

REPUBLIC OF SOUTH AFRICA

---

**REGULATION OF  
INTERCEPTION OF  
COMMUNICATIONS AND  
PROVISION OF COMMUNICATION-  
RELATED INFORMATION  
AMENDMENT BILL**

---

*(As amended by the Portfolio Committee on Justice and Constitutional Development  
(National Assembly))  
(The English text is the official text of the Bill)*

---

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

**[B 9D—2006]**

ISBN 978-1-77037-514-7

No. of copies printed ..... 1 800

**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 Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, so as to insert certain new definitions and to amend certain definitions; to provide afresh for information to be obtained and kept in respect of cellular phones and SIM-cards; to further regulate offences and penalties; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 70 of 2002**

1. Section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion before the definition of “Agency” of the following definitions:

“**‘activate’** means to allow access to the electronic communication system of the electronic communication service provider who provides a mobile cellular electronic communications service and “activated” has a corresponding meaning; 10

**‘address’** means—

(a) in the case of a natural person—

(i) the address where the person usually resides, or where such residential address is not available— 15

(aa) the address where the person is employed;

(bb) the address where the business of the person is situated; or

(ii) where such a person resides in an informal settlement and cannot provide an address contemplated in subparagraph (i), any other address, including that of a school, church or retail store, where a person usually receives his or her post; or 20

(b) in the case of a juristic person, the registered address or the address where the business is situated;” 25

(b) by the substitution for the definition of “customer” of the following definition:

“**‘customer’** means any person—

(a) to whom an electronic communication service provider provides an electronic communications service, including an employee of the electronic communication service provider or any person who receives or received such service as a gift, reward, favour, benefit or donation; 30

- (b) who has entered into a contract with an electronic communication service provider for the provision of an electronic communications service, including a pre-paid electronic communications service; or
- (c) where applicable—
- (i) to whom an electronic communication service provider in the past has provided an electronic communications service; or
  - (ii) who has, in the past, entered into a contract with an electronic communication service provider for the provision of an electronic communications service, including a pre-paid electronic communications service;”;
- (c) by the insertion after the definition of “Executive Director” of the following definition:
- “**‘family member’** means—
- (a) a person who is related to another person—
    - (i) biologically; or
    - (ii) by statutory, customary or religious law, including affinity by marriage, adoption or foster care;
  - (b) a person’s permanent life partner; or
  - (c) in the case of an orphan, a care-giver as defined in the Children’s Act, 2005 (Act No. 38 of 2005);”;
- (d) by the substitution for the definition of “identification document” of the following definition:
- “**‘identification document’** means, in the case of a person—
- (a) who is a South African citizen or is lawfully and permanently resident in the Republic—
    - (i) a green, bar-coded identity document issued in terms of section 8 of the Identification Act, 1986 (Act No. 72 of 1986), until such identity document is replaced by an identity card as contemplated in section 25 of the Identification Act;
    - (ii) an identity card issued in terms of section 14 of the Identification Act;
    - (iii) a temporary identity certificate issued in terms of section 16 of the Identification Act; or
    - (iv) a South African passport issued in terms of the South African Passports and Travel Documents Act, 1994 (Act No. 4 of 1994); or
  - (b) who is not a South African citizen or not permanently resident in the Republic, excluding a refugee, a valid passport or travel document as contemplated in paragraphs (b) and (c) of the definition of ‘passport’ in the Immigration Act, 2002 (Act No. 13 of 2002); or
  - (c) who is a refugee, a valid identity document issued in terms of section 30 of the Refugees Act, 1998 (Act No.130 of 1998);”;
- (e) by the insertion after the definition of “identification document” of the following definition:
- “**‘identity number’** means—
- (a) in the case of a person who is a South African citizen or who is lawfully and permanently resident in the Republic, the number referred to as the identity number in the document contemplated in paragraph (a)(i), (ii) or (iii) of the definition of ‘identification document’ or the number referred to as the passport number in the document contemplated in paragraph (a)(iv) of the definition of ‘identification document’;
  - (b) in the case of a person who is not a South African citizen or who is not permanently resident in the Republic, excluding a refugee, the number referred to as the passport number in the document contemplated in paragraph (b) of the definition of ‘identification document’; or
  - (c) in the case of a refugee, the number referred to as the identity number in the document contemplated in paragraph (c) of the definition of ‘identification document’;”;
- (f) by the insertion after the definition of “indirect communications” of the following definition:

“ **‘informal settlement’** means a place in an urban or rural setting used for residential purposes and in respect of which no physical addresses or street particulars are officially assigned;”.

