

THE DIRECTORATE OF NATIONAL INTEGRITY

1. Introduction

These explanatory notes will provide a background and context to the development of the Directorate of National Integrity (DNI); it will also provide an overview of its location, organisational integration and supporting notes to the legislative framework that will establish and regulate the DNI. This specialised anti-corruption agency, located within the Public Protector of South Africa, not only satisfies the Constitutional Court's ruling in *Glenister v President of the Republic of South Africa and Others*, ("Glenister Case")¹ but represents the most feasible, effective and efficient model for the South Africa context. These explanatory notes are to be read as a complementary document to the Directorate of National Integrity Bill.

2. Background

The Directorate of Special Operations (DSO) was established in 1999 by the former president of South Africa, Thabo Mbeki. The purpose of the DSO was to deal with national priority crimes and to build the public's confidence in the government's ability to fight crime. One of the national priority crimes identified was corruption.

The DSO had a very broad mandate and this led to frequent jurisdictional battles with the South African Police Service (SAPS). The DSO was heavily criticised for having too much power, as it had investigating, information gathering and prosecuting powers (known as the troika principle).² As the DSO did not have a mandate to investigate all cases of corruption, it was often accused for only pursuing cases which were easy to solve. It also came under pressure for its investigation of high level politicians. It is argued that the investigation of former Deputy President, and current President, Jacob Zuma finally led to the downfall of the DSO.

The Khampepe Commission was established in 2005 by Thabo Mbeki to consider the matters around the DSO. The Commission found that although the DSO was not

¹ (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011).

² SAPS *Country Report to the 11th United Nations Convention on Crime Prevention & Criminal Justice* (2005) available at:
https://www.google.co.za/search?rlz=1C1AFAB_enZA457ZA477&sugexp=chrome,mod=0&sourceid=chrome&ie=UTF-8&q=troika+principle.

unconstitutional, it did have some shortcomings, including no legal basis to collect intelligence and lack of oversight.

During its 52nd National Policy Conference the African National Congress (ANC) resolved to incorporate the DSO into the SAPS. The Directorate of Priority Crime Investigation (DPCI), commonly known as the Hawks, was with the tabling of the General Law Amendment Bill³ and the National Prosecuting Authority Bill,⁴ established and incorporated into the SAPS.⁵

The decision to disband the DSO and establish the DPCI in its place was heavily criticised. A business man, Hugh Glenister, argued that the disbandment of the DSO was unconstitutional and contested this in court in 2009. He lost this case in the High Court, but appealed to the Constitutional Court, where he won the case in March 2011, with a 5-4 majority. The Government of South Africa was given 18 months to address the shortcomings of the DPCI, as pointed out in the Glenister Case.⁶

In a reaction to the ruling the SAPS Amendment Bill was drafted. The government argued that this bill satisfied the Constitutional Court's requirements. Under this Bill the DPCI remains within the SAPS. The majority of the submissions to the SAPS Amendment Bill argued that the amendments made by the government is a minimalist approach to address the ruling in the Glenister Case and that it is not the most desirable option.⁷ Despite arguments to the contrary the SAPS Amendment Bill was accepted by parliament in May 2012.⁸

³ 2008.

⁴ 2008.

⁵ Berning and Montesh "Countering corruption in South Africa: The rise and fall of the Scorpions and Hawks" (2012) *SA Crime Quarterly* (39) 3-7.

⁶ Lewis and Stenning "Considering the Glenister Judgment: Independence requirements for anti-corruption institutions" (2012) *SA Crime Quarterly* (39) 12.

⁷ African Policing Civilian Oversight Forum, Association of Certified Fraud Examiners South African Chapter, Helen Suzman Foundation, Pierre de Vos (Deputy Dean Department of Public Law at UCT), Paulette Wards (Cape Bar Council) and Institute for Security Studies.

⁸ De Lange *MP's vote to keep Hawks in SAPS* (2012) available at: <http://www.iol.co.za/dailynews/news/mps-vote-to-keep-hawks-in-saps-1.1298637>.

3. Context

Corruption can be seen as a factor that is threatening the South African democracy. Corruption has detrimental effects on the economy, development, the government and business.⁹ Jeff Radebe, Minister of Justice and Constitutional Development, went as far as to state: “corruption is as serious a problem as racism was during apartheid”.¹⁰

The number of articles on corruption in the media is an indication of the extent of the corruption endemic in South Africa. High level politicians, business men and police officials have been involved in corruption scandals.

