

## Submission

to the

### The Portfolio Committee on Police

on the

## INDEPENDENT POLICE INVESTIGATIVE DIRECTORATE AMENDMENT BILL

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## A) INTRODUCTION

### ***About the Centre for Applied Legal Studies and the Rule of Law Programme***

1. The Centre for Applied Legal Studies ('CALs') welcomes the opportunity to submit comments on the Independent Police Investigative Directorate Amendment Bill, 2018 ("the Amendment Bill") in response to a call by the Portfolio Committee on Police ("the Committee"). Should the Committee host public hearings or consultative meetings on the Amendment Bill, CALs requests an invitation to the hearings and/or the meetings.
  
2. CALs is a human rights organisation and registered law clinic based at the School of Law at the University of the Witwatersrand. Our vision is a socially, economically and politically just society where repositories of power, including the state and the private sector, uphold human rights. In aspiring towards this vision, our mission is to:
  - 2.1 Deconstruct the legacy of apartheid;
  - 2.2 Challenge and hold to account, systems that perpetuate harm, poverty, inequality and human rights violations; and
  - 2.3 Reconstruct an inclusive and equal society.
  
3. In order to achieve this, we do research, advocacy and strategic litigation. CALs operates across a range of human rights issues: basic services, business and human rights, environmental justice, gender, and rule of law. The purpose of the Rule of Law Programme is to advance the realisation of particular civil and political rights, including the rights of the arrested and detained. In addition to our rights-based work, our Rule of Law Programme aims to protect and promote the systems and institutions of South Africa's constitutional democracy. CALs often submits comments on regulations, laws and policies. Some of CALs' Rule of Law submissions can be found [here](#) .

## ***CALS' Submissions in Brief***

4. In summary, CALS proposes that the Committee amend the Amendment Bill to:
  - 4.1 Empower the Minister to suspend the Executive Director, only after consultation with the Committee; and
  - 4.2 Include principles and/or guidelines to inform the Minister's discretion to suspend the Executive Director.

## **B) THE POWER TO SUSPEND**

### ***The Proper Interpretation of McBride<sup>1</sup> case***

5. Section 6A (3) (a) of the bill is ambiguous in that it may give rise to multiple interpretations. The one interpretation is that it gives the Minister the authority to suspend the Executive Director at the start of any proceedings contemplated under sections 6A (1). If this is so, then the power given to the Minister to suspend the Executive Director is not subject to any parliamentary oversight, as such it has the potential to expose IPID to constitutionally impermissible executive or political control as held in McBride. As such, this is not the remedy and /or the amendment envisioned by the Constitutional Court.
6. CALS therefore proposes that the amendment should clearly state that the Minister can only exercise his or her power to suspend *after* consultation with the Committee, any time after the start of any proceedings contemplated in section 6A (1). This means that the Minister's power is subject to oversight by the Committee, and consequently, the amendment provision will comply with the McBride judgement.

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<sup>1</sup> McBride v Minister of Police and Another [2016] ZACC 30

## **C) SUSPENSION**

### **Unfettered Discretion**

7. CALS is concerned that s 6A(3)(a) provides the Minister with an unduly wide discretion. Where legislation makes provision for discretionary use of power, as this amendment does, such discretion should be guided by determinable principles and/or guidelines. There are good reasons that may make a suspension necessary. Reasons, for example may include evidence that the Executive Director is interfering with the investigation and/or evidence that the continued holding of the position (of the Executive Director) will result in irreparable or significant harm.
8. Principles or guidelines are important because suspension ought not be used as a punishment for disciplinary proceedings which are not yet concluded. Suspension is rather to facilitate the investigation and to prevent further harm. CALS therefore proposes that the Minister's discretion be coupled with principles and/or guidelines to inform the decision.

## **D) CONCLUSION**

9. The Constitutional Court in McBride emphasised that the Minister cannot exercise the power to suspend the Executive Director unilaterally. CALS proposes that the Amendment Bill should clearly state that the Minister can only exercise his or her power to suspend *after* consultation with the Committee. CALS further proposes that the Amendment Bill should make it clear that the Minister's discretion to suspend the Executive Director should be coupled with principles and/or guidelines to inform the decision.