**Substitution of section 40 of Act 70 of 2002**

2. The following section is hereby substituted for section 40 of the principal Act: 5

**“Information to be obtained and kept by electronic communication service provider who provides a mobile cellular electronic communications service**

**40.** (1) (a) Subject to paragraph (b), an electronic communication service provider who provides a mobile cellular electronic communications service shall not activate a SIM-card on its electronic communication system unless subsection (2) has been complied with. 10

(b) Paragraph (a) does not apply to a customer of an electronic communication service provider who provides a mobile cellular electronic communications service outside the Republic who enters the geographical coverage area of a mobile cellular electronic communication service provider in the Republic and uses the electronic communication system of such provider to make, receive and send voice calls or data or access other services. 15

(2) From the date of commencement of this section an electronic communication service provider must, subject to subsection (4), at own cost implement a process to record and store, and must record and store— 20

(a) the Mobile Subscriber Integrated Service Digital Network number (MSISDN-number) of the SIM-card that is to be activated by an electronic communication service provider at the request of a person contemplated in paragraphs (b) and (c); 25

(b) in the case of a person who—

(i) is a South African citizen or is lawfully and permanently resident in the Republic, the full names and surname, identity number and at least one address of such person who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider; or 30

(ii) is not a South African citizen or who is not permanently resident in the Republic, and who requests that a SIM-card referred to in subsection (1) be activated on the electronic communication system of an electronic communication service provider, the full names and surname, identity number and at least one address of such person and the country where the passport was issued; or 35

(c) in the case of a juristic person— 40

(i) the full names, surname, identity number and an address of the authorised representative of the juristic person; and

(ii) the name and address of the juristic person and, where applicable, the registration number of the juristic person.

- (3) (a) For the purposes of subsection (2), an electronic communication service provider must, in the manner provided for in paragraph (b), verify—
- (i) the full names, surname, identity number and identity of the person contemplated in subsection (2)(b) and (c) and, where applicable, the country where the passport was issued; 5
  - (ii) the name and, where applicable, the registration number of the juristic person; 10
  - (iii) in the case of a person contemplated in subsection (2)(b)(i) and (c), the address; and
  - (iv) the authority of the representative of a juristic person. 10
- (b) An electronic communication service provider must verify—
- (i) the information contemplated in paragraph (a)(i) by means of an identification document; 15
  - (ii) the information contemplated in paragraph (a)(ii) by means of documentation, including a registration document, founding statement, document issued by the South African Revenue Service or any other similar document; 15
  - (iii) the address contemplated in paragraph (a)(iii) by means of documentation, including a bank statement, a municipal rates and taxes invoice, telephone or cellular phone account of not older than three months, or any other utility bill or an account of a retailer of not older than three months, or an existing lease, rental or credit sale agreement, insurance policy, a current television licence or a new motor vehicle licence document; and 20
  - (iv) the authority of the representative of the juristic person by means of a letter of authority or an affidavit. 25
- (4) (a) An electronic communication service provider must ensure that—
- (i) the process contemplated in subsection (2);
  - (ii) the information recorded and stored in terms of that subsection; and
  - (iii) the facility in or on which the information is recorded and stored, 30
- are secure and only accessible to persons specifically designated by that electronic communication service provider.
- (b) The Minister may, in consultation with the Cabinet member responsible for communications, by notice in the *Gazette*, determine security standards relating to the matters contemplated in paragraph (a). 35
- (5) From the date of commencement of this section, any customer who sells or in any manner provides an activated SIM-card to a person, other than a family member, and the person who is to receive the SIM-card must, immediately upon the sale or provision of the SIM-card, provide the relevant electronic communication service provider with— 40
- (a) the full names, surname and identity number of the customer; and
  - (b) all particulars as required in subsection (2) in respect of the person who is to receive the SIM-card.
- (6) (a) An electronic communication service provider must, upon receipt of the information provided in terms of subsection (5)— 45
- (i) verify the full names, surname, identity number and identity of the persons with reference to the persons' identification documents;
  - (ii) verify the address, contemplated in subsection (3)(a)(iii), of the person who is to receive the SIM-card by means of the documents contemplated in subsection (3)(b)(iii); and 50
  - (iii) verify the particulars contemplated in subsection (2)(a).
- (b) An electronic communication service provider must, upon receipt of the information provided in terms of paragraph (a), immediately record and store the information as contemplated in subsection (2).

