

Proposals on clauses 23 and Classification Review Panel

29 July 2011

CLAUSE 23 (as agreed)

23 (1) If a request is made for information and it is established that the information requested is classified, that request must be referred to the relevant head of the organ of state for a review of the classification status of the information requested.

(2) In conducting such a review the head of an organ of state must take into account the conditions for classification and declassification as set out in this chapter.

(3) The head of the organ of state concerned must declassify the classified information in accordance with section 19 and grant the request for information if that information reveals evidence of -

(i) a substantial contravention of, or failure to comply with the law; or

(ii) an imminent and serious public safety or environmental risk; and

(b) the public interest in the disclosure of the information clearly outweighs the harm that will arise from the disclosure.

(4) The head of the organ of state must -

(a) within 14 days of receipt of the request contemplated in subsection 3(a) (ii) grant the request for the declassification of classified information; or

(b) within 30 days, of receipt of the request contemplated in subsection (3) (a) (i) grant the request for the declassification of classified information.

(5) A Court may condone non-observance of the time-period referred to in section 23 (4) (a) on good cause shown

(6) If an application for a request referred to in subsection (1) is received, the head of the organ of state must within a reasonable time conduct a review of the classified information held by that organ of state relating to the request for declassification.

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- 23** (1) If a request is made for information and it is established that the information requested is classified, that request must be referred to the relevant head of the organ of state for a review of the classification status of the information requested.
- (2) In conducting such a review the head of an organ of state must take into account the conditions for classification and declassification as set out in this chapter.
- (3) The head of the organ of state concerned must declassify the classified information in accordance with section 19 and grant the request for information if that information reveals evidence of -
- (i) a substantial contravention of, or failure to comply with the law; or
 - (ii) an imminent and serious public safety or environmental risk; and
- (b) the public interest in the disclosure of the information clearly outweighs the harm that will arise from the disclosure.
- (4) The head of the organ of state must -
- (a) within 14 days of receipt of the request contemplated in subsection 3(a) (ii) grant the request for the declassification of classified information; or
 - (b) within 30 days, of receipt of the request contemplated in subsection (3) (a) (i) grant the request for the declassification of classified information.
- (5) A Court may condone non-observance of the time-period referred to in section 23 (4) (a) on good cause shown
- (6) If an application for a request referred to in subsection (1) is received, the head of the organ of state must within a reasonable time conduct a review of the classified information held by that organ of state relating to the request for declassification.

CLASSIFICATION REVIEW PANEL

Establishment of Classification Review Panel

xx. (1) There is hereby established a Panel to be known as the Classification Review Panel.

(2) All organs of state must provide the Classification Review Panel such assistance as may be reasonably required for the effectiveness of the Classification Review Panel in the performance of its functions.

(3) (a) No organ of state or employee of an organ of state may interfere with, hinder or obstruct the Classification review panel or any member thereof or a person appointed under section XXX in the performance of its, his or her functions.

(b) No access to classified information may be withheld from the Classification Review Panel on any ground.

Or

(b) Access to classified information may not be refused to the classification Review Panel on any ground

Functions of Classification Review Panel (agreed)

xx. (1) The Classification Review Panel must—

- (a) review and oversee status reviews, classifications and declassifications contemplated in this Act;
- (b) receive all reports of 10 year reviews on the status of all classified information conducted by the organs of state; and
- (c) receive, once a year, all reviews on status of classified information conducted by the organs of state during the course of a financial year.

(2) The Classification Review Panel may, with the concurrence of the Minister, make rules not in conflict with this Act for matters relating to the proper performance of the functions of the Classification Review Panel, including—

- (a) time periods within which reports by the heads of organs of state must be submitted;
- (b) information to be supplied when a report is submitted;
- (c) procedures regarding the deliberations and the conduct of work of the Panel; and
- (d) random sampling methods to be employed in reviewing compliance under this Chapter.

Constitution and appointment of Classification Review Panel

xxx. (1) Due regard having been given to—

- (a) participation by the public in the nomination process;
- (b) transparency and openness; and
- (c) the publication of a shortlist of candidates for appointment.

(2) The Joint Standing Committee on Intelligence must table a list of five persons for approval by the National Assembly

(3) The National Assembly must by a resolution with a support of a majority vote of its members upon approval submit the list of five persons to the Minister for appointment.

(4) The Classification Review Panel is headed by a Chairperson who must either be an admitted attorney or advocate with at least ten years legal experience.

(5) **[Other]** The other four members of the Classification Review Panel must be suitably qualified of whom at least one member—

- (a) must have expertise in the Constitution and **[the]** law;
- (b) must have knowledge and experience of national security matters; and
- (c) must have knowledge and experience_of archive related matters.

(6) The members of the Classification Review Panel are appointed for a term of five years which term is renewable for one additional term only.

