



planning, monitoring
& evaluation

Department:
Planning, Monitoring and Evaluation
REPUBLIC OF SOUTH AFRICA



SOCIO-ECONOMIC IMPACT ASSESSMENT SYSTEM (SEIAS)

REVISED (2018): FINAL IMPACT ASSESSMENT TEMPLATE –PHASE 2

NAME OF THE PROPOSAL: Proposed South African Police Service Amendment Bill, 2019

1. Date must be clearly indicated
2. Draft SEIAS report will have a watermark word DRAFT indicating the version and should be accompanied by the supporting documents (draft proposal, M&E plan and pieces of research work)
3. FINAL report will be in PDF format and will be inclusive of the sign-off
4. FINAL report will have the approval stamp of the DMPE on the front cover and will include the signoff
5. Sign off forms are valid for six months only



Please keep your answers as short as possible. Do not copy directly from any other document.

1. Conceptual Framework, Problem Statement, Aims and Theory of Change

1.1. What socio-economic problem does the proposal aim to resolve?

High crime levels, including that of serious violent crimes, financial crimes, organised crime, corruption and crimes against women and children to a large extent threatens the general public, but also the stability of society and economic development of the Republic. Crime levels in different serious categories have increased over a number of years. It is clear that there are shortcomings in respect of professionalization of the police service, the appointment of the leadership of the police service, the lack of positive involvement of the community in policing, a lack of discipline, the need to improve the cooperation and interaction between municipal police services and the police service, and the perceptions of the public of the police service.

Chapter 12 of the National Development Plan (NDP) states that in 2030, people living in South Africa must feel safe at home, at school and at work, and enjoy a community life free of fear. Women must be able to walk freely in the streets and children play safely outside. The police service must be well-resourced and professional, staffed by highly skilled officers who value their work, serve the community, safeguard lives and property without discrimination, protect the peaceful against violence, and respect the rights to equality and justice. The proposed amendment of the South African Police Service Act, 1995 (SAPS Act), seeks to move towards the realisation of the NDP by aligning the Act with amongst others, the policy on Community Policing Forums and a Single Police Service. Public order policing in respect of the criteria for deployment of the national public order policing capacity in the Provinces and accountability in respect thereof are supplemented and the power to allow, with concurrence of Cabinet to have the national public order policing capacity deployed where the situation cannot be dealt with by the Province proposed to be transferred from the President to the Minister, with the concurrence of Cabinet.

The High Level Panel on the Review of the State Security Agency (2018) recommended that, there must be a comprehensive review of the architecture of the South African security community which considers, inter alia:... "Refining the mandates of the intelligence departments, including defence intelligence and crime intelligence, to ensure minimum duplication and maximum coordination.". There is a need to enable the reconstruction of a professional national intelligence capability for South Africa that will respect and uphold the Constitution, and the relevant legislative prescripts. The cause for this, according to the said Panel Report, was the increasing politicisation of intelligence, including crime intelligence over the past decade or more. South Africa's civilian intelligence community (and also Police intelligence) over the past 10 to 13 years. It has become extensively embroiled in the politics and factionalism of the ruling party. The proposed amendments establish the Intelligence Division of the Service in the Act and sets out the mandate of the Division, in line with the National Strategic Intelligence Act, 1994.

1.2. What are the main roots causes of the problem identified above?

What socio-economic problem does the proposal aim to resolve	What are the main roots or causes of the problem
<p>The police cannot optimally combat and prevent crime in the country with the current institutional arrangements, capacity and service ethos</p>	<p>Lack of transparency and accountability in appointment of the highest levels of posts in the police service.</p> <p>Performance and consequence management policy not enforced</p> <p>Lack of training and knowledge of roles, work effectiveness and environment by police officers which results in abuse of power and illegal arrests.</p> <p>Major political interference within the SAPS system, the SAPS Act is not always adhered to when appointing commissioners.</p> <p>Lack of proper legal qualification requirement for Police intake.</p> <p>Under-resourced police service (high staff turnover and police death rates)</p> <p>Under-capacitated police service</p> <p>Ineffective IGR cooperation and interaction between SAPS and Municipal police services</p>
<p>Lack of trust of the public in the police service- this is an effect as a result of the above problem</p>	<p>Unprofessional behaviour by police members and negative effects thereof on the public's confidence in the police service (Moral Degeneration).</p> <p>High levels of civil litigation against the police service.</p>

Ineffective communication and cooperation mechanisms between the community and the police service in combating crime.

Lack of discipline and command and control in the police service.