(7) (a) An applicant may, for the purposes of making an application for the issuing of a direction, in writing, request an electronic communication service provider to—

- (i) confirm that the person specified in the request is or was a customer of that electronic communication service provider; and
- (ii) provide the applicant with the information recorded and stored in terms of subsection (2).

(b) An electronic communication service provider who receives a request referred to in paragraph (a) must immediately comply with that request if the person specified in the request is or was a customer of the electronic communication service provider concerned.

(8) If an employee or agent of an electronic communication service provider knows or suspects that an identification document submitted for verification as contemplated in subsection (3) is false, he or she must, within 24 hours, report the matter to a police official at any police station.

(9) An electronic communication service provider must, on its electronic communication system, record and store—

- (a) every MSISDN-number used with every IMEI-number; and
  - (b) every IMEI-number used with every MSISDN-number,
- which must, on production of a direction, be provided to an applicant within 12 hours.

(10) The information recorded and stored in terms of subsections (2), (6) and (9) must be stored by an electronic communication service provider for a period of five years after—

- (a) a customer has cancelled his or her contract with the electronic communication service provider; or
- (b) the electronic communication service provider has ended the electronic communications service provided to the customer.”.

#### **Amendment of section 51 of Act 70 of 2002**

**3.** Section 51 of the principal Act is hereby amended—

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

“(i) contravenes or fails to comply with section 6(2), 7(4), 8(4), 29(8), **[40(1), (2) or (3),]** 42(1) or 45(1);”;

- (b) by the insertion after subsection (3) of the following subsections:

“(3A) Any electronic communication service provider who fails to comply with—

- (a) the directives issued in terms of section 30(2)(a);
- (b) section 40(1), (2), (3), (4) or any determination made thereunder, (6), (7), (9) or (10); or
- (c) section 62(6)(a), (b), (c) or (d),

is guilty of an offence and liable on conviction to a fine not exceeding R100 000 for each day on which such failure to comply continues.

(3B) Any customer or person who fails to comply with section 40(5) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(3C) An employee or agent of an electronic communication service provider who fails to comply with section 40(8), is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(3D) Any—

- (a) juristic person contemplated in section 62C(1); or
  - (b) person contemplated in section 62C(2),
- who fails to comply with section 62C, is guilty of an offence and liable on conviction to a fine not exceeding R2 000 000 or to imprisonment for a period not exceeding 10 years.”; and

- (c) by the deletion in subsection (5) of the word “or” at the end of paragraph (b) and the insertion after that paragraph of the following paragraph:

“(bA) subsection (3A) does not relieve any electronic communication service provider of the obligation to comply with—  
 (i) the directives issued in terms of section 30(2)(a);  
 (ii) section 40(1), (2), (3), (4) or any determination made there-  
 under (6), (7), (9) or (10); or  
 (iii) section 62(6)(a), (b), (c) or (d); or”. 5

