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GENERAL NOTICE

NOTICE 1841 OF 2002

The following Bills have been introduced to the National Assembly by the Minister for Intelligence Services:

- (a) the Intelligence Services Control Amendment Bill, 2002
- (b) the Intelligence Services Bill, 2002
- (c) the Electronic Communications Security Bill, 2002.

These Bills will be considered by an Ad Hoc Committee of Parliament on the Intelligence Services Bills.

Comments to these Bills should be sent to:

Ms L Myoli
PO Box 15
Cape Town
8000

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Due to the short period within which the Committee is expected to report to the National Assembly on the Bills, the deadline for comments to all these Bills is Monday 14 October 2002.

REPUBLIC OF SOUTH AFRICA

INTELLIGENCE SERVICES CONTROL AMENDMENT BILL

*(As introduced in the National Assembly as a section 75 Bill; explanatory summary of
Bill published in Government Gazette No. of) (The English text is the official
text of the Bill)*

(MINISTER FOR INTELLIGENCE SERVICE)

[B - 2002]

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.
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B I L L

To amend the Intelligence Services Control Act, 1994, so as to define an expression and to amend certain definitions; to regulate anew the oversight functions of the Joint Standing Committee on Intelligence; to provide that only one Inspector-General of Intelligence may be appointed and to re-regulate the functions of the Inspector-General; to provide for the appointment of personnel to the office of the Inspector-General; to extend the power of the Minister to make regulations; and to change the name of the Act; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1994, as amended by section 1 of Act 31 of 1995 and section 1 of Act 42 of 1999

1. Section 1 of the Intelligence Services Control Act, 1994 (hereinafter referred to as the principal Act), is hereby amended:

(a) by the substitution for the definition of "Agency" of the following definition:

" 'Agency' means the National Intelligence Agency **[established by]** referred to in section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);";

(b) by the substitution for the definition of "Head of a Service" of the following definition:

" 'Head of a Service' means the Director-General of the Agency or of the South African Secret Service, the **[Chief]** head of the Intelligence Division of the National Defence Force or the **[Commissioner]** head of the Intelligence Division of the South African Police Service;";

(c) by the substitution for the definition of "Inspector-General" of the following definition:

" 'Inspector-General' means **[a]** the person appointed under section 7;";

(d) by the substitution for the definition of "Minister" of the following definition:

" 'Minister' means the **[Minister to whom the portfolio of the Agency, the South African Secret Service, the National Defence Force or the South African Police Service has been allocated in terms of section 88 of the Constitution]** 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;";

- (e) by the insertion after definition of "National Defence Force" of the following definition:

" 'prescribed' means prescribed by regulation;";

- (f) by the substitution for the definition of "Services" of the following definition:

" 'Services' means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force and the **[National Investigation Service]** Intelligence Division of the South African Police Service;" and

- (g) by the substitution for the definition of "South African Secret Service" of the following definition:

" 'South African Secret Service' means the South African Secret Service **[established by]** referred to in section 3 of Intelligence Services Act, 1994 (Act No. 38 of 1994);".

Amendment of section 2 of Act 40 of 1994, as substituted by section 2 of Act 31 of 1995 and amended by section 2 of Act 42 of 1999

2. Section 2 of the principal Act is hereby amended:

- (a) by the substitution for subsection (1) of the following subsection:

"(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 in relation to the **[intelligence and counter-intelligence functions]** administration, financial management and expenditure of the Services, and report thereon to Parliament.";

- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

"(b) No member of Parliament shall be appointed as a member of the Committee before the Agency has issued a security clearance **[has been issued]** in the prescribed manner in respect of that member **[by the National Intelligence Agency in a manner determined by the Minister as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), by regulation]**.";

- (c) by the substitution for subsection (4) of the following subsection:

"(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."; and

- (d) by the substitution in subsection (6) for paragraph (b) of the following paragraph:

"(b) The Committee **[shall be competent to]** may initiate

and recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the functioning of the Committee."

Amendment of section 3 of Act 40 of 1994, as amended by section 3 of Act 31 of 1995 and section 3 of Act 42 of 1999

3. Section 3 of the principal Act is hereby amendedC

(a) by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph:

"(i) the Auditor-General an audit report compiled in accordance with section 4(6) of the Auditor-General Act, 1995 (Act No. 12 of 1995),
and after obtaining the report, to considerC

(aa) the financial statements of the Services;

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

(cc) any reports issued by the Auditor- General on the affairs of the Services;"

(b) by the substitution in paragraph (a) for subparagraph (iv) of the following subparagraph:

"(iv) **[each]** the Minister responsible for each Service, a report regarding the budget for the Service for which he or she is responsible;"

(c) by the substitution in paragraph (f) for the words preceding the proviso of the following words:

"to order investigation by and to receive a report from the Head of a Service or [an] 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";

(d) by the substitution for paragraph (h) of the following paragraph:

"(h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, [the] any Minister responsible for a Service or Parliament"; and

(e) by the substitution for paragraph (l) of the following paragraph:

"(l) to consider and report on the appropriation of revenue or moneys for the functions of the [Agency and the South African Secret Service] Services".

Amendment of section 4 of Act 40 of 1994

4. Section 4 of the principal Act is hereby amended:

(a) by the substitution in subsection (2) for words following upon paragraph (b)(ii) of the following words:

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

be final."; and

- (b) by the substitution in subsection (3) for the words preceding the proviso of the following words:

"The Committee may, for the purposes of the performance of its functions, require [a] any Minister responsible for a Service, the Head of a Service or the Inspector-General, [of a Service] to appear before it to give evidence, to produce any document or thing and answer questions put to him or her".

Amendment of section 5 of Act 40 of 1994, as amended by section 4 of Act 42 of 1999

5. Section 5 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

"(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 [concerned];".

Amendment of section 6 of Act 40 of 1994, as substituted by section 4 of Act 31 of 1995

6. Section 6 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(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 **[each] the Minister [concerned] responsible for every Service.**

(2) The Committee may at the request of Parliament, the President or the Minister **[concerned] 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."

Substitution of section 7 of Act 40 of 1994, as amended by section 5 of Act 31 of 1995 and by section 5 of Act 42 of 1999

7. The following section is hereby substituted for section 7 of the principal Act:

"Inspector-General

7. The President shall appoint **[one or more Inspectors- General] 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[c

- (i) **one Inspector-General may be appointed with regard to some of or all the Services as long as the activities of all the Services are monitored by an Inspector-General; and**

- (ii)] if **[any]** the nomination is not approved as required in paragraph (b), the Committee shall nominate another person.

(2) **[An]** 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.

(3) The remuneration and other conditions of employment of **[an]** 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: Provided that such remuneration shall be the same as that of the Public Protector appointed in terms of section 1A of the Public Protector Act, 1994_(Act No. 23 of 1994).

(4) **[An]** The Inspector-General may be removed from office by the President, but only on the grounds of **[misbehaviour]** misconduct, incapacity, poor performance or incompetence determined by the Committee.

(5) **[An]** If 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) **[An]** The Inspector-General shall be **[responsible]** accountable to the **[President]** 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 **[an]** the Inspector-General are, in relation to the Service **[in respect of which he or she is appointed]**c

- (a) to monitor compliance by **[the]** 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 **[the]** any Service;
- (c) to perform all functions designated to him or her by the President or **[the]** any Minister **[concerned]** 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), corruption and **[the]** improper enrichment of any person through an act or omission of any member:
- (d) to submit certificates to **[the]** every Minister **[concerned]** responsible for a Service pursuant to subsection (11)(c); **[and]**
- (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."

