

PARLIAMENT
OF THE
REPUBLIC OF SOUTH AFRICA

**ANNOUNCEMENTS,
TABLINGS AND
COMMITTEE REPORTS**

TUESDAY, 16 APRIL 2013

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ANNOUNCEMENTS

National Assembly

The Speaker

1. Introduction of Bills

(1) Dr W G James

- (a) **Protection of Traditional Knowledge Bill** [PMB 3 – 2013] (National Assembly – proposed sec 76) (see below) [Bill and prior notice of its introduction published in *Government Gazette* No. 36354 of 9 April 2013.]

Introduction and referral to the **Portfolio Committee on Cooperative Governance and Traditional Affairs** of the National Assembly, as well as referral to the Joint Tagging Mechanism (JTM) for classification in terms of Joint Rule 160.

In terms of Joint Rule 154 written views on the classification of the Bill may be submitted to the JTM. The Bill may only be classified after the expiry of at least three parliamentary working days since introduction.

REPUBLIC OF SOUTH AFRICA

PROTECTION OF TRADITIONAL KNOWLEDGE BILL

(As introduced in the National Assembly (proposed section 76 Bill))

(Bill and prior notice of its introduction published in Government Gazette 36354 of 9 April 2013)

(The English text is the official text of the bill)

(Dr W J James MP)

[PMB - 2013]

BILL

To protect traditional knowledge as a new category of intellectual property; to provide how said intellectual property rights will be protected; to determine what is eligible for traditional knowledge intellectual property right protection and the conditions for the subsistence or termination of said protection; to provide for ownership of traditional knowledge intellectual property rights; to provide for the duration, nature and scope of traditional knowledge intellectual property rights; to provide for the enforcement of traditional knowledge rights; to regulate the licensing of traditional knowledge intellectual property rights; to provide for the establishment of a National Register of traditional knowledge; to provide for the establishment of a National Council in respect of traditional knowledge; to provide for the establishment of a national trust and trust fund in respect of traditional knowledge; and to provide for the regulation of the applicability of the Bill to foreign countries; to provide for the protection of performers and to provide for matters incidental thereto.

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

Definitions

1. In this Act, unless the context otherwise indicates –

“**Act**”, means the Act and any regulations issued by the Minister under it.

“**adaption**”, of a traditional work, includes-

- (a) in the case of a non-dramatic work,
 - (i) a version of it in which it is converted into a dramatic work, or in the case of a dramatic work, a version of it which it is converted into a non-dramatic work;
 - (ii) a translation of the work;
 - (iii) a version of the work in which the story or action is conveyed wholly or mainly by means of pictures;
- (b) in the case of a musical work, any arrangement or transcription of the work;
- (c) in the case of an artistic work, a transformation of the work in such a manner that the substantial features remain recognisable.

- “**Administrator**” means the administrator of the Fund provided for in section 37.
- “**community proxy**”, means a person that is duly delegated from time to time to represent, and to act and to own a traditional knowledge right for and on behalf of, a particular traditional community;
- “**copy**”, in relation to a work or a design, means a reproduction or an adaptation of it.
- “**Copyright Act**”, means the Copyright Act, No. 98 of 1978;
- “**Council**”, means the National Council for Traditional Knowledge established in section 33;
- “**Designs Act**”, means the Designs Act, No. 195 of 1993;
- “**Fund**”, means the National Trust Fund for Traditional Knowledge established in section 36;
- “**mark**”, means any sign capable of being represented graphically, including a device, name, signature, word, letter, numeral, or any combination of the foregoing;
- “**Minister**”, means the Minister of Trade and Industry;
- “**originating traditional community**”, means the traditional community in which an item of traditional knowledge evolved, or from which it originated;
- “**owner**”, in respect of an item of protected traditional knowledge, shall be deemed the community proxy of the traditional community from which that item of traditional knowledge evolved or in which it has originated;
- “**Performers Protection Act**”, means the Performers Protection Act, No. 11 of 1967;
- “**prescribed**”, means prescribed by the Minister in terms of this Act in regulations published in the Government Gazette;
- “**protected article**”, in respect of a protected traditional design, means any article to which the design has been applied by the originating community, or with the authority of the community proxy, or any articles which are goods of the same description as that article;
- “**protected traditional design**”, means a traditional design referred to in section 8;
- “**protected traditional knowledge**”, means a protected traditional work, a protected traditional design and a protected traditional mark;
- “**protected traditional mark**”, means a traditional mark referred to in section 13;
- “**protected traditional work**”, means a traditional work referred to in section 2;

“publish”, in relation to a traditional work or a traditional design, means issuing copies of that work or of that design to the public with the consent of the community proxy in sufficient quantities to reasonably meet the needs of the public, having regard to the nature of the work, and references to “published” and “publication” shall be construed accordingly;

“reduced to a material form”, means written down, recorded, represented in digital data or signals, or otherwise fixed in a material form;

“Register”, means the Register of Traditional Knowledge provided for in section 22;

“Registrar”, means the Registrar of Traditional knowledge provided for in section 19;

“Registration Office”, shall mean the Office for Registration of Traditional Knowledge provided for in section 18;

“reproduction”, means in relation to –

- (a) a traditional work which is an artistic work, including a version produced by converting the work into a three dimensional form, or if it is in three dimensions, by converting it into two dimensional form;
- (b) any traditional work, includes a reproduction made from a reproduction of that work;
- (c) and reference to **“reproduce”** and **“reproducing”** shall be construed accordingly.

“Republic”, means the Republic of South Africa.

“standard licence fee”, means a licence in respect of an item of traditional knowledge provided for in section 39.

“Trade Marks Act”, means the Trade Marks Act, No. 194 of 1993.

“traditional community”, means a natural, indigenous and homogenous grouping of people that have a common language and customs, which exists in the Republic within an organised structure, and is generally recognised as having a separate and individual character.

“traditional design”, means any design applied to any article, whether for the pattern or the shape or the configuration thereof, or for any two or more of those purposes, and by whatever means it is applied, having features which appeal to and are judged solely by the eye, irrespective of the aesthetic quality, which evolved in, or originated from, a

traditional community, and in respect of which no individual maker is known.

“**traditional design right**”, means the rights in respect of a protected traditional design provided for in section 9.

“**traditional knowledge**”, means a traditional work, a traditional design and a traditional mark.

“**traditional knowledge right**” means a traditional work right, a traditional design right and a traditional mark right.

“**traditional mark**”, means –

- (a) a certificate trade mark as described in section 42(1) of the Trade Marks Act;
 - (b) a collective mark as described in section 43(1) of the Trade Marks Acts;
 - (c) a trade mark as defined in section 2 of the Trade Marks Act;
- which evolved in, or originated from, a traditional community

“**traditional mark right**”, means the right in respect of a protected traditional mark provided for in section 14.

“**traditional work**”, means a literary, musical or artistic work as defined in section 1 of the Copyright Act, which evolved in, or originated from, a traditional community, and in respect of which no individual maker is known.

“**traditional work right**”, means a right in respect of a protected traditional work provided for in section 3.

CHAPTER 1

PROTECTION OF TRADITIONAL WORKS

Conditions for protection

2. In order to qualify for protection under this Act, a traditional work shall be—
 - (a) reduced to a material form;
 - (b) thus reduced by or on behalf of the originating traditional community; and
 - (c) recognised as being derived from, and characteristic of, that community by persons outside that community.

Traditional work right

3. (1) The right in and to a protected traditional work comprises the exclusive doing, or to authorise the doing of, any of the following acts in the Republic in relation to the work or a substantial part thereof;
- (a) reproducing it in any manner or form;
 - (b) publishing it if it was hitherto unpublished;
 - (c) performing it in public;
 - (d) broadcasting it;
 - (e) causing it to be transmitted in a diffusion service, unless such service transmits a lawful broadcast, including the work, and is operated by the original broadcaster;
 - (f) making an adaption of it;
 - (g) doing in relation to an adaption of the work without any of the acts specified in relation to the work in paragraphs (b) to (e) inclusive;
 - (h) in regard to a copy of the work made without the authority of the copyright owner,
 - (i) selling or letting it for hire or by way of trade offering or exposing it for sale or hire;
 - (ii) importing it into the Republic otherwise than for the private or domestic use of the importer;
 - (iii) distributing it for purposes of trade;
 - (iv) distributing it for any other purposes to such an extent that the owner of the right is prejudicially affected.
- (2) The traditional work right shall be infringed by any person, not being the owner of that right, who, without the licence of such owner, does or causes any other person to do, in the Republic, any act detailed in sub-section 1, if to his knowledge the work in relation to which the act is performed is a protected traditional work and his performance of the act in question was without the authority of the owner of the traditional work right.

General exceptions from the protection of traditional works

4. (1) The right in a protected traditional work, insofar as it consists of a literary work or a musical work, shall not be infringed by performing any act described in sections 12 and 14 of the Copyright Act, which sections shall apply *mutatis mutandis* to literary and musical works that are protected traditional works as they apply to literary and musical works in those sections.
- (2) The right in a protected traditional work, insofar as it consists of an artistic work, shall not be infringed by performing the act described in section 15 of the Copyright Act, which section shall apply *mutatis mutandis* to artistic works, which are protected traditional works as they apply to artistic works in that section.
- (3) The traditional work right shall not be infringed by the performance of any act by a member of the originating community which is in accordance with the customs and traditional practice of that community.

Duration of traditional work right

5. (1) The duration of the traditional work right shall, in the case of a published traditional work, be a period of 50 years from the date of its first publication, or the date on which the act came into operation, whichever is the later.
- (2) The duration of the traditional work right shall, in the case of an unpublished traditional work, be indefinite.

Protection of performance of traditional work

6. A performer's performance of a traditional work shall be protected under the Performers Protection Act, and the definition of 'literary and artistic works' in section 1 of that Act shall be deemed to include a traditional work.

Lapsing of traditional work right

7. The traditional work right shall lapse and cease to have any force or effect in the event that a person who is a member of the originating community pursues a claim of copyright infringement in respect of that work under the Copyright Act with the consent of the community proxy.

CHAPTER 2**PROTECTION OF TRADITIONAL DESIGNS****Conditions for protection**

8. In order to qualify for protection under this Act, a traditional design shall be –
- (a) reduced to a material form;
 - (b) thus reduced by or on behalf of the originating traditional community; and
 - (c) recognised as being derived from, and characteristic of, that community by persons outside that community.

Traditional design right

9. (1) The right in and to a traditional design comprises the exclusive right to exclude other persons from making, importing, using or disposing of, any article embodying the protected design; or a design not substantially different from the protected design; provided that the design of such article is a copy of the protected design.
- (2) The traditional design shall be infringed by any person, not being the owner of that right, who, without the licence of such owner, does or causes any other person to do, in the republic, any act detailed in sub-section 1 if to his knowledge the design in relation to which the act is performed is a protected traditional design and his performance of the act in question was without the authority of the owner of the traditional design right.

