

REPUBLIC OF SOUTH AFRICA

AD HOC COMMITTEE PROPOSED AMENDMENTS

TO

GENERAL INTELLIGENCE LAWS AMENDMENT BILL

[B 40— 2023]

(Ad Hoc Committee on the General Intelligence Laws Amendment Bill)

[B 40 A — 2023]

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CLAUSE 9

AD HOC COMMITTEE AMENDMENTS TO

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[B40 — 2023]

***(As agreed to by the Ad Hoc Committee on the General Intelligence
Laws Amendment Bill (National Assembly))***

CLAUSE 1

1. On page 2, in line 16, after “definition”, to omit the definition of [critical infrastructure].
2. On page 3, from line 3 after “definition” to omit the definition of [domestic intelligence]
3. On page 3, in line 12, after “definition” to omit the definition of [foreign intelligence].
4. On page 3, from line 22, after “opportunity” to omit [or potential opportunity].
5. On page 3, in line 23, after “threat” to omit [or].

6. On page 3, in line 24 to omit **[potential threat]**
7. On page 3, in line 24, after “to”, to omit **[national security or threats to]**..
8. On page 3, in line 24, after “advancement” to omit [“or”] and substitute **and**.
9. On page 3, in line 45, to omit the definition of **[national security]**.
10. On page 3, in line 61, after “opportunity” to omit **[or potential opportunity]**.
11. On page 4, in line 5, to omit the definition of **[“person or institution of national security interest”]**.
12. On page 4, in line 21, after “competence” to omit **[“test”]** and substitute **assessment**.
13. On page 4, in line 25, after “compromise” to omit **[“or is a person or institution of national security interest in terms of section 4(2)(a)(i) of the Act”]**.
14. On page 4, in line 36, after “security” to omit ,”and substitute “. ”.
15. On page 4, in line 37 to omit **[“which includes”]**.
16. On page 4, after line 37 to omit the list from **[“a” to “i”]**.
17. On page 5 to omit the list from **[“j” to “k”]**.

On page 5, after line 24, to insert the following:

18. to institute counterintelligence measures within the Service;
19. to gather departmental intelligence at the request of any interested department of state, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Service and which constitutes departmental intelligence, to the department concerned; and
20. to provide periodic national security briefings to the Joint Standing Committee on Intelligence, members of Cabinet, and Parliamentary Presiding Officers,

CLAUSE 2

1. On page 5, in line 42, to omit [“**apprehend**”] and substitute “**impede and neutralise**”.
2. On page 6 from line 8 to omit 2B(1) and to substitute the following new clause:

New Clause 4

By the insertion after section 2(2A) of the following section:

2B(1) The Centre shall, in a prescribed manner, and with regard to foreign signals, communications and non-communications—

(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 for approval by a retired Judge appointed by the President, after consultation with the Chief Justice;

(ii) the Centre supplying intelligence to the relevant intelligence structures.

(2)(b) In a prescribed manner, and with regard to information security and cryptography, the Centre shall—

(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).”

±

(2) The Judge appointed in terms of subsection (1) must take due cognisance of , in addition to South African law, applicable International Agreements in terms of section 231 of the Constitution and international law including the Universal Declaration of Human Rights when considering an application for bulk interception.

(3) A bulk interception application must be brought by the Centre in the form and manner as prescribed and include –

- (a) motivation for the granting of the application;
- (b) Indicate the period for which the application ought to be granted.

2C Management of bulk interception data

(1) The procedures to be followed for the processing, examining, copying, sharing, disclosing, sorting through, using, storing or destroying of any data obtained pursuant to, and resulting from surveillance in terms of this Act must be in the prescribed manner and on the prescribed conditions.

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

(a) accountability, together with conditions for lawful processing, examining, copying, sharing, disclosing, sorting through, using, storing or destroying;

(b) processing limitations, including processing in a lawful and reasonable manner and not processing more data than what is required in respect of the purpose;

(c) purpose-specific processing of data, including processing for a lawful purpose which is explicit, not retaining data for longer than is necessary in connection with the purpose for which it was obtained and reviewing compliance with destruction instructions;

(d) limitation on the use of data for a lawful purpose, including restricting access to data on certain conditions, conditions for sharing and disclosing data and limitations on the copying of data, including the keeping of relevant records;

(e) openness and transparency;

(f) conditions for the storage of data, including the type of data stored and the manner of storage;

(g) security safeguards, including controlled access to data, processes to prevent unlawful modification and unauthorised disclosure, procedures to identify any foreseeable internal and external risks, and policies and procedures to safeguard information; and

(h) where applicable participation of the data subject, through post-surveillance notification.'

