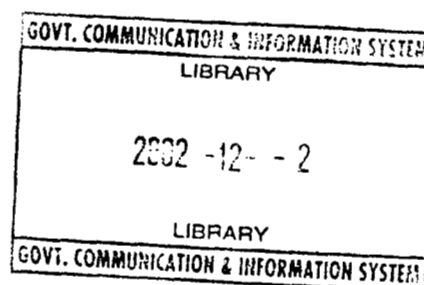


REPUBLIC OF SOUTH AFRICA

INTELLIGENCE SERVICES CONTROL AMENDMENT BILL

*(As amended by the Ad Hoc Committee on Intelligence Legislation (National Assembly))
(The English text is the official text of the Bill)*

(MINISTER OF INTELLIGENCE)



[B 50D—2002]

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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.

BILL

To amend the Intelligence Services Control Act, 1994, so as to define an expression and to amend certain definitions; to reregulate the oversight functions of the Joint Standing Committee on Intelligence; to provide that only one Inspector-General of Intelligence may be appointed and to reregulate 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— 5

(a) by the insertion before the definition of “accounting officer” of the following definition:

“ ‘Academy’ means the South African National Academy of Intelligence established in terms of the Intelligence Services Act, 2002;”;

(b) 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);”;

(c) by the insertion after the definition of “Auditor-General” of the following definition: 15

“ ‘CEO’ means the Chief Executive Officer of the Academy or Comsec, as the case may be;”;

(d) by the insertion after the definition of “Committee” of the following definition: 20

“ ‘Comsec’ means the Electronic Communications Security (Pty) Ltd established in terms of the Electronic Communications Act, 2002;”;

(e) 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, but for the 25

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CHAPTER 1

INTRODUCTORY PROVISIONS

Definitions and interpretation

- 1. (1) In this Act, unless the context otherwise indicates— 15
 - “Agency” means the Agency as defined in section 1 of the Intelligence Services Act;
 - “applicant” means—
 - (a) an officer referred to in section 33 of the South African Police Service Act, if the officer concerned obtained in writing the approval in advance of another officer in the Police Service with at least the rank of assistant-commissioner and who has been authorised in writing by the National Commissioner to grant such approval; 20
 - (b) an officer as defined in section 1 of the Defence Act, if the officer concerned obtained in writing the approval in advance of another officer in the Defence Force with at least the rank of major-general and who has been authorised in writing by the Chief of the Defence Force to grant such approval; 25
 - (c) a member as defined in section 1 of the Intelligence Services Act, if the member concerned obtained in writing the approval in advance of another member of the Agency or the Service, as the case may be, holding a post of at least general manager; 30
 - (d) the head of the Directorate or an Investigating Director authorised thereto in writing by the head of the Directorate;
 - (e) a member of a component referred to in paragraph (e) of the definition of “law enforcement agency”, authorised thereto in writing by the National Director; 35
 - or
 - (f) a member of the Independent Complaints Directorate, if the member concerned obtained in writing the approval in advance of the Executive Director;
 - “archived communication-related direction” means a direction issued under section 18(3)(a) or 19(3) in terms of which a telecommunication service provider is directed to provide archived communication-related information in respect of a customer; 40
 - “archived communication-related information” means any communication-related information in the possession of a telecommunication service provider and which is being stored by that telecommunication service provider in terms of section 30(1)(b) for the period determined in a directive referred to in section 30(2)(a), beginning on the first day immediately following the expiration of a period of 90 days after the date of the transmission of the indirect communication to which that communication-related information relates; 50
 - “authorised person” means any—
 - (a) law enforcement officer who may, in terms of section 26(1)(a)(i), execute a direction; or
 - (b) law enforcement officer or other person who may, in terms of section 26(1)(a)(ii), assist with the execution of a direction; 55
 - “Authority” means the Independent Communications Authority of South Africa established by section 3 of the Independent Communications Authority of South Africa Act, 2000 (Act No. 13 of 2000);

