

Explanatory Note:

The document contains the proposals of the ANC and the DA.

Amendments proposed by the DA are contained in squares.

The State Law Advisers have proposed two amendments of a technical nature – these are indicated in italics.

PROPOSED AMENDMENTS TO
GENERAL INTELLIGENCE LAWS AMENDMENT BILL, 2011 [B25-2011]
AD HOC COMMITTEE ON
GENERAL INTELLIGENCE LAWS AMENDMENT BILL [B25-2011]

CLAUSE 1

1. On page 2, in line 21, to omit "definitions" and to substitute "definition".
2. On page 2, from line 22, to omit the definition of "foreign signals intelligence".
3. On page 3, from line 3, to omit the definition of "information security".¹

¹ *The definition is not used in the Bill or the relevant Act.*

CLAUSE 1

1. On page 2, from line 17, to omit “subversion, sedition, treason [~~,sabotage and terrorism aimed at or against personnel, strategic installation or resources of the Republic]~~ and terrorist and related activities” and to substitute:

“~~[subversion, treason , sabotage and terrorism aimed at or against personnel, strategic installation or resources of the Republic]~~ any threat or potential threat to national security;”

2. On page 2, after line 19, to insert the following paragraphs:

- (c) by the substitution for the definition of “**departmental intelligence**” of the following definition:

“**departmental intelligence**” means intelligence [~~about any~~] on any threat or potential threat to [~~the~~] national security [~~and stability of the Republic]~~ which falls within the functions of a department of State, and includes intelligence needed by such department in order to neutralise such a threat;

- (d) by the substitution for the definition of “**domestic intelligence**” of the following definition:

“**domestic intelligence**” means intelligence on any internal [~~activity, factor or development which is detrimental to the national stability of the Republic, as well as threats or potential threats to the constitutional order of the Republic and the safety and the well-being of its people]~~ threat or potential threat to national security;

- (e) by the substitution for the definition of “**foreign intelligence**” of the following definition:

“**foreign intelligence**” means intelligence on any external threat or potential threat to [~~the national interests of the Republic and its people, and intelligence regarding opportunities relevant to the protection and promotion of such national interests irrespective of whether or not it can be used in the formulation of the foreign policy of the Republic]~~ national security;

CLAUSE 2

1. On page 4, from line 42, to omit paragraphs (b) and (c).
2. On page 4, in line 55, to omit "products"
2. On page 4, from line 58, to omit paragraph (e).
3. On page 5, from line 5, to omit paragraph (g).
4. On page 5, from line 23, to omit subparagraph (iv).
5. On page 5, from line 35, to omit paragraph (k).
8. On page 5, after line 43, to add the following paragraph:

"(e) by the insertion after subsection (2) of the following subsection:

"(2A) When performing any function referred to in subsection 2(b) the Agency is exempted from any licensing requirement contemplated in—

(a) the Broadcasting Act, 1999 (Act No. 4 of 1999); and

(b) the Electronic Communications Act, 2005 (Act No. 36 of 2005)."

CLAUSE 2

1. On page 4, after line 41, to insert the following paragraph:
 - (b) by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:
 - (i) identify any threat or potential threat to **[the security of the Republic**

or its people] national security.”

2. On page 5, from line 5, to omit paragraph (g) and to substitute:

“(g) by the deletion in subsection (2) of paragraph (a)”.

3. On page 5, from line 23, to omit subparagraph (iv) and to substitute:

“(iv) subject to the Regulation of Interception of Communications and Provision of Communications-related Information Act, 2002 (Act No. 70 of 2002), and in a manner prescribed under section 37(1)(sC) of the Intelligence Services Act, 2002 (No. No. 65 of 2002), to collect and analyse foreign signals intelligence on any threat or potential threat to national security;”.