A recent study shows that 74% of South Africans are of the opinion that corruption increased in the past three years.¹¹ Two thirds of these respondents also indicated that they perceive the SAPS to be the most corrupt government officials.¹² The SAPS have, since its inception in 1995, been struggling to eradicate corruption within the Service; corruption in SAPS permeates to the highest levels.¹³

These results were also echoed in Transparency International’s Corruption Perceptions Index. This index allocates a score between 0 (highly corrupt) and 10 (very little corruption) to each country. In 2011 South Africa attained a score 4.1 and was ranked 64th out of a 100 countries.¹⁴ This represents a drastic decline since 2007, when South Africa attained a score of 5.1 and was ranked 35th out of a 100 countries.¹⁵

Corruption in South Africa is not characterised by isolated incidents of corruption; the nature of corruption in South Africa is systemic.¹⁶ Due to the systemic nature of corruption, the prevalence of corruption can in many cases not be defined as “public sector” corruption or “private sector” corruption. Corruption can have its origin in a

⁹ Woods *Stakeholder Workshop* Unpublished presentation, delivered at SPL Bellville on 2 August 2012.

¹⁰ Lewis “On the Record: Interview with David Lewis, Director of Corruption Watch” (2012) *SA Crime Quarterly* (39) 42.

¹¹ Gordon et al “Business unusual: Perceptions of Corruption in South Africa” (2012) *HSRC* 10 (2) available at: http://www.hsrc.ac.za/HSRC_Review_Article-316.phtml.

¹² Corruption Watch *SA sees SAPS as most corrupt within the state – survey* (2012) available at: <http://www.corruptionwatch.org.za/content/sa-sees-saps-most-corrupt-within-state-survey>.

¹³ Kinnes and Newham “Freeing the Hawks Why an anti-corruption agency should not be in the SAPS” (2012) *SA Crime Quarterly* (39) 36.

¹⁴ Transparency International *Corruption Perception Index 2011* (2011) 4.

¹⁵ Corruption Watch *The Big Picture: Global Implications* (2011) Available at: <http://www.corruptionwatch.org.za/content/global-implications>.

¹⁶ Office of the Public Service Commission “A review of South Africa’s national anti-corruption agencies” (2001) *PSC* (August) 3.

public sector system, but in some way implicate or impact on the private sector, and conversely corruption can originate in the private sector and implicate or impact on the public sector. A corrupt activity can also be undertaken collaboratively by public sector and private sector players. A holistic approach to addressing corruption should therefore be followed. To address the systemic corruption it is also clear that South Africa should not only reactively investigate and prosecute corruption, but that there is also a need to promote integrity at a national level.

In order to address this problem a range of anti-corruption initiatives and institutions were established by government. The legislative and regulatory anti-corruption frameworks in South Africa are very comprehensive, although none of these institutions have a dedicated anti-corruption focus. The various anti-corruption mechanisms can however not be successful if there is not effective cooperation between them.¹⁷ In South Africa the synergies between the multiple anti-corruption agencies are not optimised and in many cases overlapping mandates encumbers the effectiveness of these agencies. There is also no ACA in South Africa with a specific mandate to educate and create public awareness about corruption.¹⁸

Neither the DSO, nor the DPCI, were dedicated anti-corruption agencies; they both had much broader mandates. It would thus not be an optimal solution to apply either of these models. It is also not feasible for South Africa to have a single anti-corruption agency that performs all of the functions needed to eradicate corruption, as the country does not have the necessary institutional foundation in place.¹⁹ Experiences in other countries have also illustrated that the single agency model is very expensive.²⁰ Tweaking any of South Africa's current or past ACA's will also not be a sufficient solution; the South African corruption context thus calls for new legislation.

¹⁷ Van Niekerk Putting the "good" back into governance while corruption has taken a turn for the worst in the South African public sector (2012) Unpublished paper read at a conference the 13th Annual Winelands at University of Stellenbosch, 2012-04-3.

¹⁸ Council for the Advancement of the South African Constitution *Submission to the SAPS Amendment Bill* (2012) available at: [http://www.ifaisa.org/current_affairs/Council_for_the_Advancement_of_the_South_African_Constitution-\(CASAC\)%20-%20SAPS_Amendment_Bill.pdf](http://www.ifaisa.org/current_affairs/Council_for_the_Advancement_of_the_South_African_Constitution-(CASAC)%20-%20SAPS_Amendment_Bill.pdf).

¹⁹ Office of the Public Service Commission "A review of South Africa's national anti-corruption agencies" (2001) PSC (August) 3.

²⁰ OECD Specialised Anti-Corruption Institutions: Review of Models (2006).