(7A) The reports of the Inspector-General contemplated in subsection (7)(2)(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, **[an] the** Inspector-General^c

(a) shall have access to any intelligence, information or premises under the control of **[the] any** Service **[in respect of which he or she has been appointed,]** 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) The Inspector-General shall inform the Head of a Service prior to his or her access to the premises of such Service in writing of his intention to have access to the Service: 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^c

- (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 No. 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 **[an] the Inspector-General** on any ground.

(10) **[An] The Inspector-General**

- (a) shall comply with all security requirements applicable to the employees of the **[Service in respect of which he or she has been appointed] Agency**;
- (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 **[concerned] responsible for that Service**, submit to that Minister, **[at such times as the Minister may specify,]** 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 **[appointed for that Service]**.

(b) (i) Each Head of a Service shall report to the Inspector-General **[appointed for that Service]** 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) **[A]** Each Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector-General **[concerned]** 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), **[an]** the Inspector-General shall submit to the Minister **[concerned]** responsible for the Service in question, a certificate stating the extent to which **[such]** 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 **[that]** 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 **[concerned]** 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 **[responsible for a Service]** may, after consultation with the Inspector-General **[concerned]**, 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, **[the Inspector-General]** on such conditions of employment as are applicable to members of **[that Service]** the Agency.

(13) The budget of the office of the Inspector-General shall be appropriated by Parliament as part of the budget vote of the Agency, and shall be expended in accordance with the rules and procedures as set out in the Public Finance Management Act, 1999 (Act No. 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 exercised in terms of such a delegation shall be deemed to have been exercised by the Inspector-General."

Amendment of section 8 of Act 40 of 1994, as substituted by section 6 of Act 31 of 1995 and amended by section 7 of Act 42 of 1999

8. Section 8 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

"(1) **[A]** The Minister, acting with the concurrence of **[the President, and]** the Committee, may make regulations **[as to any matters which are necessary or expedient for the achievement of the purposes of this Act, including but not limited to]** regarding

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

- (b) the **[exercise of their the powers and the]** performance of **[their]** his or her functions by **[Inspectors-General]** the Inspector-General;
- (c) the reports to be submitted by **[an]** the Inspector-General and the Heads of the Services[, **as well as reports to be received by the Committee**];
- (d) the suspension from office of **[Inspectors-General]** 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) **[anything which shall or may be prescribed by regulation under this Act]** security clearance for the Inspector-General and members of the Committee;
- (g) 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 lodging and investigation of complaints.

(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 **[concerned]** acting with the concurrence of the Committee may determine."

Substitution of section 9 of Act 40 of 1994, as substituted by section 7 of Act 31 of 1995

9. The following section is hereby substituted for section 9 of the principal Act:

"Short title

9. This Act shall be called the Intelligence Services **[Control]** Oversight Act, 1994."

Short title and commencement

10. This Act shall be called the Intelligence Services Control Amendment Act, 2002, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

REPUBLIC OF SOUTH AFRICA

INTELLIGENCE SERVICES BILL

*(As introduced in the National Assembly as a section 75-Bill; explanatory summary of.
Bill published in Government Gazette No. of) (The English text is the official
text of the Bill)*

(MINISTER FOR INTELLIGENCE SERVICES)

[B - 2002]

BILL

To regulate the establishment, administration, organisation and control of the National Intelligence Agency, the South African Secret Service, and the South African National Academy of Intelligence; to establish and regulate the Intelligence Services Council on Conditions of Service; and to repeal an Act; and to provide for matters connected therewith.

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

CHAPTER I**DEFINITIONS AND APPLICATION OF ACT****Definitions**

1. In this Act, unless the context indicates otherwise—

"Academy" means the South African National Academy of Intelligence established by section 5;

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

"Agency" means the National Intelligence Agency referred to in section 3;

"Chief Executive Officer" means the head of the Academy appointed in terms of

section 6(1);

"department" means a department as defined in section 1 of the Public Service Act, 1994 (Proclamation No. 103 of 1994);

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

"former member" means any member of the Intelligence Services or the Academy, whose services have terminated for any reason;

"Intelligence Services" means the Agency or the Service as the case may be;

"Intelligence Services Council" means the Intelligence Services Council on Conditions of Service established by section 22;

"Joint Standing Committee on Intelligence" means the committee established by section 2 of the Intelligence Services Control Act, 1994 (Act No. 40 of 1994);

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

"Minister" means the President, or any member of Cabinet designated by the President to take political responsibility for the Intelligence Services, or the Academy;

"National Intelligence Structures" means the National Intelligence Structures as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);

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

"non-statutory Service" means the former Umkhonto weSizwe (MK), Azanian Peoples Liberation Army (APLA) and the Department of Intelligence 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, by the head of each of the following organizational components which were integrated to consist of the Intelligence Services, with the names of:

- (a) the persons who, 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 No. 104 of 1978);
- (b) the persons who, 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) the persons who, 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 No. 25 of 1982), or are appointed in terms of section 15 of the National Security Council Act, 1981 (Act No. 27 of 1981), of Bophuthatswana;
- (d) the persons who, 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

No. 67 of 1987), of Transkei;

- (e) the persons who, 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 No. 31 of 1988), of Venda;
- (f) the persons who immediately before the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 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 No. 21 of 1971); or
 - (ii) any political party or organization;

"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" includes any land, building, building works, instrument, equipment or means of transport;

"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 or responsibility for accidents, injuries or damage; or
- (d) conducts surveillance or counter-surveillance;

"regulation" means a regulation made under this Act;

"security equipment" means the security equipment as defined in section 1 of the Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

"security service" means—

- (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 No. 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);

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

"Service" means the South African Secret Service referred to in section 3;

"strike" means a strike as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);

"this Act" includes the regulations.

Application of Act

2. Unless the context indicates otherwise, this Act applies in respect of all members, irrespective of whether they became members at the commencement of this Act or were appointed after the commencement of this Act, and irrespective of whether they work in or outside the Republic.

CHAPTER II

ESTABLISHMENT, COMPOSITION AND ORGANISATION OF AGENCY, SERVICE AND ACADEMY

Continued existence of Agency and Service

3. (1) The National Intelligence Agency and the South African Secret Service, continue to exist and consist of—

- (a) the persons who became members in terms of the Intelligence Services Act, 1994 (Act No. 38 of 1994) whose names appear on the personnel list;
- (b) the persons appointed as members in terms of the Intelligence Services Act, 1994 after its commencement;
- (c) the persons appointed as members in terms of this Act, after its commencement.

(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 benefit, subject to the provisions of the Government Employees Pension Law, 1996, (Proclamation No. 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 each of the Intelligence Services.

(b) The Director-General is the head and accounting officer of the Intelligence Services.

Composition of Agency and Service

4. (1) The Minister must for each of the Intelligence Services—

- (a) create posts of deputy Director-General;
- (b) create posts of assistant Director-General;
- (c) establish chief directorates, directorates and prescribe the functions and post structures thereof;
- (d) establish divisions and prescribe the functions and post structures thereof.

(2) The creation of deputy Directors-General posts must be done in consultation with the President.

Establishment of South African National Academy of Intelligence

5. (1) There is hereby established a South African National Academy of Intelligence, as an organisational component in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), whose management and administration is under the control of the Minister.

