

National Strategic Intelligence Act 39 of 1994¹

[ASSENTED TO 23 NOVEMBER 1994]	[DATE OF COMMENCEMENT: 1 JANUARY 1995]
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(English text signed by the President)

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GG 16128 of 2 December 1994

commencement

(see s. 8 of this Act)

provisions	date	refer to
whole Act	1 January 1995	Proc 177 in GG 16180 of 23 December 1994

as amended

by	with effect from	refer to
National Strategic Intelligence Amendment Act 37 of 1998	1 June 1999	s. 8 of Act 37 of 1998 ; Proc 69 in GG 20136 of 28 May 1999
General Intelligence Law Amendment Act 66 of 2000	1 July 2001	s. 27 of Act 66 of 2000 ; Proc R35 in GG 22427 of 2 July 2001
National Strategic Intelligence Amendment Act 67 of 2002	20 February 2003	s. 8 of Act 67 of 2002 ; Proc 12 in GG 24475 of 20 February 2003
General Intelligence Laws Amendment Act 52 of 2003	14 May 2004	s. 26 of Act 52 of 2003 ; Proc 27 in GG 26363 of 17 May 2004
General Intelligence Laws Amendment Act 11 of 2013	29 July 2013	s. 54 of Act 11 of 2013 ; Proc 32 in GG 36714 of 29 July 2013

ACT

To define the functions of members of the National Intelligence Structures; to establish a National Intelligence Co-ordinating Committee and to define its functions in respect of intelligence relating to the security of the Republic; and to provide for the appointment of a Co-ordinator for Intelligence as chairperson of the National Intelligence Co-ordinating Committee, and to define his or her functions; and to provide for matters connected therewith.

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

- 1 This Act has been updated to include all available historical commencement details

1 Definitions

In this Act, unless the context otherwise indicates-

“ **‘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);”

‘Cabinet’ means the Cabinet of the Republic of South Africa referred to in section 91 (1) of the Constitution;

[Definition of 'Cabinet' substituted by s. 1 (b) of [Act 37 of 1998](#) (wef 1 June 1999).]

“ **‘Centre’** means the National Communications Centre referred to in section 5 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);”

‘Constitution’ means the Constitution of the Republic of South Africa, 1996 ([Act 108 of 1996](#));

[Definition of 'Constitution' substituted by s. 1 (c) of [Act 37 of 1998](#) (wef 1 June 1999).]

‘Co-ordinator for Intelligence’

[Definition of 'Co-ordinator for Intelligence' deleted by s. 1 (d) of [Act 37 of 1998](#) (wef 1 June 1999).]

‘counter-intelligence’ means measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect intelligence and any classified information, to conduct vetting investigations and to counter any threat or potential threat to national security;

[Definition of 'counter-intelligence' substituted by s. 1 (a) of [Act 67 of 2002](#) (wef 20 February 2003) and by s. 1 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

“ **‘critical infrastructure’** means critical infrastructure as defined in section 1 of the Critical Infrastructure Protection Act, 2019 (Act No. 8 of 2019);

‘crime intelligence’ means intelligence used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders;

“ **‘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;”

‘departmental intelligence’ means intelligence on any threat or potential threat to national security which falls within the functions of a department of State, and includes intelligence needed by such department in order to neutralise such a threat;

[Definition of 'departmental intelligence' substituted by s. 1 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

“ **‘domestic intelligence’** means intelligence on any internal threat or opportunity or potential opportunity or threat or potential threat to national security;”

'domestic military intelligence' means intelligence required for the planning and conduct of military operations within the Republic to ensure security and stability for its people;

'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;

'evaluate' means the process of determining and assessing whether or not information is possibly correct, probably correct or factually correct;

'foreign intelligence' means intelligence on any external threat or potential threat and opportunity or potential opportunity to national security;

'foreign military intelligence' means intelligence regarding the war potential and military establishment of foreign countries (including their capabilities, intentions, strategies and tactics) which can be used by the Republic in the planning of its military forces in time of peace and for the conduct of military operations in time of war;

'intelligence' means any information obtained and processed by a National Intelligence Structure for the purposes of informing any government decision or policy-making process carried out in order to protect or advance the national security, and includes-

- (a) counter-intelligence;
- (b) crime intelligence;
- (c) departmental intelligence;
- (d) domestic intelligence;
- (e) domestic military intelligence;
- (f) foreign intelligence; and
- (g) foreign military intelligence;

[Definition of 'intelligence' inserted by s. 1 (e) of [Act 11 of 2013](#) (wef 29 July 2013).]

'infrastructure' has the meaning ascribed to it in the Critical Infrastructure Protection Act, 2019 (Act No. 08 of 2019);

'intelligence gathering' means the acquisition and processing of relevant and reliable information into intelligence products related to any domestic or foreign opportunity or potential opportunity or threat or potential threat to national security or threats to the advancement or protection of national security;

'Minister' means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209 (2) of the Constitution;

[Definition of 'Minister' inserted by s. 1 (e) of [Act 37 of 1998](#) (wef 1 June 1999).]

'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;

'national intelligence estimate' means the product of the process of considering and weighing the possibilities, probabilities and facts disclosed by national security intelligence with regard to any situation, and of drawing conclusions from such possibilities, probabilities and facts;

'National Intelligence Structures' means— (a) Nicoc; (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.”.

'national security' means the capabilities, measures and activities of the State to pursue or advance— (a) any threat; (b) any potential threat; (c) any opportunity; (d) any potential opportunity; or (e) the security of the Republic and its people, in or outside the Republic in accordance with section 198 of the Constitution;”;

'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;”;

'national strategic intelligence' means comprehensive, integrated and estimative intelligence on all the current and long-term aspects of national security which are of special concern to strategic decision-making and the formulation and implementation of policy and strategy at national level;

'Nicoc' means the National Intelligence Co-ordinating Committee established by section 4;

'opportunity or potential 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;”;

'person or institution of national security interest' means any person or institution, identified by the Agency in the form and manner prescribed, that conducts himself/herself or itself or engages in activities that are inconsistent with the principles set out in section 198 of the Constitution including any person or institution that engages in activities that are defined as a threat to national security in terms of this Act;”;

'prescribed' means prescribed by regulation;

[Definition of 'prescribed' inserted by [s. 24](#) of [Act 66 of 2000](#) (wef 1 July 2001).]

'regulation' means a regulation made under this Act;

'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.”;

'security competence test' 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 or is a person or institution of national security interest in terms of Section 4(2)(a)(i) of the Act;”;

'security competence' means a person's ability to act in such a manner that he or she does not cause classified information or material to fall into unauthorised hands, thereby harming or endangering the security or interests of the State, and is measured against a person's-

- (a) susceptibility to extortion or blackmail;
- (b) amenability to bribes and susceptibility to being compromised due to his or her behaviour; and
- (c) loyalty to the State and the relevant institution;

[Definition of 'security competence' inserted by s. 1 (j) of [Act 11 of 2013](#) (wef 29 July 2013).]

'Service' means the South African Intelligence Service as referred to in section 3 of the Intelligence Services Act, 2002 (Act No. 65 of 2002);

'South African Police Service' means the South African Police Service established by [section 5 \(1\)](#) of the South African Police Service Act, 1995 ([Act 68 of 1995](#));

[Definition of 'South African Police Service' substituted by s. 1 (g) of [Act 37 of 1998](#) (wef 1 June 1999).]

'state security matter' includes any matter which has been classified in terms of any national law and which is dealt with by the Agency or which relates to the functions of the Agency or to the relationship existing between any person and the Agency;

[Definition of 'state security matter' inserted by s. 1 (k) of [Act 11 of 2013](#) (wef 29 July 2013).]

'subversion' means any activity intended to destroy or undermine the constitutionally established system of government in the Republic of South Africa;

[Definition of 'subversion' inserted by s. 1 (c) of [Act 67 of 2002](#) (wef 20 February 2003).]

'terrorist and related activities' means terrorist and related activities as defined in [section 1](#) of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 ([Act 33 of 2004](#));

[Definition of 'terrorist and related activities' inserted by s. 1 (k) of [Act 11 of 2013](#) (wef 29 July 2013).]

'this Act' includes the regulations;

'threat to national security' includes any action or omission which may potentially cause damage, harm or loss to the national security, which includes— (a) any activity that seeks to harm the advancement and promotion of equality and equitable access to opportunities by all South Africans as provided for in section 9 of the Constitution; (b) any activity that seeks to harm the advancement and promotion of peace and harmony and freedom from fear and want for South Africans; (c) use of force or violence against the people of the Republic or the territorial integrity of the Republic; (d) foreign hostile acts directed at undermining the constitutional order of the Republic; (e) terrorism, terror financing, illicit money flows, money laundering, corruption or terrorist-related activities; (f) subversion and undue influence by hostile interests on government processes, policies and the sovereignty of the State and its organs; (g) espionage, including acts of unauthorised access, disclosure and exposure of a state security matter, exposure of economic, scientific or technological secrets vital to the Republic; (h) serious acts of violence, intimidation and sabotage directed at harming security of the Republic, its people and national critical infrastructure as well as acts directed at overthrowing the constitutional order of the Republic; (i) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of force and carrying out of its constitutional responsibilities and any legal responsibilities to a foreign country and international organisation in relation to any of the matters referred to in this definition, whether directed from, or committed within, the Republic or not, but does not include lawful political activity, advocacy, protest or dissent; (j) threats or potential threats of calamity or any harmful or contagious episode or pandemic which occurs naturally or artificially induced or declared in law as a national state of disaster; (k) acts of theft or siphoning of state financial resources and its related corrupt activities;

'vetting field work units' means vetting field work units referred to in section 2A (5A);
[Definition of 'vetting field work units' added by s. 1 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

'vetting investigation' means the prescribed investigation followed in determining a person's security competence.

[Definition of 'vetting investigation' added by s. 1 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

“'verification services' means services designed to identify the origin or the integrity of an information and communications security product, system or service;”

2 Functions relating to intelligence

“(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 potential opportunity or threat or potential threat to national security; (ii) supply intelligence regarding any such threat or opportunity to Nicoc;”

(2) It shall, subject to section 3, also be the functions of the Agency-

- (a) to gather, correlate, evaluate and analyse foreign intelligence, excluding foreign military intelligence, in order to-
 - (i) identify any threat or potential threat to the security of the Republic or its people;
 - (ii) supply intelligence relating to any such threat to Nicoc;
- [Sub-para. (ii) substituted by s. 2 (b) of [Act 37 of 1998](#) (wef 1 June 1999).]

“(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 or potential 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 apprehend 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; (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; (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; (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.”;

(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 4 of 1999](#)); and

- (b) the Electronic Communications Act, 2005 ([Act 36 of 2005](#)).
[Sub-s. (2A) inserted by s. 2 (g) of [Act 11 of 2013](#) (wef 29 July 2013).]

2B(1) The Centre shall, in a prescribed manner, and with regard to foreign signals, communications and non-communications— (a) gather, correlate, evaluate and analyse relevant intelligence in order to identify any threat or potential threat to national security subject to—(i) submission of bulk interception application in the form and manner, as prescribed for approval by a retired Judge appointed by the President, after consultation with the Chief Justice; (ii) two advisory interception experts appointed by the Minister based on his or her relevant qualifications and experience in the field; and (iii) the Centre supplying relevant intelligence to the national intelligence structures. (2)(b) In a prescribed manner, and with regard to information security and cryptography, the Centre shall— (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 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. (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).”.