"business" means any business activity conducted by any person, including activities of any private or public body;

"cellular phone" means any fixed or mobile cellular apparatus or terminal which is capable of connection to a cellular telecommunication system and which is used by a customer to transmit or receive indirect communications over such telecommunication system; 5

"communication" includes both a direct communication and an indirect communication;

"communication-related information" means any information relating to an indirect communication which is available in the records of a telecommunication service provider, and includes switching, dialling or signalling information that identifies the origin, destination, termination, duration, and equipment used in respect, of each indirect communication generated or received by a customer or user of any equipment, facility or service provided by such a telecommunication service provider and, where applicable, the location of the user within the telecommunication system; 10 15

"Constitution" means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

"contents", when used with respect to any communication, includes any information concerning the substance, purport or meaning of that communication; 20

"customer" means any person—

- (a) to whom a telecommunication service provider provides a telecommunication service; or
- (b) who has entered into a contract with a telecommunication service provider for the provision of a telecommunication service, including a pre-paid telecommunication service; 25

"decryption assistance" means to—

- (a) allow access, to the extent possible, to encrypted information; or
 - (b) facilitate the putting of encrypted information into an intelligible form;
- "decryption direction" means a direction issued under section 21(3) in terms of which a decryption key holder is directed to— 30

- (a) disclose a decryption key; or
- (b) provide decryption assistance in respect of encrypted information, and includes an oral decryption direction issued under section 23(7);

"decryption key" means any key, mathematical formula, code, password, algorithm or any other data which is used to— 35

- (a) allow access to encrypted information; or
- (b) facilitate the putting of encrypted information into an intelligible form;

"decryption key holder" means any person who is in possession of a decryption key for purposes of subsequent decryption of encrypted information relating to indirect communications; 40

"Defence Act" means the Defence Act, 1957 (Act No. 44 of 1957);

"Defence Force" means the defence force referred to in section 199(2) of the Constitution;

"designated judge" means any judge of a High Court discharged from active service under section 3(2) of the Judges' Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001), or any retired judge, who is designated by the Minister to perform the functions of a designated judge for purposes of this Act; 45

"direct communication" means an— 50

- (a) oral communication, other than an indirect communication, between two or more persons which occurs in the immediate presence of all the persons participating in that communication; or
- (b) utterance by a person who is participating in an indirect communication, if the utterance is audible to another person who, at the time that the indirect communication occurs, is in the immediate presence of the person participating in the indirect communication; 55

"direction" means any interception direction, real-time communication-related direction, archived communication-related direction or decryption direction issued under this Act, and includes an oral direction issued under section 23(7), but, for purposes of section 20, excludes an archived communication-related direction; 60

"Director" means the Director: Office for Interception Centres, seconded in terms of section 34(1);

“Directorate” means the Directorate of Special Operations referred to in section 1 of the National Prosecuting Authority Act;

“encrypted information” means any electronic data which, without the decryption key to that data—

- (a) cannot, or cannot readily, be accessed; or 5
- (b) cannot, or cannot readily, be put into an intelligible form;

“entry warrant” means a warrant issued under section 22(3) and which authorises entry upon any premises for purposes of—

- (a) intercepting a postal article or communication on the premises; or
- (b) installing and maintaining an interception device on, and removing an 10 interception device from, the premises, and includes an oral entry warrant issued under section 23(7);

“Executive Director” means the Executive Director appointed in terms of section 51 of the South African Police Service Act;

“fixed date” means the date of commencement of this Act; 15

“Fund” means the Internet Service Providers Assistance Fund established by section 38(1);

“Identification Act” means the Identification Act, 1997 (Act No. 68 of 1997);