(2) The Academy—

- (a) must provide training or conduct such examinations or tests as a qualification for the appointment, promotion or transfer of persons in or to the Intelligence Services or departments, as the case may be, as the Minister may prescribe; and
- (b) may issue diplomas or certificates to persons who have passed such examinations.

(3) The Academy must have a Training Fund whose funding consists of—

- (a) all moneys which immediately prior to the commencement of this Act were moneys defrayed for training under the Agency;
- (b) money appropriated by Parliament from time to time for promoting training under this Act;
- (c) any other money accruing to the Training Fund in terms of this Act or from any other source.

(4) (a) The Training Fund must be administered by the Chief Executive Officer.

(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.

(c) The Chief Executive Officer may invest money in the Training Fund which is not required for immediate use in such a manner as the Minister may approve with the concurrence of the Minister of Finance.

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

(b) The Chief Executive Officer 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 Special Services Account Act, 1969 (Act No. 81 of 1969).

(6) The Academy may co-operate with any institution of higher learning, in the Republic or elsewhere to achieve its objectives.

Appointment of Head and deputy Head of Academy

6. (1) The President must in accordance with the Public Service Act, 1994 (Proclamation No. 103 of 1994) appoint a head of the Academy who is also the Chief Executive Officer, principal and accounting officer of the Academy.

(2) The Minister must appoint a deputy head of the Academy who is responsible for the curriculum and research function of the Academy: Provided that if the post level of the deputy head is at the level of a deputy Director-General, the Minister must make the appointment with the concurrence of the President.

(3) The deputy head must perform his or her functions subject to this Act and any other laws governing the Intelligence Services.

Composition of Academy

7. The Minister may for purposes of the Academy create the post structures necessary for the functioning of the Academy, but such structures may not exceed the structures contemplated in section 4 in seniority.

Appointment, promotion, discharge, demotion and transfer of members

8. (1) The Minister may, subject to this Act—

- (a) appoint any person, as a member of the Intelligence Services or the Academy;
- (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.

Establishment of Ministerial Advisory Committee on Training

9. (1) There is hereby established a Ministerial Advisory Committee on

Training which consists of—

- (a) the head of the Academy;
- (b) the deputy head of the Academy;
- (c) the heads of National Intelligence Structure or their alternates; and
- (d) not more than 8 other persons appointed by the Minister on the basis of need and required expertise.

(2) At least three of the members must have extensive academic experience and knowledge, and must hold office for a renewable period of three years.

(3) In addition to the members contemplated in subsection (1) the Minister must, 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 may be viable, invite nominations for the 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 head and deputy head of the Academy to develop the curriculum and business plans for the Academy, 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 function 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.

Heads of Intelligence Services and Academy

10. (1) The Director-General concerned or the Chief Executive Officer must, subject to the directions of the Minister and this Act, exercise command and control of the Intelligence Services or the Academy, as the case may be.

(2) The Director-General concerned or the Chief Executive Officer may, subject to the directions of the Minister and the provisions of this Act, make such rules and issue such directions as he or she may deem expedient for the efficient command and control of the Intelligence Services or the Academy, as the case may be.

(3) The Director-General concerned or the Chief Executive Officer 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 Intelligence Services, or the Academy as the

- case may be, are protected from unauthorised disclosure;
- (b) no action is carried out that could give rise to any reasonable suspicion that the Intelligence Services or the Academy, as the case may be, is concerned in furthering, protecting or undermining the interests of any section of the population or any political party or organisation; and
 - (c) the powers of the Intelligence Services or the Academy 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).

Powers and duties of members

11. (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 judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), 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 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 Intelligence Services;

(b) such information cannot reasonably be obtained by other means, he or she may issue the 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.

(3) (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 Intelligence Services, who is authorized to do so by a senior member of such Intelligence Services holding a post of at least a directorate.

(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 an 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 he or she 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 must jointly issue directives to uniformly regulate the manner and procedure of applications in terms of subsection (2).

General powers of Minister

12. (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 Intelligence Services and the Academy.

(2) 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 or hire any immovable property, with or without any buildings thereon, which are necessary for the efficient functioning of the Intelligence Services or the Academy, and erect or maintain any buildings so acquired and, with the concurrence of the Minister of Finance, supply guarantees, indemnities and securities for those purposes;
- (b) acquire and utilise any movable property and any other equipment which may be necessary for the efficient functioning of the Intelligence Services or the Academy;

- (c) with the concurrence of the Minister of Finance, sell, let or otherwise dispose of any immovable property, with or without any building thereon, and anything referred to in paragraph (b), which is no longer required for the said purposes.

Retirement age of members

13. (1) A member may retire and 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 Intelligence Services 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.

(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.

Security screening and discharge of members

14. (1) Subject to subsection (2), 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 screening investigation by the Intelligence Services; and

- (b) the Minister, after evaluating the gathered information, is reasonably of the opinion that such person may be appointed as a member without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to security interests of the Republic.

(2) If the Minister is reasonably of the opinion contemplated in subsection (1)(b), the Minister must issue a document in which it is certified that such person has successfully undergone a security clearance and is regarded as being security competent: Provided that the Minister may withdraw such certificate if he or she obtains information which, after evaluation by him or her, satisfies him or her that the person should no longer be employed as a member.

(3) If the certificate, referred to in subsection (2), is withdrawn such member is deemed unfit for further membership of the Intelligence Services or the Academy and the Minister may—

- (a) discharge such person or member from the Intelligence Services or the Academy, as the case may be; or
- (b) with the approval of the Minister responsible for the department concerned, transfer such person or member to that department subject to the conditions imposed by any law governing the transfer.

Discharge of members on account of long absence without leave

15. (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 concerned or the Chief Executive Officer, as the case may be, for a period exceeding 14 calendar days, is deemed to have been discharged from the Intelligence Services or the 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 14 calendar days;
- (b) a member deemed to have been so discharged, again reports for duty, the Director-General concerned or the Chief Executive Officer, as the case may be, may, notwithstanding anything to the contrary contained in any law but subject to the approval of the Minister, reinstate him or her in his or her former post or appoint him or her to any other post in the Academy or the Intelligence Services, as the case may be, on such conditions as the Director-General concerned or the Chief Executive Officer, 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 Director-General concerned or the Chief Executive Officer, as the case may be, may determine;
- (c) the Director-General concerned or the Chief Executive Officer, 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.

Discharge of members on account of ill-health

16. (1) Any member may be discharged from the Intelligence Services or the Academy as the case may be, by the Director-General concerned or the Chief Executive Officer, as the case may be, if, after a hearing in the prescribed manner as to his or her state of health, such Director-General or the Chief Executive Officer, as the case may be, is of the opinion that he or she is by reason of ill-health unfit to remain in the Intelligence Services or the Academy, as the case may be.

(2) Any member discharged from the Intelligence Services or the 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.

Discharge or demotion of members on account of poor performance

17. (1) A member may be discharged from the Intelligence Services or the Academy or demoted by the Director-General concerned or the Chief Executive Officer, 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 Director-General or the Chief Executive Officer, 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 Intelligence Services or the Academy 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.

Discharge or demotion of members on account of misconduct

18. (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 Intelligence Services or the Academy or demoted by the Director-General concerned or the Chief Executive Officer, as the case may be, if, after an enquiry in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, the Director-General or Chief Executive Officer, as the case may be, is of the opinion that such member has committed an act of misconduct.

(3) A member who has been discharged from the Intelligence Services or the Academy 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.