(3) It shall be the function of the South African Police Service, subject to section 3-

- (a) to gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the South African Police Service as contemplated in section 205 (3) of the Constitution;
[Para. (a) substituted by s. 2 (d) of [Act 37 of 1998](#) (wef 1 June 1999) and by s. 2 (b) of [Act 67 of 2002](#) (wef 20 February 2003).]
- (b) to institute counter-intelligence measures within the South African Police Service; and
[Para. (b) substituted by s. 2 (b) of [Act 67 of 2002](#) (wef 20 February 2003).]
- (c) to supply crime intelligence relating to national strategic intelligence to Nicoc.
[Para. (c) added by s. 2 (c) of [Act 67 of 2002](#) (wef 20 February 2003).]

(4) The National Defence Force shall, subject to section 3-

- (a) gather, correlate, evaluate and use foreign military intelligence, and supply foreign military intelligence relating to national strategic intelligence to Nicoc, but the National Defence Force shall not gather intelligence of a non-military nature in a covert manner;
- (b) gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when employed for service as contemplated in section 201 (2) (a) of the Constitution and under conditions set out in section 3 (2) of this Act, and supply such intelligence to Nicoc; and
[Para. (b) amended by s. 2 (e) of [Act 37 of 1998](#) (wef 1 June 1999).]
- (c) institute counter-intelligence measures within the National Defence Force.

2A Vetting investigations

[Heading substituted by s. 3 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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; (iii) in order to have access to areas designated as critical infrastructure areas in terms of the relevant law; or (iv) if a person or institution of national security interest in terms of Section 4(2)(a)(i) of the Act ; or

- (b) is rendering a service or has given notice of intention to render a service to an organ of state, which service may-
- (i) give him or her access to classified information and intelligence in the possession of the organ of state; or
- (ii) give him or her access to areas designated national key points in terms of the National Key Points Act, 1980 ([Act 102 of 1980](#)).

[Sub-s. (1) amended by s. 2 (a) of [Act 52 of 2003](#) (wef 14 May 2004) and by s. 3 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

(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.”.

(3) Notwithstanding the provisions of subsection (2) the Agency may request the assistance of the South African Police Service, the National Defence Force or the vetting field work units in the performance of the function contemplated in subsection (2).

[Sub-s. (3) substituted by s. 3 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

(4) (a) In performing the vetting investigation contemplated in subsection (1), the relevant members of the National Intelligence Structures may use a polygraph to determine the reliability of information gathered during the investigation.

[Para. (a) substituted by s. 3 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

(b) For the purpose of this section, **'polygraph'** means an instrument used to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person.

(5) The relevant members of the National Intelligence Structures may, in the prescribed manner, gather information relating to-

- (a) criminal records;
- (b) financial records;
- (c) personal information; or
- (d) any other information which is relevant to determine the security clearance of a person:

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 relevant members shall perform this function in accordance with the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 ([Act 70 of 2002](#)).

[Sub-s. (5) amended by s. 2 (b) of [Act 52 of 2003](#) (wef 14 May 2004).]

(5A) (a) Departments of State may, at the request of the Agency, establish units to be known as vetting field work units.

(b) Vetting field work units may, on request by the Agency, assist a relevant National Intelligence Structure in gathering the information contemplated in subsection (5).

[Sub-s. (5A) inserted by s. 3 (e) of [Act 11 of 2013](#) (wef 29 July 2013).]

(6) The head of the relevant National Intelligence Structure or any officials delegated by him or her in writing may, after evaluating the information gathered during the vetting investigation, issue, degrade, withdraw or refuse to grant a security clearance.

[Sub-s. (6) substituted by s. 3 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

(7) The head of the relevant National Intelligence Structure may establish a Vetting Advisory Board comprising of members or employees of the relevant National Intelligence Structure to assist him or her or any delegated officials contemplated in subsection (6) in the determination of the security competence of a person.

[Sub-s. (7) substituted by s. 3 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

(8) (a) A person whose security clearance has been refused, withdrawn or degraded may in the prescribed manner appeal to the Minister responsible for the relevant National Intelligence Structure.

(b) Such appeal shall-

- (i) be lodged within 60 days from the date on which the decision was made known by the head of the relevant National Intelligence Structure or such later date as the Minister permits; and
- (ii) set out the grounds for the appeal.

(c) After considering the grounds of appeal and the head of the relevant National Intelligence Structure's reasons for the decision, the Minister responsible for the relevant National Intelligence Structure shall as soon as practicable-

- (i) confirm, set aside or vary the decision; or
- (ii) substitute any other decision for the decision of the relevant National Intelligence Structure.

(8A) The Minister responsible for the relevant National Intelligence Structure may establish a panel of appeal to assist him or her in the consideration of an appeal lodged in terms of this Act.

[Sub-s. (8A) inserted by s. 2 (c) of [Act 52 of 2003](#) (wef 14 May 2004).]

(9) The Director-General of the Agency may in the prescribed manner issue functional directives on-

- (a) usage and application of polygraph;
- (b) criteria for determining security competence; and
- (c) levels of security clearance.

(10) The directives contemplated in subsection (9) shall-

- (a) be issued with the approval of the Minister, who shall act in consultation with the Minister of Safety and Security and the Minister of Defence; and
- (b) notwithstanding any other law, apply to all the relevant National Intelligence Structures.

[Sub-s. (10) substituted by s. 2 (d) of [Act 52 of 2003](#) (wef 14 May 2004).]

[S. 2A inserted by [s. 3 of Act 67 of 2002](#) (wef 20 February 2003).]

3 Functions of other departments of State with reference to national security intelligence

(1) "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—;

- (a) other than the National Defence Force when employed for service as contemplated in section 201 (2) of the Constitution or when discharging the counter-intelligence responsibilities entrusted to its intelligence division; and

[Para. (a) substituted by s. 3 (a) of [Act 37 of 1998](#) (wef 1 June 1999).]

- (b) other than a police service established under any Act of Parliament, when a member of such service is investigating any offence relating to the security of the Republic or is performing any other function relating to the security of the Republic,

shall not gather departmental intelligence within the Republic in a covert manner: Provided further that such department of State-

- (i) other than the National Defence Force through its intelligence division;

[Para. (i) amended by s. 3 (b) of [Act 37 of 1998](#) (wef 1 June 1999).]

(ii) other than a police service established under any Act of Parliament, when a member of such a service is, with the knowledge and approval of Nicoc, investigating an offence relating to the security of the Republic or is performing any other function relating to the security of the Republic,

(iii)

[Para. (iii) deleted by s. 4 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

shall not gather departmental intelligence outside the Republic in a covert manner.

[Sub-s. (1) amended by s. 4 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]

(2) Notwithstanding subsection (1), the National Defence Force through its intelligence division may-

(a) whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service as contemplated in section 201 (2) (a) of the Constitution; and

(b) upon having been authorised by Nicoc acting with the concurrence of the Cabinet,

gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.

[Sub-s. (2) substituted by s. 3 (c) of [Act 37 of 1998](#) (wef 1 June 1999).]

(3) It shall be the duty of any department of State that comes into possession of national security intelligence or information which may be of value in the preparation of the national intelligence estimate referred to in section 4 (2) (c) to transmit such intelligence and information without delay to the relevant service forming part of the National Intelligence Structures, with an indication of the reliability of the source of such information.

(4) Subsection (3) shall not be construed as affecting the continued existence and functioning or the establishment of any intelligence service by any department of State for the purpose of performing its departmental intelligence functions under this Act.

“(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).”

(6) It shall be the duty of any of the members of the National Intelligence Structures to immediately transfer any intelligence in its possession that is required by another member of the National Intelligence Structures for the fulfilment of its statutory functions.

[Sub-s. (6) added by s. 4 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

(7) The head of an organ of state must ensure that the organ of state under his or her administration procures and accesses electronic communications products with the verification and approval of the Agency.

[Sub-s. (7) added by s. 4 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

(8) The head of an organ of state must, at the request of the Agency and in the prescribed manner, submit to the Agency an analysis of the electronic communications security needs of the organ of state under his or her administration.

[Sub-s. (8) added by s. 4 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

4 Establishment of National Intelligence Co-ordinating Committee

(1) There is hereby established a National Intelligence Co-ordinating Committee, which shall consist of the following persons:

- (a) The Co-ordinator for Intelligence appointed under section 5 (1), who shall be the Chairperson;
- (b) the Director-General of the Agency;

“(c) [head of the domestic division of the Agency] Director-General of the Service;”

- (e) the head of the intelligence division of the South African Police Service; and
- (f) the chief of the intelligence division of the National Defence Force,

or the alternates of the said persons, and such members of departments of State who may be co-opted by Nicoc on a permanent or an *ad hoc* basis.

[Sub-s. (1) amended by [s. 25 of Act 66 of 2000](#) (wef 1 July 2001) and by [s. 4 of Act 67 of 2002](#) (wef 20 February 2003) and substituted by [s. 5 of Act 11 of 2013](#) (wef 29 July 2013).]

(2) The functions of Nicoc shall be-

- (a) to co-ordinate the intelligence supplied by the members of the National Intelligence Structures to Nicoc and interpret such intelligence for use by the State and the Cabinet for the purposes of-
 - (i) the detection and identification of any threat or potential threat to the national security of the Republic;
 - (ii) the protection and promotion of the national interests of the Republic;
- (b) for the purposes of the functions contemplated in paragraph (a)-
 - (i) to co-ordinate and prioritise intelligence activities within the National Intelligence Structures;
 - (ii) to prepare and interpret intelligence estimates;
- (c) to produce and disseminate intelligence which may have an influence on any state policy with regard to matters referred to in paragraph (a) for consideration by the Cabinet;
- (d) after consultation with the departments of the State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national strategic intelligence between such departments;
- (e) at the request of any Department of State, to co-ordinate the gathering of intelligence and without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the National Intelligence Structures and which constitutes departmental intelligence, to the department concerned; and
- (f) to make recommendations to the Cabinet on intelligence priorities.

“(3) The Minister— (a) must 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 mem-bers of the intelligence services; (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;”

“(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).”

5 Co-ordinator for Intelligence

(1) The President shall appoint a person as Co-ordinator for Intelligence, who shall, subject to the directions and supervision of the Minister-

- (a) manage and administer the functions of Nicoc referred to in section 4 (2).
- (b)

[Para. (b) deleted by [s. 5 of Act 67 of 2002](#) (wef 20 February 2003).]

(2) The National Intelligence Structures shall, at the request of the Co-ordinator for Intelligence, render such assistance as is necessary for the performance of his or her functions contemplated in subsection (1).

[S. 5 substituted by s. 5 of [Act 37 of 1998](#) (wef 1 June 1999).]

5A Functions of Minister

(1) The Minister shall, subject to subsection (2), do everything necessary for the efficient functioning, control and supervision of the co-ordination of intelligence supplied by the National Intelligence Structures.

