

REPUBLIC OF SOUTH AFRICA

GENERAL INTELLIGENCE LAWS AMENDMENT BILL

*(As agreed to by the Ad Hoc Committee on the General Intelligence Laws Amendment Bill
(National Assembly)
(The English text is the official text of the Bill)*

(MINISTER IN THE PRESIDENCY)

[B 40B—2023]

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GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Secret Services Account Act, 1978, National Strategic Intelligence Act, Intelligence Services Oversight Act, 1994 and the Intelligence Services Act, 2002, to provide for the establishment of the evaluation committee within a period of twelve months; amendment and insertion of certain definitions; to provide for the establishment of the South African Intelligence Service, South African Intelligence Agency, the National Communications Centre and the South African National Academy of Intelligence; to provide for the functions of the Intelligence Service Structures and bulk surveillance; to provide more independence of the Office of the Inspector-General and NICOC; for additional matters that must be regulated by the Minister; to provide formatters relating to former members of Intelligence Services; to effect consequential amendments to other laws and to provide for matters connected therewith.

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

Amendment of S 3A of Act 56 of 1978

1. Section 3A(1) of Act 56 of 1978 is hereby amended by the substitution for section 3A(1) of the following: 5

“(1) There is hereby established a committee, within 12 of the passing of this Act, to be known as the Secret Services Evaluation Committee consisting of not less than three but not more than five persons appointed by the State President, of whom one shall be designated by him as the chairman, and of whom at least one shall not be a holder of office in the Executive Authority of the Republic and shall be appointed after consultation with the leaders of the opposition parties in Parliament.”. 10

Amendment of section 1 of Act 39 of 1994, as amended by section 1 of Act 37 of 1998, section 24 of Act 66 of 2000, section 1 of Act 67 of 2002, section 1 of Act 52 of 2003 and section 1 of Act 11 of 2013 15

2. Section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), is hereby amended—

(a) by the substitution for the definition of “Agency” of the following definition: “‘**Agency**’ means the [State Security] South African Intelligence Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);” 20

(b) by the insertion after the definition of “Cabinet” of the following definition:

- “**Centre**” means the National Communications Centre referred to in section 5 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;
- (c) by the deletion of the definition of [**“covert collection”**];
- (d) by the insertion after the definition of “crime intelligence” of the following definition: 5
“**cybersecurity**” means the practice of making the networks that constitute cyberspace secure against intrusions, maintaining confidentiality, availability and integrity of information, detecting intrusions and incidents that do occur, and responding to and recovering from them;”;
- (e) by the insertion before the definition of “evaluate” of the following definition: 10
“**espionage**” means the unlawful and intentional communication, delivery or making available of classified information to directly or indirectly benefit a foreign state, persons or institutions;”;
- (f) by the insertion before the definition of “intelligence” of the following definition: 15
“**infrastructure**” has the meaning ascribed to it in the Critical Infrastructure Protection Act, 2019 (Act No. 08 of 2019);”;
- (g) by the insertion before the definition of “Minister” of the following definition: 20
“**intelligence gathering**” means the acquisition and processing of relevant and reliable information into intelligence products related to any domestic or foreign opportunity or threat to the advancement and protection of national security;”;
- (h) by the insertion before the definition of “national intelligence estimate” of the following definition: 25
“**national critical information infrastructure**” means infrastructure, products or systems used to receive, transmit and store information and communications that have been identified and declared as critical for the socio-economic well-being of citizens and which are necessary for the protection of the national security of the Republic in terms of section 2(2)(B) of this Act;”;
- (i) by the substitution for the definition of “National Intelligence Structures” of the following definition: 30
“**National Intelligence Structures**” means—
(a) Nicoc; 35
(b) the intelligence division of the National Defence Force, established under the Defence Act, 2002 (Act No. 42 of 2002);
(c) the intelligence division of the South African Police Service; **[and]**
(d) the Agency[.]; **and**
(e) Service.”. 40
- (j) by the substitution for the definition of “national security intelligence” of the following definition: 45
“**national security intelligence**” means intelligence which relates to or may be relevant to the assessment of any opportunity or potential opportunity or threat or potential threat to the national security of the Republic in any field;”;
- (k) by the insertion after the definition of “Nicoc” of the following definition: 50
“**opportunity**” means, subject to the Bill of Rights and the principles enshrined in the Constitution, such capability, measure or activity employed to pursue and advance national security in accordance with section 198 of the Constitution;”;
- (l) by the substitution for the definition of “relevant members of the National Intelligence Structures” of the following definition: 55
“**relevant members of the National Intelligence Structures**” means—
(a) the intelligence division of the National Defence Force;
(b) the intelligence division of the South African Police Service; **[and]**
(c) the Agency; **and**
(d) the Service.”;
- (m) by the insertion before the definition of “security competence” of the following definitions: 60

- “**security competence assessment**’ means administering a vetting investigation to determine the security competence of a person or institution and if such person or institution is suitable to access classified information or critical infrastructure of the State or is viewed as vulnerable to blackmail, undue influence or manipulation or security compromise;”;
- (n) by the insertion before the definition of “South African Police Service” of the following definition:
“**Service**’ means the South African Intelligence Service as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;
- (o) by the insertion before the definition of “vetting field work units” of the following definitions:
“**threat to national security**’ includes any action or omission which may potentially cause damage, harm or loss to the national security.”;
- (p) by the insertion after the definition of “vetting investigation” of the following definition:
“**verification services**’ means services designed to identify the origin or the integrity of an information and communications security product, system or service;”;

Amendment of section 2 of Act 39 of 1994, as amended by section 2 of Act 37 of 1998, section 2 of Act 67 of 2002 and section 2 of Act 11 of 2013

3. Section 2 of the National Strategic Intelligence Act, 1994, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
“(1) The functions of the Service shall, subject to section 3 and section 2(2)(B), and in the prescribed manner—
- (a) to gather, correlate, evaluate, and analyse foreign intelligence (excluding foreign military intelligence), in order to—
- (i) identify any opportunity or threat to national security;
 - (ii) supply intelligence regarding any such threat or opportunity to Nicoc;
 - (iii) to institute counterintelligence measures within the Service;
 - (iv) to gather departmental intelligence at the request of any interested department of state, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Service and which constitutes departmental intelligence, to the department concerned; and
 - (v) to provide periodic national security briefings to the Joint Standing Committee on Intelligence, and members of Cabinet;”;
- (b) by the substitution in section 2 for paragraph (b) of the following paragraph:
“2(b) The functions of the Agency shall, subject to section 3 and section 2(2)(B) and in a prescribed manner—
- (a) be to fulfil national counter-intelligence responsibilities and for this purpose to conduct and coordinate counter-intelligence and to gather, correlate, evaluate, analyse information regarding counter-intelligence and domestic intelligence in order to—
- (i) identify and impede any threat to the security of the Republic and its people;
 - (ii) protect members and in particular those who are exposed to high risk intelligence operations against threats to personal security, unauthorised disclosure of information, identity and other acts of hostility aimed at harming members;
 - (iii) inform the President of any such threat;
 - (iv) supply where necessary intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence;
 - (v) impede and neutralise members suspected of contravention of this Act and related regulations and hand them to the relevant law enforcement agencies;

- (vi) supply intelligence relating to any such threat to the department of Home Affairs for the purposes of fulfilment of any function;
 - (vii) supply intelligence relating to any such threat to any other department of State for the purposes of fulfilment of its departmental functions; 5
 - (viii) supply intelligence relating to national strategic intelligence to Nicoc;
 - (ix) provide periodic national security briefing to the Joint Standing Committee on Intelligence, members of Cabinet, Premiers, Parliamentary Presiding Officers and the Chief Justice; 10
 - (x) gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned and to Nicoc; 15
 - (xi) conduct security competence test on categories of persons or institutions referred to in section 2A of the Act in order to issue or decline to issue a security clearance certificate.”; 20
and
- (b) by the insertion after section 2(2A) of the following section:
- “2B(1) The Centre shall, in a prescribed manner, and with regard to foreign signals, communications and non-communications— 25
- (a) gather, correlate, evaluate and analyse relevant intelligence in order to identify any threat to national security subject to—
 - (i) submission of bulk interception application for approval by a retired Judge appointed by the President, after consultation with the Chief Justice; 30
 - (ii) the Centre supplying intelligence to the relevant intelligence structures.
- (2)(b) In a prescribed manner, and with regard to information security and cryptography, the Centre shall— 35
- (i) identify and secure national critical information infrastructures and protect intelligence from unauthorised access, disclosure, technical and related threats;
 - (ii) provide verification services for electronic communications security products used by organs of state;
 - (iii) provide and coordinate research and development with regard to electronic communications, products and any other related 30 services;
 - (iv) support secure electronic communications solutions to identified Organs of State; and
 - (v) coordinate cybersecurity activities in order to identify and impede any cyber enabled threats. 45
- (c) When performing any function referred to in section 2B, the Centre is exempted from any licensing requirement contemplated in—
- (i) the Broadcasting Act, 1999 (Act No. 4 of 1999); and
 - (ii) the Electronic Communications Act, 2005 (Act No. 36 of 2005). 50
- (2) The Judge appointed in terms of subsection (1) must take due cognisance of , in addition to South African law, applicable International Agreements in terms of section 231 of the Constitution and international law including the Universal Declaration of Human Rights when considering an application for bulk interception. 55
- (3) A bulk interception application must be brought by the Centre in the form and manner as prescribed and include—
- (a) reasons for the granting of the application;
 - (b) Indicate the period for which the application ought to be granted. 60
- 2C Management of bulk interception data**
- (1) The procedures to be followed for the processing, examining, copying, sharing, disclosing, sorting through, using, storing or destroying of any data obtained pursuant to, and resulting from surveillance in

terms of this Act must be in the prescribed manner and on the prescribed conditions.

(2) The development of procedures in terms of subsection (1) must take into account principles for the safeguarding of data, including—

- (a) accountability, together with conditions for lawful processing, examining, copying, sharing, disclosing, sorting through, using, storing or destroying;
- (b) processing limitations, including processing in a lawful and reasonable manner and not processing more data than what is required in respect of the purpose;
- (c) purpose-specific processing of data, including processing for a lawful purpose which is explicit, not retaining data for longer than is necessary in connection with the purpose for which it was obtained and reviewing compliance with destruction instructions;
- (d) limitation on the use of data for a lawful purpose, including restricting access to data on certain conditions, conditions for sharing and disclosing data and limitations on the copying of data, including the keeping of relevant records;
- (e) conditions for the storage of data, including the type of data stored and the manner of storage;
- (f) security safeguards, including controlled access to data, processes to prevent unlawful modification and unauthorised disclosure, procedures to identify any foreseeable internal and external risks, and policies and procedures to safeguard information; and
- (g) where applicable participation of the data subject, through post-surveillance notification.

2D Surveillance arising from bulk interception

(1) If whilst conducting bulk interception, it becomes necessary to engage in surveillance of a citizen of the Republic of South Africa whether within or outside of the Republic, the Centre must comply with the procedure envisaged in the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 to obtain the requisite approval.

(2) The centre must notify, in writing, the person who is the subject of the surveillance and, within 15 days of doing so, certify in writing to the designated judge as contemplated in section 15A of the Regulation of Interception of Communication and Provision of Communication-related Information Act, Judge of a High Court, Regional Court Magistrate or Magistrate that the person has been so notified.

(3) If the notification contemplated in subsection (2)—

- (a) cannot be given without jeopardising the purpose of the surveillance, the designated judge, Judge of a High Court, Regional Court Magistrate or Magistrate may, upon application by the Centre, direct that the giving of notification be withheld for a period which must not exceed 90 days at a time or two years in aggregate; or
- (b) has the potential to impact negatively on national security, the designated judge, Judge of a High Court, Regional Court Magistrate or Magistrate may, upon application by the Centre, direct that the giving of notification be withheld for such period as may be determined by the respective judge.”