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

19. (1) If the public interest so requires, the Minister may—

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

- (i)** in the Intelligence Services or the Academy;
- (ii)** in any entity or establishment under the political control of the Minister;
- (iii)** in another department, if the Minister responsible for the department concerned 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 contemplated in subsection (1), 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 Intelligence Services or the Academy 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 Intelligence Services or the Academy on such

conditions as the Minister may determine.

(2) The Minister may, with the consent of a member and upon such conditions as he or she may determine, second a member, for the performance of a particular service or for a specified period, to the service of any other department, or the Intelligence Services or the 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 he or she 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.

Delegation of powers

20. (1) The Minister may in writing and on such conditions as he or she may deem fit delegate any power conferred upon him or her by this Act, excluding any power conferred upon him or her by sections 4(1)(a), (b) and (c), 5(1), (2)(a) and (4)(c), 6(2), 9(3), (4), (5), (8) and (9), 10(1), (2), 12(1), 13(3), 14(2), (3), 15(1)(b) and (c), 16(2), 17(2), 18(3), 19(1), (4), 21(2), 22(1), (5), (6) and (8), 23(3)(a)(i) and (ii), 28(2), 30 and 38, to the Director-General, the Chief Executive Officer or any other member of the Academy, or the Intelligence Services, as the case may be.

(2) A Director-General or the Chief Executive Officer may delegate any

power conferred upon him or her by or under this Act to any other member of the Academy or Intelligence Services as the case may be, but not any power delegated under subsection (1).

Labour Relations

21. (1) No member of the Intelligence Services or the Academy may strike or induce or conspire with any other member 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 Academy or Intelligence Services, as the case may be.

(3) 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.

Establishment of Intelligence Services Council on Conditions of Service

22. (1) There is hereby established an Intelligence Services Council on Conditions of Service which shall consist of the following members appointed on contract by the Minister:

- (a) A Chairperson;
- (b) a deputy Chairperson; and

(c) a Commissioner.

(2) The members contemplated in subsection (1) must be fit and proper persons with a thorough knowledge of the functioning of the Intelligence Services.

(3) The functions of the Intelligence Services 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;
- (c) for purposes of the functions contemplated in paragraphs (a) and (b)—
 - (i) to conduct research;
 - (ii) to review such policies;
 - (iii) to evaluate and monitor the implementation of such policies;
 - (iv) to invite the Directors-General, the Chief Executive Officer, 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 sub-paragraph (iv);
 - (vi) to confer with the Public Service Commission.

(4) The Chairperson may co-opt a Director-General or the Chief Executive Officer, to participate in the functioning of the Intelligence Services Council: Provided that such Director-General or Chief Executive Officer shall not have voting powers.

(5) The conditions of service of the members of the Intelligence Services Council must be determined by the Minister in accordance with conditions of service applicable to members.

(6) The members of the Intelligence Services Council may be removed from office by the Minister in accordance with the regulations and rules applicable to members.

(7) The Intelligence Services Council must perform its functions impartially, without bias or fear of prejudice.

(8) The Minister must appoint members or persons to give research, administrative, logistical and technical support to the Intelligence Services Council.

CHAPTER III

GENERAL

Whole time of members to be at disposal of State

23. (1) Unless otherwise provided in this Act—

- (a) every member shall place the whole of his or her time at the disposal of the State;
- (b) no member shall 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 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 Academy, or the Intelligence Services 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 Director-General concerned or the Chief Executive Officer as the case may be, and if he or she does not do so, such Director-General or the Chief Executive Officer 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 Chief Executive Officer of the value of the remuneration, allowance or reward;
- (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 Chief Executive Officer 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.

Reward for extraordinary diligence or devotion

24. The Director-General concerned or the Chief Executive Officer 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.

Establishment of decorations and medals for members

25. 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 Intelligence Services or the Academy.

Offences

26. (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 do any act in conflict with his or her duty;
 - (iii) discloses classified information or material entrusted to him or her by the Director-General, the Chief Executive Officer, or a member;
 - (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 Chief Executive Officer 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 indicating or conveying or purporting 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 Intelligence Services or the Academy or is in any manner associated or connected with the Intelligence Services or the Academy;

- (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 or the Chief Executive Officer;
 - (ii) renders security services in contravention of section 28; or
 - (iii) contravenes section 29;
- (g) being a member, discloses classified information or material without the permission of the Director-General or the Chief Executive Officer as the case may be.

(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 10 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.

Disclosure of classified information or material by former members

27. (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 concerned or the Chief Executive officer, 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 Intelligence Services or the Academy, as the case may be, 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 Chief Executive Officer may establish structures to advise him or her on the consideration of applications by former members for permission to disclose classified information or material: Provided that persons appointed to such structures shall have security clearance.

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

Employment in private security industry

28. (1) A former member may not, for a period of three years after leaving the Intelligence Services or the Academy, render a security service unless he or she has obtained a clearance certificate from the Director-General or the Chief Executive Officer as the case may be.

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

Prohibited communications by former members

29. 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 Intelligence Services or the Academy;
- (b) who co-operates or has co-operated with the Intelligence Services or the Academy, in respect of matters concerning the security of the Republic.

Appeals

30. (1) A former member may appeal to the Minister against a decision of the Director-General or Chief Executive Officer 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 must have a security clearance certificate issued by the Agency;
- (b) the remuneration and allowances to be paid to such persons must 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.

Conduct of former members

31. 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 Intelligence Services and the Academy.

Extra territorial application of Act and jurisdiction

32. (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.

Prohibition of access to premises

33. (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 Intelligence Services or the Academy.

(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.

Canteens

34. (1) Notwithstanding anything to the contrary contained in any other law, the Minister may establish canteens for the Intelligence Services or the Academy 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 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.

Limitation of actions, notification of proceedings and cause of action, and service of certain process

35. (1) Any civil proceedings against the State or any person, in respect of anything done under this Act, must be instituted within three years after the plaintiff or applicant has become aware or could reasonably be expected to have become aware of the cause of action, and notice in writing of such proceedings and of the cause thereof must be given to the defendant not less than one month before they are instituted.

(2) If the notice contemplated in subsection (1) must be given to the Director-General concerned or the Chief Executive Officer, as the case may be, it is deemed to be notification to the defendant concerned.

(3) Any process by which proceedings contemplated in subsection (1) are instituted and in which the Minister is the defendant or respondent, may be served on the Director-General concerned or the Chief Executive officer, as the case may be.

Missing members

36. (1) If a member is missing and the Director-General concerned or the Chief Executive Officer, 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 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 or the Chief Executive Officer may in a 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.

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

37. (1) The Minister may, in the event of war or when a state of emergency exists, and having regard to the requirements of the Intelligence Services or the Academy second any member for service or training in the 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 National Defence Force or the South African Police Service, as the case may be, but is not thereby exempted from the application this Act.

