

REPUBLIC OF SOUTH AFRICA

**COMMITTEE AMENDMENTS
TO
INTELLIGENCE SERVICES
BILL**

[B 58—2002]

*(As agreed to by the Ad Hoc Committee on Intelligence Legislation
(National Assembly))*

[B 58A—2002]

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AMENDMENTS AGREED TO

INTELLIGENCE SERVICES BILL [B 58—2002]

CLAUSE 1

1. On page 2, after line 13, to insert:

“counter-intelligence” means counter-intelligence as defined in section 1 the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);
2. On page 2, from line 26, to omit the definition of “Minister” and to substitute:

“Minister” means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209(2) of the Constitution;
3. On page 2, in line 34, after “(APLA)” to insert:

, the Pan Africanist Security Service of the Azanian Peoples Liberation Army

CLAUSE 5

1. On page 5, after line 37, to insert:

(6) The Chief Executive Officer must, at the end of each financial year, submit the report of the Auditor-General and the annual report of the Academy compiled in accordance with the provisions of the Public Finance Management Act, 1999 (Act No. 1 of 1999), to the Minister and the Joint Standing Committee on Intelligence for consideration.
2. On page 5, after line. 39, to add:

(8) The accreditation and recognition of the Academy’s qualifications must be done in accordance with the provisions of the South African Qualifications Authority Act, 1995 (Act No. 58 of 1995).

CLAUSE 9

1. On page 6, in line 16, to omit “must” and to substitute “may”.

CLAUSE 10

1. On page 6, after line 47, to insert:

(3) The Director-General may, in a prescribed manner, subject to the approval of the Minister and the provisions of this Act, issue functional directives applicable to—

 - (a) physical security;
 - (b) computer security;

- (c) communication security;
 - (d) protection of classified information;
 - (e) conditions of service and human resources of the Intelligence Services or the Academy, as the case may be: Provided that the functional directives on conditions of service and human resources must—
 - (i) be done in consultation with the Intelligence Services Council; and
 - (ii) be consistent with the regulations issued by the Minister;
 - (f) any other matter that is necessary for the intelligence and counter-intelligence functions of the Intelligence Services.
2. On page 6, from line 53, to omit paragraph (b) and to substitute:
- (b) neither the Intelligence Services, the Academy, nor any of their members, may, in the performance of their functions—
 - (i) prejudice a political party interest that is legitimate in terms of the Constitution; or
 - (ii) further, in a partisan manner, any interest of a political party; and

CLAUSE 11

1. On page 7, in line 36, to omit “he or she” and to substitute “the judge”.
2. On page 7, in line 42, to omit “must” and to substitute “may”.

CLAUSE 14

Clause rejected.

NEW CLAUSE

1. That the following be a new Clause:

Security screening and discharge of members

- 14.** (1) 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 Director-General, after evaluating the gathered information, is of the reasonable opinion that such a person may be appointed as a member without the possibility of such a person being a security risk or acting in any way prejudicial to the security interests of the Republic.
- (2) In order to gather the information contemplated in subsection (1)(a), the Intelligence Services may, in a prescribed manner, have access to—
- (a) criminal records;
 - (b) financial records;
 - (c) personal information; and
 - (d) any other information which is relevant to determine the security clearance of the person:
- Provided that where the gathering of information contemplated in paragraphs (c) and (d) requires the interception and monitoring of the communication of such a 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).

(3) The Director-General may, in a prescribed manner, engage the services of a polygraphist to determine the reliability of the information gathered.

(4) The Director-General may, in the prescribed manner, issue directives on—

- (a) polygraph testing;
- (b) the level of security clearance; and
- (c) criteria for evaluating the security competence.

(5) The Director-General may, after evaluating the information gathered as contemplated in subsection (1)(b), issue, degrade, withdraw or refuse to grant a security clearance certificate.

(6) Notwithstanding the provisions of subsection (5), if the Minister is of the reasonable opinion that a person may be appointed as a member without the possibility that such person might be a security risk or might act in a way prejudicial to security interests of the Republic, he or she may issue a document with respect to such a person in which it is stipulated that such a person may be appointed as member without the possibility that such person could be a security risk or could possibly act in any manner prejudicial to the security interests of the Republic, pending the outcome of the security screening investigations.

(7) 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 in question, transfer such person or member to that department subject to any law governing the transfer.

(8) (a) A person whose security clearance has been refused may, in the prescribed manner, appeal to the Minister.

(b) Such appeal must—

- (i) be lodged within 60 days from the date on which the decision was made known by the Director-General or such later date as the Minister permits; and
- (ii) set out the grounds for the appeal.

(c) After considering the grounds of appeal and the Director-General's reasons for the decision, the Minister must as soon as practicable—

- (i) confirm, set aside or vary the decision; or
- (ii) substitute any other decision for the decision of the Director-General.

(9) On intervals prescribed by the Minister, a member may be subjected to a security screening investigation to determine his or her security competence to remain in the Intelligence Services.

(10) All the provisions regarding security screening investigations, applicable to a person contemplated in subsection (1), applies to security screening of members.

CLAUSE 15

1. On page 8, in line 43, to omit “calendar” and to substitute “consecutive”.

CLAUSE 20

1. On page 10, from line 24, to omit “excluding any power conferred upon or duty assigned to him or her by this Act,”.
2. On page 10, in line 27, to omit “12(1)” and to substitute “12”.

3. On page 10, in line 27, to omit “14(2) and (3)” and to substitute “14(6), (7), (8) and (9)”.
4. On page 10, in line 28, to omit “(6) and (8)” and to substitute “and (7)”.

CLAUSE 22

1. On page 10, from line 46, to omit subsection (1) and to substitute:

(1) There is hereby established an Intelligence Services Council on Conditions of Service which consists of not more than three persons or members appointed on contract by the Minister, one of whom must be Chairperson.
2. On page 11, in line 16, to omit “must” and to substitute “may”.
3. On page 11, from line 18, to omit subsection (6).
4. On page 11, in line 22, to omit “must” and to substitute “may”.

CLAUSE 23

1. On page 11, in line 28, to omit “shall” and to substitute “must”.
2. On page 11, in line 30, to omit “shall” and to substitute “must”.

CLAUSE 26

1. On page 13, in line 7, to omit “10” and to substitute “15”.

CLAUSE 27

1. On page 13, from line 23, to omit subsection (3) and to substitute:

(3) For the purposes of subsection (1), the Director-General concerned or the Chief Executive Officer may consult any member or person to advise him or her on the consideration of applications by former members for permission to disclose classified information or material.

CLAUSE 29

1. On page 13, in line 41, after “Academy” to insert “or a foreign intelligence service”.

CLAUSE 38

1. On page 16, from line 21, to omit subsections (3) and (4).

NEW CLAUSE

1. That the following be a new Clause:

Validation of misconduct proceedings

40. Despite the repeal of the Bureau for State Security Act, 1978 (Act No. 104 of 1978), and the regulations made thereunder, the procedure followed by the Director-General for charging members with misconduct in terms of section 15 of the Intelligence Services Act, 1994 (Act No. 38 of 1994), at any time from 1 January 1995 to 1 July 2001, that would have been lawful if the Bureau for State Security Act, 1978, and those regulations had been in force at the time when it was done, is hereby validated and declared to have been lawfully done.