2D surveillance arising from bulk interception

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

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

- (3) If the notification contemplated in subsection (2) –
 - (a) cannot be given without jeopardising the purpose of the surveillance, the designated judge, Judge of a High Court, Regional Court Magistrate or Magistrate may, upon application by the Centre, direct that the giving of notification be withheld for a period which must not exceed 90 days at a time or two years in aggregate; or

- (b) has the potential to impact negatively on national security, the designated judge, Judge of a High Court, Regional Court Magistrate or Magistrate may, upon application by the Centre, direct that the giving of notification be withheld for such period as may be determined by the respective judge.

Clause 3

1. On page 6, from line 57, to omit **["if a person or institution of national security interest in terms of section 4(2)(a)(i) of the Act"]**

Clause 5

1. On page 7, in line 32, to omit **["Minister"]** and substitute **"NICOC Coordinator"**.
2. On page 7, in line 33, after "must" to insert "1".
3. On page 7, in line 33, after "," to insert **"after consultation with the Minister,"**

Clause 6

1. On page 8, in line 30, after "within", to omit **["24"]** and substitute **"12"**.

Clause 7

New Clause

1. **Section 4 of Act 40 of 1994, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 1 of Act 66 of 2002, section 3 of Act 52 of 2003 and section 3 of Act 52 of 2003 and section 8 of Act 11 of 2013.**

New Clause

1. Section 2 of Act 40 of 1994 is hereby amended;

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

2. **Section 4 of Act 40 of 1994, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 1 of Act 66 of 2002, section 3 of Act 52 of 2003 and section 3 of Act 52 of 2003 and section 8 of Act 11 of 2013.**

Section 4 of the Intelligence Services Oversight Act, 1994, is hereby amended –

(k) by the insertion before “to” of the following words “to meet with the President at least twice a year and.”.

3. **Section 7 of Act 40 of 1994, as amended, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 1 of Act 66 of 2002, section 3 of Act 52 of 2003 and section 3 of Act 52 of 2003 and section 8 of Act 11 of 2013.**

New Clause

(7B) **appointment of the Deputy Inspector General**

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

(a) nominated by the Committee; and

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

Shall a person as Deputy Inspector General of Intelligence for such a period as the President may determine at the time of such appointment, but not exceeding five years.

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

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

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

(5) The Deputy Inspector General shall have such powers as the Inspector General may delegate to him or her.

(6) Whenever the Inspector General is, for any reason, unable to perform the functions of his or her office, or while the appointment of a person to the Office of the Inspector General is pending, the Deputy Inspector General shall perform such functions.

(7) The Deputy Inspector General may be removed from Office only on –

(a) the ground of misconduct, incapacity or incompetence;

(b) a finding to that effect by the committee; and

- (c) the adoption by the National Assembly of a resolution calling for his or her removal from office.
- (8) A resolution of the National Assembly concerning the removal from office of the Deputy Inspector General of Intelligence must be adopted with a supporting vote of a majority of the members of the National Assembly.
- (9) The President may suspend the Deputy Inspector General of Intelligence in terms on such terms and conditions as the President may determine, including the suspension of the payment of his or her remuneration or the suspension of any other term or condition of his or her employment.
- (10) If a vacancy occurs in the office of the Deputy Inspector General the President shall, subject to this section, as soon as possible, appoint another person to that office.

2. Section 7 of Act 40 of 1994, as amended, as amended by section 1 of Act 31 of 1995, section 1 of Act 42 of 1999, section 1 of Act 66 of 2002, section 3 of Act 52 of 2003 and section 3 of Act 52 of 2003 and section 8 of Act 11 of 2013.

7(7)

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

Clause 11

1. On page 10, in line 36, to omit “Minister” and substitute “Inspector General of Intelligence”
2. On page 10, after line 44 to insert a new clause:

New Clause

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

Clause 12

1. On page 11, in line 3, to omit “[24]” and substitute “12”.

Amendments to the Secret Services Account Act, 1978 (Act 56 of 1998), as amended by the Secret Services Account Amendment Act, 1992 (Act 142 of 1992).

Establishment and function of Secret Services Evaluation Committee

Insertion of a New Clause

1. On page 26, after line 4 to insert a new clause:

3A. Amendments to section 3A(1) of the Secret Services Account, 1978 (Act 56 of 1978)

- (1) After “establishment” to omit “a committee” and to substitute “a committee, within 12 months of the passing of this Act,”