General exceptions from protection of traditional designs

10. (1) The disposing of an article embodying a protected traditional design by or with the authority of the owner of the traditional design right shall give the purchaser the right to use and dispose of that article.
- (2) The traditional design right shall not be infringed by a person who makes an article embodying the protected design right, or a design not substantially different from it, for private purposes or for the sole purpose of evaluation, analysis, research or teaching.
- (3) The traditional design right shall not be infringed by the performance of any act by a member of the originating community which is in accordance with the customs and traditional practice of that community.

Duration of traditional design right

11. (1) The duration of the traditional design right shall, in the case of a published traditional design, be a period of 15 years from the date of its first publication, or the date on which the act came into operation, whichever is later.
- (2) The duration of the traditional design right shall, in the case of an unpublished traditional design, be indefinite.

Lapsing of traditional design right

12. The traditional design right shall lapse and cease to have any force or effect in the event that the traditional design is registered as a design under the Designs Act by or with the authority of the owner.

CHAPTER 3

PROTECTION OF TRADITIONAL MARKS

Conditions for protection

13. In order to qualify for protection under this Act, a traditional mark shall be –

- (a) represented graphically
- (b) thus represented by or on behalf of the originating traditional community; and
- (c) recognised as being derived from, and characteristic of, that community by persons outside that community.

Traditional mark right

14. (1) Subject to section 17, the right in and to a protected traditional mark comprises the exclusive right to register that mark as a certification mark, a collective mark, or a trade mark under the Trade Marks Act and it shall be deemed to be eligible for registration as such under the Trade Marks Act by the owner thereof, subject to the provisions of that Act.
- (2) A protected traditional mark shall be deemed to be a mark falling within section 10(12) of the Trade Marks Act, and to be a mark open to objection when sought to be registered by any other party besides the owner of that protected traditional mark, or someone acting on his authority.

Duration of traditional mark right

15. Subject to section 16, the traditional mark right shall endure indefinitely.

Lapsing of traditional mark right

16. The right conferred upon a protected traditional work in this Act shall lapse and cease to have any force or effect in the event that the traditional mark is registered as a certification mark, collective mark, or a trade mark under the Trade Marks Act by or with the authority of the owner.

Effect on common law

17. (1) Subject to sub-section (2), for the purposes of the common law relating to passing-off and unlawful competition, a protected traditional mark shall be deemed to be well-known and to enjoy a repute amongst a substantial number of persons.

(2) In proceedings for passing-off or unlawful competition in which reliance is placed on sub-section (1), the plaintiff must show that the defendant knew at the time of the commission of the act that is the subject matter of the claim that the protected traditional mark was a protected traditional mark and that the act in question was committed without the authority of the owner.

CHAPTER 4

REGISTER OF TRADITIONAL KNOWLEDGE

Establishment of registration Office for Traditional Knowledge

18. The Registration Office for Traditional Knowledge is hereby established.

Registrar of Traditional Knowledge

19. (1) There shall be an officer for the Republic styled the Registrar of Traditional Knowledge, who shall be appointed subject to the laws governing the public service and who shall, subject to the directions of the Minister, have the chief control of the Registration office.

(2) The Registrar may delegate any of the powers and entrust any of the duties assigned to him by this Act, to any officer in the public service.

Seal of Registration Office

20. There shall be a seal of the registration Office and the impression of the seal shall be judicially noticed.

Unauthorised person not to act in registration matters

21. The Registrar shall permit an agent to do on behalf of the person for whom he is an agent, any act in connection with registration under this Act or any proceeding relating thereto.

Register of Traditional Knowledge

22. (1) There shall be kept at the Registration office a register in which shall be entered -
- (a) the names and addresses of applicants for the registration of protected traditional knowledge and of persons to whom registration has been granted;
 - (b) such other particulars as may be prescribed.
- (2) The Register shall be divided into separate sections for the registration of, respectively, protected traditional works, protected traditional designs and protected traditional marks.
- (3) Registrations of protected traditional knowledge may be allocated by the registrar into prescribed classes.
- (4) The Registrar shall maintain at the registration office such indexes in relation to particulars entered in the register in terms of sub-section(1) as may be prescribed.
- (5) The Register may take the form of an electronic database or such other form as may be deemed by the Registrar to be appropriate.

Inspection of Register

23. Subject to provisions of this Act, the Register or any documents lodged at the registration office shall, on payment of the prescribed fee be open to inspection by the public during the prescribed hours.

Register to furnish information from Register on Request

24. The Registrar shall, at the request of any person and on payment of the prescribed fee, furnish copies of any documents lodged at the registration office, or particulars from the Register, or furnish a certificate in respect thereof.

Application for Registration

- 25 (1) Any person claiming to be the owner of an item of traditional knowledge, and who is desirous of registering it, shall apply to the Registrar in the prescribed manner for registration thereof and the application shall be accompanied by the prescribed fee.
- (2) Subject to the provisions of this Act, the Registrar may approve the application and register the subject matter absolutely or subject to such amendments, modifications, conditions or limitations, if any, as he may deem fit.

Refusal of Application

26. If it appears to the Registrar that an application was not made in the prescribed manner, he shall refuse the application.

Registration

27. (1) As soon as practicable after the registration of an item of traditional knowledge the Registrar shall-
- (a) notify the registrant and issue to the registrant a certificate of registration in the prescribed form and sealed with the seal of office; and
- (b) cause to be published in the Patent Journal in the prescribed form a notice of such registration.

Register as evidence

- 28 The Register shall be prima facie evidence of any matters directed or authorised by this Act to be inserted in it.

Certificates of Registrar to be prima facie evidence

29. (1) A certificate purporting to be under the hand of the Registrar as to any entry, matter or thing that he is authorised by this Act to make or do, shall be prima facie

evidence of the entry having been made and of the contents thereof and of the matter or thing having been done or left undone.

(2) Printed or written copies or extracts purporting to be copies of or extracts from the Register, or any document relating to a traditional knowledge right and kept in the Registration Office, and certified by the Registrar and sealed with the seal of office, shall be admitted as evidence in all courts and proceedings without further proof or production of the original.

Register to be constructive notice

30. (1) In any proceedings with regard to the alleged infringement of an intellectual property right it shall be presumed-
- (a) that every party to those proceedings had knowledge of the particulars entered in the Register of Traditional Knowledge from the date of the advertisement of that registration in the Patent Journal; and
 - (b) that the person who is alleged to have done an act which infringes the relevant intellectual property right, or a common law right in terms of section 17, did that act without the required authority, unless the contrary is proved.

Rectification of Register

31. (1) The Registrar may order the Register to be rectified by the making, amendment or deletion of an entry therein, and such order may be made either upon a request in the prescribed manner, or without such request; provided that where the Registrar intends to make an order otherwise than upon a request, he shall give notice of his intention to do so to the registrant and to any other person who appears to him to be concerned, and shall give such registrant or other person an opportunity of being heard before proceeding with the rectification.
- (2) The Registrar shall rectify an entry in the Register in accordance with any finding or judgment of the court in respect of that entry.
- (3) If, in any proceedings for the infringement of a traditional knowledge right, it appears to the court that the registration of an item of traditional knowledge is

incorrect in any respect, the court may order that the registration shall be rectified so as to eliminate the cause of the incorrectness.

Certification of validity

32. (1) If, in any of the proceedings relating to an item of traditional knowledge, the court finds that the registration of that traditional knowledge is valid, it may certify to that effect.
- (2) If, in any subsequent proceedings, the validity of that registration is unsuccessfully attacked by any party, that party shall, unless the court otherwise directs, pay to the other party his full costs, charges and expenses as between attorney and client, so far as that registration is concerned.

CHAPTER 5

NATIONAL COUNCIL FOR TRADITIONAL KNOWLEDGE

Establishment of National Council for Traditional Knowledge

33. A National Council for Traditional Knowledge is hereby established.

Composition of Council

34. (1) The Council shall consist of not more than 12 members appointed by the Minister and selected among those nominated by the National House of Traditional Leaders a Provincial House of Traditional Leaders and other affected or interested body or entity identified in the regulations;
- (2) The Minister shall designate one of the members of the council as the Chairperson of the Council;
- (3) In appointing the members of the Council, the Minister may consult –
- (a) the Minister responsible for Arts and Culture;
 - (b) organised local government;
 - (c) any other relevant body or institution;
- (4) The Council shall –

- (a) be broadly representative of the different cultures within the Republic; and
- (b) at all times have as members
 - (i) at least two persons with extensive knowledge in, and patronage of, traditional cultures and the value of traditional communities
 - (ii) at least two persons with extensive knowledge in, and patronage of, artistic, literary, and musical works and the performing arts; and
 - (iii) at least two members with extensive knowledge of the law of intellectual property.
- (5) The members of the Council shall be appointed on such terms and conditions, including remuneration, as may be determined by the Minister in consultation with the Minister of Finance.
- (6) A member of the Council shall hold office for a period of three years and may be reappointed upon expiry of that period for a further period of three years.
- (7) At least five members of the Council ought at all times to be reappointed members of the Council.
- (8) The Minister may, subject to the Promotion of the Administration and Administrative Justice Act, 2000 (Act No. 3 of 2000), remove a member of the Council for –
 - (a) non performance;
 - (b) serious misconduct; or
 - (c) conduct that undermines the integrity or objectives of the Council
- (9) Subject to the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000), the Minister may dissolve the Council –
 - (a) if the Council fails to perform its functions in an effective and efficient manner; and
 - (b) on the grounds of mismanagement.
- (10)
 - (a) When the Minister dissolves the Council in terms of sub-section (9), the Minister may appoint an interim body for the continued governance and control of the affairs of the Council on such conditions as the Minister may determine;
 - (b) such a body shall not be appointed for a period exceeding six months, or until a new Council is appointed in terms of sub-section 4, whichever is shorter.

Functions and Powers of Council

35. (1) The Council shall –
- (a) advise the Minister of any matter concerning traditional knowledge;
 - (b) advise the Registrar on any matter regarding the registration of traditional knowledge;
 - (c) perform such further functions as may be provided for in the –
 - (i) Copyright Act;
 - (ii) Trade Marks Act; and
 - (iii) Designs Act;
 - (d) carry out such tasks as may be assigned to it from time to time by the Minister;
 - (e) undertake the promotion and preservation of traditional knowledge and in particular the commercial exploitation of such traditional knowledge for the purposes of generating income.
- (2) The Council may –
- (a) appoint any persons to assist it with the performance of any specific act, task or assignment, or to investigate any matter relating to its function;
 - (b) constitute and maintain such committees as it may deem necessary
 - (c) appoint as members of the committees any of its members and any other persons for such periods of time as it may determine;
 - (d) refer to any such committee any tasks or matters as may be necessary or expedient to enable the Council to carry out its functions; and
 - (e) supervise and control the administration of the Fund and the delegation of any of the functions of the Administrator of the Fund to a private organisation.
- (3) The Minister may, in consultation with the Minister of Finance, prescribe the tariff of fees payable for –
- (a) any work performed or services rendered by any person at the specific request or instruction of the Council
 - (b) access by any person to the results of, or other information, or in connection with, any research performed or information collected by the Council.