4. Location of the Office of the Directorate of National Integrity

In developing countries a specialised anti-corruption agency is usually established, outside of the established public sector and law enforcement agencies.²¹ The majority of the submissions to the SAPS Amendment Bill by civil society suggested that the unit should not be located within the South African Police Service. Some also argued that the a new and separate body should be created through a Constitutional amendment in the form of a Chapter 9 institution,²² whereas others argued that the unit could be located in the office of one of the existing Chapter 9 institutions, like the Public Protector or the Auditor General, or alternatively another national ministry.²³

As ruled in the *Glenister Case*,²⁴ it is not only the structural and operational independence of an anti-corruption agency that is important, but also the perception of its independence.²⁵ Due to the high perception of corruption within the South African Police Service locating an anti-corruption agency, regardless of the checks and balances in place, within SAPS is not desirable. Establishing a new Chapter 9 institution would be perceived as the most independent option, it is however not feasible as there is not sufficient political will for this option.²⁶

The Director of National Integrity (DNI) will be located within the Office of the Public Protector. The Public Protector is perceived as a highly independent and efficient organisation.²⁷ The Public Protector also has the broadest mandate of all the Chapter 9 institutions,²⁸ facilitating the organisational integration of the new unit. To protect the people of South Africa from the harmful effects of corruptions, corruption should not only have to be investigated and prosecuted reactively, but a system of national integrity should be promoted proactively. This proactive approach is a gap in the current South African anti-corruption framework. To address this gap, and to more

²¹ OECD Specialised Anti-Corruption Institutions: Review of Models (2006).

²² African Policing Civilian Oversight Forum, Institute for Security Studies, Institute for Accountability in South Africa and Association of Certified Fraud Examiners South African Chapter.

²³ Helen Suzman Foundation, African Policing Civilian Oversight Forum, Institute for Security Studies and Pierre de Vos (Deputy Dean Department of Public Law at UCT).

²⁴ (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011).

²⁵ *S v Glenister* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011) at para 207, endorsing that “This Court has indicated that ‘the appearance or perception of independence plays an important role’ in evaluating whether independence in fact exists”.

²⁶ Reeves “After *Glenister*: The case for a new dedicated agency” (2012) *SA Crime Quarterly* (39) 25.

²⁷ Institute for Security Studies “An Evaluation of Anti-corruption Agencies” (2001) *Monograph* (65) September available at: <http://www.iss.co.za/Pubs/Monographs/No65/Chap6.html>.

²⁸ Human Sciences Research Council *Assessment of the Relationship Between Chapter 9 Institutions and Civil Society* (2007) 63.

effectively protect the people of South African against corruption, the work of the Public Protector will be enhanced and complemented by the DNI.

The OECD Report states that “a specialised anti-corruption institution may be needed when structural or operational deficiencies among existing institutional framework do not allow for effective preventive and repressive actions against corruption”.²⁹ The current anti-corruption framework in South Africa is not as effective as it could be due to overlapping mandates and lack of synergy, there is also not a dedicated agency that focuses solely on corruption. The Director of National Integrity will therefore be located within the Public Protector and focus exclusively on corruption. This unit will thus not cause the Public Protector to lose focus, but it will enhance the work done by the Public Protector by providing a specialised focus on corruption.

5. Vision

The vision of the Directorate of National Integrity will be to create a corruption-free South Africa by eradicating corruption and promoting a system of national integrity.

6. Mission

The mission of the Director of National Integrity will be to prevent and combat corruption and to promote national integrity.

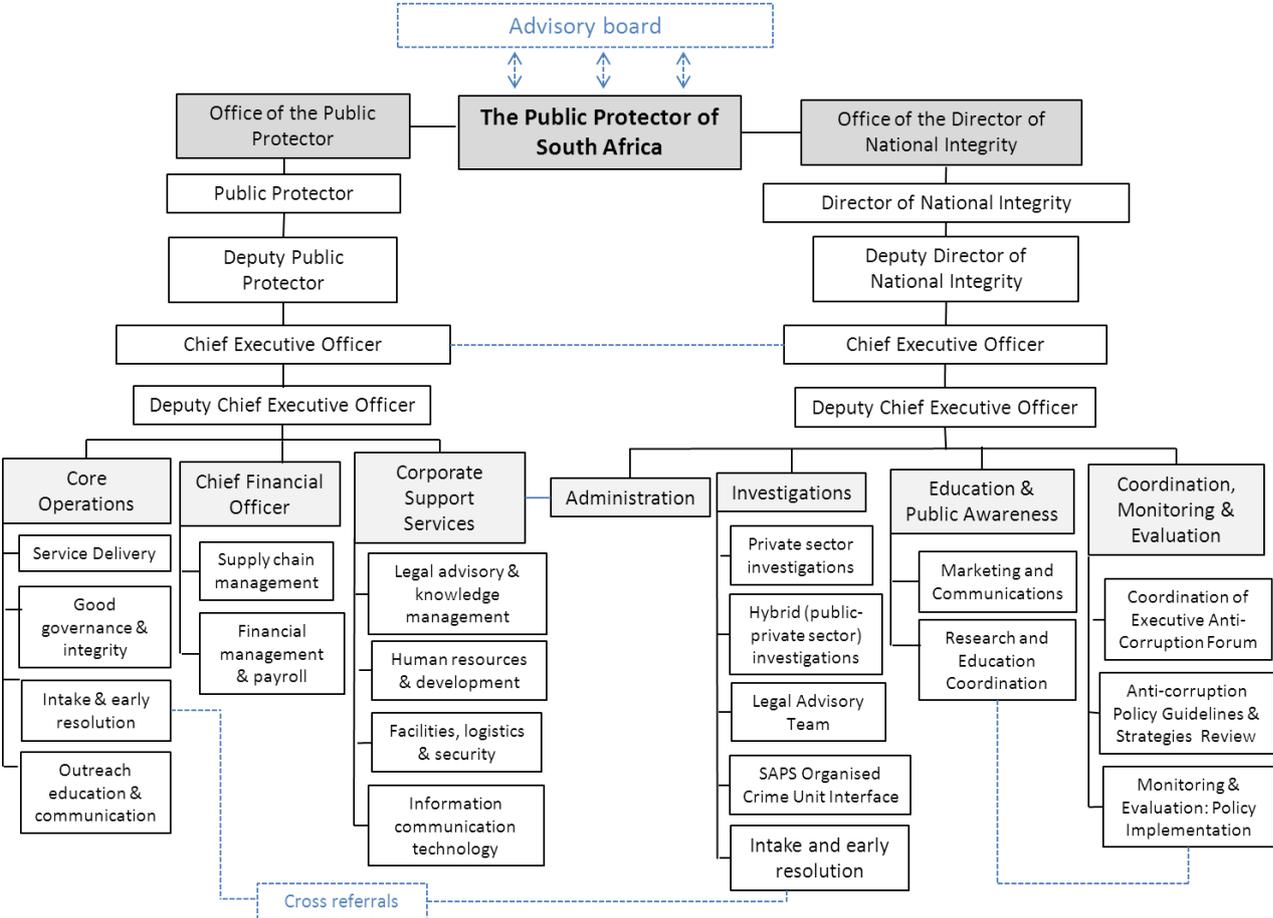
7. Organisational structure and integration

