

REPUBLIC OF SOUTH AFRICA

**COMMITTEE AMENDMENTS
TO
GENERAL INTELLIGENCE LAW
AMENDMENT BILL**

[B 36—2000]

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

[B 36A—2000]

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AMENDMENTS AGREED TO
 GENERAL INTELLIGENCE LAW AMENDMENT BILL
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CLAUSE 1

1. On page 2, after line 6, to insert:
 - (a) the substitution for the definition of “Agency” of the following definition:

“ ‘Agency’ means the National Intelligence Agency [**established by**] referred to in section 3;”;
2. On page 2, after line 7, to insert:
 - (c) the insertion after the definition of “Director-General” of the following definitions:

“ ‘former member’ means, any member of the Agency or the Service whose services have been terminated for any reason;
 ‘Intelligence Review Board’ means the Intelligence Review Board established by section 22B;”;
3. On page 2, after line 12, to insert:
 - (f) the insertion after the definition of “Minister” of the following definitions:

“ ‘person’ includes—

<ol style="list-style-type: none"> (a) a natural person; (b) a partnership; (c) a business trust; (d) a foundation; (e) any company or close corporation incorporated or registered in terms of any law; or (f) any other body of persons corporate or unincorporated; <p>‘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 this purpose;”;</p>

4. On page 2, after line 12, to insert:
 - (g) the insertion after the definition of “prescribed” of the following definition:

“ ‘private investigator’ means a person who for the benefit of another person—

<ol style="list-style-type: none"> (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;
- ‘security equipment’ includes the following security equipment:
- (a) An alarm system;
 - (b) a safe, vault or secured container;
 - (c) satellite tracking;
 - (d) closed circuit television;
 - (e) other electronic monitoring or surveillance equipment or monitoring device;
 - (f) intrusion detection, access control, bomb detection, fire detection, metal detection, x-ray inspection and telephone security equipment,
- used for the protection or safeguarding of persons or property;
- ‘security service’ includes the following services or activities:
- (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 at 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) 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 (k) and (m) to another person;
 - (l) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (l);
 - (m) creating an impression in any manner that one or more of the services in paragraphs (a) to (m) is rendered;”;

5. On page 2, after line 12, to insert:

- (h) the substitution for the definition of “Service” of the following definition:
 “ ‘Service’ means the South African Secret Service [**established by**] referred to in section 3;”;

CLAUSE 2

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Substitution of section 3 of Act 38 of 1994

2. The following section is hereby substituted for section 3 of the principal Act:

“Continued existence of Agency and Service

3. (1) There continues to exist in the Republic the Agency and the Service, as the case may be, which consist of persons who became members in terms of this Act on 1 January 1995 and persons appointed as members in terms of the provisions of this Act after commencement.

(2) The Minister shall for the purpose of the Agency and the Service—

- (a) create deputy Directors-General posts;
 - (b) establish chief directorates, directorates and divisions; and
 - (c) prescribe the functions and post structures:
- Provided that the creation of deputy Directors-General posts shall be done in consultation with the President.”.

CLAUSE 3

1. On page 3, in line 12, to omit “purporting to have been”.

CLAUSE 4

- 1. On page 3, in line 21, to omit “, superintendence”.
- 2. On page 3, in line 26, to omit “, superintendence”.

CLAUSE 6

1. On page 4, in line 2, to omit all the words from “A” up to and including “month” in line 5 and to substitute:

- (a) A member shall have the right to retire and shall be so retired on the date when he or she attains the age of 60 years: Provided that a person who is an employee on the day immediately before the commencement of this Act, has the right to retire on reaching the retirement age or prescribed retirement date provided for in any other law applicable to him or her on that day.

- (b) If such a member attains the said age 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.
- (c) 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 be retired in terms of subsection (1), he or she may with his or her consent, with the approval of the Minister, be so retained from time to time, for further periods which shall not, except with the approval of Parliament, granted by resolution, exceed two years.

CLAUSE 8

1. On page 4, in line 32, to omit “30” and to substitute “14”.
2. On page 4, from line 33, to omit “on account of misconduct”.
3. On page 4, in line 38 to omit “and” and to substitute “or”.
4. On page 4, in line 40, to omit “30” and to substitute “14”.

CLAUSE 9

1. On page 5, in line 5, to omit “in” and to substitute “[in]”.
2. On page 5, in line 6, to omit “the case of misconduct or inefficiency” and to substitute “as prescribed”.

CLAUSE 10

1. On page 5, in line 13, to omit “12(1)(a)(ii) and (b)” and to substitute “[12(1)(a)(ii) and] 12(1)(b)”.
2. On page 5, in line 14, after “21,” to omit “22A(2)” and to substitute “22B, 22E, 22F and 22G”.

