“(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).]”**

(d) by the deletion of subsection 5 of the following subsection:

**[(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.]**

(b) The addition of the following subsections after subsection (5):

“(6) A directive referred to in subsection (3)(a) shall be by way of a subpoena containing particulars of the matter in connection with which the person subpoenaed is required to appear before the Executive Director or an investigator and shall be signed by the Executive Director or the investigator and served on the person subpoenaed either by a registered letter sent through the post or by delivery by a person authorised thereto by the Executive Director or by the investigator.

(7) The Executive Director or an investigator may require any person appearing as a witness before him or her under subsection (6) to give evidence **[on]** under oath or after having made an affirmation.

(8) (a) Notwithstanding anything to the contrary contained in any law no person shall disclose to any other person the contents of any document in the possession of a member of the office of the Executive Director or the record of any evidence given to the Executive Director during an investigation, unless the Executive Director or his or her delegate determines otherwise; or

(b) Notwithstanding anything to the contrary contained in any law no person shall disclose to any other person the contents of any interview or questioning by the Executive Director or an investigator conducting an investigation in terms of this Act.

(9) No person or organ of state that is being investigated by the Directorate shall, when he or she or it is directly or indirectly involved in the investigation conducted by the Directorate, investigate an investigator that is investigating him or her or it or the investigation of the Directorate wherein he or she or it is directly or indirectly involved in such investigation.

### **Amendment of section 26 of Act 1 of 2011**

15. Section 26 of the principal Act is hereby amended –

(a) by substitution of subsection (1) and (3) for the following subsections:

“(1) The **[Minister]** Executive Director may **[prescribe]** determine 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.; and

(3) The **[Minister]** Executive Director shall **[prescribe]** determine measures to ensure the confidentiality of information obtained through integrity testing, if such measures are prescribed in terms of subsection (1).”.

### **Amendment of section 27 of Act 1 of 2011**

16. Section 27 of the principal Act is hereby amended by -

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

“(1) 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; and

(b) the addition of the following subsection after the new subsection (1):

“(2) A member of the Directorate shall not be liable in respect of anything reflected in any report, finding, point of view, recommendation or investigation made or expressed in good faith and submitted to Parliament, National Prosecuting Authority, any authority or made known in terms of this Act or the Constitution.”.

### **Amendment of section 28 of the Act 1 of 2011**

17. Section of 28 of the principal Act is hereby amended by –

(a) the substitution for paragraph (f) in subsection (1) of the following paragraph;

“(f) any complaint of –

(i) torture as defined in the Prevention and Combating of Torture of Persons Act, 2013 (Act No. 13 of 2013); and

(ii) assault against a police officer in the execution of his or her duties;

(b) substitution of paragraph (g) in subsection (1) of the following paragraph:

“(i) corruption matters as contemplated in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), as amended, within the police service 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]

(ii) corruption matters as contemplated in the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), as amended, within the [police,] police service referred to the Directorate by SAPS National Commissioner, Provincial Commissioner, Directorate for Priority Crime Investigation, Parliamentary Committee, Head or Chief of the Municipal Police Service or National Prosecuting Authority whether the member was on or off duty;

(iii) Bribery.

(iv) attempted murder by a police officer, whether the police officer is on or off duty, in the prescribed manner; 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 [,].”.

#### **Amendment of section 29 of Act 1 of 2011**

18. Section 29 of the principal Act is amended –

(a) the amendment of subsection (1)(a) of the following paragraph:

“(a) immediately after becoming aware, notify the Directorate of any matters referred to in section 28(1)(a) to [(f)] (g)(iv); and

#### **Amendment of section 30 of Act 1 of 2011**

19. The following definition is inserted after the heading of section 30

(a) For the purposes of this section the following definition is inserted:

“initiation” means the initiation of the disciplinary proceedings based on the investigation report by the Directorate by –

(a) appointing the chairperson and the employer representative;

(b) serving the charge sheet upon the member; and

(c) holding the first sitting within 30 days of the receipt of the recommendations from the Directorate.  
(b) by the substitution of section 30 of the following section:

**“30. The National Commissioner or the appropriate Provincial Commissioner or the National Head or the appropriate Provincial Head of Directorate for the Priority Crime Investigation or the appropriate Head or Chief of the Municipal Police Service or the Head or Chief of the Municipal Police to whom recommendations regarding disciplinary matters were referred, as contemplated in section 7(6) and (7), must –”**