The Office of the Director of National Integrity will be located within the Public Protector of South Africa.³⁰ The functions of the Director of National Integrity will however not be imbedded into the functions of the Public Protector, so that the effectiveness and the efficiency of the Public Protector in its current form will not be compromised. The structure of the Office of the Director of National Integrity will run parallel to the structure of the Office of the Public Protector, but these two structures

²⁹ OECD Specialised Anti-Corruption Institutions: Review of Models (2006).

³⁰ Section 2 Directorate of National Integrity Bill.

will cooperate in the performance of certain functions, in order to reinforce their actions in a mutually beneficial (financial and operational) manner. To ensure that organisational integration take place seamlessly certain corporate support services will be integrated. The structure of the Public Protector, after the integration of the DNI, is illustrated by the figure below:



7.1. The Office of the Director of National Integrity

The Office of the Director of National Integrity will take on a similar structure as the Office of the Public Protector to facilitate organisational integration between the two bodies. The same hierarchical structure will be followed with the Director of National Integrity at the top, a Deputy Director of National Integrity below him and then the Chief Executive Officer, with the Deputy Chief Executive Officer below him or her. The other major departments are discussed below.

7.1.1. Administration

To prevent burdening the Public Protector with the administration of the new unit the DNI will have its own administration department. The DNI’s administration

department will however closely cooperate with the corporate support services department of the Public Protector. Where possible the established facilities and other existing resources of the Public Protector will be used. This will minimise the investment in administrative infrastructure as the DNI can leverage from the Public Protector's current resources and systems.

7.1.2. Investigations

The DNI will enhance the work of the Public Protector by investigating cases which does not fall into the mandate of the Public Protector, and strengthen the anti-corruption framework in South Africa by performing investigative functions that are not well developed in South Africa.

All public sector corruption cases will be referred to the Public Protector; *private sector corruption* cases will however be investigated by the DNI. In the avoidance of any confusion the DNI will investigate all cases of corruption that are *hybrid* in nature, in other words cases that involve both *public and private sector* players and can thus not clearly be classified as either.

The DNI will have a *legal advisory team* consisting of adequately qualified individuals that are to its disposal at all times.

The DSO had frequent jurisdiction battles with the SAPS. To enhance cooperation with the SAPS and to reinforce the work done by the two entities, a dedicated *SAPS Organised Crime Unit Interface* will be established.

The *early intake and resolution* department will be the entry point for any case of corruption. The DNI will not refuse to record any cases of corruption, as even seemingly small cases could have far reaching implications. This department will be tasked to refer all legitimate cases of corruption for investigation to the appropriate agency. The DNI can refer cases of corruption to a department within the DNI or the Public Protector, or to the most appropriate Anti-Corruption Agency (ACA). The early intake and resolution department will do the referral of cases on the grounds of the most effective entity (given their expertise and resources) to investigate the case and with due regard to the legislative mandates of the other ACA's.³¹ This department will work closely with the early intake and resolution department of the Public Protector.

³¹ Reeves "After Glenister: The case for a new dedicated agency" (2012) *SA Crime Quarterly* (39) 25-26.