#### **Amendment of section 62 of Act 70 of 2002**

4. Section 62 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection: 10

“(6) (a) Notwithstanding section 40(1), an electronic communication service provider who, prior to the date of commencement of this section, provides a mobile cellular electronic communications service must, within 18 months from the said date, record and store the information contemplated in section 40(2) in respect of all customers whose SIM-cards are activated on its system, if the information in question has not already been recorded and stored in terms of section 40. 15  
 (b) Section 40(2), (3), (4), (9) and (10) applies with the necessary changes in respect of the information recorded and stored in terms of paragraph (a).  
 (c) The obligations and rights conferred upon a person and an applicant in terms of section 40(7) and (8) apply with the necessary changes. 20  
 (d) An electronic communication service provider shall not allow service continuation on its electronic communication system in respect of any activated SIM-card if the information referred to in paragraph (b) has not been recorded and stored at the expiry of the 18-month period contemplated in paragraph (a).” 25

#### **Insertion of sections 62A, 62B and 62C in Act 70 of 2002**

5. The following sections are hereby inserted in the principal Act after section 62:

##### **“Determination of tariffs**

**62A.** The Minister may, in consultation with the Cabinet member responsible for communications, at the request of any electronic communication service provider who provides a mobile cellular electronic communications service, determine uniform tariffs of compensation payable by the electronic communication service providers who provide a mobile cellular electronic communications service, to persons employed to record and store the information contemplated in sections 40 and 62(6) of the Act. 30  
 35

##### **Information to be provided to customers**

**62B.** An electronic communication service provider who provides a mobile cellular electronic communications service must, from the date of commencement of this section, inform— 40  
 (a) a customer of his or her obligations in terms of sections 40, 41 and 62(6) and 62C of the Act;  
 (b) a customer of the manner in which the obligations must be complied with; and  
 (c) a customer of the consequences of non-compliance with the obligations. 45

##### **Keeping of information by juristic persons and persons who lease SIM-cards**

**62C.** (1) Any juristic person, having complied with section 40(2) or 62(6), and who provides a SIM-card to a person in its employment must, before handing over the SIM-card to the other person— 50

- (a) record the particulars as required in section 40(2) and the date on and period for which the SIM-card is provided; and
- (b) verify—
- (i) the full names, surname, identity number and identity of the person to whom the SIM-card is provided; and
  - (ii) the address contemplated in section 40(3)(a)(iii), by means of documentation contemplated in section 40(3)(b).
- (2) Any person, having complied with section 40(2) or 62(6), and who rents a SIM-card to another person must, before handing over the SIM-card to the other person—
- (a) record the particulars as required in section 40(2) and the date on and period for which the SIM-card is rented; and
- (b) verify—
- (i) the full names and surname, identity number and identity of the person to whom the SIM-card is rented;
  - (ii) the name and, where applicable, the registration number of the juristic person; and
  - (iii) the address contemplated in section 40(3)(a)(iii), by means of documentation contemplated in section 40(3)(b).
- (3) The information referred to in subsections (1) and (2) must be stored for a period of five years.
- (4) (a) An applicant may, for the purposes of making an application for the issuing of a direction, in writing request a person contemplated in subsection (1) or (2) to provide the applicant with the information recorded and stored in terms of subsection (1) or (2), respectively.
- (b) A person contemplated in subsection (1) or (2) who receives a request referred to in paragraph (a) must immediately comply with that request if the request relates to any SIM-card in its, his or her possession or to any person to whom the SIM-card was provided or rented.
- (5) If a person contemplated in subsection (1) or (2) knows or suspects that an identification document submitted for verification as contemplated in section 40(3) is false, it, he or she must, within 24 hours, report the matter to a police official at any police station.”.

#### **Substitution of section 63 of Act 70 of 2002**

6. The following section is hereby substituted for section 63 of the principal Act:

##### **“Short title and commencement**

**63. (1)** This Act is called the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Notwithstanding subsection (1), sections 40 and 62(6) come into operation on the date on which the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2008, takes effect.”.

##### **Short title and commencement**

7. This Act is called the Regulation of Interception of Communications and Provision of Communication-related Information Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.