Amendment of section 2A of Act 39 of 1994, as inserted by section 3 of Act 67 of 2002 and amended by section 2 of Act 52 of 2003 and section 3 of Act 11 of 2013

4. Section 2A of the National Strategic Intelligence Act, 1994, is hereby amended—

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

“(1) The relevant members of the National [Security] Intelligence Structures [may] must conduct a vetting investigation in the prescribed manner to determine the security competence of a person, if such a person—

- (a) falls within a prescribed category of persons or institutions who must have a security clearance—

- (i) in order to be employed or render a particular service to an organ of state;
 - (ii) in order to have access to classified information and intelligence in the possession of that organ of state; or
 - (iii) in order to have access to areas designated as critical infrastructure areas in terms of the relevant law; 5
- (b) by the substitution for subsection (2) of the following subsection:
- (2) The Agency shall be responsible for **[vetting]** conducting security competence assessments of persons contemplated in subsection (1) and, on request of the South African Police Service, the Service or the National Defence Force, to persons employed by, applicants to or persons rendering a service to the South African Police Service, the Service or the Department of Defence and Military Veterans.”. 10

Amendment of section 3 of Act 39 of 1994, as substituted by section 3 of Act 37 of 1998 and amended by section 4 of Act 11 of 2013 15

5. Section 3 of the National Strategic Intelligence Act, 1994, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “If any law expressly or by implication requires any department of State, other than the Agency or the Service, to perform any function with regard to the security of the Republic or the combating of any threat to the national security of the Republic, such law shall be deemed to empower such department to gather departmental intelligence, and to evaluate, correlate and interpret such intelligence for the purpose of discharging such function: Provided that such department of State—; and 20
- (b) by the substitution for subsection (5) of the following subsection:
- “(5) Notwithstanding any law to the contrary, no department of State or statutory body shall withhold information in its possession or under its control from the Agency or Service when such information is reasonably required for any investigation in terms of section 2(1) and (2).” 25 30

Amendment of section 4 of Act 39 of 1994, as substituted by section 4 of Act 37 of 1998 and amended by section 25 of Act 66 of 2000, section 4 of Act 67 of 2002 and section 5 of Act 11 of 2013

6. Section 4 of the National Strategic Intelligence Act, 1994, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) **[head of the domestic division of the Agency]** Director-General of the Service;”
- (b) by the deletion of subsection (1)(d);
- (c) by the substitution for subsection (3) of the following subsection: 40
- “(3) The Coordinator for Intelligence—
- (a) must, after consultation with the Minister, appoint members or persons who will provide coordination and administrative support to Nicoc on such conditions of employment and security requirements as are applicable to members of the intelligence services; 45
 - (b) may determine the organisational structure and grading of the posts for the functioning of Nicoc in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;
 - (c) prescribe the manner in which Nicoc may co-opt the Private Security Industry Regulator as defined in the Private Security Industry Regulator Act, 2001 (Act No. 56 of 2001) in an *ad hoc* or permanent basis;” and 50
- (d) by the insertion after subsection (3) of the following subsection:
- “(4) The budget of the Nicoc shall be appropriated by Parliament as part of the budget vote of the intelligence services, and shall be expended in accordance with the rules and procedures set out in the Public Finance Management Act, 1999 (Act No. 1 of 1999).” 55

Amendment of section 6 of Act 39 of 1994, as substituted by section 7 of Act 37 of 1998 and amended by section 26 of Act 66 of 2000, section 7 of Act 67 of 2002 and section 7 of Act 11 of 2013

7. Section 6 of the National Strategic Intelligence Act, 1994, is hereby amended—
- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: 5
“(a) [**the protection of**] information security and protection of intelligence;”
 - (b) by the substitution in subsection (1) for paragraph (fD) of the following subparagraph: 10
“(fD) any matter necessary for the effective execution and administration of counter-intelligence functions and the co-ordination and interpretation of intelligence products; [**and**]”;
 - (c) by the insertion in subsection (1) after subparagraph (fD) of the following subparagraphs: 15
“(fE) the manner and form in which the operations of the Service, the Agency and Centre shall be coordinated;
(fF) the manner and form in which cybersecurity operations shall be conducted and coordinated in the Republic including the establishment of required technical capacities; 20
(fG) the manner and form in which national critical information infrastructures shall be identified, protected and secured;
(fH) the manner and form in which policy and legislative compliance monitoring shall be enforced by the Minister in the exercise of Ministerial control and direction as envisaged in the Constitution; 25
(fI) the manner and form in which the former members of Intelligence Services shall be structured and utilised within the Intelligence Services;
(fJ) the code of conduct of former and current members of intelligence Services, current and former Ministers and current and former Members of Parliament with access to intelligence information; 30
and
(fK) the manner and form in which the Intelligence Services shall supply post-interception reporting to the Judge referred to in section 2(2)(B);” and 35
 - (d) by the insertion after subsection (1) of the following subsection:
“(1A) The regulations contemplated in subsection (1)(a) to (fK) must be made within 12 months after the commencement of the General Intelligence Laws Amendment Act, 2023.”.

Amendment of section 1 of Act 40 of 1994, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 1 of Act 66 of 2002, section 3 of Act 52 of 2003 and section 8 of Act 11 of 2013 40

8. Section 1 of the Intelligence Services Oversight Act, 1994, is hereby amended—
- (a) by the insertion before the definition of “accounting officer” of the following definition: 45
“‘**Academy**’ means the South African National Academy of Intelligence referred to in section 5 of the Intelligence Services Act, 2002;”;
 - (b) by the substitution for the definition of “Agency” of the following definition: 50
“‘**Agency**’ means the [**State Security**] South African Intelligence Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;
 - (c) by the substitution for the definition of “Head of Service” of the following definition: 55
“‘**Head of a Service**’ means the Director-General of the Agency or the South African Intelligence Service, the head of the Intelligence Division of the National Defence Force or the head of the Intelligence Division of the South African Police Service, but for the purposes of financial and administrative accounting, the head of the Intelligence Division of the South African National Defence Force means the Secretary for Defence

and of the South African Police Service means the National Commissioner;”;

- (d) by the insertion after the definition of “intelligence” of the following definitions:
- “**Intelligence Services**’ means the South African Intelligence Agency and the South African Intelligence Service as referred to in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;
- “**Intelligence Services Entities**’ means the Academy, the Centre and the Office;”;
- (e) by the substitution for the definition of “Office” of the following definition:
- “**Office**’ means the Office for Interception Centres established by section 33 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002);” and
- (f) by the substitution for the definition of “Services” of the following definition:
- “**Services**’ means the Agency, Service, the Intelligence Division of the National Defence Force and the Intelligence Division of the South African Police Service;”.

Amendment of section 2 of Act 40 of 1994, as amended by section 2 of Act 31 of 1995, section 2 of Act 42 of 1999, section 2 of Act 66 of 2002, section 4 of Act 52 of 2003 and section 9 of Act 11 of 2013

9. (1) Section 2 of the Intelligence Services Oversight Act, 1994, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
- “(b) in respect of the administration, financial management and expenditure of the **[Office]** Intelligence Services Entities.”;
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
- “(c) The Committee shall within a period of two years after **[its first meeting]** the commencement of the General Intelligence Laws Amendment Act, 2023; review the appointment procedures referred to in **[paragraphs (a) and (b)]** subsection (2).”;
- (c) by the insertion after subsection (8) of the following subsection:
- “(9) No person shall be designated in terms of subsection (8) before the Agency has issued a security clearance in the prescribed manner in respect of that person.”.

(2) Section 2 of Act 40 of 1994 is hereby amended;

- (4) by the insertion after “chairperson” of the following words “and Deputy Chairperson”.

Amendment of Section 3 of Act 40 of 1994, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 3 of Act 52 of 2003 and section 11 of Act 11 of 2013.

10. Section 4 of the Intelligence Services Oversight Act, 1994, is hereby amended—

- “(k) to meet with the President at least twice a year and consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act.”.

Amendment of Section 6 of Act 40 of 1994, as amended, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 1 of Act 66 of 2002, section 3 of Act 52 of 2003 and section 3 of Act 52 of 2003 and section 8 of Act 11 of 2013.

11. Section 6 of the Intelligence Services Oversight Act, 1994 is amended:

- “(1) The Committee shall, within five months after its first appointment, and thereafter within **[two]** eight months after 31 March in each year, table in Parliament a report on the activities of the Committee during the preceding year, together with the finding made by it and the recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service.”.

Amendment of section 7 of Act 40 of 1994, as amended by section 5 of Act 31 of 1995, section 5 of Act 42 of 1999, section 7 of Act 66 of 2002, section 7 of Act 52 of 2003, section 36 of Act 12 of 2004 and section 12 of Act 11 of 2013

12. (1) Section 7 of the Intelligence Services Oversight Act, 1994, is hereby amended— 5

(a) by the insertion after subsection (1) of the following subsection:
“(1A) No person shall be appointed as an Inspector-General without a security clearance issued by the Agency in the prescribed manner.”;

(b) by the insertion after subsection (2) of the following subsection:
“(2A) The Inspector-General shall be appointed for a non-renewable period of five years and shall not perform remunerative work outside his or her official duties.”;

(c) by the substitution for subsection (5) of the following subsection:
“(5) **[If the]** The Inspector-General who is the subject of an investigation by the Committee in terms of subsection (4) **[he or she]** may be suspended by the President pending a decision in such investigation.”; and

(d) by the substitution for subsection (12) of the following subsection:
“(12) The Inspector General of Intelligence—

(a) must, after consultation with the Minister, appoint such number of persons to the office of the Inspector-General as may be necessary for the performance of the functions of that office, on such conditions of employment and security requirements as are applicable to members of the intelligence services;

(b) may determine the organisational structure for the functioning of the Office of the Inspector-General in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002); and

(c) The budget of the Inspector General of Intelligence shall be appropriated by Parliament as part of the budget of the intelligence services, and shall be expended in accordance with the rules and procedures set out in the Public Finance Management Act, 1999 (Act No.1 of 1999).”.

(2) Section 7(7) of the Intelligence Services Oversight Act, 1994 is hereby amended:

(c) By the insertion before “President” of the following words “Committee”.

(3) Section 7(11) of the Intelligence Services Oversight Act, 1994 is hereby amended: 35

(e) (i) The Committee, after receiving the Certificate with the recommendations of the Inspector-General of Intelligence, must notify the Minister to submit an implementation plan, within 90 days of receipt, on how he/she intends to implement the recommendations contained in the Certificate of the Inspector-General of Intelligence, 40

(ii) Where the Minister fails to submit to the Committee in line with section 7(7)(11)(e)(i) of the Act, he or she must submit a written explanation setting out the reasons for the non-compliance.

(4) Section 7 of Act 40 of 1994 is hereby amended by the insertion of the following subsection: 45

(7B) appointment of the Deputy Inspector-General

(1) “The President shall appoint a Deputy Inspector-General of Intelligence—

(a) nominated by the Committee; and

(b) approved by the National Assembly by a resolution adopted with a supporting vote of a majority of the members of the National Assembly. 50

The Deputy Inspector-General of Intelligence shall be appointed for such a period as the President may determine at the time of such appointment, but not exceeding five years.

(2) The Deputy Inspector-General may at the end of his or her term of office be reappointed in terms of subsection (1) for one additional term. 55

(3) The Deputy Inspector-General shall be a South African citizen who is fit and proper person to hold such office and who has knowledge of intelligence.