The efficient referral of cases to the most suited agency will enhance the organisational effectiveness of the agencies concerned.³²

Although a separate department for international cooperation will not be established within the DNI, the DNI will, as a dedicated Anti-Corruption Directorate, be the focal point for international cooperation.

7.1.3. Education and Public Awareness

South Africa have signed and ratified various international agreements, which tasks it with educating and making the public aware of corruption and its implications.³³ There is however no ACA in South Africa with a clear mandate to address this issue.³⁴ The DNI will address this gap in the South African anti-corruption framework.

The *Marketing and Communications* department will create public awareness of corruption, through national anti-corruption campaigns.

There are many academic, civil and private organisations conducting research on corruption. These initiatives are largely uncoordinated and as a result there is no coherent synergy in the research conducted, and results are generally not used to inform policies.³⁵ Similarly, there are a number of organisations that have developed and are delivering courses on anti-corruption. These organisations include, but are not limited to: The Institute for Security Studies, the Helen Suzman Foundation, the Council for the Advancement of the South African Constitution, the Wits School of Law, the African Policing Civilian Oversight Forum and ACCERUS (Anti-Corruption Centre for Education and Research of Stellenbosch University).³⁶ There is however no overarching national strategy for research and education on corruption. The DNI's *Research and Education Coordination* department will, through a facilitated process, develop this strategy and in an advisory capacity coordinate national initiatives to this

³² Office of the Public Service Commission "A review of South Africa's national anti-corruption agencies" (2001) PSC (August) 18.

³³ Reeves "After Glenister: The case for a new dedicated agency" (2012) SA Crime Quarterly (39) 26.

³⁴ Council for the Advancement of the South African Constitution *Submission to the SAPS Amendment Bill* (2012) available at: [http://www.ifaisa.org/current_affairs/Council_for_the_Advancement_of_the_South_African_Constitution-\(CASAC\)%20-%20SAPS_Amendment_Bill.pdf](http://www.ifaisa.org/current_affairs/Council_for_the_Advancement_of_the_South_African_Constitution-(CASAC)%20-%20SAPS_Amendment_Bill.pdf).

³⁵ Evident in the fact that in contradiction to the recommendation of the majority of submissions to the SAPS Bill, the DPCI is still located within the SAPS with the SAPS Amendment Bill.

³⁶ IFAISA *Various submissions on the SAPS Amendment Bill* (2012) online at: http://www.ifaisa.org/current_affairs-glenister.html; ACCERUS *About Us* (2011) online at: <http://accerus.org/about.aspx>.

regard. Through education and public awareness initiatives the civil society, the academic sector, the media and NGOs will be included in the fight against corruption.

7.1.4. Coordination, Monitoring and evaluation

Cross-agency coordination is a critical success factor in South Africa's fight against corruption.³⁷ Coordination and cooperation will enhance the individual and collective performance of the ACA's in South Africa.³⁸

The DNI will facilitate the *Coordination of the Executive Anti-Corruption Forum*. This forum will consist of the heads of the various anti-corruption agencies in South Africa, including, but not limited to: The DNI, the Public Protector, the Auditor General, the Independent Complaints Directorate, the National Prosecuting Authority, the SAPS Organised Crime Unit, the Asset Forfeiture Unit, the Special Investigating Unit, the South African Revenue Service, the Department of Public Service and Administration and Corruption Watch. This forum will convene bi-annually to review their collective mandates, operations and performance of the year that passed. They will decide on a set of actions needed for their individual and collective mandates to be pursued more effectively and efficiently. The DNI will, after each forum, advise the parties concerned of actions needed to facilitate the actions decided upon by the forum.

Policy Guidelines and Strategies for anti-corruption is an integral factor in preventing corrupt behaviour. The DNI's *Anti-Corruption Policy Guidelines and Strategies Review* department will review national anti-corruption policy guidelines and strategies to ensure that these documents are in accordance with international best practise and that they are conducive to ethical behaviour within the South African context.

Properly implemented policies are a preventative corruption fighting measure.³⁹ The DNI's *Monitoring and Evaluation: Policy Implementation* department will monitor and evaluate the implementation of anti-corruption policies, both at a national level as well as for public and private sector organisations. Where possible the research

³⁷ Van Niekerk *Putting the "good" back into governance while corruption has taken a turn for the worst in the South African public sector* (2012) Unpublished paper read at a conference the 13th Annual Winelands at University of Stellenbosch, 2012-04-3.

³⁸ Office of the Public Service Commission "A review of South Africa's national anti-corruption agencies" (2001) PSC (August) 3.