CHAPTER 6**NATIONAL TRUST FUND FOR TRADITIONAL KNOWLEDGE****Establishment of Fund**

36. A fund to be known as the National Trust Fund of Traditional Knowledge is hereby established.

Administration and operation of Fund

37. (1) The Minister, after consultation with the Minister of Finance, shall appoint the Administrator of the Fund who shall
- (a) be chosen from seven candidates recommended by the National Assembly and selected on the basis of his or her experience and qualification of finance, accounting, and asset management;
 - (b) be remunerated on the basis of a Deputy Director General in a public service
 - (c) administer the Fund subject to the directives of the Treasury;
 - (d) have the power to open and maintain one or more bank accounts with such subdivision and indexes as directed by the Treasury or as it may be prescribed
- (2) The proceeds of all license fees paid in respect of the use of any item of the traditional knowledge shall be deposited in the Fund.
- (3) After deduction of the prescribed administration fee, the Administrator shall pay the proceeds arising out of the use of a particular item of the traditional knowledge to the community proxy of the originating community in respect of that item of traditional knowledge within a reasonable period.
- (4) The Administrator shall maintain proper accounts in respect of the administration of the fund and the fund shall be subject to the prescribed annual audit.

(5) The Administrator shall submit an annual report to the Council in respect of the operation of the fund in the prescribed manner and form.

(6) The Administrator may delegate the operation and the administration of the fund to a private body, subject to the approval of the Council, and subject to such conditions and terms as he may consider appropriate.

(7) Any private body appointed by the Administrator in terms of sub-section (6) shall for the duration of its appointment have the powers and duties conferred upon the Administrator in respect of the fund in this Act.

(8) Notwithstanding a delegation of the Administrators functions in terms of sub-section (6), the Administrator shall remain fully responsible for the operation and administration of the Fund.

CHAPTER 7

GENERAL

Ownership and transmission of traditional knowledge right

38. (1) Ownership of the traditional knowledge right shall vest in a representative capacity in the person designated from time to time as the community proxy of the originating community, and, subject to sub-section (2), it shall not be transmissible by assignment or operation of law.

(2) In the event that the identity of the community proxy should change from time to time in accordance with the rules and practices of the originating traditional community, the ownership of the traditional knowledge right will pass automatically to the new incumbent of the position, who shall hold it in a representative capacity.

(3) The traditional work right and the traditional design right may be licensed and any such licence may be limited so as to apply to some only of the Acts comprised within the right , or to a part of the term of the right, or to a specified geographical area.

(4) Subject to sub-section (6), a licence to do an act which is comprised in the traditional work right or the traditional design right may be written or oral, or may be inferred from conduct, and it may be revoked at any time.

(5) Where the doing of anything is authorised by a licence, and it is within the times, including any implied terms, of the licence for the licensee to authorise it, it shall for the purpose of this Act be deemed to be done with the licence of the granter and of every person, upon whom the licence is binding.

(6) Unless otherwise stipulated by the owner of a traditional knowledge right, any licence granted under a traditional knowledge shall be subject to payment by the licensee of the standard licence fee.

(7) A community proxy may be vested with the ownership of copyright under the Copyright Act and a registered design under the Design Act, and in this event, notwithstanding any provision to the contrary in the Copyright Act and the Designs Act, the provision of the section shall apply *mutatis mutandis* to the ownership and licensing of such right as it applies to the traditional knowledge right.

Standard Licence Fee

39. (1) Where payment of the standard licence fee is required, it shall be paid to the Fund in the prescribed manner.

(2) Payment of the standard licence fee shall be effected by giving the prescribed notice to the administrator of the Fund and to the owner of the right in question, accompanied by the appropriated payment to the administrator.

(3) The Minister shall prescribe the amount of the standard licence fee, and may vary it from time to time, in the exercise of his discretion, after consultation with the interested parties.

(4) An Act in respect of which the standard licence fee has been paid to the Fund shall be deemed to have been done with the authority of the relevant traditional knowledge right owner.

Action by owner traditional knowledge right for infringement

40. (1) Subject to the provisions of this Act, infringements of the traditional knowledge right shall be actionable at the suit of the owner of that right, and in any action for such an infringement shall be entitled to relief by way of -

- (a) an interdict,
- (b) delivery of any infringing article, or any article or product of which the infringing article forms an inseparable part;
- (c) damages; and
- (d) in lieu of damages, at the option of the plaintiff, the standard licence fee payable in respect of the infringing conduct

(2) The owner may delegate his right of action in respect of infringement of the traditional knowledge right to the prescribed state agency in the manner prescribed, and in this event the prescribed state agency shall be vested with the same powers and rights of enforcement as the owner of traditional knowledge right.

(3) All payment of money realised in terms of subsection(1)(c) or (d) in proceedings brought by the prescribed state agency for the infringement of the traditional knowledge right shall be paid into the Fund and shall be deemed to be a licence fee paid in respect of the subject matter of the right that is enforced.

Moral rights

41. (1) Where any work, design, or mark is, or is derived from, an item of protected traditional knowledge, the owner of the traditional knowledge right shall have the unlimited right to claim that is such a work, design or mark, and to require acknowledgement thereof, and to object to any distortion, mutilation or other modification thereof where such action is, or would be, prejudicial to the honour or public esteem of the originating traditional community.

(2) Any infringement of the provision of this section shall be treated as an infringement of copyright under chapter 2 of the Copyright Act, and for the purposes of the provision of the said chapter, the owner of the traditional knowledge rights shall be deemed

to be the owner of the copyright in question and the protected traditional knowledge shall be deemed to be a work in which copy right subsists.

Restricting importation of companies

42. The provision of section 28 of the Copyright Act shall apply mutatis mutandis to traditional works and traditional designs as it applies to work protected by copyright and for the purposes of that section traditional works and traditional designs shall be deemed to be works protected by copyright.

Retrospective operation and savings

43. (1) This Act shall apply in relation to an item of traditional knowledge which came into being before the commencement of this Act as it applies in relation to such item coming into being thereafter, provided that no act performed by any person prior to the commencement of this Act shall be an infringement of a traditional knowledge right.

(2) In the event that a person performs an act prior to the commencement of this Act which, had this Act been in operation at the time, would have constituted an infringement of a traditional knowledge right, and that act gives rise to further acts of an ongoing nature which, after the commencement of this Act, would constitute infringement of a traditional knowledge right, such ongoing acts shall not constitute infringement of a traditional knowledge right for as long as they continue to be carried out in the ordinary course in a bona fida manner.

(3) Nothing in this Act shall affect any right of the State or of any person deriving title from the State to sell, use or otherwise deal with articles forfeited under the laws relating to customs and excise, including any article forfeited by virtue of this Act.

(4) The provisions of this Act shall not derogate from any rule of law relating to confidential or privileged information, unlawful competition or personality rights.

Application of Act to foreign countries

44. (1) The Minister may by notice in the Government Gazette provide that any provision of this Act specified in the notice shall in the case of any country so specified apply

to traditional knowledge emanating from a traditional community in that country as it applies to traditional knowledge emanating from a traditional community in the Republic.

(2) No notice shall be issued under this section in respect of a country which is not a party to a convention relating to traditional knowledge to which the Republic is also a party, unless the Minister is satisfied that, in respect of the class of traditional knowledge to which the notice relates, provision has been made, or will be made, under the laws of that country whereby adequate protection will be given to owners of traditional knowledge under this Act.

Regulations

45. The Minister may make regulations –
- (a) as to any matter required or permitted by this Act to be prescribed by regulation;
 - (b) providing for the composition, administration and operation of the Fund, including the keeping and preservation of any records and accounts, and any other matter that it may be necessary or expedient to regulate for the proper and efficient functioning of the Fund;
 - (c) providing for the conduct, administration and operation of the Register, including the keeping and preservation of any records, and, with the concurrence of the Minister of State Expenditure, prescribing the matters in respect of which fees shall be payable, and the tariff of such fees;
 - (d) prescribing the contents of any application, notice or form provided for in this Act;
 - (e) providing for the conduct, administration and operation of the Council, including the keeping and preservation of any records, and any other matter that it may be necessary or expedient to regulate for the proper and efficient functioning of the Council;
 - (f) providing for forms, procedures and rules regulating payment of the standard licence fee into the Fund.

Short Title and Commencement

46 This Act shall be known as the Protection of Traditional Knowledge Act of 2013, and shall come into force on its publication in the *Gazette*.

**MEMORANDUM ON THE OBJECTIVES OF THE
PROTECTION OF INDIGENOUS KNOWLEDGE BILL OF 2013**

1. BACKGROUND

There is general recognition that traditional knowledge is meritorious of legal recognition and protection. The way to achieve this that is both most legally sound and respectful of the people concerned is to regulate the subject matter through a dedicated Bill.

In 2004 Cabinet approved the adoption of the policy on Indigenous Knowledge Systems (the IKS Policy). Pursuant to the adoption of the IKS Policy the Department of Trade and Industry, formulated a policy document on the commercialization and protection of Indigenous Knowledge (IK). This policy sought to recognize and protect IK as a form of intellectual property, and to enable and promote the commercial exploitation of IK for the benefit of the indigenous communities from which the IK originated.

The creation of an appropriate legal framework for the recognition and protection of IK and of appropriate structures and mechanisms to enable the commercialization of IK is best obtained with a dedicated piece of legislation. This follows the precedents created when new intellectual property right protection was legislated in respect to information technology and computer programs. Dedicated legislation is also necessary because the required legislative protection of IK is novel in nature and different in purpose and scope from other forms of existing intellectual property rights, making it inappropriate to insert or interface IK within the existent intellectual property legislative dispensation or try to integrate the protection of IK into the existing laws. The World Intellectual Property Organization has recommended this approach to South Africa.

The Protection of Traditional Knowledge Bill, 2013 (the Bill) seeks to implement the IKP policy in a manner which is easy to reference, implement and apply and can be easily understood and applied within and by the intended communities and their legal representatives and leaders, without having to make references to the entire complex and voluminous body of intellectual properties laws.