#### **Amendment of section 31 of Act 1 of 2011**

20. Section 31 of the principal Act is amended by the substitution of paragraph (b) in subsection (1) 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 Minister and Parliament.”**

#### **Amendment of section 33 of Act 1 of 2011**

21. Section 33 of the principal Act is hereby amended by the addition of the following subsections:

**“(6) Any person who, without just cause, refuses or fails to comply with a direction or request under section 24(3) or refuses to answer any question put to him or her under that section or gives to such question an answer which to his or her knowledge is false, or refuses to take the oath or to make an affirmation at the request of the Executive Director or an investigator in terms of section 24(3), shall be guilty of an offence.;**

**(7) Any person convicted of an offence in terms of subsection (6) shall be liable to a fine or to imprisonment for a period not exceeding two years; and**

**(8) Any person who contravenes the provisions of section 24(7), (8) or (9), is guilty of an offence and shall be liable on conviction to a fine or to imprisonment not exceeding two years.”.**

#### **Amendment of section 34 of Act 1 of 2011**

22. Section 34 of the principal Act is hereby amended by the substitution of the following paragraphs Act:

(a) by the substitution of subsections (o) and (p) of the following subsections:

“(o) the manner and procedure to secure a crime scene to be investigated by the Directorate; **[and]**; and

(p) in general, any ancillary or incidental matter that it is necessary to prescribe for the proper implementation or administration of this Act[.]”.

(b) by additions of the following paragraphs:

“(q) labour relations, including matters regarding suspension, dismissal and grievances;

(r) (i) the institution and conduct of disciplinary proceedings or inquiries;

(ii) conduct of or by members that will constitute misconduct;

(iii) the provision, if any, of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that shall apply with the necessary changes to disciplinary proceedings or inquiries;

(iv) the attendance by an employee or any witness, of such disciplinary proceedings or inquiries;

(v) the circumstances under which such disciplinary proceedings or inquiries may be conducted or proceeded with in the absence of the employee accused of misconduct or affected by such an inquiry;

(vi) the hearing and submission of evidence at such disciplinary proceedings or inquiries;

(vii) competent findings and sanctions in respect of such disciplinary proceedings or inquiries;

(viii) review and appeal in respect of such disciplinary proceedings or inquiries;

(s) the issue of code of conduct for the employees of the Directorate and the adherence thereof; and

(t) the manner and procedure to be followed regarding the conditions of service, including remuneration and allowances of the staff of the Directorate as contemplated in section 7(3)(b) and (c).”

### **Amendment of section 35 of Act 1 of 2011**

23. Section 35 of the principal Act is amended by the substitution of subsection (4) of the following subsection:

“(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 in terms of this Act, the remuneration, allowances and other conditions of service **[the South African Police Service Act]** in terms of this Act shall, with the necessary changes, be amended in accordance with the provisions of section 23 of this Act.

### **Amendment of section 37 of Act 1 of 2011**

24. Section 37 of the principal Act is amended by the substitution of section 37 of the following section:

“37. This Act **[is]** shall be called the Independent Police Investigative Directorate Amendment Act, **[2011]** 2017 and comes in to operation on a date determined by the President by proclamation in the *Gazette*.

## Appendix 2 Comments on the Draft Bill

| Amended Sections        | Adopted | Comments   | Recommendations   | Decisions   |
|-------------------------|---------|--|---|---|
| Section 1 (Definitions) | Adopted | <ol style="list-style-type: none"> <li>1. "Head of Programme": Approved.</li> <li>2. "Programme": Approved.</li> <li>3. "Programme Manager": Approved.</li> <li>4. "Police Service": <ul style="list-style-type: none"> <li>• Police service definition is vague and unclear.</li> <li>• Will IPIDs mandate be extended if it includes traffic police and immigration officers?</li> </ul> </li> </ol> | <ol style="list-style-type: none"> <li>1. Definition of "police service" should be deferred to the state legal advisor. It has to pass a legal muster.</li> </ol> |   |
| Section 2               | Adopted |  |   |   |
| Section 3               | Adopted |  |   |   |
| Section 4(1)            | Adopted |  |   |   |
| Section 4(3)            | Adopted |  |   |   |
| Section 4(4)            | Adopted |  |   |   |
| Section 6 (1)           | Adopted |  |   |   |
| Section 6(2)            | Adopted |  |   |   |
| Section 6(3)            | Adopted | <ol style="list-style-type: none"> <li>1. The IPID Executive Director should have an LL.B degree or be a person who is legally qualified.</li> <li>2. The Executive Director should not have worked for SAPS before. IPID should be viewed as an independent body.</li> </ol>  |   | <ol style="list-style-type: none"> <li>1. Executive Director must not have worked for the South African Police Services.</li> <li>2. LL.B qualification should not be a requirement. The Executive Director must be a suitably qualified person.</li> </ol> |