**MEMORANDUM ON THE OBJECTS OF THE REGULATION OF  
INTERCEPTION OF COMMUNICATIONS AND PROVISION OF  
COMMUNICATION-RELATED INFORMATION AMENDMENT  
BILL, 2006**

**1. BACKGROUND TO BILL**

- 1.1 The Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002) (the principal Act), prohibits the interception of certain communications relating to serious crimes, except in terms of the provisions of the Act. The principal Act provides for the provision of certain communication-related information, applications to a designated judge to authorise interceptions, the execution of directions and entry warrants by law enforcement officers and the prohibition of electronic communications services which do not have the capability of being intercepted. It prescribes certain information pertaining to their clients that must be obtained and kept by electronic communication service providers should it be required for detecting or investigating serious crimes. The principal Act also creates offences and prescribes penalties for any contravention of its provisions.
- 1.2 Sections 40 and 62(6) of the principal Act deal with the information that needs to be obtained and kept by persons who sell cellular phones and SIM-cards: Section 40 pertains to new transactions after the commencement of that section and section 62(6) relates to persons who are already customers when the principal Act is implemented, that is existing owners of cellular phones and SIM-cards. Sections 40 and 62(6) have not yet been put into effect.

**2. OBJECTS OF THE BILL**

- 2.1 The main object of this Bill is to amend sections 40 and 62(6) so as to further regulate the electronic capturing of certain personal information of persons who are in possession of cellular phones or SIM-cards, the particulars of those cellular phones or SIM-cards and the manner in which the aforementioned information must be verified. The Bill also provides for offences, penalties and other sanctions in the event of non-compliance with the provisions of the Bill. Certain new definitions are inserted and certain existing definitions are amended. The provisions of the Bill are explained in greater detail hereunder:
- 2.2 Clause 1 of the Bill inserts a number of new definitions in the principal Act and also amends a number of existing definitions. Since the Bill is aimed mainly at the registration and verification of certain particulars of owners of cellular phones and SIM-cards, for instance addresses and identity, failing which such persons will not be able to gain access to cellular phone services, a number of the definitions in clause 1 are intended to ensure that as many persons as possible will be in a position to comply with the registration requirements, particularly persons who live in outlying areas who rely heavily on cellular phone services.
  - 2.2.1 The following definitions in the Bill are relevant:
    - (i) The new definition of “address”, besides referring to conventional forms of addresses, also includes as addresses, places for persons living in “informal settlements”, for instance an address of a school, church or retail store where a person living in an informal settlement usually receives his or her post.
    - (ii) The new definition of “informal settlement” is defined as “a place in an urban or rural setting used for residential purposes and in respect of which no physical addresses or street particulars are officially assigned”.

- (iii) The definition of “identification document”, already in the principal Act, is being amended in order to assist persons who may, for some or other reason, not be in possession of an identity document as currently defined in the principal Act, for instance persons who are not yet 16 years old and refugees. The current definition is being expanded to include documentation which children younger than 16 years can obtain, for instance a passport. This definition recognises the fact that there are many child-headed households who do not qualify for identity documents as contemplated in the Identification Act, 1986 (Act No. 72 of 1986).
- (iv) In similar vein, the proposed new definition of “identity number” broadens the scope of what an identity number is, to include not only the number referred to as the identity number in a South African identity document, but also a passport number or a number which is issued on a document to a refugee in terms of section 30 of the Refugees Act, 1998 (Act No. 130 of 1998).

2.2.2 In addition, the following definitions have been inserted in the Bill:

- (i) A definition of “activate”, which means “to allow access to the network of the electronic communication service provider who provides a mobile cellular electronic communications service”, so as to provide clarity on when a cellular phone or SIM card will be regarded as activated.
- (ii) The definition of “customer” in the principal Act is being amended in order to make it applicable to persons who are currently customers of an electronic communication service provider, as well as former customers (historical customers), where applicable.
- (iii) A definition of “family member” has been inserted. It finds application in the proposed new section 40(5) of the principal Act, dealing with the disposal of a cellular phone or SIM-card by a person to another person, other than a family member, and is discussed below. A family member means a person who is related to another person biologically, by statutory, customary or religious law, including affinity by marriage, adoption or foster care, a person’s permanent life partner, or, in the case of an orphan, a care-giver as defined in the Children’s Act, 2005 (Act No. 38 of 2005).