No integrity management mechanisms in the police service

1.3. Summarise the aims of the proposal and how it will address the problem in no more than five sentences.

- To fully align the South African Police Service Act, 1995, to the Constitution of the Republic of South Africa, 1996.
- Policing in South Africa was based, since 1996, on the principles in the White Paper, 1996, adopted by Cabinet. Since then a number of later policies had been adopted, namely the White Paper on Policing, 2016, the White Paper on Safety and Security, 2016, Community Policing Policy and the Policy on a Single Police Service. The Act requires to be aligned with these policies.
- The Constitutional Court in the matter of the *Helen Suzman Foundation v the President and Others and Glenister v the President and Others*, (Cases CCT 07/14 and CCT 09/14) found certain sections of the South African Police Service, 1995, unconstitutional and ordered the deletion of the said sections with immediate effect. The said sections need to be repealed in the Act, in order to ensure legal certainty in respect of interpretation.
- After the Marikana events the Commission of Inquiry headed by Judge Farlam, made recommendations, which included the appointment of a Panel of Experts to investigate various aspects relating to policing in general and crowd management in particular and report to the Minister thereon. The Minister has received the Report of the Panel of Experts and the relevant recommendations made by the Panel had been included in the draft Bill.
- Further developments relating to Labour Law, subsequent legislation, such as the pertaining to the Independent Police Investigative Directorate Act, 2011 (Act 1 of 2011) and the Civilian Secretariat for the Police Service Act, 2011, necessitated alignment of the South African Police Service Act, 1995.
- The Bill proposes the improvement of integrity of police officials through requirements of vetting, integrity testing, non-deviation from appointment criteria and enforcing the disclosure of conflicting interests linked with a criminal offence for non-disclosure thereof.

1.4. Please describe how the problem identified could be addressed if this proposal is not adopted. At least one of the options should involve no legal or policy changes, but rather rely on changes in existing programmes or resource allocation.

Option 1.	None. There is an urgent need for the review of the legislation. Alignment with the said policies and the Constitution can only be done through legislative amendment.
Option 2.	Some steps may be taken by establishing structures such as the national community policing forum and the national police coordinating committee. In order to comply with the proposed policies, legislation is required as some proposals cannot be executed without the empowering legal framework. Also where expenses are involved, the issue of accountability requires legal certainty and a legal basis to incur the expenses. The required amendments as a result of the Constitutional Court judgment can only be effected through a legislative amendment.

PART TWO: IMPACT ASSESSMENT

2. **Policy/Legislative alignment with other departments, behaviours, consultations with stakeholders, social/economic groups affected, assessment of costs and benefits and monitoring and evaluation.**

2.1. Are other government laws or regulations linked to this proposal? If so, who are the custodian departments? Add more rows if required.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of conflict
Civilian Secretariat for Police Service Act 2 of 2011	Department of Police	<p>The Community Policing Policy provides for a particular oversight role for the Civilian Secretariat for Police Service over community police forums and also in respect of the national police coordinating committee.</p> <p>The Secretary for Police Service is accountable for the budget earmarked for the retired (DPCI) judge, in terms of section 17L(13) of the SAPS Act. There is a need for an executive accountable to the Secretary for Police Service in respect of the administration and management of the office of the Judge.</p>	<p>The Bill proposes to regulate these matters and to align the legal framework with the said policy.</p> <p>The Bill proposes the appointment of a Chief Executive Officer for the office of the Judge.</p> <p>It is further proposed in the draft Bill that the sections in the South African Police Service, Act, dealing with Community Policing be transferred to the Civilian secretariat for Police Service act, 2011, in view of the newly adopted Policy on Community Policing, making the Provincial Civilian Secretariat for Police Service responsible for community policing structures.</p>
Public Service Act 1994	Department of Public Service and Administration	<p>The Civilian Secretariat for Police Service performs numerous functions in terms of its legislation regarding the South African Police Service just as the DPSA in respect of the civilian personnel.</p> <p>The Bill provides for appointment in the SAPS of civilian personnel with powers of police service members.</p>	Various inputs were made by the DPSA and were considered and addressed.

Government legislative prescripts	Custodian Department	Areas of Linkages	Areas of conflict

2.2. Proposals inevitably seek to change behaviour in order to achieve a desired outcome. Describe (a) the behaviour that must be changed, and (b) the main mechanisms to bring about those changes. These mechanisms may include modifications in decision-making systems; changes in procedures; educational work; sanctions; and/or incentives.

a) What and whose behaviour does the proposal seek to change? How does the behaviour contribute to the socio-economic problem addressed?

The Bill, through the professionalisation of the Service, seeks to change the behaviour of police officials towards the public.

The improvement of services towards the public must contribute to change by restoring and building the trust of the public in the Service.

The provisions relating to community policing, aimed at improving this vital area, should change the behaviour of the community to more meaningful and effective participation of the community with the police service.

The behaviour of crime intelligence must be changed with a move away from protection of party-political interests as opposed to protection of the interests of government.

All the above issues relate directly to the present high level of distrust from the public towards the police service.

b) How does the proposal aim to bring about the desired change?

By delivering a professional and more effective service, unlawful conduct towards the public and unnecessary civil litigation can be reduced and will contribute to restoring the confidence in the police.

The changes in the community policing structures and oversight and management involvement of the Provincial Civilian Secretariat and the closer involvement of the Member of the Executive Council in community policing should contribute to the active involvement in community policing structures.

The emphasis in the Bill on integrity and lifestyle audits and requirements relating to the exclusion of conflicts of interest, amongst police officials in the execution of their functions, should also contribute to restoring the trust of the public in the Service.

By removing the possibility for undue interference and deviation from structured appointment processes, the public confidence in the Service will also be boosted.

a) Who has been consulted inside of government and outside of it? Please identify major functional groups (e.g. business; labour; specific government departments or provinces; etc.); you can provide a list of individual entities and individuals as an annexure if you want.

All relevant policy documents, legislation and judgments were used in the drafting of the Bill. Requests were made to the following in order to obtain inputs regarding the practical application of the Act:

- The Department for Public Service and Administration.