³⁹ Van Niekerk *Putting the "good" back into governance while corruption has taken a turn for the worst in the South African public sector* (2012) Unpublished paper read at a conference the 13th Annual Winelands at University of Stellenbosch, 2012-04-3.

component of this department will be seconded to the Research and Education Coordination department, which could commission the appropriate research organisation to conduct the research. The DNI's *Monitoring and Evaluation: Policy Implementation* department will prepare a report advising the corrective actions that should be taken by the organisation concerned. The DNI will not have line authority to ensure that the advised measures are taken, but it will require a feedback report from the CEO/Director/Head of the organisation concerned on the corrective actions taken in response to the DNI's recommendation. These feedback reports will be made public with the DNI's annual reports. In the event that the lack of implementation of anti-corruption policies is conducive to corruption the case will be referred to the Early Intake and Resolution department.

7.1.5. Advisory board

A "special external oversight body" is an example of best practise to ensure accountability of an ACA; it is recommended that this body consist of representatives from state and civil bodies.⁴⁰

The Public Protector (comprised of the Office of the Public Protector and the Office of the Directorate of National Integrity) will have an advisory board, consisting of members from the public, private, academic and civil sectors. Members of this board will be appointed by the National Assembly.

The advisory board will meet once a year to scrutinise the operations and performance of the Public Protector for the previous year, and to advise how the Public Protector could more effectively and efficiently fulfil its mandate. Although the advisory board will not have the authority to implement any measures it will require that the Public Protector provide it with a feedback report of actions taken in response to the advisory board's recommendations. When necessary the advisory board can also advise the National Assembly on policy actions that it feels are necessary for the Public Protector to enhance its performance.

⁴⁰ OECD *Specialised Anti-Corruption Institutions: Review of Models* (2006).

8. Supplementary Notes to the Directorate of National Integrity Bill

The Directorate of National Integrity will be incorporated into the Public Protector, which is a Chapter 9 institution; the DNI will therefore be subject to all of the stipulations in Chapter 9, including the amendments proposed by this team, of the Constitution of South Africa.⁴¹ This section highlights a number of selected additional stipulations that will be included in the Directorate of National Integrity Bill.

8.1. Establishment of the Directorate of National Integrity

8.1.1. The Establishment

The DNI will have to “exercise its functions without fear, favour or prejudice”.⁴² In an attempt to make the DNI’s services accessible to all people of South Africa, the Office will have a presence in each of the nine provinces.

8.1.2. Composition of the Directorate of National Integrity

The composition of the DNI is discussed in section 7.1.

8.2. Director and Deputy Director of National Integrity

8.2.1. Appointment⁴³

The Director of the DNI will be on the same level as the Public Protector, the Director of the DNI will thus neither be superior, nor subject to the Public Protector. The same applies for the Deputy Director of the DNI and the Deputy Public Protector. To avoid political interference in the appointment of the Director and Deputy Director the president will make the appointment. The appointment procedure stipulated in Chapter 9 of the Constitution and the Directorate of National Integrity Bill are legal mechanisms that will ensure that the appointment of the Director and Deputy Director is free from undue influence.

All members of the DNI will be required to take an oath of office as stipulated in schedule one.

Short terms in office could render the Directorate of National Integrity ineffective. The renewal of terms could be open to abuse and place too much power in the hands of a

⁴¹ Section 2 Directorate of National Integrity Bill; Proposed Amendments to Chapter 9 of the Constitution.

⁴² (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011).

⁴³ Section 4 Directorate of National Integrity Bill.

re-elected individual. The Director and Deputy Director of the Office will thus be appointed for a fixed, non-renewable term of seven years.⁴⁴

8.2.2. Remuneration, vacancies in office and other terms and conditions of employment of Director and Deputy Director of National Integrity⁴⁵

The Director and Deputy Director of the Office will take an Oath of Office (first schedule), as recommended in the ruling of the Glenister Case.⁴⁶

8.2.3. Removal from Office of the Director and/or the Deputy Director⁴⁷

Specific and objectively verifiable criteria for removal from office are stipulated in the Directorate of National Integrity Bill to remove the opportunity for undue influence in the dismissal.⁴⁸

8.3. Chief Executive Officer, Deputy Chief Executive Officer, Other Staff and Investigators

8.3.1. Appointment of a Chief Executive Officer⁴⁹

To ensure that an adequately skilled and experienced individual is appointed as the Chief Executive Officer (CEO) clear criteria for appointment will be stipulated by legislation.⁵⁰

As is the case for the Director the CEO will be required to take an oath of office (Schedule One) and will be appointed for a non-renewable term of seven years.

8.3.2. Appointment of a Deputy Chief Executive Officer⁵¹

The stipulations for appointment of the Deputy CEO is the same as for the CEO.

⁴⁴ Reeves “After Glenister: The case for a new dedicated agency” (2012) SA Crime Quarterly (39) 29.

⁴⁵ Section 5 Directorate of National Integrity Bill.

⁴⁶ (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011).

⁴⁷ Section 6 Directorate of National Integrity Bill.

⁴⁸ Council for the Advancement of the South African Constitution Submission to the SAPS Amendment Bill (2012) available at:

[http://www.ifaisa.org/current_affairs/Council_for_the_Advancement_of_the_South_African_Constitution-\(CASAC\)%20-%20SAPS_Amendment_Bill.pdf](http://www.ifaisa.org/current_affairs/Council_for_the_Advancement_of_the_South_African_Constitution-(CASAC)%20-%20SAPS_Amendment_Bill.pdf).