(7) A person may not be appointed as a member of the Classification Review Panel unless that person has a valid security clearance certificate issued under the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

Disqualification from membership (as agreed)

xx. (1) A person may not be appointed as a member of the Classification Review Panel if he or she—

- (a) is not a citizen of the Republic;
- (b) is not resident in the Republic;
- (c) is appointed by, or is in the service of, the state and receives remuneration for that appointment or service;
- (d) is a member of Parliament, any provincial legislature or any municipal council;
- (e) is an office-bearer or employee of any party, movement or organisation of a party-political nature;
- (f) is an unrehabilitated insolvent;
- (g) has been declared to be of unsound mind by a court of the Republic;
- (h) has been convicted of an offence in the Republic, other than an offence committed prior to 10 May 1994 associated with political objectives, and was sentenced to imprisonment without an option of a fine.
- (i) has been removed from an office of trust on account of misconduct involving theft or fraud.

Removal from office (as agreed)

xx. (1) A member the Classification Review Panel may be removed from the Panel on -

- (a) the grounds of misconduct, incapacity or incompetence;
- (b) a finding to that effect by the Joint Standing Committee on Intelligence; and

(c) the adoption by the Assembly of a resolution calling for that member's removal as member from the Classification Review Panel.

(2) A resolution of the National Assembly concerning the removal of a member from the Classification Review Panel must be adopted with a supporting vote of a majority of the members of the Assembly.

(3) The Minister—

(a) may suspend a member from the Classification Review Panel at any time after the start of the proceedings of a committee of the National Assembly for the removal of that person; and

(b) must remove a person from office upon adoption by the Assembly of the resolution calling for that person's removal.

(4) A member ceases to be a member of the Classification Review Panel if that member-

(a) resigns;

(b) fails to attend three consecutive meetings of the Classification Review Panel, unless his or her apology has been accepted; or

(c) becomes disqualified in terms of section xxx.

(5) A vacancy in the Classification Review panel must be filled as soon as practicable in accordance with section XXX.

Remuneration of members and staff (as agreed)

xx. Members of the Classification Review Panel and staff of the Classification Review Panel must be paid such remuneration and allowances as determined by the Minister with the concurrence of the Minister of Finance.

Meetings of Classification Review Panel (as agreed)

xx. (1) The Classification Review Panel meets as often as the circumstances require, but must meet at least once a month, at such times and places as the chairperson may determine.

- (2) The Classification Review Panel may determine its own procedure for its meetings.
- (3) The quorum for any meeting of the Classification Review Panel is three members.
- (4) Any decision taken by the Classification Review Panel is not invalid merely by reason of a vacancy on the Panel provided that the required quorum is present at that meeting.

Decisions of Classification Review Panel

xx. (1) The Classification Review Panel may confirm, vary or set aside any classification decision taken by the head of an organ of state and instruct the head of the organ of state concerned to change the classification status of the classified information, if necessary.

[(2) Where the Classification Review Panel sets aside or vary a classification decision taken by the head of an organ of state the Classification Review Panel may substitute its own decision for it.

(3)] (2) The Classification Review Panel must before reaching a final decision afford the head of an organ of state an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.

[(2)] (3) A decision of the Classification Review Panel binds an organ of state subject to any appeal that the organ of state may lodge with a competent High Court.

Appointment of staff: (as agreed)

(1) The Chairperson of the Classification Review Panel must appoint staff to assist the Panel in carrying out its functions.

(2) A person may not be appointed under subsection (1) unless that person has a valid security clearance certificate issued under the National Strategic Intelligence Act, 1994 (Act No 34 of 1994).

Accountability of Classification Review Panel

Xxx The Classification Review Panel is accountable to the National Assembly, and must report on its activities and the performance of its functions at least once a year.

Reporting (as agreed)

xx. (1) The Classification Review Panel must, in respect of each financial year, prepare an annual report on the activities of the Classification Review Panel undertaken during the financial year.

(2) The Classification Review Panel must **[submit]** table the report contemplated in subsection (1) to Parliament within 30 days of receipt thereof if Parliament is in session, or if Parliament is not in session within 14 days after the commencement of the next Parliamentary session.

(3) The Classification Review Panel must, furnish any other report as the Joint Standing Committee on Intelligence, request.

(4) The Chairperson of the Classification Review Panel must publish the annual report of the Classification Review Panel.

Transitional Arrangement (as agreed):

Xxx Subject to section 20 -

(a) On the date on which this Act takes effect, any information classified under MISS Guidelines, the Protection of Information Act, 1982 (Act No 42 of 1982) or any other law, must be reviewed and an audit report must be compiled by the head of the organ of state concerned on the classified status of all classified information held by that organ of state.

(b) The Agency must review and compile an audit report on the classified status

OFFENCES:

A head of an organ of state who wilfully or in a grossly negligent manner fails to comply with the provisions of this Act commits an offence and is liable on conviction to a fine, or to imprisonment for a period not exceeding two years.

Definition:

"Request for access", in relation to classified information means a request for access to a record of a public body in terms of section 11 of the Promotion of Access to Information Act, 2000 (Act No 2 of 2000).

Clause 38: (as agreed)

Disclosure of classified information [and related] information:

38. Any person who unlawfully discloses classified information in contravention of this Act is guilty of an offence and liable on conviction to imprisonment for a period [**not less than three years but**] not exceeding five years, except where such disclosure is-

- (a) protected under the Protected Disclosures Act, 2000 (Act No 26 of 2000); or section 159 of the Companies Act, 2008 (Act No 71 of 2008); or
- (b) authorised by any other law.

¹ Time period may be considered