“identification document” means, in the case of a person who is—

- (a) a South African citizen or is lawfully and permanently resident in the Republic 20 and has attained the age of 16 years—
 - (i) an identity card or temporary identity certificate as defined in the Identification Act;
 - (ii) a green, bar-coded identity document issued in accordance with the Identification Act, 1986 (Act No. 72 of 1986), until such identity 25 document is replaced by an identity card as contemplated in section 25 of the Identification Act; or
 - (iii) a South African passport as defined in the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994);
- (b) a South African citizen or is lawfully and permanently resident in the Republic 30 and has not attained the age of 16 years, a birth certificate referred to in section 13 of the Identification Act; and
- (c) not a South African citizen or is not permanently resident in the Republic—
 - (i) a travel document as defined in the South African Passports and Travel Documents Act, 1994; or 35
 - (ii) a passport or travel document as contemplated in paragraphs (b), (c) and (d) of the definition of “passport” in the Immigration Act, 2002 (Act No. 13 of 2002);

“Independent Complaints Directorate” means the Independent Complaints Directorate established by section 50(1) of the South African Police Service Act; 40

“indirect communication” means the transfer of information, including a message or any part of a message, whether—

- (a) in the form of—
 - (i) speech, music or other sounds;
 - (ii) data; 45
 - (iii) text;
 - (iv) visual images, whether animated or not;
 - (v) signals; or
 - (vi) radio frequency spectrum; or
- (b) in any other form or in any combination of forms, 50 that is transmitted in whole or in part by means of a postal service or a telecommunication system;

“Intelligence Services Act” means the Intelligence Services Act, 1994 (Act No. 38 of 1994);

“intelligible form” means the form in which electronic data was before an 55 encryption or similar process was applied to it;

“intercept” means the aural or other acquisition of the contents of any communication through the use of any means, including an interception device, so as to make some or all of the contents of a communication available to a person other than the sender or recipient or intended recipient of that communication, and 60 includes the—

- (a) monitoring of any such communication by means of a monitoring device;

- (b) viewing, examination or inspection of the contents of any indirect communication; and
- (c) diversion of any indirect communication from its intended destination to any other destination,
- and “interception” has a corresponding meaning; 5
- “interception centre” means an interception centre established by section 32(1)(a);
- “interception device” means any electronic, mechanical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself or in combination with any other instrument, device, equipment or apparatus, to intercept any communication, but does not include— 10
- (a) any instrument, device, equipment or apparatus, or any component thereof—
- (i) furnished to the customer by a telecommunication service provider in the ordinary course of his or her business and being used by the customer in the ordinary course of his or her business;
- (ii) furnished by such customer for connection to the facilities of such telecommunication service and used in the ordinary course of his or her business; or 15
- (iii) being used by a telecommunication service provider in the ordinary course of his or her business; or
- (b) a hearing aid or similar device being used to correct below normal hearing to not better than normal, 20
- and a reference to an “interception device” includes, where applicable, a reference to a “monitoring device”;
- “interception direction” means a direction issued under section 16(4) or 18(3)(a) and which authorises the interception, at any place in the Republic, of any communication in the course of its occurrence or transmission, and includes an oral interception direction issued under section 23(7); 25
- “Internet” means the international computer network known by that name;
- “Internet service provider” means any person who provides access to, or any other service related to, the Internet to another person, whether or not such access or service is provided under and in accordance with a telecommunication service licence issued to the first-mentioned person under Chapter V of the Telecommunications Act; 30
- “law enforcement agency” means—
- (a) the Police Service; 35
- (b) the Defence Force;
- (c) the Agency or the Service;
- (d) the Directorate; or
- (e) any component of the prosecuting authority, designated by the National Director to specialise in the application of Chapter 6 of the Prevention of Organised Crime Act; 40
- “law enforcement officer” means any member of—
- (a) the Police Service;
- (b) the Defence Force, excluding a member of a visiting force;
- (c) the Agency or the Service; 45
- (d) the Directorate; or
- (e) any component referred to in paragraph (e) of the definition of “law enforcement agency”;
- “listed equipment” means any equipment declared to be listed equipment under section 44(1)(a), and includes any component of such equipment; 50
- “Minister” means the Cabinet member responsible for the administration of justice, except in Chapter 6 where it means the Cabinet member responsible for intelligence services;
- “monitor” includes to listen to or record communications by means of a monitoring device, and “monitoring” has a corresponding meaning; 55
- “monitoring device” means any electronic, mechanical or other instrument, device, equipment or apparatus which is used or can be used, whether by itself or in combination with any other instrument, device, equipment or apparatus, to listen to or record any communication;
- “National Commissioner” means the National Commissioner referred to in section 6(1) of the South African Police Service Act; 60
- “National Director” means the National Director of Public Prosecutions contemplated in section 179(1)(a) of the Constitution;