(4) The remuneration and other conditions of employment of the Deputy Inspector-General shall be determined by the President with the concurrence of the Committee and such remuneration shall not be reduced, nor shall such conditions be adversely altered during his or her term of Office. 60

- (5) The Deputy Inspector-General shall have such powers as the Inspector General may delegate to him or her.
- (6) Whenever the Inspector-General is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to the Office of the Inspector-General is pending, the Deputy Inspector-General shall perform such functions. 5
- (7) The Deputy Inspector-General may be removed from Office only on—
- (a) the ground of misconduct, incapacity or incompetence;
 - (b) a finding to that effect by the committee; and
 - (c) the adoption by the National Assembly of a resolution calling for his or her removal from office. 10
- (8) A resolution of the National Assembly concerning the removal from office of the Deputy Inspector-General of Intelligence must be adopted with a supporting vote of a majority of the members of the National Assembly.
- (9) The President may suspend the Deputy Inspector-General of Intelligence in terms on such terms and conditions as the President may determine, including the suspension of the payment of his or her remuneration or the suspension of any other term or condition of his or her employment. 15
- (10) If a vacancy occurs in the office of the Deputy Inspector-General the President shall, subject to this section, as soon as possible, appoint another person to that office. 20

Amendment of section 3 of Act 40 of 1994, as amended by section 3 of Act 31 of 1995, section 3 of Act 42 of 1999, section 3 of Act 66 of 2002, section 61 of Act 70 of 2002, section 5 of Act 52 of 2003 and section 10 of Act 11 of 2013

13. Section 3 of the Intelligence Services Oversight Act, 1994, is hereby amended— 25
- (a) by the substitution in paragraph (a)(i) for item (aa) of the following item:
“(aa) the financial statements of the Services and the [Office] Intelligence Services Entities;” and
 - (b) by the substitution in paragraph (a)(i) for item (cc) of the following item:
“(cc) any reports issued by the Auditor-General on the affairs of the Services and the [Office] Intelligence Services Entities;” 30
 - (c) by the substitution in paragraph (a) for subparagraph (iv) of the following subparagraph:
“(iv) the Ministers responsible for the Services and the [Office] Intelligence Services Entities, a report regarding the budget for each Service or Entity for which he or she is responsible [the office as the case may be];” 35
 - (d) by the substitution for paragraphs (d) and (e) of the following paragraphs, respectively:
“(d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), and regulations regarding the intelligence functions of the Service and counter-intelligence functions of the Agency, made under section 37 of the Intelligence Services Act, 2002 (Act No. 65 of 2002), section 82 of the Defence Act, 2002 (Act No. 42 of 2002), or section 24 of the South African Police Service Act, 1995 (Act No. 68 of 1995); 40
(e) to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the Service, the National Defence Force and the South African Police Service;” and 45
 - (e) by the substitution for paragraph (l) of the following paragraph:
“(l) to consider and report on the appropriation of revenue for moneys for the functions of the Services and the [Office] Intelligence Services Entities.” 55

Amendment of section 4 of Act 40 of 1994, as amended by section 4 of Act 66 of 2002, section 6 of Act 52 of 2003 and section 11 of Act 11 of 2013

14. Section 4 of the Intelligence Services Oversight Act, 1994, is hereby amended—

- (a) by the substitution in subsection (3) for the words preceding the proviso of the following words:
“The Committee may, for the purposes of the performance of its functions, require any Minister responsible for a Service or **[the Office]** an Intelligence Services Entity, the Head of a Service, the Director or the Inspector-General to appear before it to give evidence, to produce any document or **[thing]** item and answer questions put to him or her.”; and
- (b) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
“(c) have the right to be assisted by members of the Services or **[the Office, as the case may be]** the relevant Intelligence Service’s entities.”.

Amendment of section 8 of Act 40 of 1994, as substituted by section 6 of Act 31 of 1995 as amended by section 7 of Act 42 of 1999 and section 8 of Act 66 of 2002

15. Section 8 of the Intelligence Services Oversight Act, 1994, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
“(1) The Minister, acting with the concurrence of the Committee, **[may]** must make regulations regarding—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) the performance of **[his or her]** the functions designated to the Inspector-General under section 7(7)(c) [by the Inspector-General]”; and
- (c) by the insertion after subsection (1) of the following subsection:
“(1A) The regulations contemplated in subsection (1)(b) to (i) must be made within 12 months after the commencement of the General Intelligence Laws Amendment Act, 2023.”.

Amendment of section 1 of Act 65 of 2002, as amended by section 13 of Act 11 of 2013

16. Section 1 of the Intelligence Services Act, 2002, is hereby amended—
- (a) by the insertion before the definition of “accounting officer” of the following definition:
“**‘Academy’** means the South African National Academy of Intelligence referred to in section 5 of this Act”; and
- (b) by the substitution for the definition of “Agency” of the following definition:
“**‘Agency’** means the **[State Security]** South African Intelligence Agency referred to in section 3 of this Act;
- (c) by the insertion after the definition of “Auditor-General” of the following definition:
“**‘Civilian Intelligence Structures’** means the Agency, Service and the Academy;”;
- (d) by the substitution for the definition of “Council” of the following definition:
“**‘Council’** means the Intelligence Services Council [on Conditions of Service] established by section 22;”;
- (e) by the substitution for the definition of “former member” of the following definition:
“**‘former member’** means any member of the **[Agency or of the former National Intelligence Agency, South African Secret Service or South African National Academy of]** National Intelligence Structures whose services have been terminated for any reason;”;
- (f) by the insertion after the definition of “former member” of the following definition:
“**‘Intelligence Services’** means the South African Intelligence Agency and the South African Intelligence Service as referred to in section 1 of this Act”; and
- (g) by the insertion after the definition of “security service” of the following definition:
“**‘Service’** means the South African Intelligence Service referred to in section 3 of this Act”.

Amendment of section 2 of Act 65 of 2002

17. The Intelligence Services Act, 2002, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) Application of Act—Unless the context indicates otherwise, this Act applies in respect of all members and former members, irrespective of whether they were members at the commencement of this Act or were appointed after the commencement of this Act, and irrespective of whether they work or worked in or outside the Republic.”. 5

Substitution of heading of Chapter II of Act 65 of 2002, as amended by section 14 of Act 11 of 2013 10

18. The following heading is hereby substituted for Chapter II of the Intelligence Services Act, 2002:

‘ESTABLISHMENT, COMPOSITION AND ORGANISATION OF [AGENCY] INTELLIGENCE SERVICES, ACADEMY AND CENTRE’.

Amendment of section 3 of Act 65 of 2002, as amended by section 15 of Act 11 of 2013 15

19. Section 3 of the Intelligence Services Act, 2002, is hereby amended—

(a) by the substitution for the heading of the following heading:

‘Establishment of Agency, Service and Centre’

(b) by the substitution in section (3) for the words preceding paragraph (a) of the following words: 20

“(1) The South African Intelligence Service and the South African Intelligence Agency are national departments as referred to in Schedule 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and consist of the following persons—”; 25

(c) by the deletion of subsection (1A);

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

“(3)(a) The President must appoint a Director-General for the Service as the head and accounting officer.

(b) The President must appoint a Director-General of the Agency as the head and accounting officer;” and 30

(e) by the insertion after subsection (3) of the following subsections:

“(4) The Directors-General are appointed in terms of the Intelligence Services Act 2002, (Act No. 65 of 2002), read together with the Public Service Act, 1994 (Proclamation 103 of 1994). 35

(5) There is hereby established a National Communications Centre within the Agency and shall consist of the Head and members seconded from the Agency.

(6) The head of the Centre shall be appointed by the Minister at a level of the Deputy Director-General and perform their functions in terms of this Act impartially and without fear, favour or prejudice. 40

(7) The Centre shall perform the functions provided for in section 2(2B) of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).”. 45

Amendment of section 4 of Act 65 of 2002, as amended by section 16 of Act 11 of 2013 45

20. Section 4 of the Intelligence Services Act, 2002, is hereby amended—

(a) by the substitution for the heading of the following heading:

‘Composition of Service, Agency and Centre’

(b) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 50

“The Minister must for [the Agency] each of the Intelligence Services and the Centre—; and

(c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 55

“(b) create posts, structures and prescribe functions thereof.”.

Substitution of section 5 of Act 65 of 2002, as amended by section 17 of Act 11 of 2013

21. Section 5 of the Intelligence Services Act, 2002, is hereby amended—
- (a) by the substitution for the heading of the following heading:
“**Establishment of [Training Fund for Agency] Academy**”; 5
 - (b) by the insertion after the heading of the following subsection:
“(1)(a) There is hereby established a South African National Academy of Intelligence as a training Academy for intelligence structures.
(b) The South African National Academy for Intelligence is a branch of the Agency and the head of the Academy reports to the Director-General of the Agency.
(c) The Minister must, in consultation with the President, appoint a Head of the Academy who is at the level of a Deputy Director-General and acts as Executive Director and Principal of the Academy.
(d) The Minister may create posts and structures necessary for the functioning of the Academy.”; 10
 - (c) by the substitution for subsection (2) of the following subsection:
“(2) The Academy must, in the prescribed manner, and after consultation with the Agency and Service—”; 15
(a) provide training for members of the National Intelligence Structures and other government departments including—
 - (i) training to persons in, or conduct such examinations or tests as a qualification for the appointment, promotion or transfer of persons in or to, the Intelligence Services, Academy or departments, as the case may be, as the Minister may prescribe; 20
 - (ii) issuing diplomas or certificates to person who have passed such examination or tests; and 25
 - (iii) establishing and maintaining training institutions or centres, in accordance with applicable laws or regulations, for the training of students or intelligence members.”; 30
 - (d) by the substitution for subsection (3) of the following subsection:
“(3) The [Agency] Academy must have a Training Fund of which the funding consists of— 35
(a) all moneys which immediately prior to the commencement of this Act were moneys defrayed for training **[under the former National Intelligence Agency]**;
[(aA) all moneys which immediately prior to the commencement of the General Intelligence Laws Amendment Act, 2011, were moneys defrayed for training under the South African National Academy of Intelligence]; 40
(b) money appropriated by Parliament from time to time for promoting training under this Act; and
(c) any other money **[accruing to the Training Fund]** to be utilised for training in terms of this Act or from any other source subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).”; 45
 - (e) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
“(a) The Training Fund must be administered by the **[Director-General] Executive Director**.”; 50
 - (f) by the deletion in subsection (4) of paragraph (c);
 - (g) by the substitution in subsection (5)(b) for the words preceding item (i) of the following words:
“(b) The **[Director-General] Executive Director** must—”; 55
 - (h) by the insertion after subsection (5)(c) for the following paragraph:
“(d) The Executive Director must, at the end of each financial year, submit the report of the Academy compiled in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the Director-General of the Agency for consideration.”; and 60

- (i) by the substitution for subsections (7) and (8) of the following subsections respectively:

“(7) The **[Agency]** Academy may in relation to training co-operate with any institution of higher learning, in the Republic or elsewhere, to achieve its objectives.

(8) The accreditation and recognition of the **[Agency’s]** Academy’s qualifications must be done in accordance with the provisions of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008), and the Skills Development Act, 1998 (Act No. 97 of 1998).”.

Amendment of section 8 of Act 65 of 2002, as amended by section 20 of Act 11 of 2013

22. Section 8 of the Intelligence Services Act, 2002, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph—

“(a) appoint any person as a member of the **[Agency]** Civilian Intelligence Service.”.

Amendment of section 9 of Act 65 of 2002, as amended by section 21 of Act 11 of 2013

23. Section 9 of the Intelligence Services Act, 2002, is hereby amended—

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

“(1)(a) There is hereby established a Ministerial Advisory Committee on Training which consist of the Head of the Academy and the Heads of the National Intelligence Structures or their alternatives.

(b) The Minister may appoint not more than eight other persons on the basis of necessity and required expertise serve on the committee.”.

- (b) by the substitution for subsection (2) of the following subsection:

“(2) The persons appointed under subsection 1[d] (b) may hold office for a renewable period of three years, and at least **[them]** three persons appointed must have extensive academic experience and knowledge.”; and

- (c) by the substitution in subsection (7) for paragraph (b) of the following paragraph:

“(b) assist the **[Director-General]** head of the Academy to develop a curriculum and to make recommendations to the Minister in that regard.”.

Amendment of section 10 of Act 65 of 2002, as amended by section 9 of Act 52 of 2003 and section 22 of Act 11 of 2013

24. Section 10 of the Intelligence Services Act, 2002, is hereby amended—

- (a) by the substitution of the heading of the following heading:

“**Heads of Intelligence Services and Academy**”;

- (b) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The Director-General concerned or the Executive Director as the case may be, must, subject to the written directions of the Minister and this Act, exercise command and control of the **[Agency]** Service, Agency or Academy;

(2) The Director-General concerned or the Executive Director as the case may be, may, in a prescribed manner and subject to the approval of the Minister and the provisions of this Act, issue functional directives applicable to—

(a) conditions of service and human resources of the **[Agency]** Intelligence Services or Academy, as the case may be: Provided that such functional directives must be submitted to the Council for consideration; and

(b) any other matter he or she may deem expedient for the efficient command and control of the Intelligence Services or Academy, as the case may be.”;

- (c) by the substitution for subsection (3) for the words preceding paragraph (a) for the following words:
“The Director-General concerned or the Executive Director as the case may be, may, in a prescribed manner, subject to the **[approval of the Minister and the]** provisions of this Act and in consultation with the Minister, issue functional directives applicable to—”;
- (d) by the substitution in subsection (3) for paragraph (f) of the following paragraph:
“(f) any other matter that is necessary for the intelligence and counter-intelligence functions of the Service and the Agency respectively;”;
- (e) by the substitution for subsection (4) of the following subsection:
“(4) The Director-General concerned or the Executive Director must, as far as is reasonably practicable, take steps to ensure that—
(a) national security intelligence, intelligence collection methods, sources of information and the identity of members of the **[Agency] Intelligence Services, Centre or Academy**, as the case may be, are protected from unauthorised disclosure;
(b) neither the **[Agency] Intelligence Services, Centre or Academy**, as the case may be, nor any of its members may, in the performance of their functions—
(i) prejudice a political party interest that is legitimate in terms of the Constitution; or
(ii) further, in a partisan manner, any interest of a political party; or
(iii) instruct or expect their members to obey a manifestly illegal order;
(c) the powers of the Intelligence services are limited to what is necessary for the purposes of the discharge of its functions in terms of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), and the Secret Services Act, 1978 (Act No. 56 of 1978).”.
- (f) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
“(a) The Director-General concerned or the Executive Director as the case may be, must at the end of each financial year submit to the Minister a report on the activities of the **[Agency] Intelligence Services or Academy** for the relevant financial year, that must—
(i) include information about any co-operation by the **[Agency] Intelligence Services, or Academy** with an authority of another country in planning or undertaking activities pertaining to the **[Agency’s] Intelligence Services, or Academy’s** mandate; and
(ii) except for classified information, be publicly accessible.”.