- The National Commissioner of the South African Police Service.
 - The National Head of the Directorate for Priority Crime Investigation.
 - The Judge for the Directorate for Priority Crime Investigation.
 - The Executive Director of the Independent Police Investigative Directorate.
 - The Heads of Department for Community Safety in the respective Provinces.
 - The Community Police Fora.
 - The South African Policing Union (SAPU).
 - The Police and Prisons Civil Rights Union (POPCRU).
 - The Chief Executive Director: Private Security Industry Regulatory Authority (PSIRA).
 - The Chiefs of the Metro Police Services.
-
- The inputs received from the respective offices which contributed, together with the policy documents, court judgment and report of the Panel of Experts were used to draft a Working Document, setting out the proposed amendments on a complete copy of the Bill, showing the context of the proposed amendments.
 - The draft Bill was then developed on the basis of further comments received.
 - Letters were submitted, alerting the relevant Heads of institutions and Directors General that the draft Bill will soon be promoted in the Development Committee and the Justice, Crime Prevention and Security Cluster, also inviting any further comments. These letters were addressed to: The Secretary for Defence; the Director General: Department of Justice and Constitutional Development; the Acting Director General: State Security Agency; the Director General: Department of Transport; the Director General: Department for Cooperative Government and Traditional Affairs; the National Commissioner of the South African Police Service; the Director General: Department of International Relations and Cooperation; the Director General: Correctional Services ; the Coordinator of Intelligence: National Intelligence Coordinating Committee; the National Director of Public Prosecutions; the Head: Special Investigation Unit; the Director General: Department of Home Affairs; the Director: Financial Intelligence Centre.
 - Comments received were addressed in the Bill.

Consulted Government Departments, Agencies and Other Organs of State

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/</u> <u>Compliance costs and risks?</u>	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
Panel of Experts appointed by the Minister of Police upon recommendation of the Marikana Commission of Inquiry	Particular recommendations were made in respect of directions by the Minister to the National Commissioner, and deviation from application and appointment provisions and extending the powers of municipal police services in respect of crowd management.	Supported	Directions by the Minister to the National Commissioner, and deviation from application and appointment provisions and extending the powers of municipal police services in respect of crowd management.	These recommendations are accounted for in the draft Bill.
The DPCI Judge	<ul style="list-style-type: none"> • The DPCI Judge, requested that the establishment of his office be dealt with in a separate Act which will give effect to the degree of independence he feels the office deserves in respect of the appointment of personnel, and powers over the budget of the office. • To align the provisions related to the retired judge who acts as a complaints mechanism for the DPCI with a similar mechanism in the Correctional Services Act, 1998 (Act 111 of 1998); 	The Judge requires that his office be set up along the lines of a Chapter 9 institution in terms of the Constitution. This cannot be done and the example of a similar institution in the Department of Correctional Services is used as a basis.	As an alternative proposal, research was done on a similar mechanism, namely the Inspecting Judge in the Correctional Services Act, 1998, and the following proposed, namely that a new subsection 17L(6A) be inserted, providing for the appointment by the Secretary for Police Service of a Chief Executive Officer for the office of the retired judge who is responsible for all administrative, financial and clerical functions of the office of the retired judge; and is accountable to	<p>The alternative proposal based on the Inspecting Judge provided for in the Correctional Services Act, 1998, is included in the Bill, but referring to an Office Manager, rather than the Chief Executive Officer.</p> <ul style="list-style-type: none"> • Mero motu investigations by the retired Judge, the power to

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/</u> <u>Compliance costs and risks?</u>	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these <u>amendments</u> been <u>incorporated</u> in your proposal?
	<ul style="list-style-type: none"> To provide that the complaints mechanism (retired Judge), may <i>mero motu</i> initiate investigations of allegations regarding investigations by members or interference with investigations; to provide that the retired judge may summons persons to appear before him or her and to enter also public premises; 		<p>the Secretary for all the monies received by the office of the retired judge; the Chief Executive Officer will function under the control and authority of the retired judge. The Chief Executive officer must appoint the staff complement of the retired judge, and both the Chief Executive Officer and the staff will be appointed under the Public Service Act.</p>	<p>summons witnesses and a sanction for non-compliance are addressed in the Bill.</p>
<p>Independent Police Investigative Directorate</p>	<p>Declassification of documents or information required for purposes of criminal investigation and prosecution, within the context of the review of the South African Police Service Act, 1995 (Act 68 of 1995).</p>	<p>supported</p>	<p>Provision of a process to enable the authorised disclosure of classified information for the purposes of investigating a crime and prosecution. The National Director of Public Prosecutions or the Executive Director of the Independent Police Investigative Directorate may request the declassification of such document from the National Commissioner, who must respond to the</p>	<p>This matter can only be addressed through review of legislation pertaining to access to information and the powers of the Intelligence Service Oversight Act, 1994. It is not addressed in the Bill.</p>

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/</u> <u>Compliance costs and risks?</u>	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these <u>amendments</u> been <u>incorporated</u> in your proposal?
			<p>applicant within 30 days from the date of application. Should declassification be refused by the National Commissioner, such refusal must be directed for review to the retired judge appointed as complaints mechanism in respect of the Directorate for Priority Crime Investigation. Criteria in respect of refusal are laid down in the Act, and the judge is empowered to make a final decision on the declassification of the information or documents.</p> <p>The clause also proposes to prohibit the abuse of classification of documents for purposes of concealing the commission of a crime. The clause proposes to protect the identity of sources of information and investigation methods and provides for the redaction of such</p>	

Name of Stakeholder	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs and risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal?
			information from information or documents before declassifying it	
Department for Public Service and Administration	The DPSA has a vested interest in all public service departments, including the SAPS	supported	Various inputs were made by the DPSA and were considered and addressed.	proposals were incorporated.