- “National Prosecuting Authority Act” means the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998);
- “Office” means the Office for Interception Centres established by section 33;
- “oral direction” means any direction issued under section 23(7);
- “oral entry warrant” means an entry warrant issued under section 23(7); 5
- “party to the communication”, for purposes of—
- (a) section 4, means, in the case of—
- (i) a direct communication, any person—
- (aa) participating in such direct communication or to whom such direct communication is directed; or 10
- (bb) in whose immediate presence such direct communication occurs and is audible to the person concerned, regardless of whether or not the direct communication is specifically directed to him or her; or
- (ii) an indirect communication—
- (aa) the sender or the recipient or intended recipient of such indirect communication; 15
- (bb) if it is intended by the sender of an indirect communication that such indirect communication be received by more than one person, any of those recipients; or
- (cc) any other person who, at the time of the occurrence of the indirect communication, is in the immediate presence of the sender or the recipient or intended recipient of that indirect communication; and 20
- (b) section 5, means, in the case of—
- (i) a direct communication, any person participating in such direct communication or to whom such direct communication is directed; or 25
- (ii) an indirect communication—
- (aa) the sender or the recipient or intended recipient of such indirect communication; or
- (bb) if it is intended by the sender of an indirect communication that such indirect communication be received by more than one person, any of those recipients; 30
- “Police Service” means the South African Police Service established by section 5(1) of the South African Police Service Act;
- “postal article” means any postal article as defined in the Postal Services Act;
- “postal service” means a postal service as defined in the Postal Services Act, and includes any— 35
- (a) private postal service; and
- (b) service which is offered or provided as a service of which the main purpose, or one of the main purposes, is to make available, or to facilitate, a means of transmission from one place to another place of postal articles containing indirect communications; 40
- “Postal Services Act” means the Postal Services Act, 1998 (Act No. 124 of 1998);
- “postal service provider” means any person who provides a postal service;
- “premises” includes any land, building, structure, vehicle, ship, boat, vessel, aircraft or container;
- “Prevention of Organised Crime Act” means the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998); 45
- “private body” means—
- (a) a natural person who carries on any trade, business or profession, but only in such capacity;
- (b) a partnership which carries on any trade, business or profession; or 50
- (c) any juristic person,
- but excludes a public body;
- “prosecuting authority” means the national prosecuting authority established by section 179 of the Constitution;
- “public body” means any— 55
- (a) department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
- (b) other functionary or institution when—
- (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or 60
- (ii) exercising a public power or performing a public function in terms of any legislation;

“real-time communication-related direction” means a direction issued under section 17(3) or 18(3) in terms of which a telecommunication service provider is directed to provide real-time communication-related information in respect of a customer, on an ongoing basis, as it becomes available, and includes an oral real-time communication-related direction issued under section 23(7); 5

“real-time communication-related information” means communication-related information which is immediately available to a telecommunication service provider—

- (a) before, during, or for a period of 90 days after, the transmission of an indirect communication; and 10
- (b) in a manner that allows the communication-related information to be associated with the indirect communication to which it relates;

“relevant Ministers” means the Cabinet members responsible for—

- (a) communications; 15
- (b) defence;
- (c) intelligence services; and
- (d) policing,

except in Chapter 6 where it means the Cabinet members referred to in paragraphs (a), (b) and (d) and the Cabinet member responsible for the administration of justice; 20