Amendment of section 11 of Act 65 of 2002, as amended by section 10 of Act 52 of 2003 and section 23 of Act 11 of 2013

25. Section 11 of the Intelligence Services Act, 2002, is hereby amended—
(a) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
“(a) there is on any premises information which has or could probably have a bearing on the functions of the **[Agency] Intelligence Services** as contemplated in section 2 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), which information is of substantial importance and is necessary for the proper discharge of the functions of the **[Agency] Intelligence Services;**”;
- (b) by the substitution in subsection (2) for the words preceding subparagraph (i) of the following words:
“he or she may issue the **[Agency] Intelligence Services** with a direction authorising any member when reasonably necessary—”;
- (c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) A direction referred to in paragraph (a) may be executed by a member of the [Agency] Intelligence Services who is authorised to do so by a senior member of the [Agency] Intelligence Services holding a post of at least a General Manager.”.

Amendment of section 12 of Act 65 of 2002, as amended by section 11 of Act 52 of 2003 and section 24 of Act 11 of 2013 5

26. Section 12 of the Intelligence Services Act, 2002, is hereby amended—

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

“(1) The Minister may, subject to this Act, do or cause to be done all things which are necessary for the efficient superintendence, control and functioning of the [Agency] Intelligence Services, Centre or Academy.”; 10

(b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) acquire any immovable property, with or without any buildings thereon which is necessary for the efficient functioning of the [Agency] Intelligence Services, Centre or Academy and, subject to section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), supply guarantees, indemnities and securities for [that purpose] those purposes;” and 15

(c) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 20

“(c) acquire, hire or utilise any movable property and any other equipment which may be necessary for the efficient functioning of the [Agency] Intelligence Services, Centre or Academy: Provided that the utilisation of intrusive equipment is as prescribed in accordance with the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994)”.

Amendment of section 13 of Act 65 of 2002, as amended by section 25 of Act 11 of 2013

27. Section 13 of the Intelligence Services Act, 2002, is hereby amended— 30

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

“(4) Notwithstanding subsection (1), a member shall have the right to retire from the [Agency] Intelligence Services, or Academy on the date on which he or she attains the age of [55] 60 years, or on any date after that date.”; and 35

(b) by the insertion after subsection (4) of the following subsection:

“(5) In a prescribed manner, the Minister may determine the role of former members of the civilian Intelligence services.”.

Amendment of section 14 of Act 65 of 2002, as amended by section 12 of Act 52 of 2003 and by section 26 of Act 11 of 2013 40

28. Section 14 of the Intelligence Services Act, 2002, is hereby amended—

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

“(a) information with respect to that person has been gathered in the prescribed manner in a security competence assessment investigation by the [Agency] Intelligence Services;” and 45

(b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“(2) In order to gather the information contemplated in subsection (1)(a), the [Agency] Intelligence Services may, in a prescribed manner, have access to—”;

(c) by the substitution in subsection (2) for the proviso of the following proviso:

“Provided that where the gathering of information contemplated in paragraphs (c) and (d) requires the interception and monitoring of the communication of such a person, the [Agency] Intelligence Services must perform this function in accordance with the Regulation of 55

- Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).”;
- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:
“(4) The Director-General concerned may, in the prescribed manner, 5
issue directives on—”;
- (e) by the substitution in subsection (5) of the following subsection:
“(5) The Director-General concerned may, after evaluating the
information gathered as contemplated in subsection (1)(b), issue,
degrade, withdraw or refuse to grant a security clearance certificate.”; 10
- (f) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:
“If the certificate referred to in subsection (5) is withdrawn, the member
concerned is deemed unfit for further membership of the [Agency]
Intelligence Services, the Centre or the Academy, as the case may be and 15
the Minister may—”;
- (g) by the substitution in subsection (7) for paragraph (a) of the following paragraph:
“(a) discharge such person or member from the [Agency] Intelligence
Services, the Centre or the Academy, as the case may be; or”; and 20
- (h) by the substitution for subsections (8) and (9) of the following subsections, respectively:
“(8)(a) A person whose security clearance has been degraded,
withdrawn or refused by the Director-General concerned may, in the
prescribed manner, appeal to the Minister. 25
(b) Such appeal must—
(i) be lodged within 60 days from the date on which the decision was
made known by the Director-General concerned or such later
date as the Minister permits; and
(ii) set out the grounds for the appeal. 30
(c) After considering the grounds of appeal and the concerned
Director-General’s reasons for the decision, the Minister must as soon as
practicable—
(i) confirm, set aside or vary the decision; or
(ii) substitute any other decision for the decision of the Director- 35
General concerned.
(9) On intervals prescribed by the Minister, a member may be
subjected to a vetting investigation to determine his or her security
competence to remain in the [Agency] Intelligence Services Centre or
Academy, as the case may be.” 40

Amendment of section 15 of Act 65 of 2002, as substituted by section 27 of Act 11 of 2013

- 29.** Section 15 of the Intelligence Services Act, 2002, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words: 45
“Any member who absents himself or herself, whether voluntarily or involuntarily, from his or her official duties without the permission of the Director-General or the Executive Director concerned, as the case may be, for a period [exceeding 10] of 15 consecutive working days, is deemed to have been discharged from the [Agency] Intelligence 50
Services, Centre or Academy, as the case may be, on account of misconduct, with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty: Provided that if—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 55
“(b) a member deemed to have been so discharged again reports for duty, the Director-General concerned or the Executive Director, as the case may be, may, on good cause shown and notwithstanding anything to the contrary contained in any law but subject to the 60
approval of the Minister, reinstate the member in his or her former

- post or appoint him or her to any other post in the [Agency] Intelligence Services, Centre or the Academy, as the case may be, on such conditions as the Director-General concerned or the Executive Director, as the case may be, may deem fit and in that event the period of his or her absence from his or her official duties is deemed to have been absence on vacation leave without pay, or leave on such other conditions as the concerned Director-General or the Executive Director, as the case may be may determine;”;
- (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
- “(c) the Director-General concerned or the Executive Director as the case may be, refuses to reinstate the member, the latter may appeal to the Minister, stating the reasons why he or she should be reinstated.”.

Amendment of section 16 of Act 65 of 2002, as substituted by section 28 of Act 11 of 2013

30. Section 16 of the Intelligence Services Act, 2002, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Any member may be discharged from the [Agency] Intelligence Services, Centre or Academy, as the case may be, by the Director-General concerned or the Executive Director, as the case may be, if, after a hearing in the prescribed manner as to his or her state of health, [the] such Director-General or the Executive Director, as the case may be, is of the opinion that the member is by reason of ill-health unfit to remain in the [Agency] Intelligence Services, Centre or Academy, as the case may be.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) Any member discharged from the [Agency] Intelligence Services, Centre or Academy in terms of subsection (1) may in the prescribed manner appeal to the Minister, who may thereupon set aside or confirm his or her discharge.”.

Amendment of section 17 of Act 65 of 2002, as amended by section 29 of Act 11 of 2013

31. Section 17 of the Intelligence Services Act, 2002, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) A member may be discharged from the [Agency] Intelligence Services, Centre or Academy or demoted by the Director-General concerned or the Executive Director, as the case may be, if, after a hearing in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, [the] such Director-General or the Executive Director, as the case may be, is of the opinion that such member is incapable of performing his or her duties efficiently.”; and
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) A member who has been discharged from the [Agency] Civilian Intelligence Service or demoted in terms of subsection (1) may in the prescribed manner appeal to the Minister, who may thereupon set aside or confirm his or her discharge or demotion, as the case may be.”.

Amendment of section 18 of Act 65 of 2002, as amended by section 30 of Act 11 of 2013

32. Section 18 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:
- “(2) A member may be discharged from the [Agency] Civilian Intelligence Service or demoted by the Director-General concerned or the Executive Director, as the case may be, if, after a hearing in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, [the] such

Director-General, or the Executive Director, as the case may be, is of the opinion that such member is guilty of misconduct.

(3) A member who has been discharged from the [Agency] Civilian Intelligence Service or demoted in terms of subsection (2) may in the prescribed manner appeal to the Minister, who may thereupon set aside or confirm his or her discharge or demotion, as the case may be.” 5

Amendment of section 19 of Act 65 of 2002, as amended by section 31 of Act 11 of 2013

33. Section 19 of the Intelligence Services Act, 2002, is hereby amended— 10

(a) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

“(i) in the [Agency] Civilian Intelligence Service;”;

(b) by the substitution in subsection (1)(a) for item (cc) of the proviso of the following item:

“(cc) a member may not without his or her consent be transferred to a post outside the [Agency] Civilian Intelligence Service if such transfer will, save for his or her salary, result in a change in his or her conditions of service;”;

(c) by the substitution in subsection (1) for paragraph (b) of the following paragraph: 20

“(b) discharge any member from the [Agency] Civilian Intelligence Service on such conditions as the Minister may determine.”; and

(d) by the substitution for subsection (2) of the following subsection:

“(2) The Minister may, with the consent of a member and upon such conditions as the Minister may determine, second a member, for the performance of a particular service or for a specified period, to the service of any other department, Intelligence Services, Academy or to any other authority, board, entity, establishment, institution or body, but, while so seconded, the member remains subject to this Act and any other law which applies to him or her.”. 30

Amendment of section 20 of Act 65 of 2002, as amended by section 13 of Act 52 of 2003 and section 32 of Act 11 of 2013

34. Section 20 of the Intelligence Services Act, 2002, is hereby amended—

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

“(1) The Minister may in writing and on such conditions as [he or she] may deem fit delegate any power conferred upon or duty assigned to him or her by this Act, excluding any power conferred upon or duty assigned to him or her by sections 4(1)(a) and (b), 5(1), (2)(a) and (4)(c), 9(3), (4), (5), (8) and (9), 10(1), (2) and (3), 12(1) and (2)(a) and (b), 13(3), 14(6), (7), (8), (9) and (11), 15(b) and (c), 16(2), 17(2), 18(3), 19(4), 21(2), 22(1), (5) and (7), 23(3)(a) (i) and (ii), 28(2), 30 and 37, to the Director-General concerned or Executive Director, or any other member of the [Agency] Intelligence Services or Academy, as the case may be.”; and 35

(b) by the substitution for subsection (2) of the following subsection: 45

“(2) [The] A Director-General or Executive Director may delegate any power conferred upon or duty assigned to him or her by or under this Act to any other member of the [Agency] Intelligence Services or Academy, as the case may be, but not any power or duty delegated under subsection (1).” 50

Amendment of section 21 of Act 65 of 2002, as amended by section 33 of Act 11 of 2013

35. Section 21 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) No member of the [Agency] Civilian Intelligence Service may strike or induce or conspire with any other member or person to strike. 55

(2) The Minister must in the prescribed manner make provision for internal rules to deal with complaints, grievances and consultation on conditions of service and human resources within the [Agency] Civilian Intelligence Service.”.

