

Protection of Info - ANC

**SUMMARY OF AMENDMENTS TABLED
BY THE ANC ON THE PROTECTION OF INFORMATION BILL
[B6-2010]**

The following are proposed amendments to the Protection of Information Bill by the African National Congress:

1. The short title must be amended to "**Protection of State Information Bill**". This will not only clearly distinguish this Bill from another piece of legislation presently serving before Parliament's Justice Portfolio Committee, viz. The Protection of Personal Information Bill, it will also align the purpose of the Bill with its Memorandum of Objectives.
2. Clause 11 - **National Interest of Republic** - must be deleted because we agree with those who have argued that this Clause makes the Bill overbroad and unconstitutional, despite the Bill having been certified as passing Constitutional muster.
3. Clause 12 - **Commercial Information** - must be deleted for the reasons referred to in Paragraph 2.
4. The definition of "national **security**" in Clause 1 of the definitions clause must be seriously amended to ensure that the definition is crisp, clear and narrowly focused. The new definition must address legitimate national security issues that can justify the limitation of rights of access to information and freedom of expression. In this regard we propose the following definition:

"national security" means the protection of the people of the Republic and the territorial integrity of the Republic against:

- (a) The use of threat of force;
- (b) The capacity of the republic to respond to the use of threat of force;

(c) The following acts:

- (i) Hostile acts of foreign intervention
- (ii) Terrorism;
- (iii) Espionage;
- (iv) Information peddling;
- (v) Sabotage; and
- (vi) Violence;

Whether directed from, or committed within, the Republic or not, and includes the carrying out of the Republic's responsibilities to any foreign country and intentional organisations in relation to any of the matters referred to in this definition.

5. Chapter 2 and 3 must be deleted and Chapter 3 be made to form part of the regulations where relevant.
6. A provision should be made to cater for information that needs to be safeguarded on the basis of national security reasons and should include the following:
 - Protection of legitimate national intelligence structures sources;
 - legitimate operational methods, doctrine, facilities and personnel of security structures;
 - sensitive confidences in international relations;
 - ongoing investigations of state security structures;
 - details of criminal investigations and legitimate police and law enforcement methods;
 - economic, scientific or technological secrets vital to the Republic's stability, security, integrity and development.

7. Chapters 5 must be deleted.

8. Chapters 6; 7; 8, 9, 10, 11, 12 and 13 must be reviewed and amended as per the following proposals:

- 8.1 Clause 16 authorises the Head of an organ of state to classify information. However, we feel uncomfortable with the apparent ease with which that authority can be delegated, apparently without constraint. The level to which this delegation can be made must be restricted to a level not lower than Deputy-Director General or the equivalent thereof. This will address the "Algoa Bus Company" scenario.
- 8.2 Clause 22 provides for the Regular reviews of classified information. This process of review must be subject to the criteria for continued classification. The Bill must ensure clarity of this prerequisite.
- 8.3 Clause 25 provides for an appeal procedure where a request for a review has been denied. Any person who was involved in the classification process should not be part of the appeal procedure. We also propose that the Minister must be authorized to establish mechanisms to assist him/her with both the review and appeals processes. This clause must be amended to provide for this.
- 8.4 The Bill must be clearly aligned with the **Protected Disclosures Act, the Companies Act**, and other laws that serve to protect whistle blowers. Clause 38 of the Bill ostensibly seeks to provide for that alignment. However, it is felt that in its current form Clause 38 is inadequate, and must therefore be strengthened to achieve this end.
- 8.5 Clause 42 provides that improper classification and the abuse of the classification system is an offence punishable with

imprisonment for a period not exceeding three years, which is inadequate and inappropriate when measured against the penalties provided in other clauses, e.g. Clause, 42 which provides for a fifteen year sentence for the unauthorized disclosure of classified information. Clause 42 must therefore be amended to reflect this even approach.

- 8.6 The classification process set out in Chapter 6 must be subject to a two-part test, viz. First - there must be a clear, justifiable and legitimate need to classify; second - there must be a demonstrable need to protect such information once it is classified. This two-part test must be provided for in the new Chapter 3 as a means for the determination of sensitive information. This test would be followed by the determination of the classification level already provided for in the Bill.
- 8.7 Having deleted Clauses 11 & 12, consequential amendments must be made throughout the Bill, i.e. wherever the words "national interest" appear they must be replaced by the words "national security" depending on the relevance and context.