“serious offence” means any—

- (a) offence mentioned in the Schedule; or
- (b) offence that is allegedly being or has allegedly been or will probably be committed by a person, group of persons or syndicate— 25
 - (i) acting in an organised fashion which includes the planned, ongoing, continuous or repeated participation, involvement or engagement in at least two incidents of criminal or unlawful conduct that has the same or similar intents, results, accomplices, victims or methods of commission, or otherwise are related by distinguishing characteristics; 30
 - (ii) acting in the execution or furtherance of a common purpose or conspiracy; or
 - (iii) which could result in substantial financial gain for the person, group of persons or syndicate committing the offence,

including any conspiracy, incitement or attempt to commit any of the above-mentioned offences; 35

“Service” means the Service as defined in section 1 of the Intelligence Services Act;

“SIM-card” means the Subscriber Identity Module which is an independent, electronically activated device designed for use in conjunction with a cellular phone to enable the user of the cellular phone to transmit and receive indirect communications by providing access to telecommunication systems and enabling such telecommunication systems to identify the particular Subscriber Identity Module and its installed information; 40

“South African Police Service Act” means the South African Police Service Act, 1995 (Act No. 68 of 1995); 45

“system controller” of, or in relation to—

- (a) a private body, means, in the case of a—
 - (i) natural person, that natural person or any person duly authorised by that natural person;
 - (ii) partnership, any partner of the partnership or any person duly authorised by the partnership; or 50
 - (iii) juristic person, the—
 - (aa) chief executive officer or equivalent officer of the juristic person or any person duly authorised by that officer; or
 - (bb) person who is acting as such or any person duly authorised by such acting person; and 55

- (b) a public body, means, in the case of—

- (i) a national department, provincial administration or organisational component—
 - (aa) mentioned in Column 1 of Schedule 1 or 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), the officer who is the incumbent of the post bearing the designation mentioned in Column 2 of the said Schedule 1 or 3 opposite the name of the relevant 60

- national department, provincial administration or organisational component or the person who is acting as such; or
- (bb) not so mentioned, the Director-General, head, executive director or equivalent officer, respectively, of that national department, provincial administration or organisational component, respectively, or the person who is acting as such; 5
- (ii) a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), or the person who is acting as such; or
- (iii) any other public body, the chief executive officer, or equivalent officer, of that public body or the person who is acting as such; 10
- “Telecommunications Act” means the Telecommunications Act, 1996 (Act No. 103 of 1996);
- “telecommunication service” means any telecommunication service as defined in the Telecommunications Act; 15
- “telecommunication service provider” means any—
- (a) person who provides a telecommunication service under and in accordance with a telecommunication service licence issued to such person under Chapter V of the Telecommunications Act, and includes any person who provides— 20
- (i) a local access telecommunication service, public pay-telephone service, value-added network service or private telecommunication network as defined in the Telecommunications Act; or
- (ii) any other telecommunication service licensed or deemed to be licensed or exempted from being licensed as such in terms of the Telecommunications Act; and 25
- (b) Internet service provider;
- “telecommunication system” means a telecommunication system as defined in the Telecommunications Act.
- (2) For purposes of this Act—
- (a) the interception of a communication takes place in the Republic if, and only if, the interception is effected by conduct within the Republic and the communication is either intercepted, in the case of— 30
- (i) a direct communication, in the course of its occurrence; or
- (ii) an indirect communication, in the course of its transmission by means of a postal service or telecommunication system, as the case may be; and 35
- (b) the time during which an indirect communication is being transmitted by means of a telecommunication system includes any time when the telecommunication system by means of which such indirect communication is being, or has been, transmitted is used for storing it in a manner that enables the intended recipient to collect it or otherwise to have access to it. 40
- (3) A reference in this Act to the interception of a communication does not include a reference to the interception of any indirect communication which is broadcast or transmitted for general reception.