Amendment of section 22 of Act 65 of 2002, as amended by section 14 of Act 52 of 2003 and substituted by section 34 of Act 11 of 2013 5

36. Section 22 of the Intelligence Services Act, 2002, is hereby amended—

- (a) by the substitution for the heading of the following heading: 10
“**Establishment of Intelligence Services Council [on Conditions of Service]**”;
- (b) by the substitution for subsection (1) of the following subsection: 10
“(1) There is hereby established an Intelligence Services Council [on Conditions of Service] which consists of not more than three persons appointed [on contract] by the Minister, one of whom must be Chairperson.”;
- (c) by the insertion after subsection (2) of the following subsections: 15
“(2A) A member of the Council—
(a) holds office for a period not exceeding five years; and
(b) may, in the interest of continuity, be reappointed, but may not serve more than two consecutive terms.
(2B) A person may not be appointed as a member of the Council before the Agency has issued a security clearance in the prescribed manner in respect of that person.
(2C) The Minister may remove a member of the Council from office on account of misconduct, incapacity, incompetence, withdrawal of his or her security clearance or absence from three consecutive meetings of the Council without the prior permission of the chairperson, except on good cause shown.”; 20
- (d) by the substitution in subsection (3) for paragraph (bA) of the following paragraph: 25
“(bA) to promote measures and set standards to ensure the effective and efficient performance and implementation of policies and human resources within the [Agency] Intelligence Services, or Academy, as the case may be, and to make recommendations to the Minister;”;
- (e) by the substitution in subsection (3)(c) for item (iv) of the following item: 35
“(iv) to invite the [Director-General] Directors-General, Executive Director, the Chairpersons of the staff forum, members and any other interested party to give representations on any matter relating to the purview of its functions;”;
- (f) by the substitution for subsection (4) of the following subsection: 40
“(4) The Chairperson may co-opt [the] a Director-General or Executive Director to participate in the functioning of the Council: Provided that [the] such Director-General or Executive Director does not have voting powers.”; and
- (g) by the substitution for subsection (5) of the following subsection: 45
“(5) The conditions of service of the members of the Council may be determined by the Minister in accordance with the conditions of service and security requirements applicable to members.”.

Amendment of section 23 of Act 65 of 2002, as amended by section 35 of Act 11 of 2013 50

37. Section 23 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3)(a) Where a member receives any remuneration, allowance or other reward in connection with the performance of his or her work, otherwise than in accordance with this Act or in contravention of subsection (1)(b), such member must pay to the [Agency] Intelligence Services, Centre or Academy, as the case may be, an amount equal to the amount of such remuneration, allowance or reward or, where it does not consist of money, the value thereof as determined by the concerned Director-General, or the Executive Director, as the case may be, and if 55

he or she does not do so, **[the]** such Director-General or the Executive Director may recover it from him or her by way of legal proceedings: Provided that—

- (i) the member has a right of appeal to the Minister against the determination by the Director-General or the Executive Director of the value of the remuneration, allowance or reward; and 5
- (ii) the Minister may approve the retaining by a member of the whole or a portion of that remuneration, allowance or reward.

(b) Where a member has received any remuneration, allowance or other reward as contemplated in paragraph (a) which is still in his or her possession or under his or her control or in the possession or under the control of some other person on his or her behalf or, if it is money, has been deposited in any bank or other financial institution in his or her name or in the name of some other person on his or her behalf, the Director-General or Executive Director concerned, as the case may be, may in writing require such member or such other person or such bank or financial institution not to dispose thereof, or, if it is money, to retain a corresponding sum 10 of money, as the case may be, pending the outcome of any legal proceedings for the recovery of such remuneration, allowance or reward or the value thereof.” 15

Amendment of section 24 of Act 65 of 2002, as substituted by section 36 of Act 11 of 2013

38. Section 24 of the Intelligence Services Act, 2002, is hereby amended by the 20 substitution for section 24 of the following section:

“The Director-General or the Executive Director concerned, as the case may be, may, with the approval of the Minister, award to any person who is or was a member, for extraordinary diligence or devotion in the performance of his or her duties as a member, such monetary or other reward as he or she considers 25 appropriate in the circumstances.”

Amendment of section 25 of Act 65 of 2002, as substituted by section 37 of Act 11 of 2013

39. Section 25 of the Intelligence Services Act, 2002, is hereby amended by the 30 substitution for subsection (1) of the following subsection:

“(1) The Minister may establish and introduce decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by him or her, subject to such conditions as may be prescribed, to any person who is or was a member in respect of his or her services as a member or to any other person who has rendered exceptional services to the **[Agency]** Civilian Intelligence Service.” 35

Amendment of section 26 of Act 65 of 2002, as amended by section 15 of Act 52 of 2003 and section 38 of Act 11 of 2013

40. Section 26 of the Intelligence Services Act, 2002, is hereby amended—

- (a) by the substitution in subsection (1)(a) for subparagraph (iii) of the following subparagraph: 40

“(iii) discloses classified information or material entrusted to him or her by the Director-General concerned Executive Director or a member without permission of the Director-General concerned or the Executive Director, as the case may be;” 45

- (b) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs, respectively:

“(c) not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned or the Executive Director, as the case may be, makes use 50 of any decoration or medal established or introduced under this Act, or of its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive;

(d) without the approval of the Minister, in connection with any activity 55 carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol that indicates or

conveys or purports to indicate or which is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of this Act or under the patronage of the [Agency] Intelligence Services, Centre or Academy, or is in any manner associated or connected with the [Agency] Civilian Intelligence Service;" 5

(c) by the substitution in subsection (1)(f) for subparagraph (i) of the following subparagraph:

“(i) discloses classified information or material without the permission of the Director-General concerned or the Executive Director;" and 10

(d) by the substitution in subsection (1) for paragraph (g) of the following paragraph:

“(g) being a member, discloses classified information or material to an unauthorised person without the permission of the Director-General of the Agency;" 15

Amendment of section 27 of Act 65 of 2002, as amended by section 39 of Act 11 of 2013

41. Section 27 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsections (1), (2) and (3) of the following subsections, respectively: 20

“(1) Subject to section (10)(3)(a), a former member may not disclose in any form or any manner any information or material to any other person unless the Director-General or the Executive Director concerned, as the case may be, has granted permission for the disclosure of such information or material.” 25

(2) Subsection (1) applies to any information or material received by the former member during, or subsequent to, the former member’s employment or other service with the [Agency] Civilian Intelligence Service, or with the former National Intelligence Agency, the South African Secret Service, the South African National Academy of Intelligence or the State Security Agency, that was marked as classified or that the former member knew or ought reasonably to have known was classified. 30

(3) For the purposes of subsection (1), the Director-General or the Executive Director concerned may consult any member or person to advise him or her on the considerations of applications by former members for permission to disclose classified information or material.”. 35

Amendment of section 28 of Act 65 of 2002, as amended by section 40 of Act 11 of 2013

42. Section 28 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A former member may not, for a period of three years after leaving the [Agency] Civilian Intelligence Service or the former State Security Agency render a security service unless he or she has obtained a clearance certificate from the Director-General of the Agency.”. 40

Amendment of section 29 of Act 65 of 2002, as amended by section 41 of Act 11 of 2013 45

43. Section 29 of the Intelligence Services Act, 2002, is hereby amended by the substitution for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) who is or was a member, representative or associate of the [Agency] Civilian Intelligence Service, or of the former National Intelligence Agency, the South African Secret Service, [or] the South African National Academy of Intelligence, the State Security Agency or a foreign intelligence service; 50

(b) who co-operates or who has co-operated with the [Agency] Civilian Intelligence Service or with the former National Intelligence Agency, the South African Secret Service, [or] the South African National Academy of Intelligence or the State Security Agency in respect of matters concerning the security of the Republic.”. 55

Amendment of section 30 of Act 65 of 2002, as amended by section 42 of Act 11 of 2013

44. Section 30 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A former member may appeal to the Minister against a decision of the Director-General or the Executive Director concerned in terms of section 27(1) or 28(1).”.

Amendment of section 33 of Act 65 of 2002, as amended by section 44 of Act 11 of 2013

45. Section 33 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may by notice in the *Gazette* and in any other appropriate manner prohibit or restrict access to any premises under the control of the [Agency] Civilian Intelligence Services.”.

Amendment of section 34 of Act 65 of 2002, as amended by section 45 of Act 11 of 2013

46. Section 34 of the Intelligence Services Act, 2002, is hereby amended—

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

“(1) Notwithstanding anything to the contrary contained in any other law, the Minister may establish canteens for the [Agency] Civilian Intelligence Services and for the organisational components thereof.”; and

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

“(3) For the purposes of this section “canteen” includes any mess, pub or institution of the [Agency] Intelligence Services, or the Academy, as the case may be, or any premises temporarily or permanently used for providing recreation, refreshments or necessities mainly for members or retired members or for the families of such members or retired members or for persons employed in any work in or in connection with any such mess, pub, institution or premises.”.

Amendment of section 35 of Act 65 of 2002, as amended by section 46 of Act 11 of 2013

47. Section 35 of the Intelligence Services Act, 2002 is hereby amended—

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

“(1) If a member is missing and the Director-General or the Executive Director concerned, as the case may be, is satisfied that his or her absence arose from the performance of his or her functions in terms of this Act, such member shall for all purposes be deemed to be still employed by the [Agency] Intelligence Services or the Academy, as the case may be, until the day on which he or she again reports for duty or until the day on which a competent court issues an order whereby the death of such member is presumed.”; and

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

“(4) Notwithstanding subsection (2), the Director-General concerned or the Executive Director may in the prescribed manner direct that only a portion of the salary or wages and allowances of a member be paid or that no portion thereof be so paid.”.

Amendment of section 36 of Act 65 of 2002, as amended by section 47 of Act 11 of 2013

48. Section 36 of the Intelligence Services Act, 2002, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may, in the event of war or when a state of emergency exists and having regard to the requirements of the [Agency] Civilian Intelligence Services second any member for service or training in the South African National Defence Force or the South African Police Service.”.

Amendment of section 37 of Act 65 of 2002, as substituted by section 16 of Act 52 of 2003 and section 48 of Act 11 of 2013 5

49. Section 37 of the Intelligence Services Act, 2002, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (d) of the following paragraph: 10
“(d) the numerical establishment of the [Agency] Intelligence Services and Academy, the conditions of service of the members thereof, the salaries, salary scales, wages and allowances of members and the systems relating to the administration and determination thereof and the various divisions, branches, grades, ranks and designations in the [Agency] Civilian Intelligence Service;” 15
- (b) by the substitution in subsection (1) for paragraph (f) of the following paragraph: 20
“(f) all matters relating to discipline, command and control of members of the [Agency] Civilian Intelligence Services, the suspension of members and the establishment of boards of inquiry into the conduct and discipline of members;” 20
- (c) by the insertion in subsection (1) after paragraph (j) of the following paragraph: 25
“(jA) subject to the Public Service Act, 1994 (Proclamation No.103 of 1994), and any other applicable laws, the conditions of service of the Directors-General, after consultation with the Minister of Public Service and Administration;”;
- (d) by the substitution in subsection (1) for paragraphs (l) and (m) of the following paragraphs, respectively: 30
“(l) the retention of rank on retirement or resignation from the [Agency] Civilian Intelligence Service, and the award of honorary ranks; 30
(m) the control over and administration of funds appropriated to the [Agency] Civilian Intelligence Service in order to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof;” 35
- (e) by the substitution in subsection (1) for paragraphs (o) and (p) of the following paragraphs: 40
“(o) the conditions for and procedures regarding the permission of access to any premises under the control of the [Agency] Civilian Intelligence Services, and matters relating thereto; 40
(p) any matter relating to the information, communications, computer and physical security of the [Agency] Civilian Intelligence Services;”;
- (f) by the substitution in subsection (1) for paragraph (s) of the following paragraph: 45
“(s) vetting investigations of members and persons to be employed in the [Agency] Civilian Intelligence Services;”;
- (g) by the substitution in subsection (1) for paragraph (sA) of the following paragraph: 50
“(sA) the [establishment,] structure and [functions of a civilian intelligence veterans association] role of the former members of the Civilian Intelligence Services;” and
- (h) by the substitution in subsection 1 for paragraph (sE) of the following paragraph: 55
“(sE) persons authorised to task the [Agency] Intelligence Services to gather and produce intelligence; and
(sF) role of the former members of the Civilian Intelligence services.”.