⁴⁹ Section 7 Directorate of National Integrity Bill.

⁵⁰ Helen Suzman Foundation *Submission to the SAPS Bill* (2012) available at:

http://www.ifaisa.org/current_affairs/Helen_Suzman_Foundation%20-%20SAPS_Amendment_Bill.pdf.

⁵¹ Section 8 Directorate of National Integrity Bill.

8.3.3. Removal from Office of the Chief Executive Officer and/or Deputy Chief Executive Officer⁵²

The procedure for the removal of the Deputy CEO is the same as for the CEO.

8.3.4. Duties of the Chief Executive Officer and Deputy Chief Executive Officer⁵³

The Chief Executive Officer (CEO), with the assistance of the Deputy Chief Executive Officer, will be responsible for the operational effectiveness and efficiency of the DNI. Its duties are prescribed in section (10) of the DNI Bill.

8.3.5. Powers of the Chief Executive Officer⁵⁴

The powers of the CEO are determined legislatively in section (11) of the DNI Bill. The powers attributed to the CEO enables him/her to perform its functions without fear, favour or prejudice.

8.3.6. Security Screening Of the Staff of the Office⁵⁵

To ensure that the staff members of the DNI is upright individuals that will be likely to uphold the mandate, oath of office and the code of conduct they will undergo a security screening before being appointed to the Office.

8.3.7. Appointment of Investigators⁵⁶

All investigators will also have to undertake an oath of office (Schedule One) before assuming their position at the Office.

8.3.8. Term of Office⁵⁷

Investigators will be employed for a non-renewable term of seven years. In order to avoid negative impacts on organisational effectiveness an investigator involved in and on-going investigation may, at the end of the seven year period, continue to hold office for a maximum period of five years to enable the investigator to complete the proceeding.

⁵² Section 9 Directorate of National Integrity Bill.

⁵³ Section 10 Directorate of National Integrity Bill.

⁵⁴ Section 11 Directorate of National Integrity Bill.

⁵⁵ Section 15 Directorate of National Integrity Bill.

⁵⁶ Section 16 Directorate of National Integrity Bill.

⁵⁷ Section 17 Directorate of National Integrity Bill.

8.3.9. Qualifications⁵⁸

A specialised anti-corruption agency requires skilled and experienced staff.⁵⁹ The qualifications and experience that investigators need to possess to be employed as by the DNI is stipulated in the DNI Bill. Investigators will not be permitted to be actively involved in politics or to support any political candidate, in an attempt to remove the opportunity for political influence.

8.3.10. Publicity⁶⁰

To strengthen the transparency of the DNI, the Directorate will publish and publicise information falling within its mandate and affecting the nation.

The DNI will also publicise public information regarding their locations and contact details. The Directorate will be allowed to receive donations, which can solely be used for corruption education. The Directorate will have to make public all donations received and illustrate how the donations was utilised for corruption education.

The DNI will have a website where anonymous complaints could be laid.

8.3.11. Protection from Personal Liability⁶¹

To enhance the capacity of investigators to perform their functions without fear, favour or prejudice, they will be protected from personal liability.

8.4. Administration and general principles

8.4.1. Procedures of Office⁶²

The DNI will be an independent body, and will regulate its own proceedings in procedures. The DNI will however be located as a complementary body within the Public Protector, it will therefore regulate its proceedings and procedures with due regard to and in consultation with the Public Protector.

The DNI will also meet with the Public Protector at least four times per year, but as often as necessary. These meetings will serve to ensure those synergies are

⁵⁸ Section 19 Directorate of National Integrity Bill.

⁵⁹ OECD Specialised Anti-Corruption Institutions: Review of Models (2006).

⁶⁰ Section 21 Directorate of National Integrity Bill.

⁶¹ Section 22 Directorate of National Integrity Bill.

⁶² Section 25 Directorate of National Integrity Bill.

maintained between the work of the Public Protector and the DNI and that their individual mandates are performed in a mutually reinforcing manner.

In the event that a disagreement between the two bodies reaches a deadlock a commission will be appointed by the President to facilitate the reaching of an agreement.

8.4.2. Disclosure of financial interest⁶³

To ensure that all cases are investigated objectively and independently all member of the DNI will have to declare any financial interest, directly or indirectly, that they or any person connected to them might have in a particular matter. In the event that a financial interest in a matter is disclosed the particular person(s) will not be permitted to vote on any issues relating to the matter.

8.5. Mandate of the Office and execution thereof

8.5.1. Mandate of the Office⁶⁴

To ensure that the DNI will be efficient and effective it will have a clear and focused mandate. This mandate will be stipulated in legislation and not determined by policy guidelines, to prevent undue interference. The mandate is described above in section 8.1.