(2) The Minister shall perform a function contemplated in subsection (1) which affects a function of the National Defence Force or the South African Police Service in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) Subject to subsection (2), the Minister may, for the purposes of the functions contemplated in subsection (1), establish such support structures as are necessary-

- (a) for the efficient co-ordination of intelligence; and
- (b) to assist the Minister to advise the President and the national executive.

[Sub-s. (3) substituted by [s. 6](#) of [Act 67 of 2002](#) (wef 20 February 2003).]

(4) The Minister may delegate, the function contemplated in subsection (3) to the Co-ordinator for Intelligence.

[Sub-s. (4) added by [s. 6](#) of [Act 67 of 2002](#) (wef 20 February 2003).]

(5) The Minister shall advise the President and the national executive on national strategic intelligence and co-ordination of intelligence.

[Sub-s. (4) added by [s. 6](#) of [Act 67 of 2002](#) (wef 20 February 2003).]

[S. 5A inserted by [s. 6](#) of [Act 37 of 1998](#) (wef 1 June 1999).]

5B Compliance with Constitution

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

[S. 5B inserted by [s. 6](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

6 Regulations

(1) The Minister may, after consultation with the Joint Standing Committee on Intelligence, subject to subsection (2), make regulations regarding-

“(a) [the protection of] information security and protection of intelligence;”

- (b) the carrying out of vetting investigations by members of the National Intelligence Structures;
[Para. (b) substituted by s. 7 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]
- (c) the conduct of counter-intelligence operations, counter-measures and intrusive operations;
[Para. (c) substituted by s. 7 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]
- (d) production and dissemination of intelligence for consideration by Cabinet and the executive;
- (e) the co-ordination of counter-intelligence by the Agency;
- (f) the supply of intelligence products to the Minister;
[Para. (f) substituted by s. 7 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]
- (fA) the manner and form in which departmental intelligence shall be supplied to State departments;
[Para. (fA) inserted by s. 7 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

- (fB) the manner and form in which Nicoc may be tasked to gather and produce intelligence products;
[Para. (fB) inserted by s. 7 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]
- (fC) the provision of staff required for the administration of this Act;
[Para. (fC) inserted by s. 7 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(fD) any matter necessary for the effective execution and administration of counter-intelligence functions and the co-ordination and interpretation of intelligence products;

“(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; (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; (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; 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);”;

- (g) any other matter necessary for the effective administration of this Act.

“(1A) The regulations contemplated in subsection (1)(a) to (fK) must be made within 24 months after the commencement of the General Intelligence Laws Amendment Act, 2023.”.

(2) Any regulation which may affect a function of the National Defence Force or the South African Police Service shall be made in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) A vetting investigation contemplated in subsection (1) (b) may entitle the relevant members of the National Intelligence Structures concerned to subject the person undergoing a vetting investigation to a polygraph examination as prescribed, in order to determine the reliability of information provided by him or her.

[Sub-s. (3) substituted by s. 7 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

(4) A regulation made under this Act may not be published in the *Gazette*, but where such a regulation only affects the members of the National Intelligence Structures or their functioning, the affected parties must be notified in a manner determined by the Minister.

(5) A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[S. 6 substituted by [s. 7](#) of [Act 37 of 1998](#) (wef 1 June 1999), amended by [s. 26](#) of [Act 66 of 2000](#) (wef 1 July 2001) and substituted by [s. 7](#) of [Act 67 of 2002](#) (wef 20 February 2003).]

7 Repeal of laws

The Security Intelligence and State Security Council Act, 1972 (Act 64 of 1972), is hereby repealed.

8 Short title and commencement

This Act shall be called the National Strategic Intelligence Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Intelligence Services Act 65 of 2021

[ASSENTED TO 30 JANUARY 2003]	[DATE OF COMMENCEMENT: 20 FEBRUARY 2003]
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(English text signed by the President)

published in

GG 24390 of 13 February 2003

commencement

(see s. 41 of this Act)

provisions	date	refer to
whole Act	20 February 2003	Proc 10 in GG 24475 of 20 February 2003

as amended

by	with effect from	refer to
General Intelligence Laws Amendment Act 52 of 2003	14 May 2004	s. 26 of Act 52 of 2003 ; Proc 27 in GG 26363 of 17 May 2004
Public Service Amendment Act 30 of 2007	1 April 2008	s. 43 of Act 30 of 2007 ; Proc R8 in GG 30935 of 1 April 2008
General Intelligence Laws Amendment Act 11 of 2013	29 July 2013	s. 54 of Act 11 of 2013 ; Proc 32 in GG 36714 of 29 July 2013

ACT

“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.”.

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

1 This Act has been updated to include all available historical commencement details

CHAPTER

DEFINITIONS AND APPLICATION OF ACT (ss 1-2)

1 Definitions

In this Act, unless the context indicates otherwise-

“ ‘Academy’ means the South African National Academy of Intelligence referred to in section 5 of this Act;”;

‘accounting officer’ means the accounting officer as defined in [section 1](#) of the Public Finance Management Act, 1999 ([Act 1 of 1999](#));

[Definition of 'accounting officer' inserted by s. 13 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

‘Advisory Committee’ means the Ministerial Advisory Committee on Training established by section 9;

“ ‘Agency’ means the [State Security] South African Intelligence Agency referred to in section 3 of this Act;

‘Auditor-General’ means the Auditor-General referred to in section 188 of the Constitution;

[Definition of 'Auditor-General' inserted by s. 13 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

“‘Civilian Intelligence Structures’ means the Agency, Service and the Academy;”;

‘Chief Executive Officer’

[Definition of 'Chief Executive Officer' deleted by s. 13 (e) of [Act 11 of 2013](#) (wef 29 July 2013).]

'classified information' means the State information that has been classified under national legislation;

[Definition of 'classified information' inserted by s. 13 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

“‘Council’ means the Intelligence Services Council **[on Conditions of Service]** established by section 22;”;

'counter-intelligence' means counter-intelligence as defined in [section 1](#) of the National Strategic Intelligence Act, 1994 ([Act 39 of 1994](#));

[Definition of 'counter-intelligence' substituted by s. 8 (a) of [Act 52 of 2003](#) (wef 14 May 2004).]

'department' means a department as defined in section 1 of the Public Service Act, 1994 ([Proclamation 103 of 1994](#));

'Director-General' means a person appointed as such in terms of section 3 (3);

“‘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;”;

“‘Intelligence Services’ means the South African Intelligence Agency and the South African Intelligence Service as referred to in section 1 of this Act;”;

'Intelligence Services Council'

[Definition of 'Intelligence Services Council' deleted by s. 13 (h) of [Act 11 of 2013](#) (wef 29 July 2013).]

'Joint Standing Committee on Intelligence' means the committee established by [section 2](#) of the Intelligence Services Control Act, 1994 ([Act 40 of 1994](#));

'member' means a person appointed in terms of section 8, 9 or 19 or referred to in section 3;

'Minister' means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209 (2) of the Constitution;

'misconduct' means an act contemplated in section 18 (1);

'National Intelligence Structures' means the National Intelligence Structures as defined in [section 1](#) of the National Strategic Intelligence Act, 1994 ([Act 39 of 1994](#));

'non-statutory service' means the former Umkhonto weSizwe (MK), the Azanian Peoples Liberation Army (APLA), the Pan Africanist Security Service of the Azanian Peoples Liberation Army and the Department of Intelligence and Security of the African National Congress;

'person' includes-

- (a) a trust;
- (b) a foundation; and
- (c) any body of persons corporate or unincorporate;

'personnel list' means the personnel list submitted to the President within seven days after the commencement of the Intelligence Services Act, 1994 (Act 38 of 1994), by the head of each of the following organisational components which were integrated to comprise the Intelligence Services, with the names of the persons who-

- (a) on the date of the commencement of the said Act, were members of the Bureau as defined in section 1 of the Bureau for State Security Act, 1978 (Act 104 of 1978);
- (b) on the date of the commencement of the said Act, were members of the Department of Intelligence and Security of the African National Congress;
- (c) on the date of the commencement of the said Act, were members of the Bophuthatswana Internal Intelligence Service by virtue of their appointment in terms of the Bophuthatswana Internal Intelligence Service Act, 1982 ([Act 25 of 1982](#)), or were appointed in terms of section 15 of the National Security Council Act, 1981 (Act 27 of 1981), of Bophuthatswana;
- (d) on the date of the commencement of the said Act, were members of the Transkei Intelligence Service by virtue of their appointment in terms of the Intelligence Service and State Security Council Act, 1987 (Act 67 of 1987), of Transkei;
- (e) on the date of the commencement of the said Act, were members of the Venda National Intelligence Service by virtue of their appointment in terms of the Intelligence Service Act, 1988 (Act 31 of 1988), of Venda;
- (f) immediately before the commencement of the Constitution of the Republic of South Africa, 1993 (Act 200 of 1993), were members of any intelligence service or intelligence structure of-
 - (i) any Government of a self-governing territory as defined in section 38 (1) of the Self-Governing Territories Constitution Act, 1971 (Act 21 of 1971); or
 - (ii) any political party or organisation;

'polygraphist' means a person who, in order to ascertain, confirm or examine in a scientific manner the truthfulness or otherwise of statements made by another person, uses skills and techniques in conjunction with any equipment and instrument designed or adapted for that purpose;

'premises' means any site, place or location regardless of whether it is or forms part of any temporary or permanent structure, building, vessel, vehicle or aircraft;

'prescribed' means prescribed by regulation;

'private investigator' means a person who for reward-

- (a) investigates and furnishes information regarding the identity, actions, whereabouts, movements, affiliations, associations, habits, personal character, reputation, trustworthiness, loyalty, occupation, previous employment, integrity, creditworthiness, transactions, financial position, life history or background of another person with or without the consent or knowledge of such a person;
- (b) searches for someone who has or is alleged to have committed any crime, delict, breach of contract or other wrongful act, or for any evidence of such wrongdoing;
- (c) searches for missing persons, property or other assets, or investigates the costs relating to or responsibility for accidents, injuries or damage; or
- (d) conducts surveillance or counter-surveillance;

'regulation' means a regulation made under this Act;

'security competence' means security competence as defined in [section 1](#) of the National Strategic Intelligence Act, 1994 ([Act 39 of 1994](#));

[Definition of 'security competence' inserted by s. 13 (i) of [Act 11 of 2013](#) (wef 29 July 2013).]

'security equipment' means security equipment as defined in [section 1](#) of the Private Security Industry Regulation Act, 2001 ([Act 56 of 2001](#));

'security service' means a service that entails-

- (a) protecting or safeguarding a person or property in any manner;
- (b) giving advice on the protection or safeguarding of a person or property, or on the use of security equipment or the services of a private investigator;
- (c) providing a reactive or response service in connection with the safeguarding of a person or property in any manner;
- (d) providing a service aimed at ensuring order and safety on premises used for sporting, recreational, entertainment or similar purposes;
- (e) manufacturing, importing, distributing or advertising of monitoring devices contemplated in section 1 of the Interception and Monitoring Prohibition Act, 1992 ([Act 127 of 1992](#));
- (f) performing the functions of a private investigator;
- (g) performing the functions of a polygraphist;
- (h) installing, servicing or repairing security equipment;

- (i) monitoring signals or transmissions from electronic security equipment;
- (j) performing the functions of a locksmith;
- (k) performing the functions of a cryptographer;
- (l) providing training on the services referred to in paragraphs (a) to (k);
- (m) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in paragraphs (a) to (l) to another person;
- (n) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (m);

“ **‘Service’** means the South African Intelligence Service referred to in section 3 of this Act;”.