CHAPTER 2

PROHIBITION OF INTERCEPTION OF COMMUNICATIONS AND PROVISION OF REAL-TIME OR ARCHIVED COMMUNICATION- RELATED INFORMATION AND EXCEPTIONS 45

Part 1

Prohibition of interception of communications and exceptions

Prohibition of interception of communication 50

2. Subject to this Act, no person may intentionally intercept or attempt to intercept, or authorise or procure any other person to intercept or attempt to intercept, at any place in the Republic, any communication in the course of its occurrence or transmission.

Interception of communication under interception direction

3. Subject to this Act, any— 55

- (a) authorised person who executes an interception direction or assists with the execution thereof, may intercept any communication; and
 - (b) postal service provider to whom an interception direction is addressed, may intercept any indirect communication,
- to which that interception direction relates. 5

Interception of communication by party to communication

4. (1) Any person, other than a law enforcement officer, may intercept any communication if he or she is a party to the communication, unless such communication is intercepted by such person for purposes of committing an offence.
- (2) Any law enforcement officer may intercept any communication if he or she is— 10
- (a) a party to the communication; and
 - (b) satisfied that there are reasonable grounds to believe that the interception of a communication of another party to the communication is necessary on a ground referred to in section 16(5)(a),
- unless such communication is intercepted by such law enforcement officer for purposes of committing an offence. 15

Interception of communication with consent of party to communication

5. (1) Any person, other than a law enforcement officer, may intercept any communication if one of the parties to the communication has given prior consent in writing to such interception, unless such communication is intercepted by such person 20 for purposes of committing an offence.
- (2) Any law enforcement officer may intercept any communication if—
- (a) one of the parties to the communication has given prior consent in writing to such interception;
 - (b) he or she is satisfied that there are reasonable grounds to believe that the party 25 who has given consent as contemplated in paragraph (a) will—
 - (i) participate in a direct communication or that a direct communication will be directed to him or her; or
 - (ii) send or receive an indirect communication; and
 - (c) the interception of such direct or indirect communication is necessary on a 30 ground referred to in section 16(5)(a),
- unless such communication is intercepted by such law enforcement officer for purposes of committing an offence.

Interception of indirect communication in connection with carrying on of business

6. (1) Any person may, in the course of the carrying on of any business, intercept any 35 indirect communication—
- (a) by means of which a transaction is entered into in the course of that business;
 - (b) which otherwise relates to that business; or
 - (c) which otherwise takes place in the course of the carrying on of that business, 40 in the course of its transmission over a telecommunication system.
- (2) A person may only intercept an indirect communication in terms of subsection (1)—
- (a) if such interception is effected by, or with the express or implied consent of, the system controller;
 - (b) for purposes of— 45
 - (i) monitoring or keeping a record of indirect communications—
 - (aa) in order to establish the existence of facts;
 - (bb) for purposes of investigating or detecting the unauthorised use of that telecommunication system; or
 - (cc) where that is undertaken in order to secure, or as an inherent part of, 50 the effective operation of the system; or
 - (ii) monitoring indirect communications made to a confidential voice-telephony counselling or support service which is free of charge, other than the cost, if any, of making a telephone call, and operated in such a way that users thereof may remain anonymous if they so choose; 55
 - (c) if the telecommunication system concerned is provided for use wholly or partly in connection with that business; and

- (d) if the system controller has made all reasonable efforts to inform in advance a person, who intends to use the telecommunication system concerned, that indirect communications transmitted by means thereof may be intercepted or if such indirect communication is intercepted with the express or implied consent of the person who uses that telecommunication system.

