



PARLIAMENT

OF THE REPUBLIC OF SOUTH AFRICA

COMMITTEES

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SECRETARIAT D.
ad hoc protect

Clauses flagged by Committee for further discussion, dated 18 September 2012

1.1 In line 28 National security insert "includes" and delete "means" to read, "**national security**" includes the protection of the people of the Republic and the territorial integrity of the Republic against—"

1.2 Clause 4 related to PAIA no consensus was reached.

- a. (4) In respect of classified state information and ~~despite section 5 of the Promotion of Access to Information Act~~, this Act prevails if there is a conflict between a provision of this Act and a provision of another Act of Parliament ~~that regulates access to classified information.~~ *now deleted*

1.3 Changes to Application of Act 3(1); 3(2)(a); 3(2)(b)

- a. The DA did not agree with clause 3.1 as it refers to all state information.
b. Opposition parties did not agree with including the words "the cabinet" in clause 3(2)(a) to read: "(a) apply to the cabinet, the security services of the Republic and the oversight bodies referred to in Chapter 11 of the Constitution; and"
c. DA needed time to relook at including "the cabinet" as its inclusion might mean everything in the cabinet and by extension the minister and his/her department are also classifiable.
d. The chair noted that presently cabinet documents are automatically classified.
e. Mr Lees felt the Committee would need to look at the wording carefully before approving.
f. Mr Bloem felt the word cabinet should be defined.
g. The chair clarified that the word cabinet would not apply to the line function of ministers but to protect the actual cabinet meeting documents.

1.4 Clause 3.(3)(a),(b),(c) and (d) DA reserved its comment to until after it had time to review the clause.

1.5 Mr Bloem requested clause 4.2 be discussed later:

- a. "(4.) (2) State information may, in terms of this Act, be protected against unlawful disclosure, alteration, destruction or loss."

1.6 Parties agreed to flag Clause 10 related to "Conditions for classification, reclassification and declassification" for further discussion.

New prop. from ANC

1.7 Parties agreed to flag clause 14(6)-(9) for further discussion of an alternative clause.

1.8 Clause 15 with insertion of "the Agency or the relevant classifying organ of state" was flagged for further discussion.

- a. Mr Bloem requested the ANC include the words "senior member of the South African Police Service" as it should stipulate that it was not any member of SAPS.
b. The Chair noted the regulations would stipulate at which rank the member would be at to receive classified information.
c. The DA wished to add additional clauses (1)-(4) to allow a person to retain a copy of the classified information if it fell within certain parameters.
d. The ANC felt the DA proposals would create loopholes in the system. The

ANC proposed that section 43 would address the DA concerns.

- 1.9 Clause 19 (6) remove 14 days and insert "a reasonable time".
 - a. Parties requested the Bill stipulate a timeframe for the head of organ of state to comply as a reasonable time had different meanings for different people.
- 1.10 Mr Lees requested further discussion on clause 25 that relates to "remuneration of members and staff" arguing that remuneration should be decided by an independent remuneration committee or panel.
- 1.11 The ANC requested the Committee park clause 36, 37, 38 and 39 until the ANC had an opportunity to table and discuss the definition for espionage.
- 1.12 The DA noted it is opposed to minimum sentences in the Bill.
- 1.13 The DA is also opposed to references to intent or no intent. The DA would hold its proposals until the ANC has tabled its proposals with regard to the definition for espionage.
- 1.14 Clause 40(1) Mr Bloem submitted COPE's amendment to delete "intentionally" and insert "with the intention to cause harm to national security"
- 1.15 Parties agreed to flag Clause 43(c) for further discussion, "Clause 43(c) 'reveals criminal activity, including criminal activity for ulterior purposes listed in section 14 and 47 of this Act.'"
- 1.16 The DA proposed a new clause 44:
 - a. Insert: "provided that no person may be prosecuted;
 - i. if that person has, within 14 days of receipt, applied for declassification as contemplated in this Act, or
 - ii. if that person has, within 14 days of receipt, applied to the Classification Review Panel for a review of the classification as is contemplated in this Act, or
 - iii. if that person has, within 14 days of receipt, applied to a court of law for an urgent review of the classification as is contemplated in this Act, or
 - iv. where the information or a part thereof that is contained in a classified record has been improperly classified in terms of this Act.
- 1.17 Apartheid era classified documents.
 - a. The DA proposed that the Committee consider declassifying apartheid era classified documents especially those in the public's possession.
 - b. The Chair noted that COSATU had made a submission regarding apartheid classified information that would remain classified in terms of this Act. The Committee should consider finding a balance between the submissions made and the DA proposal.
 - c. Mr Nzimande raised a point of order that the Bill proposes a new regime and any information classified in 1969 must be returned.
 - d. The Chair noted the matter would be parked for further discussion.