2. OBJECTIVES OF THE BILL

The Bill intends to achieve the following objectives, namely to—□

- (a) provide legislative mechanisms to protect the different species of indigenous knowledge;
- (b) recognize indigenous knowledge by defining indigenous knowledge systems components;
- (c) protect traditional knowledge as a new category of intellectual property and provide how said intellectual property rights will be protected;
- (d) determine what is eligible for traditional knowledge intellectual property right protection and the conditions for the subsistence or termination of said protection;
- (e) provide for ownership of traditional knowledge intellectual property rights;
- (f) provide for the duration, nature and scope of traditional knowledge intellectual property rights;
- (g) provide for the enforcement of traditional knowledge rights;
- (h) regulate the licensing of traditional knowledge intellectual property rights;
- (i) provide for the establishment of a National Register of traditional knowledge;
- (j) provide for the establishment of a National Council in respect of traditional knowledge to facilitate the commercialization of indigenous knowledge and the application of income generated to the benefit of indigenous communities;
- (k) provide for the establishment of a national trust and trust fund in respect of traditional knowledge;

- (l) provide for the regulation of the applicability of the Bill to foreign countries; and
- (m) provide for the protection of performers.

The proposed legislation seeks to give effect to the Government's policy to recognize and afford protection to indigenous knowledge as a national heritage and asset, and to ensure that indigenous communities benefit from such recognition and protection, and from the commercialization of this asset.

The proposed legislation will also place the Republic amongst the leading countries as what concerns the recognition and protection of indigenous values.

3. CONSTITUTIONAL IMPLICATIONS

None

4. BODIES AND ORGANISATIONS CONSULTED □

In formulating the IKS Policy the Government, which this Bill implements, consulted the following bodies and organizations

- Departments of Science and Technology, Foreign Affairs, Agriculture, Environmental Affairs and Tourism, Arts and Culture and Health;
- Science councils, including the Medical Research Council;
- Universities, including the Universities of Cape Town and Venda;
- Provincial Governments, including the Limpopo Department of Environment and Tourism;
- Standing Advisory Committee on Intellectual Property Rights;
- A professional reference team consisting of eminent people in the area of IP and TK;
- Traditional Leaders in KZN and North West Provinces; and

Universities of Durban Westville, Fort Hare and North West.

5. FINANCIAL IMPLICATIONS □

The additional funding required for the establishment of the structures and functions provided for in this Bill is lower than any other known and published proposal aimed at implementing the IKS Policy.

6. PARLIAMENTARY PROCEDURE

We are of the opinion that the Bill must be dealt with in accordance with the procedure prescribed by section 76 of the Constitution since it deals, inter alia, with matters relating to customs of traditional communities.

We are of the opinion that it is necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it contains provisions pertaining to customs of traditional communities.

2. Membership of Committees

- (1) The following changes to Committee membership have been made by the Democratic Alliance:

Joint Standing Committee on Defence

Discharged: Lorimer, Mr J

Appointed: Coetzee, Mr T

TABLINGS

National Assembly and National Council of Provinces

1. The Minister of Finance

- (a) Municipal Budgets for the 2011 and 2012 Medium Term Revenue and Expenditure Framework (MTREF), tabled in terms of section 24(3) of the Local Government: Municipal Finance Management Act, 2003 (Act No 56 of 2003).

2. The Minister of Water and Environmental Affairs

- (a) Report and Financial Statements of the Botshelo Water for 2011-12, including the Report of the Auditor-General on the Financial Statements and Performance Information for 2011-12 [RP102-2013].
- (b) Report and Financial Statements of the Bushbuckridge Water Board for 2011-12, including the Report of the Independent Auditors on the Financial Statements and Performance Information for 2011-12.

3. The Minister of Higher Education and Training

- (a) Annual Performance Plan of the Services Sector Education Training Authority (SSETA) for 2013 – 2014.
- (b) Annual Performance Plan of the Culture, Arts, Tourism, Hospitality and Sport Sector Education and Training Authority (CATHS-SETA) for 2013/2014.
- (c) Strategic Plan of the National Skills Fund for 2011/12 – 2015/16.
- (d) Annual Performance Plan of the Energy and Water Sector Education and Training Authority (EW-SETA) for 2013/14 – 2015/16.

COMMITTEE REPORTS

National Assembly

1. Report of the Portfolio Committee on Police on the Annual Report on the Private Security Industry Regulatory Agency (PSIRA), DATED 12 FEBRUARY 2013

The Portfolio Committee on Police reports as follows:

1. Introduction

The Private Security Industry Regulatory Authority (PSIRA) was established in terms of Section 2 of the Private Security Industry Regulation Act, No. 56 of 2001. It is mandated to regulate the private security industry in South Africa and to exercise effective control of security service providers in the public and national interest and the interest of the security industry itself. A Council is appointed by the Minister of Police in consultation with Cabinet and currently constitutes a full-time Chairperson and three additional Councillors, who are independent of the private security industry. The Council is tasked with the governance of the Authority, forms the accounting authority of PSIRA and is accountable to the Minister of Police in the performance of its functions. The Authority is listed as a public entity in Schedule 3A of the Public Finance Management Act (PFMA). As such, the Authority must adhere to the statutory duties and responsibilities as imposed by the PFMA. The Authority is funded through levies and fees recoverable from the security industry, in accordance with section 16 of the Act and currently receives no funds from the State.

As part of its oversight function, the Committee considers the Annual Report of the Authority on an annual basis and believes that its engagements with the Authority have been robust throughout the 2011/12 financial year. Hearings were held with the Authority over a three-day period during which the Authority presented on its performance for 2011/12, both in terms of service delivery targets, as well as in terms of its financial statements.

Structure of Report: This Report comprises nine sections:

- Section 1: Introduction.
- Section 2: Financial performance of the Authority for 2011/12.
- Section 3: Summarises the 2011/12 report of the Auditor-General for the Authority.
- Section 4: Provides a broad overview of the changing strategic and operational environment of the Authority for 2011/12.
- Section 5: Performance information for each Strategic Priority in 2011/12
- Section 6: Highlights key observations of the Committee with respect to financial and performance information for 2011/12.
- Section 7: Summarises additional information requested from the Authority in deliberations and other reporting requirements.
- Section 8: Summarises recommendations of the Committee with a focus on the 2012/13 Annual Report.

- Section 9: Conclusion

2. Financial performance

2.1 Issues identified as significant concern

Tariff increase: In January 2012, the PSIRA effected tariff increases of 75% for standard business fees and 900% for fees paid by the companies for each security officer hired. This was done regardless of the fact that National Treasury recommended an inflation-related adjustment of 9.1% across all categories. The PSIRA went ahead with the increases and ignored the suggestions proposed by the National Treasury. Moreover, the PSIRA did not seek the concurrence of the Minister of Finance for the increase of tariffs in terms of Section 2 (3)(a) of the Private Security Industry Levies Act No 23 of 2002, which states that

“The Minister [of Police] must—with the concurrence of the Minister of Finance, within a period of 60 days after receiving a notice referred to in subsection (2)(c), give the Council notice approving or rejecting the proposed imposition, variation or determination”.

The management of PSIRA indicated that whilst the Private Security Industry Levies Act No 23 of 2002 was promulgated, it was never enforced. Therefore, the PSIRA did not need to seek the concurrence of the Minister of Finance. Following the introduction of the tariff increases in January 2012, legal action was instituted by the Security Industry Alliance (SIA) against the PSIRA, Minister of Police and the chairperson of the Council, to set aside the 2011 Annual Fee Regulations. The SIA indicated that the proposed annual fee increases were too high and threatened the financial viability of their organisations. (The fees are set out in section 5.3 of this paper). The management of PSIRA has admitted that there is a high probability that the court will set aside the 2011 Annual Fee Regulations.

Expenditure: Various issues pertaining to expenditure are highlighted. These are: (1) Significant increase in consulting and professional fees between 2008/09 and 2009/10, which recorded a doubling of the expenditure. However, the Authority managed to reduce this expenditure from R10.641 million to R5.379 million in 2011/12; (2) A doubling of office and other rent between 2008/09 and 2009/10. This further escalated significantly in 2011/12 recording a total of R10.904 million compared to the R3.257 million spent in 2010/11; and (3) Employee related costs increasing by 47% from R39.2 million (in 2009/10) to R57.5 million (in 2010/11) and further increased by 10.8% in 2011/12 to R63.7 million.

Debt management: Debt is a source of pressure in the PSIRA budget. Debt arises from the annual fees, fines, penalties and interest that are billed to registered security service providers, but due to the lack of capacity in the revenue management department of PSIRA they use an agency to collect long-outstanding debt. For the year ended 31 March 2012, PSIRA wrote off uncollected debt to the amount of R82.5 million (2010/11: R75.5 million). The number of accounts written off as uncollectable is 6 005. PSIRA reported that bad debt write-offs results in the withdrawal of registration of the service providers who fail to pay in terms of the PSIRA Act.

Lease agreement: The PSIRA entered into a lease agreement for a period of 5 years to the value of R61.243 million (Annual Report, 2010/11:85) for 5 070 m² office space and 160 parking bays. The lease is structured such that the costs for the first 2 years are the same (R5.7 million per annum) with a steep increase (R15.058 million) in the third year, after which the premium increases by 10% in the fourth and fifth years. The lease should have been formulated such that there would be a constant escalation of 10% from the second year. This would have translated into a lease that commenced at R10.031 million in the first year, increasing to R14.687 million in the fifth year. Other concerns raised by the Public-Private partnership (PPP) unit within National Treasury which examined the lease include the following:

- The payment arrangement results in a huge increase of more than 268% in the first 18 months from R241 066.67 to R888 290.31 per month, which is not justifiable.
- The lease payments exclude operational costs which amount to R91 260.00, and it is not clear what this includes.
- Air-conditioning is part of the building and there is no justification as to why it should be paid separately, attracting a fee of R10 140.00.
- The 10% escalation is too high and significantly above the CPI. Lease expenditure of over R100 million could be incurred if the current lease is renewed for a further 5 years. The PSIRA could build its own facility for that kind of money.

In terms of Treasury Regulation 16A6 the procurement of the lease should have been done through a competitive bidding process. However in terms of Practice Note 8 of 2007/08, should it be impractical to invite competitive bids for specific procurement, e.g. in urgent or emergency cases or in case of a sole supplier, the accounting officer / authority may procure the required goods or services by other means, such as price quotations or negotiations in accordance with Treasury Regulation 16A6.4. The reasons for deviating from inviting competitive bids should be recorded and approved by the accounting officer.

The PSIRA asserts that there was an urgency to relocate to new premises, as the building that it was occupying was not safe. This followed an Engineering Evaluation of the building in November 2010. However, it should be noted that while the engineer's report was finalised in November 2010 the decision to deviate from the normal procurement process was approved by the Council in February 2011. The lease agreement was only signed in April 2011. Therefore there was sufficient time for the PSIRA to procure a lease through a competitive process. This could have resulted in the PSIRA obtaining a more cost-effective lease.

The Office of the AG conducted an audit into the lease agreement and found that it did not constitute irregular expenditure. The Portfolio Committee on Police requested the Office of the AG to conduct a performance audit on the lease agreement to establish whether value for money was achieved through the process.