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Interception of communication to prevent serious bodily harm

7. (1) Any law enforcement officer may, if—

- (a) he or she is satisfied that there are reasonable grounds to believe that a party to the communication has—

(i) caused, or may cause, the infliction of serious bodily harm to another person;

(ii) threatens, or has threatened, to cause the infliction of serious bodily harm to another person; or

(iii) threatens, or has threatened, to take his or her own life or to perform an act which would or may endanger his or her own life or would or may cause the infliction of serious bodily harm to himself or herself;

- (b) he or she is of the opinion that because of the urgency of the need to intercept the communication, it is not reasonably practicable to make an application in terms of section 16(1) or 23(1) for the issuing of an interception direction or an oral interception direction; and

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(c) the sole purpose of the interception is to prevent such bodily harm, intercept any communication or may orally request a telecommunication service provider to route duplicate signals of indirect communications specified in that request to the interception centre designated therein.

(2) A telecommunication service provider must, upon receipt of a request made to him or her in terms of subsection (1), route the duplicate signals of the indirect communications concerned to the designated interception centre.

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(3) The law enforcement officer who made a request under subsection (1) must as soon as practicable after making that request, furnish the telecommunication service provider concerned with a written confirmation of the request which sets out the information given by that law enforcement officer to that telecommunication service provider in connection with the request.

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(4) The law enforcement officer who intercepts a communication under subsection (1) or (2) must, as soon as practicable after the interception of the communication concerned, submit to a designated judge—

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- (a) a copy of the written confirmation referred to in subsection (3);

(b) an affidavit setting forth the results and information obtained from that interception; and

(c) any recording of the communication that has been obtained by means of that interception, any full or partial transcript of the recording and any notes made by that law enforcement officer of the communication if nothing in the communication suggests that bodily harm, attempted bodily harm or threatened bodily harm has been caused or is likely to be caused.

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(5) A telecommunication service provider who, in terms of subsection (2), has routed duplicate signals of indirect communications to the designated interception centre must, as soon as practicable thereafter, submit an affidavit to a designated judge setting forth the steps taken by that telecommunication service provider in giving effect to the request concerned and the results obtained from such steps.

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(6) A designated judge must keep all written confirmations and affidavits and any recordings, transcripts or notes submitted to him or her in terms of subsections (4) and (5), or cause it to be kept, for a period of at least five years.

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Interception of communication for purposes of determining location in case of emergency

8. (1) In circumstances where—

- (a) a person is a party to a communication;

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(b) that person, as a result of information received from another party to the communication (in this section referred to as the “sender”), has reasonable grounds to believe that an emergency exists by reason of the fact that the life of another person, whether or not the sender, is being endangered or that he or

she is dying or is being or has been seriously injured or that his or her life is likely to be endangered or that he or she is likely to die or to be seriously injured; and

- (c) the location of the sender is unknown to that person,
the person referred to in paragraph (a) may, if he or she is— 5
 - (i) a law enforcement officer, and if he or she is of the opinion that determining the location of the sender is likely to be of assistance in dealing with the emergency, orally request, or cause another law enforcement officer to orally request, the telecommunication service provider concerned to—
 - (aa) intercept any communication to or from the sender for purposes of 10
 - determining his or her location; or
 - (bb) determine the location of the sender in any other manner which the telecommunication service provider deems appropriate; or
 - (ii) not a law enforcement officer, inform, or cause another person to inform, any law enforcement officer of the matters referred to in paragraphs (a), (b) and 15
 - (c).

(2) A law enforcement officer who has been informed as contemplated in subsection (1)(ii), may, if he or she is of the opinion that determining the location of the sender is likely to be of assistance in dealing with the emergency, orally request, or cause another law enforcement officer to orally request, the telecommunication service provider 20 concerned to act as contemplated in subsection (1)(i)(aa) or (bb).

(3) A telecommunication service provider must, upon receipt of a request made to him or her in terms of subsection (1)(i) or (2)—

- (a) intercept any communication to or from the sender for purposes of determining his or her location; or 25
- (b) determine the location of the sender in any other manner which the telecommunication service provider deems appropriate,

and if the location of the sender has been so determined, the telecommunication service provider concerned must, as soon as practicable after determining that location, provide the law enforcement officer who made the request with the location of the sender and 30 any other information obtained from that interception which, in the opinion of the telecommunication service provider concerned, is likely to be of assistance in dealing with the emergency.