Regulations

38. (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, the standard of physical and mental fitness, the medical examination of members, and the medical, dental and hospital treatment of members and their families;
- (c)** the provision of medical aid, dental and hospital treatment of members who have

- retired, and their families and of the families of members who have died or die;
- (d) the numerical establishment of the Intelligence Services and the 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 Academy, or the Intelligence Services;
 - (e) the establishment and maintenance of training institutions or centres for members or any other person and the instructions, 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 Intelligence Services and the Academy, the suspension of members and 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 enquiry 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 constitution of hearings into the alleged ill-health of members;
 - (j) procedure to be followed in respect of cases of presumed poor performance and constitution of hearings into the alleged poor performance of members;
 - (k) the recovery from a member of any deficiency, 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 Academy, or the

- Intelligence Services and the award of honorary ranks;
- (m) the control over and administration of funds appropriated for the Academy or the Intelligence Services 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 No. 55 of 1998).
 - (o) the conditions for and procedures regarding the permission of access to any premises under the control of the Intelligence Services or the Academy, as the case may be, and matters relating thereto;
 - (p) any matter relating to information, communications, computer and the physical security of the Intelligence Services and the Academy.
 - (q) the functioning of the Intelligence Services Council;
 - (r) a code of conduct to be adhered to by members;
 - (s) security screening investigations of members and persons to be employed in the Intelligence Services or the Academy as the case may be;
 - (t) any matter which in terms of this Act must or may be prescribed.

(2) Regulations contemplated in paragraphs (b) and (c) must be made in consultation with the Minister responsible for the administration of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

(3) The security screening investigation contemplated in subsection (1)(s) may entitle the Intelligence Services, to subject the member or person undergoing a

security screening investigation to a polygraph test as prescribed, in order to determine the reliability of information provided by him or her.

(4) The Intelligence Services may have access to the following information pertaining to a member or person who is subject to a security clearance investigation:

- (a) Financial records;
- (b) criminal records;
- (c) personal information in the possession of referees or any person who has knowledge of such a member or person; or
- (d) any other information which is relevant to determine the security competency of that member or person:

Provided that where the gathering of information contemplated in paragraphs (c) and (d) requires interception and monitoring of the communications and conversations of such a member or person, the Intelligence Services, must perform this function in accordance with the provisions of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992).

(5) 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 to a fine or to imprisonment for a period not exceeding five years.

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

(7) A regulation made in terms of this section with reference to members need not be published in the *Gazette*, but shall be notified to members to whom it applies

such manner as the Minister may determine.

Discoveries, inventions and improvements by members

39. (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 Intelligence Services or the 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 any discovery, invention or improvement vest in the Intelligence Services or the 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 Intelligence Services or the Academy, as the case may be, in respect of any discovery, invention or improvement referred to in subsection (1), and the Intelligence Services or the Academy, as the case may be, 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.

Repeal of laws and savings

40. (1) The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) All assets, liabilities, rights and duties including funds, resources and administrative records of the Agency with respect to training, must be transferred to the Academy within six months after the commencement of this Act, and shall vest and be deemed to have been acquired or incurred by the Academy.

(3) A registrar of deeds shall, upon the production to him or her of a certificate by the Minister that immovable property described in the certificate vests in the Academy 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).

(4) No duty, office fee or other charge is payable in respect of any entry or endorsement in terms of subsection (3).

(5) If an enquiry into alleged improper conduct instituted in terms of a law repealed by subsection (1), has not been concluded at the commencement of this Act, such proceedings must be continued and concluded in accordance with the law in terms of which the enquiry was instituted, as if such law had not been repealed.

(6) Notwithstanding subsection (1) disciplinary proceedings may be instituted and concluded in terms of this Act against any person who at any time prior to the commencement of this Act is alleged to have committed an act which may have constituted improper conduct in terms of a law repealed by subsection (1) or any regulation or rule made thereunder: Provided that no proceedings may be so instituted unless the act concerned is substantially the same as an act constituting improper conduct in terms of this Act.

(7) Any subordinate legislation issued in terms of the Intelligence Services Act, 1994 (Act No. 38 of 1994) shall remain in force for a period of six months after the date of commencement of this Act.

Short title and commencement

41. 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 OR AMENDED

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 81 of 1969	Security Services Special Account Act, 1969	<p>1. The substitution for section 2 of the following section:</p> <p>"Payments from account</p> <p>2. The moneys in the account shall be utilised for the defraying of expenses in connection with—</p> <p>(a) the performance of the function and the duty of the National Intelligence Agency, and the South African Secret Service as referred to in the National Strategic Intelligence Act, 1994; and</p> <p>(b) the organisation of, the exercising of the powers and the performance of the duties and functions of any member of, the exercising of the powers of the President [or the responsible Executive Deputy President] or <u>the</u> Minister in relation to the superintendence and control of, and the action by and functioning of, the [Agency and the Service] <u>Intelligence Services and the Academy</u> as defined in section 1 of the Intelligence Services Act, [1994] 2002, and matters in connection therewith which the said President, [Executive Deputy President] or Minister, as the case may be, may from time to time approve as being in the national interest, and shall be paid out subject to the directions of the said President, [Executive Deputy President] or Minister, as the case may be."</p> <p>2. The substitution for section 5 of the following section:</p> <p>"Investment of balances</p> <p>5. Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as may be determined by the President, [Executive Deputy President] or Minister responsible for the National Intelligence Agency, [or the] the South African Secret Service <u>or the South African</u></p>

No. and year of Act	Short title	Extent of repeal or amendment
		<u>National Academy of Intelligence</u> with the concurrence of the Minister of Finance."
Act No. 84 of 1982	Protection of Information Act, 1982	<p>The amendment of section 1 by the substitution for the definition of 'security matter' of the following definition:</p> <p>" 'security matter' includes any matter which is dealt with by the [Agency or the Service] <u>Intelligence Services or the Academy</u> as defined in section 1 of the Intelligence Services Act, [1994] 2002, or which relates to the functions of that [Agency or Service] <u>Intelligence Services or the Academy</u> or to the relationship existing between any person and that [Agency or Service] <u>Intelligence Services or the Academy</u>."</p>
Act No. 38 of 1994	Intelligence Services Act, 1994	The repeal of the whole.
Proclamation No. 103 of 1994	Public Service Act, 1994	<p>1. The amendment of section 1 by the insertion in subsection (1) before the definition of 'Agency' of the following definition:</p> <p>" '<u>Academy</u>' means the South African National Academy of Intelligence defined in section 1 of the <u>Intelligence Services Act, 2002</u>;"</p> <p>2. The amendment of section 2 by the substitution for subsection (3) of the following subsection:</p> <p>"(3) Where persons employed in the [Agency or the Service] <u>Intelligence Services or the Academy</u> are not excluded from the provisions of this Act, those provisions shall apply only in so far as they are not contrary to the laws governing their service, and those provisions shall not be construed as derogating from the powers or duties conferred or imposed upon the [Agency or the Service] <u>Intelligence Services or the Academy</u>."</p> <p>3. The amendment of section 8 by the substitution in subsection (1)(a) for subparagraph (iii) of the following subparagraph:</p> <p>"(iii) in the [Agency or the Service] <u>Intelligence Services or the Academy</u>; and"</p>
Act No. 66 of 1995	Labour Relations Act, 1995	<p>1. Amendment of section 2 by the insertion after paragraph (c) of the following paragraph:</p> <p>"(d) the South African National Academy of <u>Intelligence</u>."</p>