Office relocation costs: The Authority incurred significant expense during the relocation of offices from Arcadia to Centurion. The office relocation cost R4,726 million of which R4 009 was spent on fixed assets and R717 thousand was spent on the move and upgrading the new building in Centurion.

Regional office lease agreement (KwaZulu-Natal): The Authority entered into a 5 year lease agreement for its KwaZulu-Natal Regional offices with a total value of the undiscounted lease payments amounting to R4,830 million over the period.

Salary package: Chairperson of the Council: The Chairperson of the Council has been appointed on a full-time basis on an annual remuneration of R1.39 million (Annual Report, 2010/11:83), which increased to R1 442 438 million in 2011/12 (3.5%). The remuneration of the Chairperson is much higher than what is offered by other entities in the same category (A1: R979 596 thousand) in terms of the Treasury Regulations. This is an additional amount of almost a half a million Rand per year (R462 842). Given the precarious financial position that the Authority currently finds itself in, it would be advisable for the Chairperson to be appointed on a part-time basis and be remunerated only for attending meetings.

2.2 Statement on Financial Performance

The table below illustrate the overall financial performance of the PSIRA in 2011/12. It is clear that the overall deficit for the year improved significantly in 2011/12 compared to 2010/11. The deficit improved from R23,045 million (2010/11) to R9,280 million (2011/12) representing an improvement of almost 60%.

Various issues to note on the overall financial performance:

- Revenue increased by 17.1%
- Other income increased by 146.3%. Note 11 to the Financial Statements indicates a significant increase in *Sundry income* (2010/11:R3,25 million and 2011/12:R21,73 million). This represents an increase of 568.0% in 2011/12 compared to the previous year.
- Debt impairment increased by 24.4%

2.3 Revenue

The Authority, as an industry regulatory authority, receives no government funding and relies on various streams of revenue, which are as follows:

- Annual fees from Security Providers. These companies pay R4 250.00 per annum and R7.00 per month for each Security Officer employed.
- Annual fees from active Security Officers payable monthly. These officers pay R84.00 per annum through salary deductions.
- Revenue from services rendered, i.e.:
 - Registration fees
 - Disbursement fees – issuance of ID cards, Certificates
 - Processing of training (course) reports
 - Fines issued at code of conduct enquiries

The table above show that the revenue of PSIRA increased by 17.1% in 2011/12 compared to 2010/11. Issues to note:

- Significant increase of 90% in fines.

- Significant decrease of 39.8% in registration fees.

2.4 Employee related costs/Salary expenses

The analysis of personnel cost per division of the Authority revealed various issues of concern regarding organisational aspects of the PSIRA. These include:

- The 100% decrease in salary cost within the *'Internal Audit and Risk Management'* division indicates that the position(s) are vacant (The AG made a significant finding on the lack of a Risk Management Strategy in terms of National Treasury prescripts);
- Appointment of a staff member in *'Asset Management'* to the cost of R1.328 million per annum (2011/12);
- All positions in the *'Prosecution'* division are currently vacant;
- The number of personnel employed in the *'Information Technology'* division increased from one to six in 2011/12 compared to the previous financial year;
- Three staff members were appointed in *'Events Management'* at an annual cost of R766 626 thousand;
- The Authority recorded an expenditure of R2,973 million on *'Fixed term contracts'* in 2011/12 compared to 2010/11 in which there was no expenditure recorded for fixed term contracts.

Basic salaries paid by the Authority in 2010/11 were R37.021 million and increased by 18.6 per cent to R43.918 million in 2011/12.

Council and Senior Management Emoluments

In the 2009/10 Annual Report of PSIRA, the Authority provided a detailed report and full cost-breakdown of Council and Senior Management emoluments for the 2009/10 financial year. This included expenditure incurred in terms of council fees, salary, travel costs, bonuses and car allowances. This detailed cost-breakdown was omitted in both the 2010/11 and 2011/12 Annual Reports of PSIRA.

2.5 Debt impairment

The table below indicates that the Authority recorded an increase of 24.4% in 'debt impairment' in 2011/12 compared to 2010/11.

2.6 Irregular expenditure

Irregular expenditure of R1,178 million was incurred in 2011/12 (in comparison to the R865 thousand in the previous financial year). A total of R3,612 million was condoned in 2010/11 which included condonation on the opening balance of R5,129 million. None of the irregular expenditure incurred in 2011/12 was condoned. The final balance on irregular expenditure still to be condoned was R3,561 million. Two incidents where irregular expenditure was identified were reported as follows:

- Cash collection service to the value of R400 531.00
- Domestic flights to the value of R778 373.00

2.7 Fruitless and wasteful expenditure

Fruitless and wasteful expenditure to the amount of R17 220 (thousand) was incurred in 2011/12. Of this amount, R1 440.00 was identified by PSIRA and R15 780.00 by the AG. This is a 39.3% increase compared to the R12 356 (thousand) incurred in 2010/11). The amount was made up of the following:

- Salaries paid after contract end date (R15 780.00)
- Creditors (R1 440.00)

2.8 Contingent liabilities

Contingencies are identified in Note 18 of the financial statements. However, this note does not reflect the value of contingencies addressed during the financial year and accumulated contingencies. It has been requested previously that these values should be provided and it is reiterated.

2.9 Consultants

In a response from PSIRA in August 2012, the Authority stated that an amount of R9,496,705 million was paid to consultants in the 2010/11 financial year. Among the cost-breakdown for services provided, an amount of R4,198,267 million was paid towards an Information Technology contract/service. The Authority further stated that the contract was terminated in August 2011.

3. Audit findings

PSIRA received an unqualified audit opinion for 2011/12 with emphasis of matters. The 2011/12 Report of the Auditor-General pertaining to PSIRA reflects the following:

3.1 Report on Financial Statements

Significant Uncertainties

The AG made mention of significant uncertainties in terms of lawsuits in which the Authority is the defendant. These are stipulated in note 18 of the Financial Statements of the 2012 Annual Report:

- 1) De Beer v PSIRA (Defamation of character – claim of R1 million);
- 2) Mavana v PSIRA (Wrongful termination – CCMA found in favour of PSIRA, but applicant referred the matter to the Labour Court);
- 3) Mogapi v PSIRA (Wrongful dismissal); and
- 4) Security Industry Alliance v PSIRA (Dispute pertaining to the 2011 Annual Fee Regulations).

The Authority has made no provision for any liability (contingent liability) that may result from these legal actions in their financial statements.

Going Concern

The Statement of Financial Performance for the year ended 31 March 2012 on page 80 of the Annual Report indicates that PSIRA incurred a net loss of R9,280 million (2011: R23,763 million) during the year. The current liabilities exceed the current assets by R8,266 million as per the statements of financial

performance. The AG reported that these conditions, along with other matters as set forth in the note 21 of the Financial Statements of the Authority, indicates the existence of a material uncertainty that may cast significant doubt on the public entity' ability to operate as a going concern.

Material Losses

As disclosed in note 13 of the Financial Statements of PSIRA, material losses to the amount of R82,487 million were incurred of which R24,065 million was written off in the current year and the balance adjusted through a decrease in the impairment provision.

3.2 Report on other legal and regulatory requirements

Predetermined objectives

The reported performance of the Authority against predetermined objectives was evaluated by the AG against the overall criteria of usefulness and reliability. The material findings made by the AG are as follows:

Usefulness of information

- Performance targets are not specific
- Performance targets are not measurable
- Indicators not verifiable
- Performance indicators not well defined
- Performance targets are not time bound

3.3 Key concerns and recommendations:

- **Leadership:** The AG found that the accounting authority did not have a risk management strategy in place as per National Treasury prescripts.
- **Predetermined objectives:** The AG found that the Authority's focus was not on predetermined objectives and ensuring full compliance with laws and regulations, in terms of irregular expenditure. It is recommended that the accounting authority ensure predetermined targets meet SMART criteria. Senior management should take responsibility to ensure performance information reported on is reliable and should be held accountable for reporting unreliable information.
- **Bad debt:** A large amount was written off as bad debt as was the case in the previous year – management is anticipating that this trend will decrease as most of these bad debts are historic of nature.
- **Supply Chain Management:** PSIRA should continuously monitor compliance with due procurement processes.
- **Financial Management:** Senior management should monitor and review day to day financial activities to ensure monthly financial information are accurate and reliable.
- **Information Technology:** Approve and implement an IT governance framework and monitor the effectiveness of IT systems.

4. Overview of the Strategic and Operational environment of the Authority

In 2010/11 the Authority embarked on an organisational turnaround to improve service delivery and establish a standing as an effective regulator of private security in South Africa. The revised Strategic Plan has been guided by national policy priorities as set out by the Justice, Crime Prevention and Security (JCPS) Cluster, which is specifically aimed at improving effectiveness and integration of the Criminal Justice System (CJS) revamp in order to reduce the overall levels of crime in the country.

The Strategic Plan introduced seven strategic priorities for PSIRA based on a situational analysis of the industry environment. The following strategic priorities resulted from this process:

- Strategic Priority 1: Industry Stewardship (Knowledge and Advocacy);
- Strategic Priority 2: Stakeholder and Customer Relationship Management;
- Strategic Priority 3: Financial management and funding;
- Strategic Priority 4: Excellent Service Delivery (Effective Regulation);
- Strategic Priority 5: Efficient and Effective Processes;
- Strategic Priority 6: Effective Organisational Structures with Skilled, Competent and Motivated Workforce; and
- Strategic Priority 7: Enabling Environment (Organisational Culture).

5. Performance Information for each Strategic Priority in 2011/12

The Private Security Industry Regulatory Agency (PSIRA) determined a total of 46 measurable targets for the 2011/12 financial year. Of the total planned targets, 14 out of 46 were achieved during the period under review, which represents a success rate of 30.4 per cent. The remaining 32 targets were not achieved, which represents 69.5 per cent of total planned targets. Strategic Priorities 1 and 7 achieved none of their targets.

There are discrepancies in the calculation of achieved targets for 2011/12, in that the Authority reported a different performance rating/grading structure. Instead of reporting targets 'achieved' or 'not achieved', the Authority graded the achievement in the following manner: The number 1 was given to targets 'not achieved'; 2 was given to targets 'partially achieved' and 3 was given to targets 'achieved'. Targets are either achieved or not achieved and must be clearly reported in the Annual Report. Additionally, the Auditor-General counted those targets 'partially achieved' as 'achieved' and thus came to a success rate of 68 per cent (23 targets achieved).

Strategic Priority 1: Industry Stewardship (Knowledge and Advocacy)

The objective of the first Strategic Priority: Industry Stewardship (Knowledge and Advocacy) is to ensure a full understanding of the industry and to begin to respond to industry needs and challenges, so as to be recognised as "the industry experts". A total of 7 targets were set for 2011/12, of which the Authority realised none. The Authority reported that the poor performance on this strategic priority was due to budgetary constraints experienced in the financial year under review. As

mentioned above, Strategic Priority 1: Industry Stewardship (Knowledge and Advocacy) achieved none of the predetermined targets in 2011/12.