‘staff forum’ means a consultation forum for members on conditions of service and human resources;

‘strike’ means a strike as defined in [section 213](#) of the Labour Relations Act, 1995 ([Act 66 of 1995](#));

‘this Act’ includes the regulations;

‘vetting investigation’ means vetting investigation as defined in [section 1](#) of the National Strategic Intelligence Act, 1994 ([Act 39 of 1994](#)).

[Definition of ‘vetting investigation’ added by s. 13 (k) of [Act 11 of 2013](#) (wef 29 July 2013).]

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.”.

CHAPTER II

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

3 **‘Establishment of Agency, Service and Centre’**

“(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—

- (a) who became members in terms of the Intelligence Services Act, 1994 (Act 38 of 1994), whose names appear on the personnel list;
- (b) appointed as members in terms of the Intelligence Services Act, 1994, after its commencement;
- (c) appointed as members in terms of this Act after its commencement.

[Sub-s. (1) amended by s. 15 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

(2) A former member of a non-statutory service may apply to have his or her years of service in a non-statutory service recognised for purposes of pension benefits, subject to the provisions of the Government Employees Pension Law, 1996 ([Proclamation 21 of 1996](#)), if he or she became a member of the Agency or the Service between 1 January 1995 and 31 March 2004.

“(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;”

“(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).

(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.

(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).”.

4 **‘Composition of Service, Agency and Centre’**

(1) “The Minister must for **[the Agency]** each of the Intelligence Services and the Centre—:

- (a) create posts at the equivalent level of Deputy Director-General;

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

(c) establish divisions and components and prescribe the functions and post structures thereof.

(2) The creation of posts at the equivalent level of Deputy Director-General must be done in consultation with the President.

[S. 4 substituted by [s. 16](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

5 “Establishment of [Training Fund for Agency] Academy”;

“(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.”;

“(2) The Academy must, in the prescribed manner, and after consultation with the Agency and Service—”;

(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;

(ii) issuing diplomas or certificates to person who have passed such examination or tests; and

(iii) establishing and maintaining training institutions or centres, in accordance with applicable laws or regulations, for the training of students or intelligence members.’

(b) may issue diplomas or certificates to persons who have passed such examinations or tests.

[Sub-s. (2) amended by s. 17 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(3) The [Agency] Academy must have a Training Fund of which the funding consists of—

(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];

(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).”;

(4) **“(a) The Training Fund must be administered by the [Director- General] Executive Director.’**

(b) Money in the Training Fund must be utilised to promote training under this Act, but money or other property donated or bequeathed to the Training Fund must be utilised in accordance with the conditions of the donation or bequest in question.

(5) (a) The end of the financial year of the Training Fund is on the last day of March in each year.

(b) **The [Director-General] Executive Director must—”;**

(i) keep records of money received by, and disbursements made from, the Training Fund and of its assets, liabilities and financial transactions;

(ii) at the end of each financial year, prepare annual financial statements reflecting money received by, and disbursements made from, the Training Fund and its assets and liabilities.

(c) The records and annual financial statements must be audited annually by the Auditor-General in accordance with the Security Services Special Account Act, 1969 ([Act 81 of 1969](#)).

[Sub-s. (5) amended by s. 17 (j) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(d) The Executive Director must, at the end of each financial year, submit the report of the Academy compiled in accordance of the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the Director-General of the Agency for consideration.”

(6)

[Sub-s. (6) deleted by s. 17 (k) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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).”

6

[S. 6 repealed by [s. 18](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

7

[S. 7 repealed by s. 19 of [Act 11 of 2013](#) (wef 29 July 2013).]

8 Appointment, promotion, discharge, demotion and transfer of members

(1) The Minister may, subject to this Act-

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

(b) promote, discharge, demote or transfer any member:

Provided that such appointment, promotion, discharge, demotion or transfer in respect of a Deputy Director-General or equivalent post may only be effected in consultation with the President.

(2) A prescribed document signed by the Minister and certifying that any person has been appointed as a member is *prima facie* proof that such person has been so appointed.

9 Establishment of Ministerial Advisory Committee on Training

(1) There is hereby established a Ministerial Advisory Committee on Training, which consists of-

“(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.”.

(c) the heads of the National Intelligence Structures or their alternates; and

(d) not more than eight other persons appointed by the Minister on the basis of necessity and required expertise.

[Sub-s. (1) substituted by s. 21 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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.”;

(3) In addition to the members contemplated in subsection (1) the Minister must, subject to subsection (4), appoint a fit and proper person who is a South African citizen, with experience in higher education, to be the Chairperson of the Advisory Committee.

(4) The Minister must by notice in the *Gazette*, and by such other means as may be viable, invite nominations for the position of Chairperson of the Advisory Committee from the public.

(5) A member of the Advisory Committee who is not in the full-time employment of the State must be paid the remuneration and allowances determined by the Minister with the concurrence of the Minister of Finance.

(6) The period of office of the Chairperson is three years and may be renewed for a further period not exceeding two years.

(7) The functions of the Advisory Committee are to-

(a) conduct research and make recommendations to the Minister on the formulation and review of policies on training;

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

(8) The Advisory Committee must within three months after its establishment submit rules and procedures governing its functions to the Minister for approval.

(9) The Advisory Committee may, in consultation with the Minister, establish such subcommittees as may be necessary for the performance of its functions.

10 “Heads of Intelligence Services and Academy”;

“(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.”; (3) “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—”;

(a) physical security;

(b) computer security;

(c) communication security;

(d) protection of classified information;

(e)

[Para. (e) deleted by s. 9 (c) of [Act 52 of 2003](#) (wef 14 May 2004).]

“(f) any other matter that is necessary for the intelligence and counter-intelligence functions of the Service and the Agency respectively;”

“(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).”.

(5) “(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.”.

(b) As soon as practicable after receipt of the report contemplated in paragraph (a), the Minister must table it in Parliament.

[Sub-s. (5) added by s. 22 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

11 Powers and duties of members

(1) A member must, in the performance of his or her functions, obey all lawful directions received from a person having the authority to give such directions.

(2) If a designated judge as defined in [section 1](#) of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 ([Act 70 of 2002](#)), is satisfied, on the grounds mentioned in a written application complying with directives issued under subsection (5), that-

“(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) such information cannot reasonably be obtained by other means,

“he or she may issue the [Agency] Intelligence Services with a direction authorising any member when reasonably necessary—”;

- (i) to enter such premises;
- (ii) to search such premises with the purpose of obtaining such information;
- (iii) to examine, copy, photograph or transcribe any article, document or other material on such premises; and
- (iv) to remove any article, document or other material from the premises, for as long as is reasonably necessary, for the purposes of examining, copying, photographing or transcribing it, as the case may be.

[Sub-s. (2) amended by s. 10 (a) of [Act 52 of 2003](#) (wef 14 May 2004) and by s. 23 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

(2) (a) A direction referred to in subsection (2) must be issued for a specific period not exceeding three months.

“(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.”.

(c) A member who executes a direction or assists in the execution thereof must, not later than the date of expiry of the direction referred to in paragraph (a), return any article, document or other material that was removed in terms of subsection (2) (b) (iv) to the premises in question unless the judge referred to in subsection (2) is of the opinion that the return of the said article, document or material will prejudice the security of the Republic, in which case the judge may direct that it be destroyed or stored elsewhere.

(4) The judge referred to in subsection (2) may, upon a written application complying with the directives issued under subsection (5), extend the period of validity of the direction for a further period not exceeding three months at a time, if the extension is necessary for a reason mentioned in subsection (2).

(5) The Judges President of the several Divisions of the High Court of South Africa may jointly issue directives to uniformly regulate the manner and procedure of applications in terms of subsection (2).

12 General powers of Minister

“(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.”;

(3) Without derogating from the generality of his or her powers in terms of subsection (1), and notwithstanding anything to the contrary contained in any other law, the Minister may-

“(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;”;

(aA) erect or maintain buildings on the property so acquired;

[Para. (aA) inserted by s. 24 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

(b) sell or otherwise dispose of immovable property which is no longer required for any purpose contemplated in paragraph (a);

“(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)”.

(d) sell, let or otherwise dispose of anything contemplated in paragraph (c), which is no longer required for the said purposes.

[Sub-s. (2) amended by [s. 11](#) of [Act 52 of 2003](#) (wef 14 May 2004).]

13 Retirement age of members

(1) A member must be retired on the date when he or she attains the age of 60 years: Provided that a person who was an employee of the former National Intelligence Agency or the South African Secret Service on the day immediately before the date of commencement of this Act may retire on reaching the retirement age or prescribed retirement date provided for in any other law applicable to him or her on that day.

[Sub-s. (1) substituted by s. 25 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]

(2) If a member attains the retirement age referred to in subsection (1) after the first day of a month, he or she shall be deemed to have attained it on the first day of the following month.

(3) If it is in the public interest to retain a member in his or her post beyond the age at which he or she is required to retire in terms of subsection (1), his or her services may, with his or her consent and with the approval of the Minister, be so retained from time to time, for further periods not exceeding five years in total.

“(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.”;

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

14 Vetting and discharge of members

[Heading substituted by s. 26 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]

(1) No person may be appointed as a member unless-

“(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;”;

(b) the Director-General, after evaluating the gathered information, is of the reasonable opinion that such a person may be appointed as a member without the possibility of such a person being a security risk or acting in any way prejudicial to the security interests of the Republic.

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

- (a) criminal records;
- (b) financial records;
- (c) personal information; and
- (d) any other information which is relevant to determine the security clearance of the person:

“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 Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).”

(3) The Director-General may, in a prescribed manner, engage the services of a polygraphist to determine the reliability of the information gathered.

“(4) The Director-General concerned may, in the prescribed manner, issue directives on—”;

- (a) polygraph testing;
- (b) the level of security clearance; and
- (c) criteria for evaluating the security competence.

“(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.”;

(6) Notwithstanding the provisions of subsection (5), if the Minister is of the reasonable opinion that a person may be appointed as a member without the possibility that such a person might be a security risk or might act in a way prejudicial to the security interests of the Republic, he or she may issue a document with respect to such a person in which it is stipulated that such a person may be appointed as a member without the possibility that such a person could be a security risk or could possibly act in any manner prejudicial to the security interests of the Republic, pending the outcome of the vetting investigations.

[Sub-s. (6) substituted by s. 26 (e) of [Act 11 of 2013](#) (wef 29 July 2013).]

(7) “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 the Minister may—”

“(a) discharge such person or member from the **[Agency]** Intelligence Services, the Centre or the Academy, as the case may be; or”;

- (b) with the approval of the Minister responsible for the department in question, transfer such person or member to that department subject to any law governing the transfer.

[Sub-s. (7) amended by s. 12 (b) of [Act 52 of 2003](#) (wef 14 May 2004) and by s. 26 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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. (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. (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- 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.”.