(4) The law enforcement officer who made a request under subsection (1)(i) or (2) must— 35

- (a) as soon as practicable after making that request, furnish the telecommunication service provider concerned with a written confirmation of the request which sets out the information given by that law enforcement officer to that telecommunication service provider in connection with the request;
- (b) as soon as practicable after making that request, furnish a designated judge 40 with a copy of such written confirmation; and
- (c) if the location of the sender and any other information has been provided to him or her in terms of subsection (3), as soon as possible after receipt thereof, submit to a designated judge an affidavit setting forth the results and information obtained from that interception. 45

(5) A telecommunication service provider who has taken any of the steps contemplated in subsection (3), must, as soon as practicable thereafter, submit to a designated judge—

- (a) an affidavit setting forth the steps taken by that telecommunication service provider in giving effect to the request concerned and the results and 50 information obtained from such steps; and
- (b) if such steps included the interception of an indirect communication, any recording of that indirect communication that has been obtained by means of that interception, any full or partial transcript of the recording and any notes made by that telecommunication service provider of that indirect communi- 55 cation.

(6) A designated judge must keep all written confirmations and affidavits and any recordings, transcripts or notes submitted to him or her in terms of subsections (4)(b) and (c) and (5), or cause it to be kept, for a period of at least five years.

Interception of communications authorised by certain other Acts

9. (1) Any communication may, in the course of its occurrence or transmission, be intercepted in any prison as defined in section 1 of the Correctional Services Act, 1998 (Act No. 111 of 1998), if such interception takes place in the exercise of any power conferred by or under, and in accordance with, any regulations made under that Act. 5

(2) If any regulations referred to in subsection (1)—

- (a) were made prior to the fixed date, the Cabinet member responsible for correctional services must within one month after the fixed date, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within one month after the commencement of its next ensuing ordinary session, submit a copy of those regulations to Parliament; or 10
- (b) are made after the fixed date, the Cabinet member responsible for correctional services must, before the publication thereof in the *Gazette*, submit those regulations to Parliament.

Monitoring of signal for purposes of installation or maintenance of equipment, facilities or devices 15

10. Any person who is lawfully engaged in duties relating to the—

- (a) installation or connection of any equipment, facility or device used, or intended to be used, in connection with a telecommunication service; 20
- (b) operation or maintenance of a telecommunication system; or
- (c) installation, connection or maintenance of any interception device used, or intended to be used, for the interception of a communication under an interception direction.

may, in the ordinary course of the performance of those duties, monitor a signal relating to an indirect communication where it is reasonably necessary for that person to monitor that signal for purposes of performing those duties effectively. 25

Monitoring of signal and radio frequency spectrum for purposes of managing radio frequency spectrum

11. Any person appointed as an inspector in terms of section 98 of the Telecommunications Act and who is lawfully engaged in performing the functions of the Authority relating to the management of the radio frequency spectrum, as contemplated in section 28(1) of that Act, may, in the ordinary course of the performance of those functions, monitor a signal or radio frequency spectrum relating to an indirect communication which is transmitted over radio, where it is reasonably necessary for that employee to monitor that signal or radio frequency spectrum for purposes of identifying, isolating or preventing an unauthorised or interfering use of such a signal or frequency or of a transmission. 30 35

Part 2

Prohibition of provision of real-time or archived communication-related information and exceptions 40

Prohibition of provision of real-time or archived communication-related information

12. Subject to this Act, no telecommunication service provider or employee of a telecommunication service provider may intentionally provide or attempt to provide any real-time or archived communication-related information to any person other than the customer of the telecommunication service provider concerned to whom such real-time or archived communication-related information relates. 45

Provision of real-time or archived communication-related information under real-time communication-related direction or archived communication-related direction 50

13. Subject to this Act, any telecommunication service provider to whom a real-time communication-related direction or an archived communication-related direction is