Amendment of section 38 of Act 65 of 2002, as amended by section 49 of Act 11 of 2013

50. Section 38 of the Intelligence Services Act, 2002, is hereby amended—

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

“(1) The rights in respect of all discoveries and inventions and all improvements in respect of processes, apparatus and machinery made by a member resulting from research undertaken by such member in the course of his or her employment as a member vest in the [Agency] Intelligence Services or Academy, as the case may be.”; and

(b) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) If the rights in respect of any discovery, invention or improvement vest in the [Agency] Intelligence Services or Academy in terms of subsection (1), the Minister may award to the person responsible for the discovery, invention or improvement such bonus as he or she deems fit, or make provision for financial participation by such person in the profits derived from the discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance.

(4) The Minister may apply for a patent in the name of the [Agency] Intelligence Services or Academy, in respect of any discovery, invention or improvement referred to in subsection (1), and the [Agency] Intelligence Services or Academy, must for the purposes of the Patents Act, 1978 (Act No. 57 of 1978), be regarded as the assignee of the discoverer or inventor concerned.”.

Amendment of section 40 of Act 65 of 2002, as substituted by section 50 of Act 11 of 2013

51. Section 40 of the Intelligence Services Act, 2002, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) All assets, liabilities, rights and duties including funds, resources and administrative records of the former [**National Intelligence Agency, South African Secret Service, South African National Academy of Intelligence and Electronic Communication Security (Pty) Ltd (herein after referred to as Comsec)**] State Security Agency must be transferred in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999) to the [Agency] South African Intelligence Agency, South African Intelligence Service, Centre and South African National Academy of Intelligence within [six] 24 months after the commencement of the General Intelligence Laws Amendment Act, [2013] 2022, and must vest from the date of transferral in, and must from that date be regarded as having been acquired or incurred by, the [Agency] South African Intelligence Agency, South African Intelligence Service, Centre and the South African National Academy of Intelligence, as the case may be.”;

(b) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) A registrar of deeds must, upon the production to him or her of a certificate by the Minister that immovable property described in the certificate vests in the [Agency] South African Intelligence Agency, South African Intelligence Service, Centre and the South African National Academy of Intelligence, as the case may be, in terms of subsection (2), make such entries and endorsements as he or she may deem necessary in or on any relevant register, title deed or other document in his or her office, so as to give effect to subsection (2).”;

(c) by the substitution for subsections (5) and (6) of the following subsections, respectively:

“(5) If an inquiry into alleged misconduct has been instituted by an entity referred to in subsection (2) but not yet concluded at the commencement of the General Intelligence Laws Amendment Act,

[2013] 2023, such proceedings must be continued and concluded in accordance with the law in terms of which the inquiry was instituted.

(6) Disciplinary proceedings may be instituted and concluded in terms of this Act against alleged improper conduct of any person who at any time prior to the commencement of the General Intelligence Laws Amendment Act, [2013] 2023, was in the service of an Intelligence structure or an entity referred to in subsection (2), provided that the act or omission concerned is substantially the same as an act constituting misconduct in terms of this Act.”; and

(d) by the insertion after subsection (9) of the following subsections:

“(10) Any regulation issued in terms of section 37 of the Intelligence Services Act, 2002 (Act No. 65 of 2002), shall remain in force for a period of 12 months after the date of commencement of the General Intelligence Laws Amendment Act, 2023 unless it is inconsistent with this Act.

(11) Any memorandum of understanding or agreement entered into by or on behalf of the former State Security Agency, will remain in force after the date of commencement of General Intelligence Laws Amendment Act, 2023 to the extent that they remain applicable.”.

Substitution of long title of Act 65 of 2002

52. The following long title is hereby substituted for the long title of the Bill as introduced:

“To regulate the establishment, administration, organisation and control of the [State Security Agency] South African Intelligence Service, South African Intelligence Agency, South African National Academy of Intelligence and the Centre; to establish and regulate the Intelligence Services Council [on Conditions of Service]; [to repeal certain laws;] and to provide for certain transitional measures and savings; and to provide for matters connected therewith.”.

Amendment of Laws

53. The laws specified in Schedule 1 are hereby amended to the extent indicated in the third column thereof.

Short title and commencement

54. (1) This Act is called the General Intelligence Laws Amendment Act, 2023 and shall come into operation on a date determined by the President by proclamation in the *Gazette*.

(2) Different dates may so be determined in respect of different—

- (a) provisions of this Act; and
- (b) categories of intelligence entities.

SCHEDULE 1

LAWS AMENDED

(Section 54)

No. and year of Act	Short title	Extent of Amendment
Act No. 81 of 1969	Security Services Special Account Act, 1969	<p>1. The amendment of section 2 by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs, respectively:</p> <p>“(a) the performance of the function and duty of the [Agency] Intelligence Services as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002), and the Office as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002); and</p> <p>(b) by the organisation of, the exercising of the powers and the performance of the duties and functions of any member of, the exercising of the powers of the President or the Minister in relation to the superintendence and control of, and the action by and the functioning of, the [Agency] Civilian Intelligence Services as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).”.</p> <p>2. The substitution for section 3 for the following section:</p> <p>“Control of expenditure</p> <p>3. Subject to the provisions of section 2, the account shall be under the control of the Director-General: [State Security Agency] South African Intelligence Agency and the Director-General: South African Intelligence Service, who shall cause proper records to be kept for all moneys received or expended.”.</p> <p>3. The substitution for section 5 of the following section:</p> <p>“Investment of balances</p> <p>5. Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as may be determined by the President or Minister responsible for the [State Security Agency] Civilian Intelligence Services or the Office with the concurrence of the Minister of Finance.”.</p>
Act No. 84 of 1982	Protection of Information Act, 1982	<p>1. The amendment of section 1 by the substitution for the definition of “security matter” of the following definition:</p> <p>“‘security matter’ includes any matter which is dealt with by—</p> <p>(a) the [Agency] Civilian Intelligence Services as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002); or</p> <p>(b) the Office as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-Related Information Act, 2002 (Act No. 70 of 2002),</p> <p>or which relates to the functions of the [Agency] Civilian Intelligence Services or the Office or to the relationship existing between any person and the [Agency] Intelligence Services, the Academy or the Office.”.</p>
Proclamation 103 of 1994	Public Service Act, 1994	<p>1. The Amendment of section 1—</p> <p>(a) by the substitution for the definition of “member of the Intelligence Services” of the following definition:</p>

No. and year of Act	Short title	Extent of Amendment
		<p>“ ‘member of the Intelligence Services’ means a member of the [State Security Agency] Civilian Intelligence Services appointed or deemed to have been appointed in terms of the Intelligence Services Act, 2002;”;</p> <p>(b) by the deletion of the following definition “ [State Security Agency’ means the State Security Agency referred to in section 3 of the Intelligence Services Act, 2002;”].</p> <p>2. The amendment of section 16 by the substitution in subsection (1)(a), (2)(a), (2A)(a), (4) and (7) for the words “State Security Agency” of the words “Agency or the Service”.</p> <p>3. The deletion in Schedule 1 of the words “State Security Agency” and “Director-General: State Security Agency”.</p> <p>4. The insertion in Columns 1 and 2 of Schedule 1 of the words National Security Agency” and “Director-General: South African Intelligence Agency ”; and “South African Intelligence Service” and “Director-General: South African Intelligence Service”.</p> <p>5. The insertion in Columns 1 and 2 of Part A of Schedule 3 of the words “South African National Academy of Intelligence” and “Executive Director: South African National Academy of Intelligence”;</p>
Act No. 66 of 1995	Labour Relations Act, 1995	<p>1. The substitution for section 2 of the following section: “Exclusion from application of this Act 2. This Act does not apply to members Of— (a) the National Defence Force; (b) the [State Security] <u>South African Intelligence Agency</u>; (c) the South African Intelligence Service; (d) the <u>South African National Academy of Intelligence</u>; (e) <u>National Communications Centre.</u>”.</p>
Proclamation 21 of 1996	Government Employees Pension Law, 1996	<p>1. The amendment of section 1 by the deletion of the following definition “[State Security Agency’ means the State Security Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”].</p> <p>2. The substitution in Rule 1.24 of the Rules of the Government Employees Pensions Fund contained in Schedule 1, for the definition of “Services” of the following definition: ““Services”, the [State Security Agency] the <u>South African Intelligence Agency</u> , <u>South African National Defence Force</u>, <u>South African Police Service</u> and <u>South African Intelligence Service</u> as described in section 1 of the Law”</p> <p>3. The substitution in Rule 14.2.4 of the Rules of the Government Employees Pension Fund contained in schedule 1, for paragraph (a) of the following paragraph: “(a) of a member who is a member of the South African Police Service, the Correctional Services, the South African national Defence Force [or the State Security Agency], the <u>South African Intelligence Agency</u> or the <u>South African Intelligence Service</u>, shall be increased by a period which is equal to one quarter of the period by which his or her pensionable service exceeds the period of 10 years;”.</p>

No. and year of Act	Short title	Extent of Amendment
		<p>4. The substitution for the words “State Security Agency” of the words “South African Intelligence Agency and the “South African intelligence Service”, wherever it occurs, in—</p> <p>“(i) sections 18(2) and 29(1)(a);</p> <p>(ii) the definition of “responsible Minister” contained in Rule 1.22 of the Rules of the Government Employees Pensions Fund contained in Schedule 1; and</p> <p>(iii) Rule 4.1.3(b) and subparagraph (i) of the proviso to Rule 14.8 of the said Rules.</p>
Act No. 75 of 1997	Basic Conditions of Employment Act, 1997	<p>1. The amendment of section 1 by the deletion in the definition of “Public Service” of paragraph (b), (c), (d) and (e); and</p> <p>2. The amendment of section 3—</p> <p>(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) members of the [State Security Agency] Civilian Intelligence Service;”.</p>
Act No. 112 of 1998	Witness Protection Act, 1998	<p>1. The amendment of section 1 by the substitution in the definition of “law enforcement officer” for paragraph (a) of the following paragraph: “(a) a member [of the State Security Agency referred to in section 3] as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002); and</p> <p>2. The amendment of section 6 by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs, respectively: “(c) the Director-General: [State Security] South African Intelligence Agency; (d) the Director-General: South African Intelligence Service;”.</p>
Act No. 131 of 1998	Medical Schemes Act, 1998	<p>1. The amendment of section 1—</p> <p>(a) by the insertion before the definition of “actuary” of the following definition: “‘Academy’ means the South African National Academy of Intelligence established by section 5 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;</p> <p>(b) by the insertion after the definition of “administer” of the following definition: “‘Agency’ means the South African Intelligence Agency established in terms of section 3(1) of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”;</p> <p>and (b) by the insertion after the definition of “Minister” of the following definitions: “‘Service’ means the South African Intelligence Service established in terms of section 3(1) of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”.</p> <p>2. The amendment of section 2 by the substitution for subsection (3) of the following subsection: “(3) Notwithstanding the provisions of subsections (1) and (2), this Act shall not apply to the [State Security Agency] Civilian Intelligence Service referred to in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).”</p>
Act No. 38 of 2001	Financial Intelligence Centre Act, 2001	<p>1. The amendment of section 1 by the substitution for the definition of “intelligence services” of the following definition: “‘intelligence services’ means the [State Security Agency] Intelligence Services as defined in section 1 of the Intelligence Services Act, 2002 (Act No. 65 of 2002).”.</p>