(10) All the provisions regarding vetting investigations, applicable to a person contemplated in subsection (1), shall apply to the vetting of a member contemplated in subsection (9).

[Sub-s. (10) substituted by s. 12 (d) of [Act 52 of 2003](#) (wef 14 May 2004) and by s. 26 (h) of [Act 11 of 2013](#) (wef 29 July 2013).]

(11) The Minister may, in a prescribed manner, for the purposes of any appeal lodged in terms of this Act, establish a panel of appeal to assist him or her to consider any such appeal.

[Sub-s. (11) added by s. 12 (e) of [Act 52 of 2003](#) (wef 14 May 2004).]

15 Discharge of members on account of long absence without leave

(1) “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 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—”;

(a) any member absents himself or herself from his or her official duties without such permission and accepts other employment, he or she is deemed to have been discharged even if he or she has not yet absented himself or herself for a period of 10 consecutive working days;

“(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 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) 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.”.

(2) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (1) (c), establish an advisory panel to assist him or her in considering the appeal.

[S. 15 substituted by [s. 27](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

16 Discharge of members on account of ill-health

“(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.”;

“(2) Any member discharged from the **[Agency]** Intelligence Ser-vices, 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.”

(3) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (2), establish an advisory panel to assist him or her in considering the appeal.

[S. 16 substituted by s. 28 of [Act 11 of 2013](#) (wef 29 July 2013).]

17 Discharge or demotion of members on account of poor performance

“(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.”;

“(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.”.

(3) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (2), establish an advisory panel to assist him or her in considering the appeal.

[S. 17 substituted by s. 29 of [Act 11 of 2013](#) (wef 29 July 2013).]

18 Discharge or demotion of members on account of misconduct

(1) A member is guilty of misconduct if that member-

- (a) commits a crime or an offence; or
- (b) contravenes or fails to comply with any provision of this Act.

“(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.”

(4) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (3), establish an advisory panel to assist him or her in considering the appeal.

[Sub-s. (4) added by s. 30 (b) of [Act 11 of 2013](#) (wef 29 July 2013).]

19 Transfer and discharge of members on account of public interest, secondment of members, and temporary employment of other persons

(1) If it is in the public interest, the Minister may-

(a) transfer any member from the post held by him or her to any other post-

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

(ii) in any entity or establishment under the political control of the Minister; or

(iii) in another department, if the Minister responsible for the department in question has granted his or her approval,

whether or not such post is of a lower grade than that of the post held by him or her, and whether or not such post is within or outside the Republic: Provided that-

(aa) upon such transfer the member's salary and salary scale and such benefits as may be approved by the Minister, may not be reduced or altered without his or her consent, except in accordance with sections 17 and 18;

(bb) such transfer to another department, entity or establishment is subject to the conditions imposed by any law governing that transfer; and

“(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;”

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

“(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.”.

(3) The Minister may by contract engage any person for the performance of a particular service, or for any period and on such terms as the Minister may deem fit.

(4) Subject to subsection (3) the Minister may determine that a person engaged on contract be designated as a member for the duration of the contract.

20 Delegation of powers

“(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.”;

“(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).”

21 Labour relations

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

(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.”.

(4) A regulation made under this section with reference to members may not be published in the *Gazette* but must be notified to members in such manner as the Minister may determine.

22 “**Establishment of Intelligence Services Council [on Conditions of Service]**”;

“(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.”;

(2) The persons contemplated in subsection (1) must be fit and proper persons to fulfil the functions referred to in subsection (3).

“(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.”

(3) The functions of the Council are-

- (a) to make recommendations to the Minister on the development of policies on conditions of service and human resource matters;
- (b) to make recommendations to the Minister on improvements of salaries and fringe benefits of members on an annual basis;

“(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 Acad-emy, as the case may be, and to make recommendations to the Minister;”

- (c) for the purposes of making recommendations as contemplated in paragraphs (a), (b) and (bA)-
 - (i) to conduct research;
 - (ii) to review such policies;
 - (iii) to evaluate and monitor the implementation of such policies;

“(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;”;

- (v) to evaluate representations contemplated in subparagraph (iv);
- (vi) to confer with the Public Service Commission.

“(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.”;

“(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.”

(6) The Council must perform its functions impartially, without bias, fear or prejudice.

(7) The Minister may appoint members or persons to give research, administrative, logistical and technical support to the Council.

(8) The Council-

- (a) is accountable to the Minister; and
- (b) must at the end of each financial year submit a report on its activities and findings to the Minister.

(9) (a) The Minister must submit the report referred to in subsection (8) (b) to the Joint Standing Committee on Intelligence and to the Minister for the Public Service and Administration.

(b) The report must not contain confidential information that would be detrimental to national security.

[S. 20 amended by s. 14 (a), (b) and (c) of [Act 52 of 2003](#) (wef 14 May 2004) and substituted by [s. 34](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

23 Whole time of members to be at disposal of State

(1) Unless otherwise provided in this Act-

- (a) every member must place the whole of his or her time at the disposal of the State;
- (b) no member must perform or engage himself or herself to perform any remunerative work outside his or her employment; and
- (c) no member may claim as of right additional remuneration in respect of any official duty or work which he or she is required by a competent authority to perform.

(2) Notwithstanding subsection (1), the Minister may grant permission to a member to perform or engage himself or herself to perform remunerative work outside his or her employment.

“(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 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 (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 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.”

(4) Any salary, allowance, fee, bonus or honorarium which may be payable in respect of the service of a member seconded to any other government or any other authority or to any

board, entity, establishment, institution or body shall be paid to the Academy or the Intelligence Services: Provided that in special circumstances the Minister may approve the payment to such member of an amount equal to the said salary, allowance, fee, bonus or honorarium, or a portion thereof.

24 Reward for extraordinary diligence or devotion

“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 appropriate in the circumstances.”.

25 Establishment of decorations and medals for members

“(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.”.

(2) The medals contemplated in subsection (1) must be registered with the Bureau of Heraldry in terms of the Heraldry Act, 1962 ([Act 18 of 1962](#)), and in the prescribed manner.
[S. 25 substituted by s. 37 of [Act 11 of 2013](#) (wef 29 July 2013).]

26 Offences

(1) A person commits an offence if he or she-

- (a) not being a member-
- (i) by words, conduct or demeanour pretends that he or she is a member;
- (ii) encourages a member not to carry out his or her duty or to perform any act in conflict with his or her duty;

“(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;”

(b) fails to comply with section 23 (3) (b);

“(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 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 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;’

(e) enters upon any premises in contravention of any prohibition or restriction under section 33;

(f) being a former member-

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

(ii) renders security services in contravention of section 28; or

(iii) contravenes section 29;

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

(2) Any person convicted of an offence in terms of this Act is liable, in the case of a contravention referred to in-

(a) subsection (1) (a) (i) or (ii), to a fine, or to imprisonment for a period not exceeding six months;

(b) subsection (1) (a) (iii), to a fine or to imprisonment for a period not exceeding five years;

(c) subsection (1) (b) or (c), to a fine or to imprisonment for a period not exceeding one year;

(d) subsection (1) (d), to a fine or to imprisonment for a period not exceeding two years;

(e) subsection (1) (e), to a fine or to imprisonment for a period not exceeding 15 years;

- (f) subsection (1) (f), to a fine or to imprisonment for a period not exceeding 10 years; or
- (g) subsection (1) (g), to a fine or to imprisonment for a period not exceeding 10 years.

27 Disclosure of classified information or material by former members

“(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. (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. (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.”.

(4) The Minister may prescribe the manner in which applications for disclosure of classified information or material by former members must be processed.

28 Employment in private security industry

“(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.”.

(2) The Minister may prescribe the manner in which any former member may apply for a clearance certificate referred to in subsection (1).

29 Prohibited communications by former members

No former member may communicate in the Republic or elsewhere in a manner that is likely to be detrimental to the security of the Republic with any person-

“(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;

(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.”

30 Appeals

“(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).”.

(2) The Minister may establish a panel of appeal to advise him or her on the appeal process by a former member: Provided that-

- (a) persons appointed to the panel of appeal have a security clearance certificate issued by the Agency;
- (b) the remuneration and allowances to be paid to such persons be determined by the Minister with the concurrence of the Minister of Finance.

(3) The Minister may prescribe the procedure of appeal by former members.

31 Conduct of former members

The Minister may prescribe the manner in which former members must conduct themselves in order to protect the security of the Republic and the interests of the Agency.

[S. 31 substituted by [s. 43](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

32 Extra-territorial application of Act and jurisdiction

(1) Any act constituting an offence or misconduct under this Act and which is committed outside the Republic by any South African citizen or any person domiciled in the Republic is deemed to have been committed also in the Republic.

(2) Any offence or misconduct contemplated in subsection (1) may be tried by the appropriate court or board of enquiry at the place in the Republic where the accused or person concerned happens to be despite any law regarding jurisdiction.

33 Prohibition of access to premises

“(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.”.

(2) The Minister may take or cause to be taken such measures as are necessary for the security of, or for the enforcement of a prohibition of or a restriction on access to, such premises, and may in connection with any measures so taken cause such notices to be published or such warning notices to be made as may in each particular case be necessary.

34 Canteens

“(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.”

(2) The production of an official document signed by the Minister and indicating that he or she has established a canteen for the purposes of this section, is conclusive proof that it is a canteen falling under this section.

“(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.”.

35 Missing members

“(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.”;

(2) The salary or wages and allowances accruing to a member during his or her absence as contemplated in subsection (1) must, subject to subsection (4), be paid to his or her spouse or, if he or she has no spouse, to his or her other dependants, or to any person who is competent to receive and administer such salary or wages and allowances on behalf of his or her spouse or such other dependants.

(3) Payment of any salary or wages and allowances in terms of subsection (2) must for all purposes be deemed to be payment thereof to the member concerned, and an amount so paid shall not be recoverable by the State from any person.

“(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.”.

36 Training and service in South African National Defence Force and South African Police Service

“(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.”.

(2) A member is, while so seconded for service or training, subject to the discipline, command and control applicable to the South African National Defence Force or the South African Police Service, as the case may be, but is not thereby exempted from the application of this Act.