8.5.2. Reports and recommendation by Office⁶⁵

As the DNI does not have prosecuting powers it will refer any findings and recommendations to the relevant authorities. These authorities will have to provide a report to the Director indicating and motivating the action that they took in response to the Directorate's findings and recommendations.

8.6. Mandate of the Chief Executive Officer and Investigators

8.6.1. Mandate of Investigators⁶⁶

The mandate of the CEO and investigators is stipulated by legislation in Section 34 of the DNI Bill.

⁶³ Section 26 Directorate of National Integrity Bill.

⁶⁴ Section 28 Directorate of National Integrity Bill.

⁶⁵ Section 32 Directorate of National Integrity Bill.

⁶⁶ Section 34 Directorate of National Integrity Bill.

8.6.2. Code of Conduct⁶⁷

All of the members of the DNI will be required to subscribe to the Code of Conduct (Second Schedule), before assuming Office.

8.7. Complaints about the Office

8.7.1. Complaints mechanism⁶⁸

The judiciary will have oversight over the complaints mechanism, as an additional safeguard from political influence and interference.⁶⁹ To avoid undue influence and interference a retired judge will investigate complaints against the DNI. The retired judge will report the outcome of his finding to the national assembly. The Office will through this mechanism therefore be accountable to the national assembly.

8.8. Reporting and financial provisions

8.8.1. Investigating, Quarterly and Annual reports of the Office⁷⁰

To ensure the transparency of its operations the DNI will provide a report for each investigation conducted and present this report to the Special Director of Public Prosecutions. The DNI will also report on all recommendations made to the NPA and action taken by the NPA. In the event that the NPA does not implement a recommendation made by the DNI, the NPA will have to indicate why a prosecution is not appropriate. This transparency will strengthen public trust in the DNI.

To stay accountable for its operations the DNI will present a quarterly report to the Special Director of Public Prosecutions, the Public Protector and to the National Assembly. The Office will also maintain public accountability by publishing the quarterly reports in the Government Gazette.

A comprehensive annual report will be prepared for each financial year to illustrate how the Office exercised its mandate and how it contributed to strengthening the South African democracy.

⁶⁷ Section 36 Directorate of National Integrity Bill.

⁶⁸ Section 37 Directorate of National Integrity Bill.

⁶⁹ (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC) ; 2011 (7) BCLR 651 (CC) (17 March 2011).

⁷⁰ Sections 38, 39, 40 Directorate of National Integrity Bill.

8.8.2. Funds of the Office⁷¹

The DNI will have financial autonomy to ensure that it is enabled to perform its functions independently.⁷² The Office will manage its finances in an accountable and transparent manner.

8.8.3. Annual estimates⁷³

As stated above, the Office will have financial autonomy to avoid undue influence in its operations. The Office will, with due regard to the Public Protector, be responsible for preparing financial estimates at least three months before the end of each financial year.

8.8.4. Accounts and Audit⁷⁴

The Chief Executive Officer will be the Accounting Officer of the Office.⁷⁵

8.9. Investigations

8.9.1. Protection of Informers⁷⁶

The Public Protector, Advocate Thuli Madonsela, proclaims the importance of protecting whistle-blowers in the fight against corruption.⁷⁷ Section (58) of the DNI Bill stipulates how the protection of informers will be regulated by the DNI.

9. Conclusion

These explanatory notes are to be read as a complementary document to the Directorate of National Integrity Bill. The establishment of the DNI does not only satisfy the Constitutional Court's requirements in the ruling of the Glenister Case, but it represents the most feasible, effective and efficient model for the South African context. The DNI will address gaps in the current South African anti-corruption

⁷¹ Section 41 Directorate of National Integrity Bill.

⁷² Reeves "After Glenister: The case for a new dedicated agency" (2012) SA Crime Quarterly (39) 30.

⁷³ Section 43 Directorate of National Integrity Bill.

⁷⁴ Section 45 Directorate of National Integrity Bill.

⁷⁵ Association of Certified Fraud Examiners South African Chapter *Submission to the SAPS Amendment Bill* (2012) available at:

[http://www.ifaisa.org/current_affairs/Association_of_Certified_Fraud_Examiners_\(ACFE\)%20-%20SAPS_Amendment_Bill.pdf](http://www.ifaisa.org/current_affairs/Association_of_Certified_Fraud_Examiners_(ACFE)%20-%20SAPS_Amendment_Bill.pdf).

⁷⁶ Section 58 Directorate of National Integrity Bill.

⁷⁷ Mbanjwa "Whistle blowers must be protected" (2012) *The New Age* available at:

<http://www.thenewage.co.za/mobi/Detail.aspx?NewsID=3589&CatID=1007>.

framework and enhance the individual and collective anti-corruption initiatives of the established ACA's. The Directorate of National Integrity will thus contribute towards eradicating corruption and promoting a system of national integrity.

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