Consulted stakeholders outside government

The Bill had been extensively consulted within Government. The Bill Minister of Police approved further consultations on the draft Bill. The aim is to further submit it to Cabinet for approval to publish it in the Government Gazette for public comments. The draft of the Amendment Bill has been provisionally finalized, subject to provisional certification by the Chief State Law Adviser.

Department's name	What do they see as main <u>benefits</u> , <u>Implementation/ Compliance costs and risks</u> ?	Do they <u>support</u> or <u>oppose</u> the proposal?	What <u>amendments</u> do they propose?	Have these amendments been <u>incorporated</u> in your proposal? If yes, under which section?
Not applicable now. The draft Bill will after approval by Cabinet be published soon to invite public comments, which comments will be considered and addressed in the final draft.				

- b) Summarise and evaluate the main disagreements about the proposal arising out of discussions with stakeholders and experts inside and outside of government. Do not give details on each input, but rather group them into key points, indicating the main areas of contestation and the strength of support or opposition for each position

There had been consensus during interdepartmental consultation processes on the Draft Bill and the Bill was intensively interrogated and concerns addressed. The Bill received general support of stakeholders within government. Stakeholders outside government will get a chance to criticise the Bill once it has been published for public comments.

2.3. Assessment of costs and benefits to stakeholders inside and outside of government.

- 2.4. Describe the groups that will benefit from the proposal, and the groups that will face a cost. These groups could be described by their role in the economy or in society. Note: NO law or regulation will benefit everyone equally so do not claim that it will. Rather indicate which groups will be expected to bear some cost as well as which will benefit. Please be as precise as possible in identifying who will win and who will lose from your proposal. Think of the vulnerable groups (disabled, youth women, SMME), but not limited to other groups.

List of beneficiaries (groups that will benefit)	How will they benefit?
State	Benefit by ensuring the safety of citizens
General public and inhabitants of the Republic	Safety and security

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
South African Police Service	<ul style="list-style-type: none"> The establishment of the Intelligence Division of the SAPS by law, implies firstly a continuation of the present Crime Intelligence Division, with mostly the same functions as present. In terms of the National Strategic Intelligence Act, 1994 (Act 39 of 1994), the SAPS is already responsible for the security assessment (vetting) of the members of the SAPS. The professionalisation of the SAPS and increased vetting and integrity testing for the SAPS will, however, place a larger financial burden on the SAPS Intelligence Division and the Integrity Management. If handled correctly the increase in the quality of personnel and concomitant increase in professionalism and integrity will in the long run be beneficial to the police service. The implementation of merit-based appointments in the SAPS especially in respect of the most senior personnel as well as dealing with the most senior personnel in the same manner as the National Commissioner, will lead to increased costs in this regard. The establishment and running of a national police coordinating committee between the SAPS, the CSPS and

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
	<p>municipal police services, in terms of the proposed section 64K(1A) would not cause an increased expense, as in practice such a committee had already been established but without a legal basis for establishment thereof.</p> <ul style="list-style-type: none"> • The establishment and running costs of a national community policing forum could be shared between the SAPS and the Civilian Secretariat for Police Service. • The proper implementation of community policing should not impact heavily on the SAPS, as most of the structures are already provided for in the present Act, but are simply not functioning well. • Policing of new crimes: a number of new crimes is proposed in the Bill, relating to conflict of interest, false reporting to the police, improved provisions in respect of the abuse of police, uniforms, blue lights, radio and computers of the police for criminal purposes. In respect of a number of exiting crimes in the Act, the Bill only proposes a higher penalty. • A Workshop had been held with all the relevant Divisions of the police service where the financial implications had been discussed. It was concluded that all expenses related to the implementation of the Bill can be dealt with in the budgets provided for the Medium Term Expenditure Framework (MTEF), the 3 year Plan as well as the 5 year Strategic Plan of the Service.
Civilian Secretariat for Police Service	<p>The Civilian Secretariat for Police Service is already accountable in respect of the dedicated and earmarked budget of the retired judge for the DPCI (complaints mechanism).</p> <p>The proposal that an Office Manager for the office of the judge be appointed will require an additional expense in respect of that office. It will, however, resolve an administrative problem in that the Chief Executive Office will be accountable to the Civilian Secretary for Police Service for the said budget and the office of the judge be made clearly subject in respect of personnel administration to the Public Service Act, 1994.</p> <p>Extension of the powers of the DPCI Judge. This might impact on the number of personnel required, which the Judge has already indicated is in any event required even now. The budget needs to be appropriated from Parliament, but forms part of the budget for which the Secretary for Police Service is accountable.</p> <p>The establishment and running costs of a national community policing forum could be shared between the SAPS and the Civilian Secretariat for Police Service.</p> <p>Both the police service and the Civilian Secretariat for Police Service indicated that the implementation of the Act can be dealt with within the budgets for the MTEF, the 3 year Plan as well as the 5 year Strategic Plan.</p>
The Provincial Government through the office of the	The proposed remuneration of members of the respective community forums for actual proven and prior approved

List of cost bearers (groups that will bear the cost)	How will they incur / bear the cost
member of the Executive Council and the Provincial Civilian Secretariat for Police Service.	expenses by the Civilian Secretariat for Police Service will require additional expense for the Civilian Secretariat for Police Service/Provincial Government, and the transfer of funds between the police service and the CSPS had been discussed with the National Treasury.