37 Regulations

(1) The Minister may, after consultation with the Joint Standing Committee on Intelligence, make regulations as to-

- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, dismissal, suspension or demotion of members and the personnel management of those members in general;
- (b) the provision of medical aid to, the standard of physical and mental fitness of and the medical examination of members, and the medical, dental and hospital treatment of members and their families;
- (c) the provision of medical aid to and dental and hospital treatment of members who have retired, and their families, and the families of members who have died;

“(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;”;

- (e) the establishment and maintenance of training institutions or centres for members or any other persons and the instruction, training, security, discipline and control of such members at such institutions or centres;

“(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;”;

- (g) the deductions to be made from the salaries, wages or allowances of members;
- (h) the assembly of boards of inquiry appointed under this Act, the procedure at the proceedings of such boards and the attendance of witnesses thereat;
- (i) procedures to be followed in respect of cases of alleged medical unfitness and the constitution of hearings into the alleged ill-health of members;
- (j) procedures to be followed in respect of cases of presumed poor performance and the constitution of hearings into the alleged poor performance of members;

“(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;”;

- (k) the recovery from a member of any deficit, loss, damage or expense which he or she has unlawfully caused to the State;

“(l) the retention of rank on retirement or resignation from the **[Agency]** Civilian Intelligence Service, and the award of honorary ranks;

“(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;”;

- (n) all matters relating to representivity and equity not inconsistent with the objectives and principles of the Employment Equity Act, 1998 ([Act 55 of 1998](#));

“(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;

“(p) any matter relating to the information, communications, computer and physical security of the **[Agency]** Civilian Intelligence Services;”;

- (q) the functioning of the Council;

[Para. (q) substituted by s. 48 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

- (r) a code of conduct to be adhered to by members;

“(s) vetting investigations of members and persons to be employed in the **[Agency]** Civilian Intelligence Services;”

“(sA) the **[establishment,]** structure and **[functions of a civilian intelligence veterans association]** role of the former members of the Civilian Intelligence Services;”;

- (sB) the election, representation and functions of the staff forum;

[Para. (sB) inserted by s. 48 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

(sC) the supply of intelligence to the Minister;

[Para. (sC) inserted by s. 48 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

(sD) the supply of departmental intelligence to government departments;

[Para. (sD) inserted by s. 48 (f) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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.”.

(f) any matter which in terms of this Act must or may be prescribed.

(2) Regulations contemplated in paragraphs (b) and (c) of subsection (1) must-

(a) as far as possible, be consistent with the general principles and objectives of the Medical Schemes Act, 1998 ([Act 131 of 1998](#)); and

(b) be made in consultation with the Minister responsible for the administration of the Medical Schemes Act, 1998 ([Act 131 of 1998](#)).

[Sub-s. (2) substituted by s. 16 of [Act 52 of 2003](#) (wef 14 May 2004).]

(3) Regulations made under this Act may provide that any person who contravenes a provision thereof, or fails to comply therewith, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(4) Different regulations may be made with reference to different categories of members.

(5) A regulation made in terms of this section with reference to members need not be published in the *Gazette*, but must be notified to members to whom it applies in such manner as the Minister may determine.

38 Discoveries, inventions and improvements by members

“(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.”

(2) The Minister may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to such conditions and the payment of such fees or royalties as the Minister may determine.

“(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.”.

39 Validation of misconduct proceedings

Despite the repeal of the Bureau for State Security Act, 1978 (Act 104 of 1978), and the regulations made thereunder, the procedure followed by the Director-General in terms of the said regulations to-

- (a) charge members with misconduct; and
- (b) constitute a board of enquiry,

which was provided for in section 15 of the Intelligence Services Act, 1994 (Act 38 of 1994), at any time from 1 January 1995 to 1 July 2001, that would have been lawful if the Bureau for State Security Act, 1978, and those regulations had been in force at the time when it was done, is hereby validated and declared to have been lawfully done.

40 Repeal of laws, transitional provisions and savings

(1) The laws specified in the Schedule are hereby repealed to the extent indicated in the third column thereof.

“(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.”

(3) (a) Notwithstanding subsection (2) and section 3 (1A), as from a date determined by the Minister by notice in the *Gazette*, Comsec ceases to exist as a juristic person and must for the purposes of the Companies Act, 2008 ([Act 71 of 2008](#)), be regarded as having been wound up.

(b) The Companies and Intellectual Property Commission must, upon receipt of a notification by the Director-General of the date contemplated in paragraph (a), deregister Comsec as a company in terms of the Companies Act, 2008 ([Act 71 of 2008](#)), with effect from the said date.

(c) No notice or filing fee or other charge is payable in respect of the deregistration of Comsec.

(4) “(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).”

(b) No duty, office fee or other charge is payable in respect of any entry or endorsement in terms of paragraph (a).

“(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.”

(7) Any regulation made under section 22 of the Electronic Communications Security (Pty) Ltd Act, 2002 (Act 68 of 2002), shall remain in force for a period of six months after the date of commencement of this Act unless it is inconsistent with this Act.

(8) (a) Any employee of Comsec, appointed in terms of section 14 (1) of the Electronic Communications Security (Pty) Ltd Act, 2002 (Act 68 of 2002), must be transferred to the Agency on terms and conditions which may not be less favourable than the remuneration and terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.

(b) A person transferred to the Agency in terms of paragraph (a) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.

(9) Unless inconsistent with the context or clearly inappropriate, any reference in any law to the National Intelligence Agency, the South African Secret Service or the South African National Academy of Intelligence or to Electronic Communications Security (Pty) Ltd or Comsec, must be regarded as a reference to the Agency.

[S. 40 substituted by [s. 50](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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 Amend-ment Act, 2023 to the extent that they remain applicable.”.

41 Short title and commencement

This Act is called the Intelligence Services Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

Schedule

LAWS REPEALED

(Section 40 [(1)])

[Schedule substituted by [s. 51](#) of [Act 11 of 2013](#).]

No. and year of Act	Short title	Extent of repeal
Act 68 of 2002	Electronic Communications Security (Pty) Ltd Act, 2002	Repeal of the whole.
Act 52 of 2003	General Intelligence Laws Amendment Act, 2003	Repeal of sections 17, 18, 19, 20, 21, 22, 23 and 24

Intelligence Services Oversight Act 40 of 1994¹

[Short title, previously 'Intelligence Services Control Act', substituted by [s. 9](#) of [Act 66 of 2002](#), and originally 'Committee of Members of Parliament on and Inspectors-General of Intelligence Act', substituted by s. 7 of [Act 31 of 1995](#).]

[ASSENTED TO 23 NOVEMBER 1994]	[DATE OF COMMENCEMENT: 1 JANUARY 1995]
	(see s. 9 of this Act)

(Afrikaans text signed by the President)

published in

GG 16129 of 2 December 1994

as amended

by	with effect from	refer to
Committee of Members of Parliament on and Inspectors-General of Intelligence Amendment Act 31 of 1995	21 July 1995	s. 8 of Act 31 of 1995
Intelligence Services Control Amendment Act 42 of 1999	26 November 1999	s. 8 of Act 42 of 1999 ; Proc R124 in GG 20661 of 26 November 1999
Intelligence Services Control Amendment Act 66 of 2002	20 February 2003	s. 10 of Act 66 of 2002 ; Proc 11 in GG 24475 of 20 February 2003
Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002	30 September 2005	s. 63 of Act 70 of 2002 ; Proc R55 in GG 28075 of 30 September 2005, as amended by Proc R25 in GG 28973 of 27 June 2006
General Intelligence Laws Amendment Act 52 of 2003	14 May 2004; to be proclaimed	s. 26 of Act 52 of 2003
Prevention and Combating of Corrupt Activities Act 12 of 2004	27 April 2004	s. 37 of Act 12 of 2004
General Intelligence Laws Amendment Act 11 of 2013	29 July 2013	s. 54 of Act 11 of 2013 ; Proc 32 in GG 36714 of 29 July 2013

ACT

To provide for the establishment of a Committee of Members of Parliament on Intelligence and to define its functions; and for the appointment of Inspectors-General of Intelligence and to define their functions; and to provide for matters connected therewith.

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

- 1 This Act has been updated to include all available historical commencement details

1 Definitions

[NB: Definitions of 'Intelligence Services Entities' and 'Office' inserted by s. 3 (b) and (c) of the General Intelligence Laws Amendment [Act 52 of 2003](#), provisions which will be put into operation by proclamation. See PENDLEX.]

In this Act, unless the context otherwise indicates-

“**Academy**’ means the South African National Academy of Intelligence referred to in section 5 of the Intelligence Services Act, 2002;”;

'accounting officer' means the Head of a Service;

“**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);”;

'Auditor-General' means the Auditor-General referred to in section 188 of the Constitution; [Definition of 'Auditor-General' substituted by s. 1 (a) of [Act 42 of 1999](#) (wef 26 November 1999).]

'CEO'

[Definition of 'CEO' inserted by s. 1 (c) of [Act 66 of 2002](#) (wef 20 February 2003) and deleted by s. 8 (c) of [Act 11 of 2013](#) (wef 29 July 2013).]

'chairperson' means the person appointed under section 2 (4) (b) as chairperson of the Committee;

'Commission'

[Definition of 'Commission' deleted by s. 1 (a) of [Act 31 of 1995](#) (wef 21 July 1995).]

'Committee' means the Joint Standing Committee on Intelligence established by section 2; [Definition of 'Committee' substituted by s. 1 (b) of [Act 31 of 1995](#) (wef 21 July 1995).]

'Comsec'

[Definition of 'Comsec' inserted by s. 1 (d) of [Act 66 of 2002](#) (wef 20 February 2003) and deleted by s. 8 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

'Constitution' means the Constitution of the Republic of South Africa, 1996 ([Act 108 of 1996](#)); [Definition of 'Constitution' substituted by s. 1 (b) of [Act 42 of 1999](#) (wef 26 November 1999).]

'counter-intelligence' means counter-intelligence as defined in section 1 of the National Strategic Intelligence Act, 1994;

'Director' means Director as defined in [section 1](#) of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 ([Act 70 of 2002](#)); [Definition of 'Director' inserted by s. 3 (a) of [Act 52 of 2003](#) (wef 14 May 2004).]

'Evaluation Committee' means the Secret Services Evaluation Committee established by [section 2](#) of the Secret Services Act, 1978 ([Act 56 of 1978](#));

“**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;”

.

'Inspector-General' means the person appointed under section 7; [Definition of 'Inspector-General' substituted by s. 1 (f) of [Act 66 of 2002](#) (wef 20 February 2003).]

'intelligence' means the process of gathering, evaluation, correlation and interpretation of security information, including activities related thereto, as performed by the Services;

“**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;”;

‘Minister’ means the President or the member of the Cabinet designated by the President in terms of section 209 (2) of the Constitution to assume political responsibility for the control and direction of the intelligence services established in terms of section 209 (1) of the Constitution;
[Definition of ‘Minister’ substituted by s. 1 (g) of [Act 66 of 2002](#) (wef 20 February 2003).]

‘money’ means all money whatsoever received or held by an accounting officer for or on behalf of the State;

‘National Defence Force’ means the Force established by section 224 of the Constitution;

“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);”

‘prescribed’ means prescribed by regulation;
[Definition of ‘prescribed’ inserted by s. 1 (i) of [Act 66 of 2002](#) (wef 20 February 2003).]

‘regulation’ means a regulation made under this Act;

“Services’ means the Agency, Service, the Intelligence Division of the National Defence Force and the Intelligence Division of the South African Police Service;”.

‘South African Police Service’ means the service referred to in section 214 of the Constitution;

‘South African Secret Service’

[Definition of ‘South African Secret Service’ substituted by s. 1 (k) of [Act 66 of 2002](#) (wef 20 February 2003) and deleted by s. 8 (i) of [Act 11 of 2013](#) (wef 29 July 2013).]

‘Speaker’ means the Speaker of the National Assembly contemplated in section 52 of the Constitution;

[Definition of ‘Speaker’ inserted by s. 1 (c) of [Act 31 of 1995](#) (wef 21 July 1995) and substituted by s. 1 (c) of [Act 42 of 1999](#) (wef 26 November 1999).]

‘this Act’ includes the regulations.