Strategic Priority 2: Stakeholder and Customer Relationship Management (CRM)

The objective of Strategic priority 2: Stakeholder and Customer Relationship Management, is to ensure meaningful and successful engagement with all stakeholders. A total of 8 targets were set for 2011/12, of which 3 were achieved representing a success rate of 37.5%.

Strategic Priority 3: Financial management and funding

The objective of Strategic priority 3: Financial management and funding is for PSIRA to be a financially stable and sustainable organisation (to increase revenue, decrease costs and achieve at least breakeven). A total of 7 targets were set for 2011/12 and 3 of these were achieved, representing a success rate of 42.8%.

Strategic Priority 4: Excellent Service Delivery (Effective Regulation)

The objective of Strategic priority 4: Excellent Service Delivery (Effective Regulation) is to enable effective compliance and enforcement of PSIRA legislation in order to achieve behavioural changes in the industry. A total of 6 targets were set for 2011/12 of which the Authority achieved 4, which represents a success rate of 80%.

Strategic Priority 5: Efficient and Effective Processes and Systems

The objective of Strategic priority 5: Efficient and Effective Processes and Systems are to ensure that adequate processes and systems are in place to effectively carry out the mandate of PSIRA. A total of 6 targets were set of which 2 were achieved, representing a success rate of 33.3%.

Strategic Priority 6: Effective Organisational Structures with Skilled, Competent and Motivated Workforce

The objective of the Strategic priority 6: Effective Organisational Structures with Skilled, Competent and Motivated Workforce is to ensure that PSIRA has competent and skilled employees that are able to execute their tasks effectively. A total of 9 targets were set for 2011/12 of which only 2 were achieved, which represents a success rate of 22.2%.

Strategic Priority 7: Enabling Environment (Organisational Culture)

The objective of Strategic priority 7: Enabling Environment (Organisational Culture) is to ensure that the Authority has a culture of learning embracing excellence that supports its vision and strategy. A total of 4 targets were set for 2011/12 of which none were achieved, representing a success rate of 0%.

Operational overview:

Registration Department (Customer Relationship Management)

A total number of 80,315 individual applications were received during the 2011/12 financial year:

- 71 397 were registered as security guards;

- 1 552 were rejected because of criminal records and non-compliance to the PSIR Act; and
- 7 366 are currently pending and will be carried over to the next financial year.

Compliance and Enforcement Department

Compliance Inspections: During the period 1 April 2011 to 31 March 2012 a total of 7 669 compliance inspections were conducted on security service providers, or inspections which formed part of investigations by the Enforcement Unit, compared to 6 611 inspections conducted during the previous financial year. The most inspections were performed at Small Businesses (employing less than 20 security officers), a total of 2 997 inspections were conducted at these classification of businesses.

Enforcement Inspections: During the 2011/12 financial year, a total of 514 enforcement inspections were conducted by PSIRA.

Improper conduct investigations: During the 2011/12 financial year, a total of 1 530 dockets were compiled against security businesses relating to improper conduct compared to the 1 446 dockets for the previous financial year (2010/11).

Improper conduct investigations pertaining to Minimum Wages: A total of 524 dockets relating to improper conduct pending against security providers for allegations of failing to pay the statutory minimum wage to employees.

Criminal Investigations: As at 31 March 2012, a total of 771 outstanding criminal cases were pending with the SAPS, compared to 648 cases in 2010/11. During the period 1 April 2011 to 31 March 2012, a total of 240 criminal cases were opened by inspectors of the Authority. During this period, 117 criminal cases were finalised by the SAPS and/or National Prosecuting Authority. The Authority reported that this is partly due to an audit conducted on pending cases on the Authority's records in the Western Cape and Eastern Cape regional offices.

6. Observations of the Committee

The following are key observations of the Committee with regard to the performance and financial issues of the Authority for 2011/12:

Leadership and capacity of Council: The Committee raised concerns around the apparent lack of leadership and the inadequate capacity of the Council of the Authority, as the Council is mandated with the governance of the Authority. The Council stated that the composition of the Council is currently problematic as there are various vacancies in the Council, which makes having quorum at Council meetings difficult. It was further stated that there is currently a blur of functions between the Chairperson of the Council and the Director of the Authority, with no clear lines of responsibility. It is hoped that the Amendment Bill currently before Parliament will address this situation. The term of the current serving Council will come to an end in December 2012 and it was stated that the new executive will have a difficult time in addressing the issues identified in the Authority. The Committee stated that the Council must hand the Minister of Police a hand-over

report, which clearly states the practical difficulties experienced by the Council as well as the various issues of concern pertaining to the governance of the Authority in an effort to empower the Minister to effectively address the situation from escalating.

Measurement of performance targets: The Committee stated that the measurement of performance targets is problematic; as targets are either 'achieved' or 'not achieved' and stated that the Authority cannot report on targets as 'partially achieved'. The Committee stated that the Authority must refrain from reporting in this manner in future Annual Reports.

Determination of Salaries for the Senior Management Structure (SMS): The Committee raised a variety of serious concerns on issues pertaining to the appointment of the SMS as well as the accompanying salary packages of the SMS members. Members of the Committee wanted to know whether the Council were aware of the decision to outsource the job grading and whether Council approved the salary scales on which the SMS of the Authority was appointed. The Council indicated that the appointment process was broken in two and that Council members were only part of the interview process, but not of the salary package approval process. Council acknowledged that the Council is not currently functioning optimally and that due to this; the Council was unaware of many decisions taken by the Authority. The Committee expressed concern to the evident nature of the dysfunction of the Council as there were no minutes available for the Council meetings in which salary packages were decided and stated that this was clearly a unilateral decision by the Chairperson and Director of PSIRA. The Committee further stated that the decision taken by the Minister of Police to request the Accountant-General of South Africa to launch an investigation into the salary packages of all Senior Managers in PSIRA are welcomed and supported.

The second issue of concern raised by the Committee was related to the fact that the function of job grading was outsourced to a private company, namely PricewaterhouseCoopers (PWC), and indicated that the Committee finds this extremely problematic. The job grading was done on a different grading system than that used by the Department of Public Service and Administration (DPSA) for government employees. PWC used the Patterson Grading System to determine job grading opposed to the Equate Grading System, which is used by the DPSA. The use of private companies to grade jobs for public entities is highly irregular as the mechanism for oversight and accountability is largely lost through the process chosen by PSIRA. The Council stated that the currently serving members of the Council was not yet appointed when the decision to use PWC for job grading was taken and further stated that at the time the decision was taken a Ministerial Task-team was appointed to PSIRA and noted that the Authority was completely dysfunctional and could not perform the task of job grading in-house. The Committee questioned why the Authority did not approach the Department of Public Service and Administration for assistance in the process of job grading and why the Authority did not benchmark their salaries against similar public entities. The Authority stated that they were not aware that they could approach DPSA. The Council stated that PSIRA is under the impression that the Authority is not like other public entities, in that they generate most of their own funds and that it is crucial for this mindset to change and accept the assistance available from

Government. The Authority stated that they have paid PwC at total of R603 thousand to date for services provided in terms of job grading (R603 146.30).

Allowances to Council: The Committee questioned what allowances are paid to Council members in 2011/12 and why this information is no longer included in the Annual Report as was done in 2009/10. The Authority stated that the information should not have been reported in 2009/10 and hence the reason for not including such in the years since.

ETHICS HOTLINE: Members of the Committee raised concern about the ethics hotline. The Authority outsourced this function to a private company (KPMG) for managing a complaints hotline pertaining to the private security industry. The Committee questioned the amount of complaints received through the hotline and whether the Authority considered the R47 000.00 spent on the hotline as value for money. The Authority stated that they could not provide the total amount of calls received through the hotline, but confirmed that a total of 26 case reports were generated in the 2011/12 financial year. The Committee noted that it is a very expensive hotline, as so few case reports were generated in the space of a year and further questioned why an independent body was necessary to establish a hotline within a body like PSIRA already mandated to be an independent body to regulate the industry. The Authority stated that the Law Enforcement division of PSIRA also have a complaints line. However, the Council stated that they were not aware of the hotline managed by KPMG and that the Council was not part of the decision to establish such hotline. The Council further stated that the hotline was not cost effective and that there exists no motivation why such an outsourced hotline was necessitated by the Authority.

Research: The Committee raised concern regarding the lack of performance in the Strategic Priority 1: Industry Stewardship (Knowledge and Advocacy), in which priority research projects to be completed was prioritised and only topics were identified.

Planning: Members of the Committee expressed concern regarding the apparent lack of cohesion between the budget process and established priorities of the Authority and questioned why there is an apparent disjoint between the funding available and the priorities/ performance targets set by the Authority and that this leads to priorities not being achieved as various targets were not met due to budgetary constraints. The Council indicated that the funding model on which the Authority operates is not ideal, but that the budgeting process will be reviewed and will enjoy increased focus in coming years. PSIRA is a trading entity which generates some of its own income.

New corporate head office in Centurion: The Committee raised several issues of concern regarding the relocation of PSIRA's corporate head office from Arcadia to Centurion. The Committee expressed their strongest opposition against the process taken in the relocation of offices of the Authority. The Committee further stated that the Auditor-General of South Africa was requested to perform a performance audit on the lease agreement in order to establish whether value for money was ensured by the Authority. The Committee further requested that the Authority give their full cooperation to the AG when requested and that the

Authority must be prepared for the outcome of the audit when concluded. The specific issues raised by the Committee were:

- **Lease agreement:** The Committee raised significant concern regarding the excessive cost incurred in entering into a new lease agreement for the Authority's corporate head office in Centurion to the cost of R87 million over a five-year period. The Committee further stated that the fact that the Authority specified an AAA-graded building was unacceptable for any entity finding itself in financial difficulty. The Authority stated that they wanted to improve the corporate image of PSIRA and thus decided on an AAA-graded building. The Committee was surprised by this response and stated that the improvements they speak of is cosmetic and that the Authority can only better their image by improving on service delivery.
- **Cost of relocation:** The Committee expressed further concern regarding the R4,7 million spent on procurement of new furniture and relocation costs incurred by the Authority's in moving offices from Arcadia to Centurion and stated that these expenses were unacceptable and should not have been a priority for the Authority. The Committee questioned why new furniture was procured for the new office and what happened to the old furniture. The Authority stated that the old furniture was not suitable for the new open-plan office space of the new corporate head office. The Committee requested that the Authority must keep the Committee informed regarding the sale of the old furniture and ensure that it is disposed of according to the prescripts of the PFMA, thus ensure that the Minister approves the sale.
- **Disposal of building:** Various issues of concern were further raised regarding the disposal of the condemned (previous) corporate head office of PSIRA in Arcadia (Pretoria). The Committee asked what the status of the sale of the building is currently as the Authority reported earlier this year that the sale is finalised, but that the Authority cannot disclose the name of the buyer as the process was not yet completed. Members of the Committee were surprised to learn that the building has not yet been sold and that the process is ongoing. The Authority indicated that the statement made earlier the year was erroneous as the Minister must first approve the sale of such asset. The Authority further acknowledged that the Round Robin Resolution taken by the Council and Authority was flawed as it is in contravention of the Public Finance Management Act (PFMA), which clearly stated that the responsible Minister must authorise the sale of such asset to the value in excess of R10 million. The Committee further questioned whether legal requirements were met in terms of dealing with a condemned building, such as informing the local municipality. The Authority stated that they have not informed the Tshwane Municipality and will ensure that all legal requirements pertaining to disposing of a condemned building are followed.