2.6 Describe the costs and benefits of implementing the proposal to each of the groups identified above, using the following chart. Please do not leave out any of the groups mentioned, but you may add more groups if desirable. Quantify the costs and benefits as far as possible and appropriate. Add more lines to the chart if required.

Note: "Implementation costs" refer to the burden of setting up new systems or other actions to comply with new legal requirements, for instance new registration or reporting requirements or by initiating changed behaviour. "Compliance costs" refers to on-going costs that may arise thereafter, for instance providing annual reports or other administrative actions. The costs and benefits from achieving the desired outcomes relate to whether the particular group is expected to gain or lose from the solution of the problem.

For instance, when the UIF was extended to domestic workers:

- *The implementation costs were that employers and the UIF had to set up new systems to register domestic workers.*
- *The compliance costs were that employers had to pay regularly through the defined systems, and the UIF had to register the payments.*
- *To understand the inherent costs requires understanding the problem being resolved. In the case of UIF for domestic workers, the main problem is that retrenchment by employers imposes costs on domestic workers and their families and on the state. The costs and benefits from the desired outcome are therefore: (a) domestic workers benefit from payments if they are retrenched, but pay part of the cost through levies; (b) employers pay for levies but benefit from greater social cohesion and reduced resistance to retrenchment since workers have a cushion; and (c) the state benefits because it does not have to pay itself for a safety net for retrenched workers and their families.*

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
South African Police Service	<p>Establishment of the Intelligence Division of the SAPS</p> <p>Running costs for meetings of the national community policing forum</p> <p>Running costs for the national police coordinating committee</p> <p>Expenses related to appointment processes of Deputy National Commissioners, Div. Comms. and Prov. Comms.</p> <p>Expenses related to acting against a Deputy National Commissioner, Div. Comm. or Prov. Comm. in case of loss of confidence or misconduct.</p>		<p>Professionalisation of the Police Service.</p> <p>Improvement of appointments and management through that.</p> <p>Improved discipline in the Service.</p> <p>Reduction of costs related to litigation against the Service.</p>	
Civilian Secretariat for Police Service	<p>Running costs for meetings of the national community policing forum?</p> <p>Running costs for the national police coordinating committee?</p> <p>Appointment and remuneration of the Office Manager and personnel of the Office of the DPCI Judge.</p>		<p>See in this regard the Workshop on the financial implications of the implementation of the Bill which was held between the Civilian Secretariat for Police Service and the relevant Divisions of the Service</p>	<p>Workshop concluded that the implementation of the Act can be dealt with within the budgets for the MTEF, the 3year Plan as well as the 5 year Strategic Plan.</p>

Group	Implementation costs	Compliance costs	Costs/benefits from achieving desired outcome	Comments
The Provincial Government through the office of the member of the Executive Council and the Provincial Civilian Secretariat for Police Service.	Expenses Remuneration related to the prior-approved real expenses of members of the community policing forums and boards.	The draft Bill makes it clear that community policing members are not entitled to any remuneration. The Bill provide for remuneration of prior approved expenses only in respect of projects of the community policing forums.	The benefit is that projects must be approved beforehand by the community policing forums. Funding must be available for such projects and should include such remuneration.	Comments and inputs from the side of the MECs and provincial structures had not really been forthcoming. Further input had been requested from the Provincial Heads of Secretariats. Indications are that there are existing budgets for Provincial Secretariats emanating from the Provincial Government, but these might need to be reviewed and re-prioritized.

2.7 Cost to government: Describe the changes that the proposal will require and identify where the affected agencies will need additional resources

- a) Budgets, has it been included in the relevant Medium Term Expenditure Framework (MTEF) and

Preliminary indications from the Central Evaluation Committee and discussions with the National Treasury on cutting costs in the civil service indicate that the costs relating to budgets and personnel will have to be managed from existing budgets.

- b) Staffing and organisation in the government agencies that have to implement it (including the courts and police, where relevant). Has it been included in the relevant Human Resource Plan (HRP)

Staffing implications regarding the office of the retired judge are minimal. The staff for the office of the retired Judge is already receiving attention within the present budget arrangements.

Note: You MUST provide some estimate of the immediate fiscal and personnel implications of the proposal, although you can note where it might be offset by reduced costs in other

areas or absorbed by existing budgets. It is assumed that existing staff are fully employed and cannot simply absorb extra work without relinquishing other tasks.

2.8 Describe how the proposal minimises implementation and compliance costs for the affected groups both inside and outside of government.

For groups outside of government (add more lines if required)

Not Applicable

Group	Nature of cost (from question 2.6)	What has been done to minimise the cost?

For government agencies and institutions:

Not applicable

Agency/institution	Nature of cost (from question 2.6)	What has been done to minimise the cost?

2.9 Managing Risk and Potential Dispute

- a) Describe the main risks to the achievement of the desired outcomes of the proposal and/or to national aims that could arise from implementation of the proposal. Add more lines if required.