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 75 of 1997	Basic Conditions of Employment Act, 1997	<p>1. Amendment of section 1 by the insertion in the definition of "public service" of the following paragraph: <u>"(d) the South African National Academy of Intelligence;"</u>.</p> <p>2. Amendment of section 3 by the substitution for paragraph (a) of subsection (1) of the following paragraph: <u>"(a) members of the National Intelligence Agency, [and] the South African Secret Service and the South African National Academy of Intelligence; and."</u></p>
Act No. 55 of 1998	Employment Equity Act, 1998	<p>1. Amendment of section 1 by the insertion in the definition of "public service" of the following paragraph: <u>"(d) the South African National Academy of Intelligence;"</u>.</p> <p>2. Amendment of section 4 by the substitution for subsection (3) of the following subsection: <u>"This Act does not apply to members of the National Defence Force, the National Intelligence Agency, [or] the South African Secret Service or the South African National Academy of Intelligence;"</u>.</p>
Act No. 131 of 1998	Medical Schemes Act, 1998	<p>1. Amendment of section 1 by—</p> <p>(a) the insertion after the definition of "administrator" of the following definition: <u>" 'Agency' means the Agency as defined in section 1 of the Intelligence Services Act, 2002;"</u>;</p> <p>(b) the insertion before the definition of "Actuary" of the following definition: <u>" 'Academy' means the Academy as defined in section 1 of the Intelligence Services Act, 2002;"</u>;</p> <p>(c) the insertion after the definition of "rules" of the following definition: <u>" 'Service' means the South African Secret Service as defined in the Intelligence Services Act, 2002;"</u>.</p> <p>2. Amendment of section 2 by the insertion after subsection (2) of the following subsection: <u>"(3) Notwithstanding the provisions of subsection (1) and (2) this Act shall not apply to the Agency, the Academy and the Service."</u></p>

Q@ DATE NESTFORM(FIELD(sv070802 MEMORANDUM OF THE OBJECTS OF THE INTELLIGENCE SERVICES BILL, 2002 1.BACKGROUND In 2001, the Minister for Intelligence Services (hereinafter referred to as the Minister), gave directions for the review of the intelligence dispensation with regard to the administration, control and supervision of the Intelligence Services. This process was in support of the process which was already underway under the auspices of the Presidential Intelligence Budget Advisory Committee (PIBAC) chaired by the Deputy President, which looked at amongst other issues, building capacity within the Intelligence Services, resourcing and creating a conducive environment for optimal efficiency. Pursuant to these initiatives, the Minister, in conjunction with the Minister for Public Service and Administration, established a Task Team on Conditions of Service, comprising of members of the Intelligence Services and the Department of Public Service and Administration, to conduct a comparative research on the administration and human resource management in the Intelligence Services. Since the inception of the intelligence dispensation in 1995, there has been no consistency in the way best practice was imported from the Public Service to the Intelligence Services. This was further exacerbated by the fact that the Intelligence Services are excluded from the application of labour law and thus did not participate in the Public Service Collective Bargaining Council although they were expected to follow agreements that were reached through the said process. This anomaly had to be corrected and this inequity needed to be addressed by both Ministers.

2.CONTENTES OF THE BILL The Bill seeks to regulate (a)the retirement age of members of the Intelligence Services, which is 60 years, and to provide for the Minister to extend the years of service to 65 years on account of public interest; (b)the establishment of the Intelligence Services Council on Conditions of Service which will comprise of: a Chairperson, Deputy Chairperson and a Commiss)-: H Q

REPUBLIC OF SOUTH AFRICA

ELECTRONIC COMMUNICATIONS SECURITY (PTY) LTD BILL

(As introduced in the National Assembly as a section 75 Bill;

Bill published in Government Gazette No.??? of ???)

(The English text is the official text of the Bill)

(Minister for Intelligence Services)

(B_____2002)

BILL

To provide for the establishment of a company that will provide electronic communications security products and services to organs of state; and to provide for matters connected therewith.

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

CHAPTER 1**Definitions**

1. In this Act, unless the context otherwise indicates—

“Board” means the Board of Directors of Comsec contemplated in Section 8;

“Chief Executive Officer” means the Chief Executive Officer contemplated in section 13;

“communication” means communication as defined in an Act of Parliament providing for the interception and monitoring of communications;

“Companies Act” means the Companies Act, 1973 (Act No. 61 of 1973);

“Comsec” means Electronic Communications Security (Pty) Limited established by Section 3;

“critical electronic communications” means electronic information or communications held by organs of state, which are necessary for the protection of

the national security of the Republic or the protection of the economic and social well-being of its inhabitants;

"Intelligence Services" means the Intelligence Services as contemplated in an Act of Parliament providing therefor;

"Minister" means the Minister for Intelligence Services;

"organs of state" means an organ of state as defined in section 239 of the Constitution;

"prescribe" means prescribe by regulations;

"this Act" includes the regulations.

Establishment of Comsec

2. There is hereby established a juristic person to be known as Electronic Communications Security (Pty) Ltd.

Principal objective of Comsec

3. The principal objective of Comsec is to ensure that critical electronic communications are protected and secure.

Incorporation of Comsec

4. (1) The Minister must effect the incorporation of Comsec in terms of the Companies Act.
- (2) Notwithstanding the Companies Act or any other law, the State is the sole shareholder of Comsec.
- (3) Notwithstanding the Companies Act, the Minister or a person designated by him or her must, on behalf of the State, sign the memorandum and articles of association and all other documents necessary for the incorporation of the company.
- (4) The Registrar of Companies must—
- (a) register the memorandum and articles of association as signed in terms of subsection (3);
 - (b) incorporate the company as a private company under the name “Electronic Communications Security (Pty) Ltd”; and
 - (c) issue to the company a certificate to commence business with effect from the date of the company’s incorporation.

Provision of Companies Act not applicable to Comsec under certain circumstance

5. A provision of the Companies Act shall not apply to Comsec where the Minister of Trade and Industry has issued a declaration under section 6.

Request for exemption from application of provision of Companies Act

6. (1) The Minister may, on the recommendation of Comsec, request the Minister of Trade and Industry to declare the whole or part of a provision of the Companies Act not applicable to Comsec.

(2) The request contemplated in subsection (1) must be fully motivated, and the Registrar of Companies must publish particulars about the request and motivation by notice in the *Gazette*.

(3) The Minister of Trade and Industry may, by notice in the *Gazette*, after having considered the request contemplated in subsection (1) and if satisfied on reasonable grounds that the non-application of the provision of the Companies Act to Comsec will—

- (a) contribute to the efficiency of Comsec and reduce its operating costs;
- (b) not reduce or limit the accountability of Comsec as a public institution or detract from the requirements of transparency regarding its functioning and operations; and
- (c) not be prejudicial to the interests of the State, employees of Comsec or claims of creditors of Comsec,

declare, with effect from the date stated in the notice, the whole or part of a provision of the Companies Act not applicable to Comsec.

Functions

7. (1) The functions of Comsec are to—

- (a) protect and secure critical electronic communications against unauthorised access or technical, electronic or any other related threats;
- (b) provide, with the concurrence of the National Intelligence Agency defined in section 1 of the Intelligence Services Act, 1994 (Act No. 38 of 1994), verification services

for electronic communications security systems, products and services used by organs of state;

- (c) provide and co-ordinate research and development with regard to electronic communications security products, services and any other related services;
- (d) perform any other function not inconsistent with this Act that is necessary for the effective functioning of Comsec.

(2) For purposes of the function contemplated in subsection (1), Comsec must—

- (a) develop, design, procure, invent, install or maintain secure electronic communications systems or products and do research in this regard;
- (b) provide secure electronic communications services, systems and products;
- (c) provide cryptographic services;
- (d) train and support users of the electronic communications systems, products and related services; and
- (e) provide consultancy services on the security and protection of electronic communications services, systems and products.