No. and year of Act	Short title	Extent of Amendment
		<p>2. The amendment of section 12 by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) information with respect to that person has been gathered in a vetting investigation by the [State Security] South African Intelligence Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);” and</p> <p>3. The amendment of section 13 by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) information with respect to that person has been gathered in a vetting investigation by the [State Security] South African Intelligence Agency referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);” and</p> <p>4. The amendment of section 19 by the substitution in subsection (1) for paragraph (e) of the following paragraph: “(e) the Director-General of the [State Security] South African Intelligence Agency;”.</p>
Act No. 56 of 2001	Private Security Industry Regulation Act, 2001	<p>1. The amendment of section 7 by the substitution of paragraph (e) of the following paragraph: “(e) has not obtained such a security clearance by the [State Security] South African Intelligence Agency as may have been determined by the Minister;”.</p> <p>2. The amendment of section 14 by the substitution in subsection (4) for paragraph (c) of the following paragraph: “(c) Staff members of the Authority may not have any financial interest in the private security industry and must successfully undergo such security clearance check by the [State Security] South African Intelligence Agency, as may be determined by the Council if this is relevant in respect of their work.”; and</p> <p>3. The amendment of section 23 by the substitution for subsection (5) of the following subparagraph: “(5) Despite any provision to the contrary, a person in the permanent employ of the Service, [the State Security Agency] the South African Intelligence Agency, the South African Intelligence Service, the South African National Defence Force or the Department of Correctional Services may not be registered as a security service provider while so employed.”.</p>
Act No. 40 of 2002	Institution of Legal Proceedings against certain Organs of State Act, 2002	<p>1. The amendment of section 5 by the substitution in subsection (1)(b) for subparagraph (i) of the following subparagraph: “(i) Minister [of State Security] for Intelligence is the defendant or respondent may be served on the Director-General: [State Security] South African Intelligence Agency or the Director-General: South African Intelligence Service;”.</p>
Act No. 70 of 2002	Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002	<p>1. The amendment of section—</p> <p>(a) by the substitution in subsection (1) for paragraph (c) of the definition of “applicant” of the following paragraph: “(c) a member as defined in section 1 of the Intelligence Services Act, if the member concerned obtained in writing the approval in advance of another member of the Agency, or the Service, as the case may be, holding a post of at least general manager;”;</p> <p>(b) by the substitution in subsection (1) for paragraph (c) of the definition of “law enforcement agency” of the following paragraph: “(c) The Agency or the Service;”</p>

No. and year of Act	Short title	Extent of Amendment
		<p>(c) by the by the substitution in subsection (1) for the definition of “Minister” of the following definition: “‘Minister’ means the Cabinet member responsible for the administration of justice, except in Chapter 6 where it means the Cabinet member responsible for [state security] intelligence;”;</p> <p>(d) by the substitution in subsection (1) for paragraph (c) of the definition of “relevant Ministers” for the following paragraph: “(c) [state security] intelligence; and”; and</p> <p>(e) by the insertion after the definition of “Service” of the following definition: “‘Service’ means the <u>South African Intelligence Services established in terms of section 3(1) of the Intelligence Services Act, 2002 (Act No. 65 of 2002)</u>;”; and</p> <p>2. The amendment of section 34 by the substitution in subsection (4)(a) for subparagraphs (iii) and (iv) of the following subparagraphs respectively: “(iii) Director-General:[State Security] <u>South African Intelligence Agency</u> ;[and] (iv) <u>Director-General: South African Intelligence Service</u>;”.</p>

MEMORANDUM ON THE OBJECTS OF THE GENERAL INTELLIGENCE LAWS AMENDMENT BILL, 2023

1. INTRODUCTION

- 1.1 Section 209(1) of the Constitution empowers the President, in his capacity as the Head of the National Executive, to—
 - 1.1.1 establish Civilian Intelligence Service or Services through National legislation; and
 - 1.1.2 assume political responsibility for the control and direction of any of those services or designate such responsibility to a member of the Cabinet.
- 1.2 The General Intelligence Laws Amendment Bill, 2023 (“the Bill”) seeks to amend the National Strategic Intelligence Act No 39 of 1994, the Intelligence Services Act No 65 of 2002, the Intelligence Oversight Act No 40 of 1994 and other relevant intelligence laws so as to—
 - 1.2.1 establish the Foreign Intelligence Service which shall be responsible for foreign Intelligence gathering so as to identify opportunities and threats to National Security;
 - 1.2.2 establish the Domestic Intelligence Agency which shall be responsible for counter-intelligence as well as gathering of domestic intelligence in order to identify threats to national Security;
 - 1.2.3 provide for the legislative functions of the Signals Intelligence capacity which shall gather intelligence through foreign signals, communications and non-communications platforms; and
 - 1.2.4 re-establish the South African National Academy of Intelligence (SANAI) as Intelligence Training Institute for both domestic and foreign intelligence capacities. The Head of SANAI is appointed by the Minister, in consultation with the President, at a level of DDG. SANAI reports to the Director-General (DG) of the Domestic Intelligence Service.
- 1.3 The proposed architecture referred to above is based on the recommendations of the Presidential High Level Review Panel on State Security Agency, White Paper on Intelligence and the International benchmark studies conducted on the architectures of some of the key intelligence services referred to below:
 - 1.3.1 UNITED KINGDOM has the following intelligence Services:
 - Security Service (SS or MI5)—Domestic Intelligence service and it reports to the Home Secretary.
 - Secret Intelligence Service (SIS or MI6)—Foreign Intelligence service and it reports to the Foreign Secretary.
 - Government Communication Headquarters (GCHQ)—Signals Intelligence Service and it reports to the Foreign Secretary.
 - Parliamentary oversight committee-The Intelligence and Security Committee of Parliament (ISC).
 - 1.3.2 UNITED STATES OF AMERICA
 - Federal Bureau of Investigation (FBI)—Domestic intelligence and security service and it reports to the Department of Justice. FBI has law enforcement powers.
 - Central Intelligence Agency (CIA)—Foreign Intelligence and it reports to the Director of National Intelligence and provides Intelligence to the President and Cabinet.

- National Security Agency (NSA)—Signals Intelligence and Information Assurance capacity.
- Oversight—US congress (Select committees of the Senate and House of Representatives).

1.3.3 GERMANY

- Federal Office for the Protection of the Constitution (BfV)—Domestic Intelligence Service and reports to the Federal Minister of Interior.
- BUNDES NACHTRICHTENDIENST (BND)—Foreign Intelligence Service. The BND is under the Federal Chancellor s Office and reports to the Commissioner of Intelligence (Deputy Minister Level) in the Chancellor s Office.

1.3.4 ISRAEL

- SHABAK—Domestic Intelligence and Security. It has arresting powers like FBI.
- MOSSAD—Foreign Intelligence Service. Also has cybersecurity and signals Intelligence capacity.
- REPORTING—Both services report to a Minister responsible for Intelligence.
- PARLIAMENTARY OVERSIGHT—Foreign and Defence Committee (Intelligence Subcommittee).

1.3.5 ALGERIA

- General Directorate of Documentation and External Security (DGDSE)—Responsible for external intelligence collection and security as well as foreign intelligence liaison.
- General Directorate of Internal Security—Responsible for the internal security of the country.
- General Directorate of Technical Intelligence (DGRT)— responsible for technical intelligence collection.
- These services fall under the Department of Intelligence and Security and they report to the President.
- There is no civilian oversight for the Intelligence services.

1.3.6 ZIMBABWE

- Zimbabwe Central Intelligence Organisation (ZCIO) has an internal and external collection responsibility.
- The CIO has executive powers drawn for the constitution, and falls within the Office of the President.
- The CIO forms part of the National Joint Operations Command (JOC), where all security Services Heads assemble and is chaired by the President.
- The Ministry of State for National Security therefore represents CIO in parliament.

1.3.7 EGYPT

- The General Intelligence Service of Egypt which is also referred to as the Mukhabarat, has internal and external collection responsibility.
- The Director of the General Intelligence is the head of the Egyptian General Intelligence Service and reports to the President.

1.4 Providing legislative functions for the signals intelligence (SIGINT) capacity as per the order of the High Court and the Constitutional Court:

- ##### 1.4.1
- The High Court and Constitutional Court dealt with two aspects of interception namely bulk and targeted interception.

- 1.4.2 In relation to Bulk Interception which part of the mandate of the SSA, both the High Court and the Constitutional Court declared that the:
“The bulk surveillance activities and the foreign signals interception undertaken by the National Communications Centre are unlawful and invalid”
- 1.4.3 As indicated above and in relation to bulk interception, the High Court and Constitutional Court outlawed bulk interception activity until bulk interception activities are provided for in law.
- 1.4.4 To comply with the order of the Constitutional Court, the Bill is providing for the mandate of bulk interception activities within the Intelligence Agency. Specifically, the Bill empowers the President to appoint a retired Judge supported by two Bulk interception experts to approve applications for monitoring and interception of foreign signals by the Intelligence Services as part of the intelligence collections activities. It will be noted that the intelligence services referred to above also have the foreign signals collections capacity and this recommendation is not unique to South Africa only.

It is generally noted that that there is regulatory framework for signals intelligence activities in other jurisdictions. The framework includes the role of other spheres of the State and in some instances presidential proclamation issued as guiding instrument on the work of the intelligence services in this regard. The proposal contained in the Bill carries the same spirit of subjecting the intelligence service to some form of oversight by other spheres of State. Hence the proposal of the appointment of the retired judge by the President. The approach proposed in the Bill is also consistent with the established oversight mechanism in South African on interception related activities.

- 1.4.5 It is critical that bulk interception activities be provided for in law now in order to comply with the Constitutional Court judgment and also to ensure that the Intelligence Services are fully capacitated to monitor National Security threats from foreign signals. Currently and due to this Court order, the Intelligence Agency is unable to gather this crucial intelligence and this has a severe negative impact on the National Security of the Republic and the work of the security structures.
- 1.4.6 The Bill proposes the following functions for the Signals Intelligence Capacity referred to above:
- “2B (1) With regard to foreign signals, communications and non-communications and in a prescribed manner, the Signals Intelligence Centre shall:
- gather, correlate, evaluate and analyze relevant intelligence in order to identify any threat and/or potential threat to national security subject to:
 - (i) submission of an application in the prescribed manner to a panel consisting of a retired Judge as a chairperson and two bulk interception experts;
 - (ii) the retired judge shall be recommended by the Judicial Services Commission/ Minister of Justice and appointed by the President.
 - (iii) the Panel shall adjudicate and approve bulk interception applications and may impose such additional conditions deemed appropriate and consistent with the objectives of this Act.
 - The Centre shall supply its intelligence information to the Agency or the Service and to NICOC.

1.5 The role of the intelligence structures in combatting terror financing, illicit economy activities and money laundering in line with the FATF process.

1.5.1 The State Security Agency is part of the FATF team coordinated by the National Treasury which includes other departments such as the Department of Justice, Social Development and Financial Intelligence Centre. As a contribution of intelligence in combatting this illegal activity, the team agreed that the Minister responsible for Intelligence should be empowered by law to regulate security assessment and investigations on:

- Any person, category of persons or institutions that are of National Security Interest in line with section 4(2)(a)(i) of the National Strategic Intelligence Act, 1994 (Act No 39 of 1994) for security vetting by the Agency.
- Section 4(2)(a)(i) of the National Strategic Intelligence Act empowers NICOC to coordinate and interpret Intelligence supplied by the National Intelligence Structures so as to detect and identify any threat or potential threat to National Security of the Republic,
- The proposed amendment enables the Intelligence structures to conduct security assessments and investigations on institutions that may be used illegally for terror financing and money laundering.

1.5.2 In this regard, Section S2A of the National Strategic Intelligence Act, 1994, will be amended as follows:

2A “(1) The relevant members of the National Security Structures **must** conduct a security assessment in a prescribed manner to determine the security competence of a person if such a person—

- (i) Is employed by or is an applicant for employment by an organ of State; or
- (ii) Is rendering a service or has given notice of intention to render a service to an organ of state which service may—
 - a. give him or her access to classified information and intelligence in the possession of the organ of state; or
 - b. give him or her access to areas designated as Critical Infrastructure in terms of the relevant law;
- (iii) Is a person or Institution of National Security interest as per section 4(2)(a)(i) of the Act;

1.6 Empowering the Minister to prescribe regulations on the following key security matters

1.6.1 Cybersecurity and identification of critical electronic communications and Infrastructure

1.6.1.1 Section 2(1)(a) of the National Strategic Intelligence Act No 39 of 1994; provides that the mandate of the State Security Agency is to gather and analyze domestic and foreign Intelligence in order to:

- Identify any threat or potential threat to National Security.

1.6.1.2 National Security includes Cybersecurity or the security of the ICTs and due to this and also in line with the approved National Cybersecurity Policy Framework, the Minister responsible for Intelligence has legal authority to regulate the coordination of cybersecurity in the Republic. In view of the above and taking into account the fact that there is no existing legislative instrument to regulate cybersecurity, this Bill empowers the Minister responsible for Intelligence to develop relevant regulations.

1.6.1.3 Section 2(2)(b) of the National Strategic Intelligence Act, 1994, provides that, in a prescribed manner and with regard to communications and cryptography, the Agency must:

- Identify, protect and secure critical electronic communications and infrastructure against unauthorised access or technical or any other related threats.

1.6.1.4 Due to this enabling section, the Minister is empowered to regulate the identification, protection and security of critical electronic communications and infrastructure which are commonly referred to as National Critical Information Infrastructures (NCIIS).