|                |          |  |  |   |
|----------------|----------|--|--|---|
| Section 6(4)   | Approved | <ol style="list-style-type: none"> <li>1. The section is unclear on Executive Director's term of office .</li> <li>2. The term of office should remain a 5 year term and be in line with the current term of office.</li> <li>3. The NDPPs term of office is 10 years.</li> <li>4. The Public Protector's term of office is 7 years.</li> <li>5. The 5 year term limits the Executive Director in executing his/her duties.</li> <li>6. The term of office should be a minimum of 5 years renewable but not exceeding 10 years.</li> </ol> |  | <ol style="list-style-type: none"> <li>1. The Executive Director shall be appointed for a non – renewable term of 10 years.</li> </ol>                  |
| Section 6(5)   | Deleted  | <ol style="list-style-type: none"> <li>1. The section should be removed. It is no longer applicable.</li> </ol>  |  | 1. Section deleted.   |
| Section 6(6)   | Adopted  |  |  |   |
| Section 6(7)   | Adopted  |  |  |   |
| Section 6(8)   | Adopted  | <ol style="list-style-type: none"> <li>1. The committee should nominate atleast two candidates to the National Assembly.</li> </ol>  |  | <ol style="list-style-type: none"> <li>1. The committee should nominate atleast two candidates to the National Assembly.</li> </ol>                     |
| Section 6(9)   | Adopted  |  |  |   |
| Section 6(10)  | Adopted  | <ol style="list-style-type: none"> <li>1. This section should come after subsection 6 (11), after the Executive Director has been appointed.</li> </ol>  |  | <ol style="list-style-type: none"> <li>1. This section should come after subsection 6 (11), after the Executive Director has been appointed.</li> </ol> |
| Section 6(11)  | Adopted  |  |  |   |
| Section 6(12)  | Adopted  |  |  |   |
| Section 6 (13) | Adopted  |  |  |   |

|               |         |  |   |  |
|---------------|---------|--|---|--|
| Section 6A    |         | 1. Heading should read:<br>Remuneration and conditions of service <b>for</b> the Executive Director.   |   |  |
| Section 6A(1) | Adopted | 1. Is it necessary to compare the remuneration of the Executive Director to that of the National Assembly?<br>2. Ranking in the South African Police Services is taken seriously.<br>3. Ranks and remuneration have an impact on how IPIDs investigations are respected by the South African Police Services.<br>4. There's an existing committee in Parliament that reviews remunerations annually. |   |  |
| Section 6A(2) | Adopted |  |   |  |
| Section 6A(3) | Adopted |  |   |  |
| Section 6A(4) | Adopted |  |   |  |
| Section 6A(5) | Adopted | 1. This section is a repetition of Section 6 (12).   |   |  |
| Section 6A(6) | Adopted | 1. This section is a repetition of Section 6 (13).   |   |  |
| Section 6B    |         | 1. 6B – The Heading should read:<br>Suspension of the Executive from office.   |   |  |
| Section 6B(1) | Adopted |  |   |  |
| Section 6B(2) | Adopted |  |   |  |
| Section 6B(3) | Adopted |  |   |  |
| Section 6B(4) | Adopted | 1. The number of days for the complaint to be  | 1. The number of days for the complaint to be |  |