4. On page 5, from line 36, to omit paragraph (d) and to substitute;

“(d) subject to the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), and in a manner prescribed under section 37(1)(sC) of the Intelligence Services Act, 2002 (Act No. 65 of 2002), to monitor or interfere with the electromagnetic, acoustic and other emissions and any equipment producing such emissions and to obtain and provide information derived from or related to such emissions or equipment and from encrypted material, for the purposes of protecting and promoting national security.”.

CLAUSE 4

1. On page 6, in line 35, to omit "If any law" up to and including "State—" in line 41 and to substitute:

"[If any law expressly or by implication requires any department of State, other than the Agency, to perform any function with regard to the security of the Republic or the combating of any threat to the 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] A department of State—".

2. On page 6, after line 41, to insert the following paragraph:

(b) by the substitution in subsection 1 for the words preceding paragraph (i) of the second proviso of the following words:

"Provided **[further]** that such department of State—";

3. On page 6, in line 44, to omit "subsections" and to substitute "subsection".

4. On page 6, from line 45, to omit subsection (5).

CLAUSE 5

1. On page 6, from line 58, to omit "one of whom shall be designated by the Minister as chairperson".

2. On page 7, in line 1, to omit "head of Nicoc" and to substitute "Coordinator for Intelligence appointed under section 5(1), who shall be the Chairperson".
3. On page 7, from line 11, to omit paragraphs (b), (c), (d), (e) (f) and (g).

CLAUSE 6

Clause rejected.

NEW CLAUSE

1 That the following be a new clause to follow clause 6:

"Insertion of section 5B in Act 39 of 1994

7. The following section is hereby inserted in the National Strategic Intelligence Act, 1994, after section 5A:

"Compliance with Constitution

5B. When performing any function provided for in this Act, the Constitution, in particular section 199(5) and (7), must be duly complied with."

CLAUSE 7

1. On page 8, in line 24, to omit the second "and".
2. On page 8, after line 24, to insert the following paragraph:
 - (d) by the insertion after subsection (1) of the following subsection:

"(1A) Regulations contemplated in subsection (1)(c) must be consistent with the provisions contained in the Section 11 of the Intelligence Services Act, 2002 (Act 65 of 2002) and the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).";
3. On page 8, in line 31, after "her", to insert "; and".
4. On page 8, after line 31, to add the following paragraph:
 - (f) by the addition of the following subsection:

"(6) Any regulation made under this section must be submitted to and approved by the Joint Standing Committee on Intelligence."

NEW CLAUSE

1. That the following be a new clause to follow clause 7:

Insertion of section 7A in Act 39 of 1994
8. The following section is hereby inserted in the National Strategic Intelligence Act, 1994, after section 7:

"Offences and Penalties

7A. Any person who unlawfully and intentionally gathers, correlates, evaluates and analyses intelligence on lawful political activity, advocacy, protest or dissent is guilty of an

offence and liable on conviction to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment."

CLAUSE 8

Clause rejected.

CLAUSE 11

1. On page 9, after line 22, to insert the following paragraph²:

"(a) by the substitution in paragraph (a)(i) for the words preceding item (aa) of the following words:

*"the Auditor-General an audit report compiled in accordance with section **[4(6) of the Auditor-General Act, 1995 (Act No. 12 of 1995)]** 22 of the Public Audit Act, 2004 (Act 25 of 2004), and after obtaining the report, to consider-*"

2. On page 9, in line 25, after "**Comsec]**" to insert "and the Office".

CLAUSE 14

1. On page 10, from line 48, to omit paragraph (f).

² Technical amendment: Act No. 12 of 1995 has been repealed by Act No. 25 of 2004.

CLAUSE 49

1. On page 24, in line 23, to omit paragraph (sC).

CLAUSE 49

1. On page 24, after line 28, to add the following paragraphs:

(g) by the insertion after subsection (2) of the following subsection:

“(2A) Regulations contemplated in subsection (1)(sC) must be consistent with the provisions contained in the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).”

(h) by the addition of the following subsection:

“(6) Any regulation made under this section must be submitted to and approved by the Joint Standing Committee on Intelligence.”