(3) Subject to applicable labour law, Comsec may with the approval of the Minister acting with the concurrence of the Minister responsible for an entity or establishment of the State which performs functions similar to those referred to in subsection (2), integrate such an entity or establishment into Comsec.

(4) Comsec may co-operate with any organisation in the Republic or elsewhere to achieve its objectives.

(5) Comsec, the members of its Board and its employees must, in the performance of their functions in terms of this Act, comply with the policies and regulations

relating to security of communications made in terms of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

(6) Comsec is exempted from the licensing requirements contemplated in the Telecommunications Act, 1996 (Act No. 103 of 1996).

CHAPTER 2

GOVERNANCE OF COMSEC

Board of Directors

8. (1) Comsec must be managed and controlled in accordance with this Act by a Board of Directors appointed by the Minister, after consultation with Cabinet.

(2) The business and operational plans of Comsec must be approved by the Board, with the approval of the Minister.

(3) The Board represents Comsec.

Composition of Board

9. (1) The Board is made up of not more than nine members of whom—

- (a) one is the non-executive chairperson;
- (b) not more than four are executive directors, one of whom must be designated as the Chief Executive Officer; and
- (c) the rest are additional non-executive members, consisting of persons approved by the Minister on the basis of relevant expertise.

(2) A majority of the Board of Directors forms a quorum at any meeting of the Board.

(3) On an equality of votes in any meeting of the Board, the chairperson has a casting vote in addition to a deliberative vote.

Terms of office of members of Board

10. (1) A non-executive member of the Board—

- (a) holds office for a period of three years, which the Minister may extend for further periods of three years each or such shorter periods as the Minister may determine;
- (b) serves on the terms and conditions determined by the Minister and specified in the letter of appointment of the member; and
- (c) may resign by giving three month's written notice to the Minister or as stipulated in the letter of appointment.

(2) An executive member of the Board—

- (a) holds office for a period determined by the Minister in the letter of appointment; and
- (b) may resign by giving three month's notice to the Minister or as stipulated in the letter of appointment.

(3) The names of the Board members may be kept confidential.

Remuneration of members of Board

11. A member of the Board, except the executive directors and any appointed member who holds a post or office in the Public Service or any institution, organisation or

body established by or under any other law and funded wholly or partly by the State, may be remunerated on a daily basis at a rate determined by the Minister with the concurrence of the Minister of Finance.

Removal from office

12. The Minister may in the prescribed manner, remove any member of the Board from office on the grounds of misconduct, incompetence or incapacity or failure to obtain the necessary security clearance.

CHAPTER 3

CHIEF EXECUTIVE OFFICER

Functions of the Chief Executive Officer

13. The Chief Executive Officer is responsible for the administration and the general management and control of the day to day functioning of Comsec, subject to the directions and instructions issued by the Board.

Employment of personnel

14. (1) The Chief Executive Officer must appoint the employees of Comsec, subject to such remuneration, allowances and service benefits as the Board may determine.

(2) In filling posts, the evaluation of persons must be based on training, skills, competence, knowledge and the need to redress the imbalances of the past, so as to achieve a staff complement broadly representative of the South African population, according to race, gender and disability.

(3) The Minister or any other Minister may, at the request of Comsec, second an employee to Comsec in accordance with an Act of Parliament providing for the Intelligence Services or section 15(3) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), as the case may be.

(4) For as long as an employee is seconded to Comsec, Comsec must re-imburse the relevant department for the remuneration and allowances paid by such department to the employee, and for any other expenditure arising from the secondment of that employee.

Employment of employees of the Security Services

15. (1) Any employee involved in an electronic communications security function in the Security Services contemplated in Chapter 11 of the Constitution, or in any establishment or entity contemplated in section 7(3), may be made an employment offer by Comsec.

(2) (a) The remuneration, benefits and privileges offered by Comsec may not be less than those payable to the employee by the previous employer immediately prior to his or her transfer.

(b) Prior to the transfer of an employee, an agreement must have been reached between the employers, Comsec and the Minister, and with the concurrence of Minister of Finance, where applicable —

- (i) as to whether accrued leave and sick leave should be wholly or partially carried over to Comsec;
- (ii) as to whether the monetary value of such benefits should be payable wholly or partially to the employee prior to transfer; and
- (iii) as to which portion of the costs of the transferred benefits is to be carried by the employer and which portion by Comsec.

(3) The agreement contemplated in subsection (2)(b) must also deal with any other existing contractual obligation between the employer and the employee.

(4) An offer contemplated in subsection (1) may only be made to employees who are in the service of the respective employers at the time of the conclusion of the offer.

(5) Any employee who accepts the offer contemplated in subsection (1) is not entitled to any voluntary severance package.

(6) An officer who is a member of Government Employees' Pension Fund and who is employed by Comsec may—

- (a) choose to become a dormant member of such Fund, and from the date of exercising such choice, the officer must, despite the provisions of any other law, be regarded to be a dormant member of the Fund;
- (b) choose to remain a member of the Fund, in which case Comsec is responsible for the employer's contribution to the Fund;
- (c) request to become a member of any other registered pension fund, and withdraw from the current Fund in accordance with the Government Employees Pension Law, 1996 (Act No. 21 of 1996).

CHAPTER 4

SECURITY MATTERS

Security clearance

16. No person may be appointed as a member of the Board or as an employee of Comsec without a security clearance certificate issued by the National Intelligence Agency in accordance with the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

CHAPTER 5

SERVICE DELIVERY

Analysis of electronic communications needs, and business agreement

17. (1) The head of an organ of state must ensure that the organ of state under his or her administration procure and access electronic communications products with the verification and approval of Comsec.

(2) The Board must, within six months after Comsec's incorporation, and thereafter in every second year, request in the prescribed manner, all organs of state to submit to the Board an analysis of their electronic communications security needs.

(3) The Board must, after having considered an analysis contemplated in subsection (2) and if satisfied that Comsec must attend to the electronic communication

security needs, enter into a business agreement with relevant organ or state for the provisioning of the necessary services.

(4) Comsec may enter into business agreements to regulate its relationship with organs of state.

CHAPTER 6

FINANCIAL MATTERS

Funding of Comsec

18. (1) Funding and capital to start operating Comsec must be obtained from funds agreed to between the Minister and the Minister of Finance.

(2) The funds of Comsec (Pty) Ltd consist of—

- (a) monies received from Parliament as part of the Vote of the Intelligence Services submitted in terms of the Special Services Account Act, 1969 (Act No. 81 of 1969);
- (b) monies received for services provided as stipulated in the agreements entered into with organs of state;
- (c) funds, finances and grants contemplated in subsection (7);
- (d) donations contemplated in subsection (8).

(3) The rates used for determining the cost of service must be reasonably market related and periodically approved by the Minister of Finance.

(4) Comsec must perform its functions in an efficient and cost-effective manner.

(5) In the event of excess funds, the Board must recommend to the Minister, on the basis of a strategic plan, how such funds may be retained by Comsec and for which purpose.

(6) Payment for services provided by Comsec to an organ of state must be made in accordance with the business agreement between the parties.

(7) The Minister may, after a request from Comsec, request the Minister of Finance for special funding or any other special financial arrangement, including government grants, for the effective functioning of Comsec.

(8) Comsec may, with the approval of the Minister, accept donations and bequests, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999).

(9) The books and records of accounts and financial statements of Comsec must be audited annually by the Auditor-General in accordance with the Special Services Account Act, 1969 (Act No. 81 of 1969).