2 Establishment of Committee on Intelligence

(1) There is hereby established a Parliamentary Committee to be known as the Joint Standing Committee on Intelligence, which shall, subject to the Constitution, perform the oversight functions set out in this Act-

- (a) in relation to the intelligence and counter-intelligence functions of the Services, which include the administration, financial management and expenditure of the Services; and

“(b) in respect of the administration, financial management and expenditure of the [Office] Intelligence Services Entities.”;

and report thereon to Parliament.

[Sub-s. (1) substituted by s. 2 (a) of [Act 66 of 2002](#) (wef 20 February 2003) and by [s. 4 of Act 52 of 2003](#) (wef 14 May 2004).]

(2) (a) The Committee shall consist of 15 members of Parliament appointed on the basis of proportional representation determined according to the formula in paragraph (c): Provided that-

- (i) if the total number of seats on the Committee allocated to the political parties in terms of paragraph (c) is less than 15, the unfilled seats shall not be allocated to any political party, but the Committee shall nevertheless be deemed to be properly constituted; and
- (ii) if one political party has been allocated more than eight seats in terms of paragraph (c) and more than five political parties are represented in Parliament, the five minority parties with the largest representation in Parliament are entitled to at least one member each on the Committee, and the

Committee so constituted shall be deemed to be properly constituted regardless of whether the total number of seats so allocated on the Committee is more or less than 15; and

- (iii) if any political party is unwilling to serve or to continue to serve on the Committee, the seats of such political party on the Committee shall not be allocated to any other political party but the Committee shall nevertheless be deemed to be properly constituted.

(b) No member of Parliament shall be appointed as a member of the Committee before the Agency has issued a security clearance in the prescribed manner in respect of that member.

[Para. (b) substituted by s. 2 (b) of [Act 66 of 2002](#) (wef 20 February 2003).]

(c) Political parties shall be entitled to designate a member or members to the Committee in accordance with the principle of proportional representation and as determined according to the following formula: By dividing the number of seats held by the party in the National Assembly by the total number of seats in the National Assembly, multiplying the result by 15 and discarding all decimals.

[Sub-s. (2) substituted by s. 2 (a) of [Act 42 of 1999](#) (wef 26 November 1999).]

(3) (a) A member referred to in subsection (2) shall be appointed by the Speaker or the Chairperson of the National Council of Provinces, depending upon the House of Parliament from which the member is appointed, acting with the concurrence of the President, who shall act with the concurrence of the leader of the political party concerned.

[Para. (a) substituted by s. 2 (b) of [Act 42 of 1999](#) (wef 26 November 1999).]

(b) In the event that agreement is not reached in respect of the appointment of a particular member, the matter shall be referred for determination to a committee consisting of the President, the Speaker, the Chairperson of the National Council of Provinces and the leader of the political party concerned, and the decision of the committee shall be final.

[Para. (b) substituted by s. 2 (c) of [Act 42 of 1999](#) (wef 26 November 1999).]

“(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).”

(4) The Speaker and the Chairperson of the National Council of Provinces acting with the concurrence of the President, who shall act after consultation with the leaders of the political parties represented on the Committee, shall appoint a member of Parliament, excluding a member appointed to the Committee in terms of subsection (3), as the chairperson of the Committee and subsection (2) (b) shall apply with the necessary changes to such member.

[Sub-s. (4) substituted by s. 2 (d) of [Act 42 of 1999](#) (wef 26 November 1999) and by s. 2 (c) of [Act 66 of 2002](#) (wef 20 February 2003).]

(5) A member of the Committee-

- (a) shall, subject to paragraph (b), be appointed as a member until the Parliament to which he or she has been elected under the Constitution, is dissolved in terms of the Constitution;
- (b) shall be replaced with a member of his or her party in accordance with subsection (3) or (4), as the case may be-
- (i) at the request of the leader of his or her party; or
- (ii) if he or she has conducted himself or herself in a manner which constitutes a threat to national security in the opinion of the Speaker or the Chairperson of the National Council of Provinces, as the case may be, with the concurrence of the Committee and the President, acting after consultation with the leader of the party concerned.

[Sub-para. (ii) substituted by s. 2 (e) of [Act 42 of 1999](#) (wef 26 November 1999).]

- (c) may resign by notice in writing to the Speaker or the Chairperson of the National Council of Provinces, as the case may be, in which event a substitute shall be appointed in accordance with paragraph (b) and subsection (3) or (4), as the case may be.

[Para. (c) substituted by s. 2 (f) of [Act 42 of 1999](#) (wef 26 November 1999).]

(6) (a) The Committee shall meet at such times and follow such procedures as may be prescribed by the rules and orders contemplated in section 45 of the Constitution.

[Para. (a) substituted by s. 2 (g) of [Act 42 of 1999](#) (wef 26 November 1999).]

(b) The Committee may initiate and recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the functions and activities of the Committee.

[Para. (b) substituted by s. 2 (d) of [Act 66 of 2002](#) (wef 20 February 2003).]

(7) No person other than members of the Committee or members of the staff referred to in subsection (8) may be present during the proceedings of the Committee, except with the permission of the Committee.

(8) The Committee shall be assisted in the performance of its functions by-

- (a) officers of Parliament designated for that purpose by the Speaker and the Chairperson of the National Council of Provinces; and

[Para. (a) substituted by s. 2 (h) of [Act 42 of 1999](#) (wef 26 November 1999).]

- (b) persons designated for that purpose by the Minister, after consultation with the Speaker, the Chairperson of the National Council of Provinces, the chairperson and the Heads of the Services.

[Para. (b) substituted by s. 2 (h) of [Act 42 of 1999](#) (wef 26 November 1999).]

[S. 2 substituted by [s. 2](#) of [Act 31 of 1995](#) (wef 21 July 1995).]

“(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.”.

3 Functions of Committee

The functions of the Committee are-

- (a) notwithstanding anything to the contrary contained in any other law or the common law, to obtain from-

- (i) the Auditor-General an audit report compiled in accordance with [section 22](#) of the Public Audit Act, 2004 ([Act 25 of 2004](#)), and after obtaining the report, to consider-

“(aa) the financial statements of the Services and the **[Office]** Intelligence Services Entities;”;

- (bb) any audit reports issued on those statements; and

“(cc) any reports issued by the Auditor-General on the affairs of the Services and the **[Office]** Intelligence Services Entities;”;

and report thereon to Parliament;

[Sub-para. (i) substituted by s. 3 (a) of [Act 42 of 1999](#) (wef 26 November 1999) and by s. 3 (a) of [Act 66 of 2002](#) (wef 20 February 2003) and amended by s. 10 (a) of [Act 11 of 2013](#) (wef 29 July 2013).]

- (ii) the Evaluation Committee a report on the secret services and intended secret services evaluated and reviewed by it, together with any comments or recommendations which the Evaluation Committee may deem appropriate;

- (iii) any designated judge as defined in [section 1](#) of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 ([Act 70 of 2002](#)), a report regarding the functions performed by him or her in terms of that Act, including statistics regarding such functions, together with any comments or recommendations which such designated judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction referred to in that Act;

[Sub-para. (iii) substituted by [s. 61](#) of [Act 70 of 2002](#) (wef 30 September 2005) and by s. 10 (d) of [Act 11 of 2013](#) (wef 29 July 2013).]

“(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]**;

- (b) to consider and make recommendations on the report and certificate transmitted to it in terms of section 7 (7) (d);

- (c) to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities;

“(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);

(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;”;

- (f) to order investigation by and to receive a report from the Head of a Service or the Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property: Provided that the Committee is satisfied that such complaint is not trivial or vexatious or made in bad faith;
[Para. (f) amended by s. 3 (c) of [Act 66 of 2002](#) (wef 20 February 2003).]
- (g) to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights entrenched in Chapter 2 of the Constitution to the South African Human Rights Commission referred to in section 184 of the Constitution, and to receive a report from such Commission concerning the matter;
[Para. (g) substituted by s. 3 (c) of [Act 42 of 1999](#) (wef 26 November 1999).]
- (h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, any Minister responsible for a Service or Parliament;
[Para. (h) substituted by s. 3 (d) of [Act 66 of 2002](#) (wef 20 February 2003).]
- (i) to request the officials or bodies referred to in paragraphs (a), (b) and (f) to explain any aspect of a report;
[Para. (i) substituted by s. 3 (b) of [Act 31 of 1995](#) (wef 21 July 1995).]
- (j) to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security, including administration and financial expenditure;
[Para. (j) substituted by s. 3 (e) of [Act 66 of 2002](#) (wef 20 February 2003).]
- (k) to 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;

“(l) to consider and report on the appropriation of revenue for moneys for the functions of the Services and the **[Office]** Intelligence Services Entities.”.

4 Access to intelligence, information and documents

(1) The Committee shall, notwithstanding anything to the contrary contained in any other law or the common law, but subject to subsection (2) and the proviso to section 3 (1) (a) (iii), in the performance of its functions, have access to intelligence, information and documents in the possession or under the control of a Service, on condition that-

- (a) such access is necessary for the performance of such functions;
- (b) such intelligence, information and documents shall be handled in accordance with the written security guidelines and measures of, or the conditions prescribed or determined by, the chairperson with the concurrence of the Heads of the Services; and
- (c) such documents shall after inspection thereof be returned to a Service as determined by the Head of that Service.

(2) (a) Notwithstanding anything to the contrary contained in this Act or any other law, a Service shall not be obliged to disclose to the Committee-

- (i) the name or identity of any person or body engaged in intelligence or counter-intelligence activities;

- (ii) any intelligence, information or document in a form which could reveal the identity of any source of such intelligence, information or document if that intelligence, information or document was provided to such Service under an express or implied assurance of confidentiality;
- (iii) any intelligence or counter-intelligence method employed by a Service if such disclosure could reveal or lead to the revelation of the name or identity of any person or body engaged in intelligence or counter-intelligence activities or the identity of the source of any intelligence, information or document: Provided that this provision shall not prevent the disclosure of any part of intelligence, information or a document if such part can be separated from the part which could reveal the name, identity or method referred to in subparagraphs (i) and (ii) and this subparagraph.

(b) In the event of a dispute arising from-

- (i) the provisions of paragraph (a) as to whether or not the disclosure of any intelligence, information or document may reveal the name or identity of any person or body engaged in intelligence or counter-intelligence activities or intelligence or counter-intelligence methods employed or the identity of the source of intelligence, information or document; or
- (ii) the provisions of subsection (1) (a) as to whether access to certain intelligence, information or any document is necessary to perform the functions of the Committee,

such dispute shall be referred for determination to a committee composed of the Inspector-General, the Head of the Service in question, the chairperson of the Committee and the Minister responsible for that Service, which decision of the Committee shall be final.

[Para. (b) amended by s. 4 (a) of [Act 66 of 2002](#) (wef 20 February 2003).]

"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:"

Provided that such person shall-

- (a) be given reasonable notice of such appearance;
- (b) be given reasonable details regarding the purpose of such appearance; and

“(c) have the right to be assisted by members of the Services or [the Office, as the case may be] Intelligence Services entities in question.”

5 Secrecy

(1) The Committee shall conduct its functions in a manner consistent with the protection of national security.