Contingent liability: The Committee expressed concern regarding the fact that the Authority is not budgeting for contingent liabilities and further stated that the Authority has continuously ignored the recommendation made by the Committee to budget for contingent liabilities.

Use of Consultants: The Committee expressed concern pertaining to the excessive use of consultants and questioned why these consultants are seemingly doing the work for which PSIRA employees are being paid for. The Committee expressed approval of the fact that the Authority halved the cost of consultants since 2010/11, but stated that the amount spent on consultants remained too high.

Difference between satellite and regional offices: The Committee questioned what the difference between satellite offices and regional offices are. The Authority stated that satellite offices deliver all primary functions of the Authority, much the same as regional offices. The Authority further stated that these offices serve as a meeting-place for security companies and security guards looking for employment. The Committee expressed extreme concern regarding this practice as it verges on labour brokering. The Authority indicated that this is an unintended consequence and not promoted by the Authority, however the Council acknowledge the potential for corruption through this practise and that it has the potential of placing the integrity of PSIRA in jeopardy. The Council further indicated that the Committee's concern is noted and that the practice will be investigated.

Personnel expenditure: The Committee raised various concerns regarding the information reported on page 50 of the Annual Report regarding personnel expenditure for 2011/12. The Authority indicated that the table included in the Annual Report contains various mistakes and that an erratum was sent to the Minister, subsequent to the Committee demanding that the erratum be done. The following specific issues of concern were raised by the Committee:

- **Inconsistencies in expenditure:** Members of the Committee raised concern pertaining to the apparent inconsistencies contained in the personnel expenditure table reported on page 50 of the Annual Report. Especially in the case of Asset Management for which expenditure increased from R371 016 to R1.32 million between 2010/11 and 2011/12, while only one person was appointed in this division. The Authority acknowledged that it was a mistake on their part and that the figures for Asset Management and Facilities Management must be swapped. However, the Committee indicated that it did not make much of a difference as the increase remains significant.
- **Fixed term contracts:** The Authority reported on 27 fixed term contracts in 2011/12, which was never done in the past and the Committee questioned why the Authority had such a large number of fixed term contracts as this is the first time reported as such. The Authority indicated that it was a mistake on their part and that the fixed term contact employees have been included in the various divisions in the past.
- **Events management:** The Committee expressed concern regarding the establishment of an events management office in PSIRA and questioned what the function and job descriptions of the three personnel appointed in this office are. The Authority responded that the events management office was primarily established to manage the Industry Forums, but seeing that these forums was not yet established, the office currently have no measurable outputs. The Committee questioned why the Authority, while in a financially precarious situation, spent R700 thousand with no measure-

able outputs. The Committee requested that the events management outputs must be included as a measurable target in the 2013/14 Annual Performance Plan of PSIRA.

Business Applications: The Committee raised concern regarding the incorrect information contained in the Authority's Annual Report regarding the mistake made regarding the number and status of business applications in 2011/12. The Authority apologised for the mistake and indicated that an erratum will be affected.

Lack of reporting on sick and incapacity leave: The Committee questioned why the Authority does not report on sick and incapacity leave taken by employees as required. The Authority stated that they were not aware that they had to report on it and indicated that it will be included in coming Annual Reports.

7. Summary of the Authority's additional reporting requirements

Reporting matter	Action required	Timeframe
Detailed breakdown of Consultancy fees. The report must include the following: <ul style="list-style-type: none"> • Appointment date of service provider/consultant; • Purpose of service to be provided; • All bids or quotes received for each service from other service providers or consultants; • Total cost of the contract awarded, including length of contract; and • Expenditure to date. 	Written report	05 December 2012
Copy of letter to Tshwane Metropolitan Municipality pertaining to the condemned building in Pretoria.	Written report	05 December 2012
A full breakdown of all allowances paid to the Senior Management Structure (SMS) of PSIRA, besides their cost-to-company salary packages.	Written report	05 December 2012
Detailed breakdown and explanation on the discrepancy in the calculations of personnel expenditure which appeared in the Annual Report and the subsequent erratum by PSIRA.	Written report	05 December 2012
Detailed report on the sale of the condemned PSIRA corporate head office in Arcadia (Pretoria).	Written report	Once sale is finalised

8. Recommendations

The following recommendations were made by the Portfolio Committee on Police:

Financial statements: The Portfolio Committee recommends that the financial statements of the Authority must be further interrogated by the Select Committee on Public Accounts (SCOPA).

Consultants: The Committee recommends that the Authority should rely less on consultants and that the expenditure on consultancy fees should be further reduced in the coming years.

Annual Performance Plan 2013/14: The Committee recommends that measurable outputs be identified for the events management office and included in the Annual Performance Plan of the Authority for the 2013/14 financial year as well as all subsequent years.

Annual Report 2012/13: The Committee recommends that the following information must be contained in the 2012/13 Annual Report of the Authority:

- Foreword by Minister;
- Detailed report by the Council of PSIRA;
- Organogram of the Authority's structure;
- A detailed breakdown of registration fees not collected;
- Employment vacancies broken down into divisions as well as provincial offices;
- Applications for registration approved and those not approved;
- Applications approved or not approved for training institution accreditations;
- Budgetary information for contingent liabilities;
- Sick and incapacity leave taken by employees; and
- The Authority must refrain from reporting on targets as 'partially achieved' and only report on targets as 'achieved' or 'not achieved'.

The Committee further recommends that specific attention must be given to the following aspects of future Annual Reports:

- Quality control;
- The correctness of Notes on financial statements; and
- Adhering to Government resolutions in that all Departmental Annual Reports must be produced in a cost effective manner.

9. Conclusion

The Committee expressed their dissatisfaction with the performance of the Private Security Industry Regulatory Agency (PSIRA). The Council of PSIRA must be blunt in its hand-over report to the Minister and clearly state the problems experienced in PSIRA to enable the Minister to address the situation. The Committee stated very clearly that the Council of PSIRA will have to account for the failure or successes of the Authority in coming years, as the Council is mandated to exercise oversight over the Authority in terms of governance issues. The Authority has to take their responsibility in terms of regulating the private security industry seriously and realise that change in PSIRA must come from the inside through improved service delivery and not merely cosmetic changes.

2. REPORT ON THE OVERSIGHT VISIT TO POLICE STATIONS IN NORTHERN CAPE PROVINCE, DATED 12 FEBRUARY 2013

1. INTRODUCTION

The Portfolio Committee on Police conducted an oversight visit of three police stations and one Independent Police Investigative Directorate (IPID) office in the Northern Cape Province from 24-27 July 2012. The police stations and offices that were visited were:

- Pabalello police station
- Keimoes police station
- Upington police station
- Northern Cape Independent Police Investigative Directorate (IPID) satellite office

1.2 Objective of the oversight visit

The aim was to ensure that the legislation and policies passed by Parliament are implemented accordingly and that the compliance thereof is adhered to.

Another objective of the Committee was to commend good performance and identify challenges and short-falls in the performance of each police station.

1.3 Delegation

Members of Parliament

Hon A Van Wyk - Acting Chairperson **(ANC)**

Hon A Molebatsi **(ANC)**

Hon G Lekgetho **(ANC)**

Hon D Sibiya **(ANC)**

Hon D Stubbe **(DA)**

Hon George **(COPE)**

Hon D Kohler Barnard **(DA)**

Support Staff

- Ms J Shonhiwa - Committee Secretary
- Mr K Lobi - Committee Assistant
- Mr M Buthelezi - Committee Researcher

2 Visit to Pabalello Police Station

The Portfolio Committee visited this station on 24 July 2012. The Committee made the general observation that the performance of the station was not at an acceptable level.

2.1 Findings of the Committee

- 2.1.1 **Accessibility:** The station was not well identified because there was no sign on the road that identified the station. It was accessible to both people with disabilities and the community.
- 2.1.2 **Vehicles:** There were insufficient vehicles at the station. The AVL system is working perfectly and the vehicles' location can be traced. All vehicles have valid license discs. Three vehicles are taken home by members; one is taken by a duty officer and the other two are taken home by sector managers. Authority for taking vehicles home is granted by the station commissioner and proof thereof was produced. The vehicles are suitable for the terrain. Three vehicles are utilised for attending complaints during the week. This number increases to five during the weekend.
- 2.1.3 **Community Service Centre (CSC):** The Domestic Violence Act (DVA) register is kept at the CSC. The register is completed correctly. The list of the organisations which offers counselling and other support services is not kept in the CSC or updated regularly. The police officials that attend to complaints do not understand the DVA. The Child Justice Act is available in the CSC but the list that contains particulars of the probation officers as well as well as written agreement with the probation officer was not available. There were no station instructions on how to comply with the provisions of Child Justice Act. Both DVA and Child Justice Act documentation are policy compliance documents rather than useful for operational purposes.

- 2.1.4 **Leave abuse and absenteeism:** The management indicated that there is absenteeism especially in the month of December and January. It also takes place during weekends and month-ends specifically in shifts.
- 2.1.5 **Second Hand Goods Act:** The DPO is responsible for policing compliance with the Second Hand Goods Act. There are four registered Second Hand Goods dealers in the area.
- 2.1.6 **Detectives:** The detective office is not located in the same place as the police station. It is one and the half kilometres from the police station. There is general problem regarding the taking of the statements and formulation of the charges. There were 9 missing dockets in the past 3 years but they were all found in court. There are 446 cases at the unit. The smallest caseload by a detective is 19 cases and the highest is 142 cases. A total of 107 cases were closed undetected in the past financial year. There is a lack of informers in the unit and the budget for informers is unknown to the Branch Commander.
- 2.1.7 **Cell:** The station does not have cells.