(10) Comsec may acquire shares from any other company registered in the Republic in terms of the Companies Act.

CHAPTER 7

GENERAL

Intellectual property

19. (1) Notwithstanding the provisions in any other law, all intellectual property rights in any product, service, item, method or any other thing of any nature relating to secure communications technology or systems developed, designed or invented as contemplated in section 7(2) by Comsec or its employees, vests in Comsec.

(2) The Board must direct how the product, service, item, method or any other thing of any nature contemplated in subsection (1) is to be utilized by Comsec in the achievement of its objective.

Exemption from application of this Act

20. (1) The Minister may, at the request of an organ of state, exempt such organ of state from the application of this Act if the exemption will not compromise national security.

(2) The request contemplated in subsection (1) must be fully motivated.

Critical electronic communications infrastructure

21. (1) Comsec must provide protection to critical electronic communications infrastructure, such as computer systems and programmes.

(2) Comsec must co-ordinate research and development regarding any security risk that may arise in relation to critical electronic communications infrastructure.

(3) The Minister may, on the recommendation of Comsec, identify critical communications infrastructure and request Comsec to provide the necessary protection.

Regulations

22. (1) The Minister may make regulations regarding—

- (a) additional functions not inconsistent with this Act to be performed by Comsec;
- (b) the conditions for the appointment of directors to the Board;
- (c) security requirements with regard to electronic communications of the different organs of state;
- (d) on the advice of the Board, conditions of employment and any other benefits of employees of Comsec;
- (e) transitional arrangements not inconsistent with this Act with regard to the implementation of this Act; and
- (f) any other matter that the Minister may consider necessary to prescribe in order to achieve the objects of this Act.

(2) A regulation 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 on conviction liable to a fine or to imprisonment for a period not exceeding five years.

Offences and Penalties

23. (1) Any person is guilty of an offence if he or she—

- (a) interferes or tampers with any electronic communications system or product of an organ of state;
- (b) contravenes section 17(1);
- (c) not being a director or employee of Comsec, by word, conduct or demeanour pretends that he or she is a director or employee of Comsec;
- (d) being a director or employee of Comsec omits to carry out his or her duty or performs an act in conflict with his or her duty;

(2) Any person convicted of an offence in terms of this Act is liable, in the case of contravention of—

- (a) subsection (1)(a), to a fine or to imprisonment for a period not exceeding 10 years; and
- (b) section (1)(b), (c) (d) or (e), to a fine or to imprisonment for a period not exceeding one year.

Limitation of liability

24. The Minister, Comsec or any of its employees is not liable for anything done in good faith in terms of furthering the objectives of the Act.

Savings and liabilities

25. (1) All assets, liabilities, rights and duties, including funds, resources and administrative records, of an entity or establishment of the State which ceases to exist by virtue of an integration contemplated in section 7(3) vest upon such integration in Comsec, and must be regarded to have been acquired or incurred by Comsec in terms of this Act.

(2) The 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 Comsec by virtue of subsection (1), make the necessary entries and endorsements in or on any relevant register, title deed or other document in his or her office, so as to give effect to that subsection.

(3) No duty, office fee or any other charge is payable in respect of any entry or endorsement made in terms of subsection (2).

(4) Disciplinary proceedings instituted prior to the commencement of this Act and not yet completed when this Act took effect, must be concluded in terms of the law under which the proceedings were instituted.

Amendment of laws

26. The laws mentioned in the first column of Schedule 1 are hereby amended to the extent set out in the third column of that Schedule.

Short title and commencement

27. This Act is called the Electronic Communications Security (Pty) Ltd Act, 2002, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

SCHEDULE 1

(Clause 26)

LAWS AMENDED

No. and year of Act	Short title	Extent of repeal or amendment
Act 81 of 1969	Security Services Special Account Act, 1969	<p>1. The amendment of section 2 by the substitution for paragraph (a) of the following paragraph:</p> <p>"(a) the performance of the function and the duty of the National Intelligence Agency, and the South African Secret Service as referred to in the National Strategic Intelligence Act, 1994, and of Comsec as referred to in the <u>Electronic Communications Security (Pty) Ltd Act, 2002</u>; and".</p> <p>2. The substitution for section 5 of the following section:</p> <p>"Investment of balances</p> <p>5. Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as may be determined by the President, Executive Deputy President or Minister responsible for the National Intelligence Agency, [or] the South African Secret Service or Comsec with the concurrence of the Minister of Finance."</p>
Act No. 84 of 1982	Protection of Information Act, 1982	<p>1. The amendment of section 1 by the substitution for the definition of "security matter" of the following definition:</p> <p>" 'security matter' includes any matter which is dealt with by Comsec as defined in section 1 of the <u>Electronic Communications Security (Pty) Ltd Act, 2002</u>, or the Agency, or the Service as defined in section 1 of the Intelligence Services Act, 1994, or which relates to the functions of Comsec or that Agency or Service or to the relationship existing between any person and Comsec or that Agency or Service."</p>

No. and year of Act	Short title	Extent of repeal or amendment
Act No. 66 of 1995	Labour Relations Act, 1995	1. The amendment of section 2 by the deletion in paragraph (b) of the word "and", and by the addition of the following paragraph: " <u>(d) Comsec.</u> ".
Act No. 75 of 1997	Basic Conditions of Employment Act, 1997	1. The amendment of section 1 by the deletion in paragraph (b) of the definition of "public service" of the word "and", and by the addition of the following paragraph: " <u>(d) Comsec.</u> ". 2. The amendment of section 3 by the deletion in subsection (1)(a) of the second "and", and by the addition of the following paragraph: " <u>(c) the directors and staff of Comsec.</u> ".
Act No. 55 of 1998	Employment Equity Act, 1998	1. The amendment of section 1 by the deletion in paragraph (b) of the definition of "public service" of the word "and", and by the addition of the following paragraph: " <u>(d) Comsec.</u> ". 2. The amendment of section 4 by the substitution for subsection (3) of the following subsection: "(3) This Act does not apply to members of the National Defence Force, the National Intelligence Agency or the South African Secret Service <u>or to the directors and staff of Comsec.</u> ".

MEMORANDUM ON THE OBJECTS OF THE ELECTRONIC COMMUNICATIONS SECURITY (PTY) (LTD) BILL, 2002

1. CONTENTS OF BILL

This Bill seeks to establish Electronic Communications Security (Pty) Ltd ("Comsec") as a private company in terms of the Companies Act, 1973, with the State as the sole shareholder. The objective of Comsec is to protect and secure certain electronic communications of organs of state against unauthorised access or other related technical or electronic threats.

In terms of the proposed Bill, Comsec may be exempted from certain provisions of the Companies Act by a declaration made by the Minister of Trade and Industry in the *Gazette* after a recommendation from Comsec and a request from the Minister for Intelligence Services. Such request must be fully motivated.

The Bill also seeks to authorise Comsec to integrate agencies of the State which provide services similar to those of Comsec, into Comsec. All organs of state will have to procure and access electronic communications products and systems with the verification and approval of Comsec. However, organs of state may be exempted from the application of this Act.

The affairs of Comsec will be managed by a Board of nine Directors, one of whom will be a Chief Executive Officer.

2. FINANCIAL IMPLICATIONS FOR STATE

3. OTHER DEPARTMENTS CONSULTED

Presidential Intelligence Budget Advisory Committee
Department of Safety and Security
Department of Labour
Department of Justice and Constitutional Development
Department of Defence
National Treasury

4. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

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