1.6.2 Coordination of the private security industry

The Bill proposes regulating measures for the coordination of the private security industry by NICOC on a need basis. This approach promotes public-private cooperation on security matters and also provides additional capacity to government in cases of the need. This measure of cooperation has already been implemented within the security sector and is a critical enabler of public-private cooperation within the security sector.

1.6.3 Regulations on Code of Conduct of current and former members of the service, current and former ministers, and former and current members of parliament with access to intelligence information

1.6.3.1 Globally, intelligence services have adopted various measures to protect access to intelligence even by members of the parliament and relevant support services. This proposal seeks to ensure that all those who have access to intelligence are subjected to measures that seek to prevent or minimize the risk of the disclosure of intelligence and compromise of National Security.

1.6.3.2 This approach of having security checks for access to intelligence is followed by the major countries like United States, Canada, United Kingdom, Germany and New Zealand. This approach is consistent with our laws and the counter-intelligence mandate of protecting critical information and intelligence.

1.7 Consultation with National Treasury on clarifying the powers of the Minister and the Director-General and Aligning with the PFMA

1.7.1 The Presidential High Level Review Panel and the State of Capture Commission raised the need for the review of the relevant intelligence laws so as to provide an appropriate balance between exercise of the oversight responsibilities by the Minister and the responsibility of the Director-General on operational matters. This will ensure that the Minister is able to provide policy guidance to intelligence services which will be operationally implemented by the concerned Director-General.

1.7.2 In the international benchmark study referred to above, it is noted that in most of the intelligence services, the heads of the Intelligence report to either a designated Minister of State or the President in the performance of their functions.

1.7.3 In view of the above, the SSA consulted National Treasury on this issue and the following proposed changes to relevant sections of the law was agreed to by both parties. It was agreed that the following sections in the Intelligence Services Act, be amended as follows so as

to achieve a clear role of the Minister the concerned Director-General:

- (i) “10 (1) The Director-General concerned or the Executive Director, as the case may be, must, subject to the written directions of the Minister and this Act, exercise command and control of the Service, Agency or Academy: Provided that the Minister shall, in cases where there are financial implications, consult the Minister of finance;
- (ii) (2) The concerned Director-General or the Executive Director, as the case may be, may, in a prescribed manner and subject to the approval of the Minister and the provisions of this Act, issue functional directives applicable to—
 - (a) conditions of service and human resources of the Intelligence Services or Academy, as the case may be: Provided that such functional directives must be submitted to the Council for consideration: Provided that the Minister shall, in cases where there are financial implications, consult the Minister of finance; and
 - (b) any other matter he or she may deem expedient for the efficient command and control of the Intelligence Services or Academy, as the case may be.”.
- (iii) (3) “The Director-General or the Executive Director concerned may, in a prescribed manner, subject to the provisions of this Act, issue functional directives applicable to—”;

Or Alternatively:

- The Director-General or the Executive Director concerned may, in a prescribed manner, subject to the provisions of this Act, and in consultation with the Minister, issue functional directives applicable to—
 - “(f) any other matter that is necessary for the intelligence and Counter-Intelligence functions of the Service and the Agency respectively;

2. SUMMARY OF THE REST OF THE PROVISIONS OF THE DRAFT GILAB 2023

2.1 OBJECTS OF THE BILL

- 2.1.1 **Clause 1** clarifies and introduces new definitions of various national security concepts and terminology relevant to the amendments in the Bill such as the definitions of the Agency, Service, Centre, cybersecurity, Academy, National Security, threats to National Security, domestic and foreign intelligence and intelligence gathering amongst others.
- 2.1.2 **Clause 2** outlines the functions of the Agency, Service and the Centre.
- 2.1.3 **Clause 3** provides that the responsibility for the conducting of security competence assessment test and vetting of persons employed by, applicants to organs of state, or rendering services to organs of state which is the responsibility of the Agency.
- 2.1.4 **Clause 3** outlines the functions of other departments of State with reference to national security intelligence and co-operation between organs of state and the Intelligence Services. In addition to the Domestic and Foreign Intelligence Service, other departments of state may gather departmental intelligence when they are empowered by law to perform a function with regard to the security of the Republic or the combatting of any threat to the national security of the Republic, provided that they may not do so in a covert manner, and may not do so outside the Republic in a covert manner with the exception of Defence Intelligence.
- 2.1.5 **Clause 5** provides for the composition of the Nicoc and administrative matters related to its functioning. The composition of Nicoc includes the Directors-General of the Domestic and Foreign Intelligence Service. The Bill also provides that the budget of Nicoc shall be appropriated as per the budget vote of the intelligence services.
- 2.1.6 **Clause 6** enables the Minister to make regulations relating to information security and the protection of intelligence, coordination of the activities of the Intelligence structures established, protection of National Critical Information Infrastructures as well as the coordination of cybersecurity activities by the Agency. These regulations will be approved by the Minister after consultation with the Joint Standing Committee on Intelligence (JSCI). Regulations contemplated in section 6 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994) must be made 24 months after the commencement of the Act.
- 2.1.7 **Clauses 7–12** outline amendments to the Intelligence Services Oversight Act, 1994 (Act No. 40 of 1994). **Clause 7** provides definitions for various concepts and terminology utilised in the Bill. Key concepts include the definitions of Centre, Intelligence Services as South African Intelligence Agency (Agency) and South African Intelligence Service (Service), and Intelligence Services Entities as Centre, SANAI and the OIC.
- 2.1.8 **Clause 9** provides for the administration, financial management and expenditure of the Intelligence Services Entities to be within the ambit of the oversight of the JSCI. Clause 9 provides for review of the appointment procedures of the JSCI within two years of the commencement of the contemplated General Intelligence Laws Amendment Act, 2023. Clause 9 also provides that a person may not

be designated as a member of the JSCI without a valid security clearance.

- 2.1.9 **Clause 11** provides for the appointment, qualification for eligibility, and conditions of employment of the Inspector-General of Intelligence (IGI). The President appoints the IGI nominated by the JSCI and the approval of the National Assembly of a resolution supported by two thirds of the National Assembly members. The IGI may only be appointed subject to the issuance of a security clearance, and must be South African citizens and fit and proper persons to hold such office and who has knowledge of intelligence. The IGI shall hold office for a term of five years and the term of office of the IGI is non-renewable.
- 2.1.10 The conditions of service and remuneration of the IGI shall be prescribed by the President in consultation with the Minister of Finance. Clause 11 also provides that the President may remove the IGI only on the grounds of misconduct, incapacity, withdrawal of security clearance, poor performance or incompetence as prescribed. The president may suspend the IGI pending an investigation and decision by the JSCI.
- 2.1.11 The IGI must comply with the security requirements to employees of the intelligence services and shall serve impartially and independently and perform their functions in good faith and without fear, favour, bias or prejudice. Clause 11 also provides that the Minister must appoint persons to the office of the IGI as may be necessary for the performance of the functions of that office and on the same conditions of employment and security requirements as members of the Intelligence Services, and may determine the post structure of the office of that office.
- 2.1.12 **Clause 12** provides for the Minister to make regulations on various matters with the concurrence of the JSCI. The Minister must make regulations on the performance of the IGI's functions under section 7(7)(c) of the Intelligence Services Oversight Act, 1994 (Act No. 40 of 1994). The Minister must also make regulations regarding the suspension and termination of employment of the IGI, the oath or affirmation of secrecy to be subscribed to by the IGI, members and staff of the JSCI, the leaders of political parties represented or willing to serve on the JSCI, and staff appointed to the office of the IGI. Clause 12 also provides that the Minister must make regulations regarding the security clearance of the IGI, members and staff of the JSCI.
- 2.1.13 **Clauses 13 to 55** provide for amendments to the Intelligence Services Act, 2002 (Act No. 65 of 2002). **Clause 13** provides definitions for various concepts and terminology utilised in the Bill. Key concepts include the definitions of Centre, Civilian Intelligence Service, and Executive Director that are defined to assist in defining the legislative mandates of the intelligence agencies.
- 2.1.14 **Clause 15** outlines the application of the Intelligence Services Act, 2002 (Act No. 65 of 2002) and the Bill extends the application to include former members.
- 2.1.15 **Clause 16** provides for the establishment of Agency, Service and the Centre. The State Security Agency is disestablished as a Schedule 1 national department and the Agency and Service are two separate national departments as envisaged in section 7(2)(a) and Schedule 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994). Clause 17 also provides for the appointment of the Directors-General of the Agency and Service as accounting officers in terms of the

PFMA. The Minister exercises oversight responsibilities in terms of the Intelligence Services Act, 2002.

- 2.1.16 **Clause 16** also establishes the Centre which is responsible for the bulk interception services referred to in section 2(2B) referred to above. The Centre is constituted by its head and members and reports to the Director-General of the Agency.
- 2.1.17 **Clause 18** provides for the establishment of SANAI as an Intelligence Training Academy. The functions of SANAI include the provision of training to the civilian intelligence community and that SANAI may establish training centers and may cooperate with any institution of higher learning to achieve its objectives. The accreditation and recognition of SANAI's qualifications must be done in accordance with the provision of the National Qualifications Framework Act, 2008 (Act No. 9).
- 2.1.18 **Clause 19–20** provides for the appointment of the head of the Academy by the Minister, in consultation with the President, at a level of Deputy Director-General. The Head of SANAI reports to the DG of the Domestic Service. Clause 20 deals with the composition of SANAI and empowers the Minister to establish and prescribe the organizational and post structure.
- 2.1.19 **Clause 21** provides for the appointment of members of the Civilian Intelligence Service and clause **22** provides for the Head of SANAI to be a member of the Ministerial Advisory Committee on Training.
- 2.1.20 **Clause 23 to 54** provides for the responsibilities for the management and leadership of the departments and government components to the Directors-General and Executive Directors, under the executive oversight of the Minister. The reference to the SSA is replaced by the Civilian Intelligence Service or relevant entities, as the case may be. All members of the Civilian Intelligence Service bear the same responsibilities.
- 2.1.21 **Clause 35** outlines the establishment and functions of the Intelligence Service Council, the five-year term of office of the members of the Council, the security clearance for the eligibility for appointment as a member of the Council, and the removal of a member of Council on account of misconduct, incapacity, incompetence, withdrawal of security clearance or absence from three consecutive meetings of the Council.
- 2.1.22 The Minister may determine the conditions of service and security requirements of the members of the Council in accordance with the conditions of service and security requirements of members of the Civilian Intelligence Service. The Minister must appoint members or persons to constitute the office of the Council on the conditions of service and security requirements applicable to members of the Civilian Intelligence Service. The Minister must determine organizational and post structure of the ISC.
- 2.1.23 **Clause 42** enables the Minister to prescribe the role and functions of former members of Intelligence within the Intelligence Services and clause 43 empowers the Minister to determine the conduct of former members in relation to disclosure of classified information and intelligence.

2.1.24 **Clauses 50** provides for the long title of the Intelligence Services Act, 2002 (Act No. 65 of 2002).

2.1.25 **Clause 51** read with Schedule 1 to the Bill sets out the consequential amendments to other Acts of Parliament, required by the Bill.

2.1.26 **Clause 52** provides for the short title and commencement of the Bill. The envisaged Act is called the General Intelligence Laws Amendment Act, 2023. The President may determine different dates for the commencement of different provisions of the envisaged Act.

3. CONSULTATION

3.1 The Intelligence Structures, Department of Justice and Constitutional Development, Department of Public Service and Administration, National Treasury as well as all the JCPS cluster Departments were consulted.

3.2 The substance of this memorandum was discussed by the Development Committee of the Justice, Peace and Security (JCPS), JCPS Directors-General cluster and JCPS cluster Ministers.

4. FINANCIAL IMPLICATIONS FOR STATE

4.1 The main financial implications of the disestablishment of the SSA, will be in the re-configuration of the Agency, Service, Centre and SANAI referred to in this Bill.

4.2 It is envisaged that additional funds that will be required for the reconfiguration of the two Intelligence services and the required operational capacities and systems as dealt with in detail in the Business case to be presented to Cabinet as an annexure to this Bill.

5. CLASSIFICATION OF THE BILL

5.1 The Department is of the opinion that the Bill must be dealt with in accordance with section 75 of the Constitution, since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The Department is also of the opinion that it is not 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 does not contain provisions pertaining to customary law or customs of traditional communities.