|                |                        |   |   |   |
|----------------|------------------------|---|---|---|
|                |                        | copied to the Minister should be 14 working days.   | copied to the Minister should be 14 working days. |   |
| Section 6B(5)  | Adopted                |   |   |   |
| Section 6B(6)  | Adopted                | 1. The draft text should read: The committee must consider the complaint and any representations submitted by the Executive <b>or any other interested party</b> within 30 days of receipt of the representations by the Executive <b>or any other interested party</b> . |   | 1. The draft text should read: The committee must consider the complaint and any representations submitted by the Executive <b>or any other interested party</b> within 30 days of receipt of the representations by the Executive <b>or any other interested party</b> . |
| Section 6B(8)  | Adopted                |   |   |   |
| Section 6B(9)  | Adopted                |   |   |   |
| Section 6B(10) | Adopted                |   |   |   |
| Section 6B(11) | Adopted                |   |   |   |
| Section 6B(12) | Adopted                |   |   |   |
| Section 6B(13) | Adopted                |   |   |   |
| Section 6B(14) | Adopted                |   |   |   |
| Section 6B(15) | Adopted                |   |   |   |
| Section 6C(1)  | Adopted                |   |   |   |
| Section 6C(2)  | Adopted                |   |   |   |
| Section 6C(2)  | Adopted                |   |   |   |
| Section 6(3)   | Adopted                |   |   |   |
| Section 6C(4)  | Adopted                |   |   |   |
| Section 6C(5)  | Adopted                |   |   |   |
| Section 6C(6)  | Adopted                |   |   |   |
| Section 6C(7)  | Adopted                |   |   |   |
| Section 6C(8)  | Adopted                |   |   |   |
| Section 6C(9)  | Adopted                |   |   |   |
| Section 6C(10) | Adopted                |   |   |   |
| Section 7(2)   | Not in included in the | 1. Should be amended to correct the error   |   | 1. Should be amended to correct the   |

|                          |             |  |   |  |
|--------------------------|-------------|--|---|--|
|                          | draft text. | in the principal Act.<br>2. Section 7 (2) should read: "The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in <b>section 20.</b> " |   | error in the principal Act.<br>2. Section 7 (2) should read: "The Executive Director is responsible for the appointment of the provincial heads of each province as contemplated in <b>section 20.</b> " |
| Section 7(3)(b)          | Adopted     |  |   |  |
| Section 7(3)(c)          | Adopted     |  |   |  |
| Section 7(6)             | Adopted     |  |   |  |
| Section 8(1)(b)          | Adopted     |  |   |  |
| Section 8(1)(c)          | Adopted     |  |   |  |
| Section 8(1)(d)          | Adopted     |  |   |  |
| Section 8(1)(f)          | Adopted     |  |   |  |
| Section 8(1)(g)          | Adopted     |  |   |  |
| Section 8(3)             | Adopted     |  |   |  |
| Section 8(4)             | Adopted     |  |   |  |
| Section 8 (7)            | Adopted     |  |   |  |
| Section 8(9)             | Adopted     |  |   |  |
| Section 8(10)            | Adopted     |  |   |  |
| Section 9(e)             | Adopted     |  |   |  |
| Section 10 (3)           | Adopted     |  |   |  |
| Section 20 (1)           | Adopted     |  |   |  |
| Section 20(2)            | Adopted     |  |   |  |
| Section 21(1)(aA)        | Adopted     |  |   |  |
| Section 22(2)(c)         | Adopted     |  |   |  |
| Section 22(3)            | Adopted     |  |   |  |
| Section 22(4)            | Adopted     |  |   |  |
| Section 22(5)            | Adopted     |  |   |  |
| Section 22(8)            | Adopted     |  |   |  |
| Section 23               | Adopted     |  |   |  |
| Section 24(bA)           | Adopted     |  |   |  |
| Section 24(4)(a) and (b) | NO          | 1. The Farlam Commission of Inquiry criticised   | The matter should be referred to the State Law Advisor. |  |