(2) No person shall disclose any intelligence, information or document the publication of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of this Act, except-

- (a) to the extent to which it may be necessary for the proper administration of any provision of this Act;
- (b) to any person who of necessity requires it for the performance of any function in terms of this Act;
- (c) with the written permission of the chairperson, which permission may be given only with the concurrence of the Head of a Service and the Inspector-General;
- (d) as prescribed by regulation.

(3)

[Sub-s. (3) deleted by [s. 4](#) of [Act 42 of 1999](#) (wef 26 November 1999).]

6 Report to Parliament

(1) The Committee shall, within five months after its first appointment, and thereafter within two 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 findings made by it and the recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service.

[Sub-s. (1) substituted by [s. 6 of Act 66 of 2002](#) (wef 20 February 2003).]

(2) The Committee may at the request of Parliament, the President or the Minister responsible for each Service or at any other time which the Committee deems necessary, furnish Parliament, the President or such Minister with a special report concerning any matter relating to the performance of its functions, and shall table a copy of such report in Parliament or furnish the President and the Minister concerned with copies, as the case may be.

[Sub-s. (2) substituted by [s. 6 of Act 66 of 2002](#) (wef 20 February 2003).]

(3) Nothing shall be included in any report of the Committee, the inclusion of which will be more harmful to the national security than its exclusion will be to the national interest.

[S. 6 substituted by [s. 4 of Act 31 of 1995](#) (wef 21 July 1995).]

7 Inspector-General

(1) The President shall appoint an Inspector-General of Intelligence-

- (a) nominated by the Committee; and
- (b) approved by the National Assembly by a resolution supported by at least two thirds of its members:

Provided that if the nomination is not approved as required in paragraph (b), the Committee shall nominate another person.

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

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

“(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.”;

(3) The remuneration and other conditions of employment of the 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.

(4) The Inspector-General may be removed from office by the President, but only on the grounds of misconduct, incapacity, withdrawal of his or her security clearance, poor performance or incompetence as prescribed.

“(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.”;

(6) The Inspector-General shall be accountable to the Committee for the overall functioning of his or her office, and shall report on his or her activities and the performance of his or her functions to the committee at least once a year.

(7) The functions of the Inspector-General are, in relation to the Services-

- (a) to monitor compliance by any Service with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence;
- (b) to review the intelligence and counter-intelligence activities of any Service;
- (c) to perform all functions designated to him or her by the President or any Minister responsible for a Service;
- (cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), the commission of an offences [sic] referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member;

[Para. (cA) substituted by [s. 36 \(1\)](#) of [Act 12 of 2004](#) (wef 27 April 2004).]

(d) to submit the certificates contemplated in subsection (11) (c) to the relevant Ministers;

[Para. (d) substituted by [s. 7 \(b\)](#) of [Act 52 of 2003](#) (wef 14 May 2004).]

(e) to submit reports to the Committee pursuant to section 3 (1) (f); and

(f) to submit reports to every Minister responsible for a Service pursuant to the performance of functions contemplated in paragraphs (a), (b), (c) and (cA): Provided that where the Inspector-General performs functions designated to him or her by the President, he or she shall report to the President.

[Sub-s. (7) amended by [s. 7 \(a\)](#) of [Act 52 of 2003](#) (wef 14 May 2004).]

(7A) The reports of the Inspector-General contemplated in subsection (7) (f) in respect of monitoring and reviewing shall contain the findings and recommendations of the Inspector-General.

(8) Notwithstanding anything to the contrary contained in this or any other law or the common law, the Inspector-General-

(a) shall have access to any intelligence, information or premises under the control of any Service if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of the Service in question and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of his or her functions;

(aA) shall inform the Head of a Service prior to his or her access to the premises of such Service in writing of his or her intention to have access to such premises: Provided that the notice shall specify the date and the nature of access to the premises;

(b) may, if the intelligence or information received by him or her in terms of paragraph (a) is subject to any restriction in terms of any law, disclose it only-

(i) after consultation with the President and the Minister responsible for the Service in question; and

(ii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and

(iii) to the extent that such disclosure is not detrimental to the national interest;

(c) shall have access to any other intelligence, information or premises which is not under the control of any Service if such access is necessary for the performance of his or her functions in terms of subsection (7) and he or she shall be entitled to demand from any such person such intelligence, information, reports and explanations as he or she may deem necessary for the performance of his or her functions: Provided that the Inspector-General shall not have access if such intelligence or information is not necessary for the performance of his or her functions: Provided further that the Inspector-General shall first obtain a warrant issued in terms of the Criminal Procedure Act, 1977 ([Act 51 of 1977](#)), if such information, intelligence or premises are not under the control of the Services in question;

(d) may, if the intelligence or information received by him or her in terms of paragraph (c) is subject to any privilege or restriction in terms of any law, disclose it only-

(i) after he or she has given written notice of his or her intention to do so to the lawful possessor of such intelligence or information; and

(ii) after consultation with the President and the Minister responsible for the Service in question; and

(iii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and

(iv) to the extent that such disclosure is not detrimental to the national interest.

(9) No access to intelligence, information or premises contemplated in subsection (8) (a) may be withheld from the Inspector-General on any ground.

(10) The Inspector-General-

(a) shall comply with all security requirements applicable to the employees of the Agency; and

[Para. (a) substituted by [s. 12](#) of [Act 11 of 2013](#) (wef 29 July 2013).]

(b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.

(11) (a) Each Head of a Service shall, in respect of every period of 12 months or such lesser period as is specified by the Minister responsible for that Service, submit to that Minister, a report on the activities of that Service during that period, and shall cause a copy of such report to be submitted to the Inspector-General.

(b)(i) Each Head of a Service shall report to the Inspector-General regarding any unlawful intelligence activity or significant intelligence failure of that Service and any corrective action that has been taken or is intended to be taken in connection with such activity or failure.

(ii) Each Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector-General within a reasonable period after such unlawful intelligence activity or significant intelligence failure came to his or her attention.

(c) As soon as practicable after receiving a copy of a report referred to in paragraph (a), the Inspector-General shall submit to the Minister responsible for the Service in question, a certificate stating the extent to which the Inspector-General is satisfied with the report and whether anything done by that Service in the course of its activities during the period to which the report relates, in the opinion of the Inspector-General-

- (i) is unlawful or contravenes any directions issued by the Minister responsible for that Service; or
- (ii) involves an unreasonable or unnecessary exercise by that Service of any of its powers.

(d) As soon as practicable after receiving a report referred to in paragraph (a) and a certificate of the Inspector-General referred to in paragraph (c), the Minister responsible for the Service in question shall, subject to section (4) (2), cause the report and certificate to be transmitted to the Committee.

“(12) The Minister— (a) must, after consultation with the Inspector-General, 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; and (b) may determine the organisational structure and grading of the posts for the functioning of the Office of the Inspector-General in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002).”

(12A) The National Commissioner of the South African Police Service and the Chief of the South African National Defence Force may, if requested by the Inspector-General, second employees of the Service or the Force, as the case may be, to the office of the Inspector-General with the consent of the employees concerned and in terms of the laws governing the secondment in question.

[Sub-s. (12A) inserted by s. 7 (c) of [Act 52 of 2003](#) (wef 14 May 2004).]

(13) The budget of the office of the Inspector-General 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 as set out in the Public Finance Management Act, 1999 ([Act 1 of 1999](#)).

(14) The Inspector-General may, in writing, delegate any function contemplated in subsection (7) to any employee in his or her office, and any function performed in terms of such a delegation shall be deemed to have been performed by the Inspector-General.

[S. 7 amended by s. 5 of [Act 31 of 1995](#) (wef 21 July 1995) and by s. 5 of [Act 42 of 1999](#) (wef 26 November 1999) and substituted by s. 7 of [Act 66 of 2002](#) (wef 20 February 2003).]

7A Offences and penalties

Any person who-

- (a) contravenes section 5 (2) or 7 (9); or
- (b) fails to comply with section 7 (8),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[S. 7A inserted by s. 6 of [Act 42 of 1999](#) (wef 26 November 1999).]

8 Regulations

“(1) The Minister, acting with the concurrence of the Committee, **[may]** must make regulations regarding—”;

- (a) any matter that is required or permitted to be prescribed in terms of this Act;

“(b) the performance of **[his or her]** the functions designated to the Inspector-General under section 7(7)(c) **[by the Inspector-General]**”;

- (c) the reports to be submitted by the Inspector-General and the Heads of the Services;
 - (d) the suspension or removal from office of the Inspector-General and the termination of employment of the Inspector-General;
 - (e) an oath or affirmation of secrecy to be subscribed to by the Inspector-General, members and staff of the Committee, the leaders of political parties represented or willing to serve on the Committee, and staff appointed in terms of section 7 (12);
 - (f) security clearance for the Inspector-General and members of the Committee;
 - (g) the procedure for appointment of staff to the office of the Inspector-General;
 - (h) the conditions of employment applicable to the personnel appointed to the office of the Inspector-General; and
 - (i) the procedure for the lodging and investigation of complaints.
- [Sub-s. (1) amended by [s. 7 of Act 42 of 1999](#) (wef 26 November 1999) and substituted by [s. 8 of Act 66 of 2002](#) (wef 20 February 2003).]

“(1A) The regulations contemplated in subsection (1)(b) to (i) must be made within 24 months after the commencement of the General Intelligence Laws Amendment Act, 2023.”

(2) A regulation made under this section need not be published in the *Gazette*, but shall be notified to any person affected thereby in such manner as the Minister acting with the concurrence of the Committee may determine.

[Sub-s. (2) substituted by [s. 8 of Act 66 of 2002](#) (wef 20 February 2003).]

(3) A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[Sub-s. (3) added by s. 7 (d) of [Act 42 of 1999](#) (wef 26 November 1999).]

[S. 8 substituted by [s. 6 of Act 31 of 1995](#) (wef 21 July 1995).]

9 Short title

This Act shall be called the Intelligence Services Oversight Act, 1994.

[S. 9 substituted by s. 7 of [Act 31 of 1995](#) (wef 21 July 1995) and by [s. 9 of Act 66 of 2002](#) (wef 20 February 2003).]

PENDLEX: Intelligence Services Oversight Act 40 of 1994 after amendment by the General Intelligence Laws Amendment Act 52 of 2003

Section 1 - definitions

'Office' means Office as defined in [section 1](#) of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 ([Act 70 of 2002](#));

Section 3 (a) (i) (cc)

any reports issued by the Auditor-General on the affairs of the Services and the Intelligence Services Entities,

Section 3 (a) (iv)

the Ministers responsible for the Services and the Intelligence Services Entities, a report regarding the budget for each Service or Entity for which he or she is responsible;

Section 3 (l)

to consider and report on the appropriation of revenue or moneys for the functions of the Services and the Intelligence Services Entities.

Section 4 (3) - words preceding the proviso

The Committee may, for the purposes of the performance of its functions, require any Minister responsible for a Service or an Intelligence Services Entity, the Head of a Service, the CEO, the Director or the Inspector-General to appear before it to give evidence, to produce any document or thing and answer questions put to him or her:

Section 4 (3) (c)

have the right to be assisted by members of the Services or Intelligence Services Entities in question.