Note: It is inevitable that change will always come with risks. Risks may arise from (a) unanticipated costs; (b) opposition from stakeholders; and/or (c) ineffective implementation co-ordination between state agencies. Please consider each area of risk to identify potential challenges.

- b) Describe the measures taken to manage the identified risks. Add more rows if necessary.

Mitigation measures means interventions designed to reduce the likelihood that the risk actually takes place.

Identified risk	Mitigation measures
Negative perceptions and orchestrated actions against the legislation and implementation thereof	To alert communication services and the GCIS in advance in order to ensure that a proper and executable Media Plan is in place to address misperceptions from the period when the draft Bill is announced and published for public comments. A communications plan had been drafted and was forwarded to the GCOS for

	consideration as to communicating the publication in the <i>Gazette</i> of the Bill for public comments, once approved by Cabinet
Interdepartmental Cooperation	Ensure continuous engagements with key governmental role-players. The likelihood of interdepartmental cooperation had been mitigated by interaction with the Department of Finance/Treasury on costs involved regarding the establishment of the Advisory Panel and consultations with the National Prosecuting Authority.

- c) What kinds of dispute might arise in the course of implementing the proposal, whether (a) between government departments and government agencies/parastatals, (b) between government agencies/parastatals and non-state actors, or (c) between non-state actors? Please provide as complete a list as possible. What dispute-resolution mechanisms are expected to resolve the disputes? Please include all of the possible areas of dispute identified above. Add more lines if required.

The proposed legislation is an amendment of existing legislation and the principal Act. No problems had been experienced on government level or civil society with the implementation of the principal Act, and as a result of the intensive interdepartmental consultations no disputes are expected. The risk of opposition against the Bill had been explained and can be mitigated. Possible areas of dispute will be identified clearly through the publication of the draft Bill for public consultation. In addition, the South African Policing Union (SAPU) and the Police and Prisons Civil Rights Union (POPCRU) were also consulted in the drafting of the Bill.

Note: Disputes arising from regulations and legislation represent a risk to both government and non-state actors in terms of delays, capacity requirements and expenses. It is therefore important to anticipate the nature of disputes and, where possible, identify fast and low-cost mechanisms to address them.

Nature of possible dispute (from sub-section above)	Stakeholders involved	Dispute-resolution mechanism

Would it be possible to establish or use more efficient and lower-cost dispute-resolution mechanisms than those now foreseen? These mechanisms could include, for instance, internal appeals (e.g. to the Minister or a dedicated tribunal) or mediation of some kind.

Nature of possible dispute	Proposed improvement in dispute-resolution mechanism

2.10 Monitoring and Evaluation

a) When is implementation expected to commence after the approval of the proposal?

The Bill had been provisionally certified by the Chief State Law Adviser. The Development Committee has recommended the Bill to the Justice, Crime Prevention and Security (JCPS) Directors General Cluster. The JCPS Directors General Cluster on 3 December 2019 recommended the submission of the Bill to the JCPS Ministers Cluster, before submission thereof to Cabinet. It is planned to submit the draft Bill for consideration to the JCPS MINISTERS Cluster on 18 February 2020. If approval can be obtained by the end of February 2020, it is planned to publish the draft Bill for public comments during March 2020, with a six-week period for public comments. The Bill will then be finalised for submission to Cabinet for introduction, in Parliament, which is expected by end of June/July 2020. Implementation of the Bill is expected by April/May 2021. The consideration process in Parliament will take some time in view of the extent of the Bill.

b) Who will be responsible for monitoring the implementation of this proposal?

The South African Police Service, prosecution and law enforcement. The monitoring can be coordinated through the relevant governmental role players and reported to the Civilian Secretariat for Police Service.

c) What are the results and key indicators to be used to for monitoring? Complete the table below:

Results	Indicators	Baseline	Target	Responsibility
<p>Impact: long term result (change emanating from the implementation of the proposal in the whole of society of parts of it)</p> <p>Strengthened and well-functioning Criminal Justice System and professional South African Police Service.</p> <p>Better service delivery and value for money in respect of costs of policing.</p>	<p>Accountable and transparent South African Police Service, and monitoring coordinated through the relevant governmental role players and reported to the Civilian Secretariat for Police Service.</p>	<p>Active Reporting by the South African Police Service</p>	<p>Implementation of the Amendment Act within <u>three months</u> after assent to and signing of the Act</p>	<p>Minister of Police & South African Police Service</p>
<p>Outcome: medium term result (what beneficiaries achieve as a result of the implementation of the proposal)</p>	<p>Improved levels of trust in the South African Police Service's ability to deal with crimes.</p>	<p>Ongoing</p>	<p>Ongoing</p>	<p>South African Police Service</p>

- d) When will this proposal be evaluated on its outcomes and what key evaluation questions will be asked? Below please find evaluation questions for your consideration:
- i. What was the quality of proposal design/content? (Assess relevance, equity, equality, human rights)
 - ii. How well was the proposal implemented and adapted as needed? (Utilise the Monitoring and Evaluation plan to assess effectiveness and efficiency)
 - iii. Did the proposal achieve its intended results (activities, outputs and outcome) as per the Monitoring and Evaluation plan?
 - iv. What unintended results (positive and/or negative) did the implementation of the proposal produce?
 - v. What were the barriers and enablers that made the difference between successful and failed proposal implementation and results
 - vi. How valuable were the results of your proposal to the intended beneficiaries?