|                |         |   |  |  |
|----------------|---------|---|--|--|
|                |         | <p>these two sections.</p> <ol style="list-style-type: none"> <li>2. The two sections should not be removed.</li> <li>3. Section 35 of the Constitution refers to the rights of arrested, detained and accused persons and not suspects.</li> <li>4. There is case law protecting the rights of suspects in relation self incrimination.</li> </ol> |  |  |
| Section 24(5)  | NO      | The matter should be referred to the State Law Advisor.   | The matter should be referred to the State Law Advisor.  |  |
| Section 24(6)  | Adopted |   |  |  |
| Section 24(7)  | Adopted |   |  |  |
| Section 24(8)  | NO      | <ol style="list-style-type: none"> <li>1. The non-disclosure of documents limits the right to legal representation.</li> <li>2. Information should not be divulged to the detriment of the investigation.</li> <li>3. It is not a blanket prohibition.</li> </ol>   | <ol style="list-style-type: none"> <li>1. The section should be given context and should not be interpreted as a secrecy clause.</li> </ol>        |  |
| Section 26(1)  | Adopted |   |  |  |
| Section 26(3)  | Adopted |   |  |  |
| Section 27(1)  | Adopted |   |  |  |
| Section 27(2)  | Adopted | <ol style="list-style-type: none"> <li>1. The South African Police Services should explicitly be included or specified as an authority.</li> </ol>  | <ol style="list-style-type: none"> <li>1. The South African Police Services should explicitly be included or specified as an authority.</li> </ol> |  |
| Section 28(i)  | Adopted |   |  |  |
| Section 28(ii) | Adopted | <ol style="list-style-type: none"> <li>1. The following words should be removed from the text: <ul style="list-style-type: none"> <li>• Remove “matters”</li> </ul> </li> </ol>   |  |  |

|                  |                        |   |                                   |   |
|------------------|------------------------|---|-----------------------------------|---|
|                  |                        | <p>after corruption.</p> <ul style="list-style-type: none"> <li>• Remove “as amended”.</li> <li>• Remove “SAPS” before National Commissioner</li> <li>• Remove “on or off duty”.</li> </ul>                   |                                   |   |
| Section 28 (iii) | Adopted                | 1. The section should be moved to Section 28 (iv). Section 28 (iv) should be moved to Section 28 (iii).   |                                   | 1. The section should be moved to Section 28 (iv). Section 28 (iv) should be moved to Section 28 (iii).   |
| Section 28 (iv)  | Adopted                | 1. The section should be moved to Section 28 (iii). Section 28 (iii) should be moved to Section 28 (iv).  |                                   | 1. The section should be moved to Section 28 (iii). Section 28 (iii) should be moved to Section 28 (iv).  |
| Section 29(a)    | Adopted and Reconciled | 1. Due to swapping of Section 28 (iii) with (iv), Section 29 (a) should read: “immediately after becoming aware, notify the Directorate of any matters referred to in section 28 (1)(a) to (f)(g)(iii); and”. |                                   | 1. Due to swapping of Section 28 (iii) with (iv), Section 29 (a) should read: “immediately after becoming aware, notify the Directorate of any matters referred to in section 28 (1)(a) to (f)(g)(iii); and”. |
| Section 30       | NO                     | <p>1. Admission of misconduct is not reflected under the definition of initiation.</p> <p>2. The ‘Publicity of disciplinary</p>   | 1. The section should be amended. | 1. Section 30 (c) should be removed.  |

|                     |         |  |  |  |
|---------------------|---------|--|--|--|
|                     |         | proceedings (public hearings) should be added.<br>3. Section 30 (c): The section should be deleted.  |  |  |
| Section 31          | Adopted |  |  |  |
| Section 33(6)       | Adopted |  |  |  |
| Section 33(7)       | NO      | 1. "fine and/or imprisonment" must be added.<br>2. "imprisonment not exceeding two years" should be removed. It is the prerogative of the judge to determine a term of imprisonment. | 1. IPID should take legal counsel on Section 33 (7). |  |
| Section 33(8)       | Adopted |  |  |  |
| Section 34(o)       | Adopted |  |  |  |
| Section 34(p)       | Adopted |  |  |  |
| Section 34(q)       | Adopted |  |  |  |
| Section 34(r)(i)    | Adopted |  |  |  |
| Section 34(r)(ii)   | Adopted |  |  |  |
| Section 34(r)(iii)  | Adopted |  |  |  |
| Section 34(r)(iv)   | Adopted |  |  |  |
| Section 34(r)(v)    | Adopted |  |  |  |
| Section 34(r)(vi)   | Adopted |  |  |  |
| Section 34(r)(vii)  | Adopted |  |  |  |
| Section 34(r)(viii) | Adopted |  |  |  |
| Section 34(s)       | Adopted |  |  |  |
| Section 34(t)       | Adopted |  |  |  |

**Recommendations and further additions to the Amendment Bill:**

1. IPID should publicise its recommendations, especially the ones affecting policy changes.
2. The South African Police Services should have a right to respond to IPIDs reports.
3. The rights to remain silent and self – incrimination should be addressed