2.2 Recommendations of the Committee

As part of dealing with the identified challenges, the Portfolio Committee made the following recommendations:

- 2.2.1 The shortage of the female police officers was posing a serious challenge in dealing with crime against women and children. The Provincial Commissioner must provide the Committee with the report on how she intends to address this shortage.
- 2.2.2 The DVA should be perceived as a crime fighting tool other than an added responsibility to police officers. The station must provide the Committee with the report on how it will improve on utilising/complying with the Domestic Violence Act.
- 2.2.3 The vacancies in the detective unit should be filled. The shortage of informers must be addressed and budget allocated for them communicated to the Branch Commander.
- 2.2.4 Sector policing should be supported by the provisioning of more vehicles. The role of the Cluster is not clear in assisting and

ensuring proper management of the station. The role of a Cluster in the station management should be improved.

2.2.5 The station should be commended for being clean.

2.2.6 The Community Policing Forum and Youth Desk must also be commended for the role they play in crime fighting in the area.

3. Visit to Keimoes Police Station

The Portfolio Committee visited this station on the 25 July 2012. The Committee made the general observation that the overall performance of the station is at an acceptable level.

3.1.1 Findings of the Committee

3.1.2 **Accessibility:** The station is not identifiable by roadmarkings indicating the whereabouts of the station. The station building is in a state of good repair. The station is accessible to all including people with disabilities. The only concern is that people with disabilities had to access the station from the entrance at the back of the police station.

3.1.3 **Vehicles:** There is a shortage of vehicles in the police station. According to the RAG there should be eighteen vehicles but currently there are twelve. These vehicles were also not suitable for the terrain. All vehicles have valid licence discs displayed on them. Three vehicles were involved in accidents in the previous financial year. Two vehicles are taken home after hours by the members, one by an officer and the other by the detective on stand-by. The Station Commissioner authorises these vehicles to be used after hours. Two vehicles were used for responding to calls for assistance from the community during the week and one more vehicle is added during the weekend. Three vehicles were boarded in the past financial year and these vehicles were all replaced.

3.1.4 **CPF:** The Chairperson of the CPF stated that the communication between the Provincial CPF and the local CPF is poor. He also states that they have received no funding in the past financial year.

3.1.5 **DVA:** The DVA is available in the CSC but the list of organisations which offer counselling and other support is not updated regularly.

The Act is not kept in the patrol vehicles and vehicles that attend to complaints. The Register is correctly completed.

- 3.1.6 **Child Justice Act:** The Child Justice Act is available in the CSC but the list that contains particulars of the probation officer as well the written agreement with the probation officer was not available. National instructions on how to comply with the provisions of Child Justice Act was not available. The Station Instructions were there but never communicated to the police officials at the station.
- 3.1.7 **Vacancy and absenteeism:** There is no general absenteeism at the police station. The month that reflects the highest absenteeism is June and some members do not report on duty after their rest days.
- 3.1.8 **Second Hand Goods Act:** There is one person responsible for policing implementation of the Second Hand Goods Act. There are five registered Second Hand Goods dealers in the area and they are visited weekly.
- 3.1.9 **Detectives:** The Detectives are situated three hundred metres from the station. The detectives identified the problems of poorly taken statements and incorrectly formulated charges. There was only one missing docket in the past 3 years. There are 558 cases at the unit. The detective caseload varies from the smallest which is 9 to the highest which is 92 dockets. A total of 108 cases were closed and registered as undetected in the past financial year. There were 1078 dockets that were opened in the past financial year. There were a total of 6 registered informers and one claim was made in the past financial year.
- 3.1.10 **Cells:** There were a total of six cells and all of them were in operation. There were no detainees in the cells. The condition of the cells was acceptable.

4 Recommendations of the Committee

- 4.1 The station was performing at an acceptable level but it can still improve.
- 4.2 The Branch Commander must be assisted to ensure effective crime investigation.

- 4.3 The introduction of military ranks in the SAPS was said to improve command and control. This should be evidenced in the manner in which members are executing their daily duties.
- 4.4 The Provincial Commissioner must assist the station with the provisioning of a mini-bus that will transport the witnesses to and from court.
- 4.5 The Cluster must ensure that it assists the station where necessary to ensure that it improves on its service delivery.
- 4.6 Communication needs to be improved to ensure that members are aware of the new legislation that is passed by Parliament and what is expected by them in executing the provisions of this legislation.

5. Visit to Upington Police Station

The Portfolio Committee visited this station on the 26 July 2012. The Committee made the general observation that the performance of the station was not at an acceptable level. The Committee made the following findings:

5.1 Findings of the Committee

- 5.1.1 **Accessibility:** The station was clean and easily identifiable. The station was accessible to both the public and people with disabilities. General information was displayed on the wall and all members observed had their name tags.
- 5.1.2 **Vehicles:** There is a shortage of the vehicles at the police station. According to the RAG there should be fifty-nine vehicles but currently there are fifty. These vehicles were suitable for the terrain. All vehicles have valid licence discs displayed on them. Fourteen vehicles were involved in an accident in the previous financial year. Six vehicles were boarded in last financial year. The station was allocated nine vehicles in that same year.
- 5.1.3 **CPF:** The Chairperson of the CPF stated that they lack training that can enable them to perform their functions as the CPF.
- 5.1.4 **DVA:** The DVA is available in the CSC and the Register is kept up to date. The Act is kept in the patrol vehicles and vehicles that attend to complaints.

- 5.1.5 **Child Justice Act:** The Child Justice Act is available in the CSC but the written agreement with the probation officer was not available.
- 5.1.6 **Vacancy and absenteeism:** There is general absenteeism at the police station. The month that reflects highest absenteeism is January.
- 5.1.7 **Second Hand Goods Act:** There is one person responsible for Second Hand Goods. There are fifty-six registered Second Hand Goods dealers in the area and they are visited weekly.
- 5.1.8 **Detectives:** The detectives are situated three kilometres from the station. They identified poorly taken statements one of the problems they are experiencing. They were also not happy with the Crime Office at the station. Their complaint was that it is not adding any value in the investigation of crime and experienced detectives were placed in that office which increased the workload of the remaining detectives. There are 2261 cases at the unit. The smallest caseload of a detective is 32 cases and the highest is 327 cases. A total of 853 cases were closed undetected in the past financial year. There were 3065 dockets that were opened in the past financial year. There were a total of 64 registered informers and one claim was made in the past financial year.
- 5.1.9 **Cells:** There are eleven cells at the station. Only one cell is operational. Two cells have cracks on the walls and the other cell is used as a storeroom. The status of the cells is poor and some of the cell doors do not close or lock. There are no grill doors in some of the cells and they are stored in the storeroom. Some of the taps and lights are not working. Four detainees (three males and one female) were in the cells at the time of the visit. String, a watch and a newly used condom was found in the female cell. There was also a drunk female detainee were found in the cells. There were two escapes from custody in the past financial year.
- 5.1.10 **SAPS 13 Stores:** There are three stores at the station and one archive. SAPS13 firearms are stored together with firearms for safe-keeping and amnesty firearms in the strong-room. Unlawful firearms are also kept in the strong-room for safe-keeping and owners are not charged for having them. The warrant officers working in that strong room were unable to provide the exact number of firearms and ammunition that were kept in the strong-room. Blood kits are kept in the SAPS 13 and some are to be fetched by the

investigating officers. Fifteen rape kits were kept in the store and were never sent to the laboratory for examination.

5.2 Recommendations of the Committee

- 5.2.1 The Station Commissioner must ensure that there is teamwork amongst detectives as this was lacking. There must be a system in place to ensure that there is a regular feedback to complainants.
- 5.2.2 The Provincial office must report to the Committee on the progress regarding the fraud case against the police officials.
- 5.2.3 Progress reports regarding escapes from the custody must be tabled with the Committee.
- 5.2.4 The CPF must ensure that it holds its Annual General Meeting.
- 5.2.5 Departmental cases must be finalised timeously.
- 5.2.6 The Provincial office must ensure that detectives are also promoted as is the case with police officials in other units.
- 5.2.7 Progress reports regarding the improvement of cells must be tabled with the Committee
- 5.2.8 Progress reports regarding the processing of rape kits to the laboratory must be tabled with the Committee.
- 5.2.9 The Station Commissioner must ensure collective responsibility of all management in the station. They all should ensure that policing is effective at the police station.
- 5.2.10 The Cluster should validate its existence by ensuring that it assists the station to improve its performance.
- 5.2.11 All responses must be sent to the Committee by the 17 August 2012.

6. Visit to Independent Police Investigative Directorate Office

The Portfolio Committee visited this IPID office on the 27 July 2012. The Committee made the following general observations.

6.1 Findings of the Committee

- 6.1.1 The office is neat, well identifiable, and accessible to the public and people with disabilities. It is, however, not near the public transport facilities. The building has a number of rooms that are not utilised. The building is in a good condition.

- 6.1.2 There were three investigating officers and one administration clerk at the office. The job description of the clerk is to arrange the trips of the investigating officers. The investigating officers carry amongst them a total of 112 cases of which only 9 are active dockets. Three were assault cases and was carried by a junior investigator. The senior investigator has six rape cases under investigation. Other dockets were at court. Two of the three investigators are former police officers with detective training. The other investigator who is also used to input statistics in the computer system was not able to state whether she had obtained her investigative training. She is currently undergoing training as an investigator because she was previously trained as a case analyst.
- 6.1.3 The investigating officers always referred to Regulation 20 in their recommendations to SAPS but they were unable to explain what this Regulation entails. The Committee inspected different registers and they do not reflect the cases that are open. The numbers that were in the registers were not necessarily case numbers. Forensic reports were not in the register allocated but were found on the other register. In finalised registers, some pages were torn-off. The majority of the cases were closed unsubstantiated with no further explanation. There were no copies of the recommendations made.
- 6.1.4 The dockets to court register did not contain the complainant's name, and there were no signatures to reflect that the docket was indeed taken to court. The senior investigator alleged that he was attending the court but according to the court register there was no court that day and the last court date was in February 2012.
- 6.1.5 The office did not have access to the Provincial database. Neither did it have access to their own data once the docket was closed.
- 6.1.6 There are no systems for docket control. The registers are not inspected. There were two counts of rape by one police officer at Upington LCRC and that person was still working and was never suspended.

7 Recommendations of the Committee

- The Committee recommended that the IPID office provide a written report on all matters that it was unable to answer during the visit.

Appendix 1: Acronyms and Terms used in the Report

Acronyms:

AFIS-	Automated Fingerprint Identification System
AVL-	Automated Vehicle Location system
CPF-	Community Police Forum
CSC-	Community Service Centre
FCS-	Family Violence, Child Protection and Sexual Offences Unit
SAPS-	South African Police Service

Terms used:

Designated Police Official-	This refers to the person responsible at station level for dealing with licensing and other requirements in terms of the Firearm Control Act.
SAPS 13 Store-	This refers to the stores and safes that hold exhibits including firearm exhibits.
Firearm Safe-	This refers to the safe(s) that hold State (official firearms) for use by SAPS members