The proposals in the draft Bill must be evaluated from time of implementation, as it should have some immediate areas of impact, especially in respect of improving the community policing, the manner of senior appointments and guidelines in that regard. New crimes may simply have a deterrent effect and might not immediately lead to an increase in prosecution.

The measurement in the longer term of issues such as professionalization, should be in respect of whether civil litigation against the Service increases or decreases.

The relationships between the Service and the community is also indicative of the success of the proposals, as well as cooperation between the SAPS and municipal police service.

The Civilian Secretariat for the Police Service should play a leading role in the monitoring of the implementation of the proposals.

- e) Provide a comprehensive implementation plan (see Annexure A) aligned to 2.10 (b)
- f) Please identify areas where additional research would improve understanding of then costs, benefit and/or of the legislation.
- None

For the purpose of building a SEIAS body of knowledge please complete the following:

<i>Name of Official/s</i>	<i>Dr PC Jacobs</i>
<i>Designation</i>	<i>Director: Legislation Specialist</i>
<i>Unit</i>	<i>Legislation Unit of the Civilian Secretariat for Police Service</i>
<i>Contact Details</i>	<i>Mobile: 082 7789215</i>
<i>Email address</i>	<i>Philip.Jacobs@csp.gov.za</i>

1. Briefly summarise the proposal in terms of (a) the problem being addressed and its main causes and (b) the measures proposed to resolve the problem.

Problem:

The South African Police Service Act, 1995, was adopted before the Constitution of the Republic of South Africa, 1996, and although amendments have been effected to the Act, with references to the said Constitution, the Act had not been totally aligned to the Constitution and all the references to the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), where applicable need to be aligned to the Constitution of the Republic of South Africa, 1996.

Proposals:

All references to the 1993 Constitution of the Republic of South Africa, had been substituted with appropriate references to the Constitution of the Republic of South Africa, 1996. The proposals involve amendment of certain definitions in the Act; to delete provisions related to the Secretariat for Police following the adoption of the Civilian Secretariat for Police Service Act, 2011 (Act 2 of 2011).

Problem:

The Act needed to be aligned to policy such as the White Papers on Policing, and Safety and Security, 2016, the Community Policing Policy and the National Development Plan. To address the need that the Service must be professionalised.

Proposal:

To include Deputy National Commissioner, and Divisional Commissioners under the same measures in respect of dealing with them in case of a loss of confidence to provide for the functions of the National, Deputy National, Provincial and Divisional Commissioners; to provide that a limited deviation will be allowed in respect of requirements for applications for, consideration of and requirements for posts in the Service and that the process of appointment will be merit-based and transparent; to provide for integrity testing of new members;

Problem:

Members are reluctant to file reports on the use of violence; and to address in general the recommendations of the Panel of Experts, following the recommendations of the Farlam Commission of Inquiry into the events at Marikana.

Proposal:

To provide for the reporting by members of the Service on the use of force, that members may not use deadly force to protect property only, in circumstances where life is not threatened, and that no fully automatic firearms may be used in crowd management;

Problem:

The Act does not clearly regulate the deployment of members in terms of international obligations.

Proposal:

To provide for service outside the Republic by members of the Service in fulfilment of international obligations;

Problem:

Numerous Acts provide for search and seizure powers for police officials. This impacts on training and correct operational application.

Proposal:

It is proposed to provide for obtaining warrants in terms of the Criminal Procedure Act, 1977, by police officials irrespective of any other provision in any other Act.

Problem:

The mandate of the municipal police services is not clear in terms of public order policing.

Proposal:

To provide for establishing of public order policing units within municipal police services; and in terms of the mandate to make it clear that municipal police may intervene as first responders in terms of public order policing.

Problem:

Lack of powers with the complaints mechanism of the Directorate for Priority Crime Investigation.

Proposal:

To provide that that the complaints mechanism (retired Judge), may *mero motu* initiate investigations of allegations regarding investigations by members or interference with investigations; to provide that the retired judge may summons persons to appear before him or her and to enter also public premises; to provide that it is an offence not to comply with a summons by the judge;

Problem:

Need to establish specialised units;

Proposal:

To provide for the establishment of specialised units by the National Commissioner;

Problem:

The intelligence Division of the SAPS is not regulated in terms of a national act.

Proposal:

To provide for the establishment of the Intelligence Division of the Service;

Problem:

Lack of oversight over community policing structures:

Proposals:

To provide for structures in respect of community policing the improve the effectivity thereof and oversight over community policing structures; to provide for "clusters" instead of "areas" and to

provide for representation in cluster community policing boards; to provide for monthly reporting by provincial and cluster community policing boards to the member of the Executive Council on the performance of their functions; to provide for the functions of the community policing forums;

Problem:

The lack of discipline in the Service, leading to poor service delivery and increased litigation against the Service.

Proposal:

To provide for a disciplinary system which will be managed by dedicated, appropriately qualified and trained disciplinary units of presiding and disciplinary officers;

Problem:

The need to provide in respect of coordination between the municipal police services and the SAPS, in view of the policy of a "single Police Service".