NEW CLAUSE

1. That the following be a new Clause:

Repeal of section 14 of Act 38 of 1994

11. Section 14 of the principal Act is hereby repealed.

CLAUSE 13

1. On page 5, in line 27, after “38” to insert “of 1994”.

NEW CLAUSE

1. That the following be a new Clause:

Repeal of section 18 of Act 38 of 1994

15. Section 18 of the Act is hereby repealed.

CLAUSE 15

1. On page 6, in line 59, after “22A” to insert “, 22B, 22C(1), 22D and 22E(1)”.

CLAUSE 16

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 22A in Act 38 of 1994

18. The following sections are hereby inserted after section 22 of the principal Act:

“Disclosure of classified information by former members of Agency or Service

22A. (1) A former member may not disclose in any form or any manner any information or material to any other person unless—

- (a) the person to whom the information or material is disclosed is authorised by the Director-General to receive it;
- (b) the Intelligence Review Board has granted permission for the disclosure of the 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 Agency or Service—

- (a) that was marked as classified or that the former member knew or ought reasonably to have known was classified;
- (b) that the former member knew or ought reasonably to have known was in the process of being classified at the time of disclosure.

Establishment of Intelligence Review Board

22B. (1) An Intelligence Review Board is hereby established, consisting of not less than three but not more than five persons appointed by the Minister of whom one shall be designated by him or her as the chairperson.

- (2) The functions of the Intelligence Review Board are to—
 - (a) consider and approve any application by a former member to disclose information or material in terms of subsection (1);
 - (b) perform any other prescribed function.

(3) The Minister shall appoint as members of the Board, fit and proper persons with integrity.

(4) No person shall be appointed as a member of the Intelligence Review Board before a security clearance has been issued in respect of that person by the relevant authority.

- (5) The Minister may determine—
 - (a) the term of office of the members of the Board;

- (b) with the concurrence of the Minister of Finance, the remuneration and allowances to be paid to members of the Board:

Provided that members of the Board who are employees appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and members of the Agency or the Service, as the case may be, shall not be entitled to such remuneration and allowances; and

- (c) any other conditions of appointment.

(6) The Minister may remove a member of the Intelligence Review Board from office prior to the expiry of that member's term of office if—

- (a) a member of the Intelligence Review Board is found guilty of an offence or a misdemeanour as prescribed;
 (b) is unable to carry out responsibilities as a member of the Intelligence Review Board;
 (c) the security clearance of the member is withdrawn.

(7) The Minister may prescribe all matters which are necessary or expedient for the functioning of the Intelligence Review Board.

Prohibited communications by former members

22C. (1) No former member of the Agency or Service, as the case may be, 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 Agency or the Service, as the case may be;
 (b) who co-operates or has co-operated with the Agency or the Service, as the case may be, in respect of matters concerning the security of the Republic.

(2) Subsection (1) does not apply to communications of a purely personal nature.

Prohibited employment by former members

22D. (1) No former member may utilise in the Republic or elsewhere any skills, information or material acquired as a result of his or her employment by the Agency or the Service in any manner, which may be detrimental to the security of the Republic or to the interests of the Agency or Service, as the case may be.

Employment in private security industry

22E. (1) A former member may not render a security service for a period of three years after leaving the Agency or the Service, as the case may be, unless he or she has first obtained a clearance certificate from the Director-General.

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

Appeals

22F. (1) A former member may appeal to the Minister against the decision of the Intelligence Review Board in terms of section 22B(2).

(2) A former member may appeal to the Minister against the decision of the Director-General to issue a clearance certificate in terms of section 22E.

(3) The Minister may prescribe the procedure of appeal by former members.

Conduct of former members

22G. (1) The Minister may prescribe the manner in which former members of the Agency or the Service may conduct themselves in order to protect the interests of the Agency or the Service and the security of the Republic.

(2) Regulations made by the Minister in terms of sections 22B, 22E, 22F and 22G shall be made by notice in the *Gazette*.”.

NEW CLAUSE

1. That the following be a new Clause:

Amendment of section 26 of Act 38 of 1994

19. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any civil proceedings against the State or any person in respect of anything done in pursuance of this Act, shall be instituted within [**two**] three years after becoming aware that the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than [**one month**] 30 calendar days before it is instituted.”.

CLAUSE 18

1. On page 7, in line 33, to omit “all matters relating to misconduct and discipline within” and to substitute:

as to all matters relating to discipline, command and control of members of

CLAUSE 24

Clause rejected.