Proposal:

To provide for the approval by the member of the Executive Council, after consultation with the National Commissioner, of a municipal police service after considering the feasibility of the establishment of a municipal police service, and that specific geographical area, taking into account the need and the resources of the local community and whether the establishment will contribute to effective policing in that part of the country; to provide that the municipal police council may appoint a chief for the municipal police service after consultation with the National Commissioner; to provide that the Chief of a Metropolitan Police Service must report to the Provincial Commissioner to ensure coordination of action; to provide for crowd control as a function of municipal police services, limited to the role as first responders or upon request of the Service; to provide that the National Commissioner may, after consultation with the Department for Cooperative Government and Traditional Affairs, the Department of Transport and the South African Local Government Association, appoint national police coordinating committee in order to facilitate an integrated model of policing, as well as the functions of such committee, and representation on it; to provide for consultation by the Minister of Transport with the National Commissioner and the national policing coordinating forum, when determining the training curriculum for traffic officers, in terms of the section 75 of the National Road Traffic Act, 1996 (Act No. 93 of 1996), read with regulation 2B(3) of the National Road Traffic Regulations, 2000.

Problem:

The abuse of police equipment and uniforms in the commission of crime and the use of colours, emblems and uniforms by private security companies, which may be confused with police vehicles, equipment or uniforms.

Proposal:

To improve measures relating to property of the Service, including disposal thereof, including uniforms, blue lights and bullet-resistant jackets and to increase penalties in respect of the unlawful disposal and possession thereof; to provide for a power to the National Commissioner to direct the use of any emblem, title, or symbol on a uniform or vehicle of a business and to provide for an offence in case of the non-compliance with such a direction; to provide for an offence in relation to the unlawful use of blue lights.

Problem:

To address the issue of protection of information in the Service.

Proposal:

To expand the offence of disclosure of information also to persons employed by the South African Police Service and who are not members of the Service and to reservists in order to curb forewarning of persons of police investigations or operations;

Problem:

The abuse of social media to spread hoaxes in order to divert police resources to commit crimes in other areas.

Proposal:

To provide for an offence in respect of hoaxes and the spreading of false information leading to unnecessary and wasteful use of the resources of the Service and which are knowingly aimed at a diversion of the resources of the Service to commit an offence; to provide for an order by the court to the accused, in addition to any other sentence to remunerate such unnecessary and wasteful use of resources proven during the trial;

Problem:

The conflict of members in a particular investigation.

Proposal:

To provide for an offence relating to members who are involved in investigations whilst having a conflict of interest and who did not disclose such conflict and withdrew from the investigation; and to provide for matters connected therewith.

2. Identify the social groups that would benefit and those that would bear a cost, and describe how they would be affected. Add rows if required.

Groups	How they would be affected
<i>Beneficiaries</i>	
1. Law enforcement	A more professional police service would largely decrease costs which have to be incurred as a result of erroneous actions which lead to civil litigation, court judgments against the Department and court settlements.
2. Prosecution	A more efficient and professional police service would benefit the prosecution with better results in terms of the quality of investigations and the concomitant increase in the conviction rate of the prosecution.
3. The public in general	Better service delivery and value for money in respect of costs of policing.
<i>Cost bearers base</i>	
1. Law enforcement	Only in respect of initial training to implement the legislation
2. Prosecution	Only in respect of initial training to implement the legislation
3. Establishment of the	Professionalisation of the Service for the SAPS. Financial implications for the Secretariat for Police Service.

National Policing Board.	
4. Establishment of Police Intelligence Division	It is in fact a continuance of the existing Crime Intelligence Division, only regulated in terms of the South African Police Service Act, 1995.

3. What are the main risks from the proposal in terms of (a) undesired costs, (b) opposition by specified social groups, and (b) inadequate coordination between state agencies?
4. Summarise the cost to government in terms of (a) budgetary outlays and (b) institutional capacity.
5. Given the assessment of the costs, benefits and risks in the proposal, why should it be adopted? It's meant to align our legislation but through that alignment the country will benefit in having updated and relevant key legislation.
6. Please provide two other options for resolving the problems identified if this proposal were not adopted.

Option 1.	Only legislation can effect the deletions from the Act, as indicated by the Constitutional Court. New crimes and increased penalties proposed can only be effected through legislation.
Option 2.	The principles in respect of a National Policing Board could be used ad hoc as in the case of the appointment by the President of the NPA recently. For consistency and to properly apply the financial implications, it is required to legislate it.

7. What measures are proposed to reduce the costs, maximise the benefits, and mitigate the risks associated with the legislation?

It provides for the reporting by members of the Service on the use of force, that members may not use deadly force to protect property only, in circumstances where life is not threatened, and that no fully automatic firearms may be used in crowd management.

The Bill also provide for an offence in respect of hoaxes and the spreading of false information leading to unnecessary and wasteful use of the resources of the Service and which are knowingly aimed at a diversion of the resources of the Service to commit an offence.

8. Is the proposal (mark one; answer all questions)

	Yes	No
a. Constitutional?	X	
b. Necessary to achieve the priorities of the state?	X	
c. As cost-effective as possible?	X	
d. Agreed and supported by the affected departments?	X	

9. Which NDP priorities would be most supported by this proposal?

- Strengthening the criminal justice system.
- Creating a professional police service.
- Use an integrated approach to safety.
- Build community participation in community safety.
- Strengthening intelligence capabilities.