2.3 Clause 2 of the Bill amends section 40 of the principal Act. The proposed section seeks to prohibit any electronic communication service provider who provides an electronic communications service from activating a SIM-card or allowing the use of any cellular phone on its electronic communications system, unless the proposed section 40(2) has been complied with.

- 2.3.1 Proposed section 40(2) provides that the following information must be recorded and stored by an electronic communication service provider:
  - (a) The MSISDN-number (the mobile cellular telephone number that is allocated to a person), the IMEI-number (the cellular handset number) and IMSI-number (the unique number allocated to a SIM-card for identification purposes);
  - (b) in the case of a natural person, the full names, surname, identity number and an address of the person; and
  - (c) in the case of a juristic person, the full names, surname, identity number and an address of the authorised representative of the juristic person and the name and address of the juristic person and, where applicable, the registration number of the juristic person.

- 2.3.2 Proposed section 40(3) provides that a mobile cellular electronic communications service provider must verify the particulars of a person, with reference to an identification document and the address particulars, with reference to prescribed documentation.
- 2.3.3 In terms of proposed section 40(4), the electronic communication service providers must ensure that the information that is recorded and stored and the facilities on which the information is recorded and stored, are secure and only accessible to persons specifically designated by the said electronic communication service providers. The Minister may, by notice in the *Gazette*, determine minimum security standards for this purpose.
- 2.3.4 Proposed section 40(5) and (6) requires both, a person who sells or, in any other manner, provides an activated cellular phone or SIM-card to any person, other than a family member, and the person who receives the cellular phone or SIM-card, to provide the electronic communication service provider in question with specified particulars of both parties. These provisions also require the relevant service provider to verify the personal particulars of the seller or giver, as well as those of the recipient, in addition to verifying the particulars of the cellular phone or SIM-card. As mentioned, the transfer of cellular phones and SIM-cards between family members is excluded from the ambit of these provisions.
- 2.3.5 Proposed section 40(7) obliges the electronic communication service providers to respond to queries of the law enforcement agencies whether a particular person is a customer of the service provider in question and also to provide certain information relating to that customer, prior to the issuing of a direction in terms of the principal Act.
- 2.3.6 Proposed section 40(8) requires an employee or agent of an electronic communication service provider to report any false information that has been submitted for verification purposes, to a police official at a police station.
- 2.3.7 Proposed section 40(9) grants to the Minister the power, by notice in the *Gazette*, for a period not exceeding three months, to exempt an electronic communication service provider from the obligation of verifying, recording and storing the particulars contemplated in subsection 40(2). This exemption can only take place after the Minister has weighed up security and crime considerations against the following factors, namely—
- (a) the extent to which an international event hosted by the Republic may be affected;
  - (b) the international obligations of the Republic;
  - (c) the relationship between the Republic and the international community;
  - (d) the objective of universal access to electronic communications service; and
  - (e) the number of persons entering the Republic within a particular period.
- 2.4 Clause 3 of the Bill seeks to amend section 51 of the principal Act in order to criminalise non-compliance by an electronic communication service provider with the directives issued under section 30(2)(a) and sections 40, 62(6) and 62C of the principal Act. Furthermore, a conviction under this section does not relieve the service provider from compliance with the relevant section.
- 2.5 Clause 4 of the Bill amends section 62(6) of the principal Act. In terms of the amendment an electronic communication service provider must, within 12 months from the commencement of the Bill, record, store and verify the

information required by the proposed section 40 in respect of all customers whose cellular phones and SIM-cards are already activated on its electronic communications system at the time the Bill is implemented. The provisions of section 40 apply *mutatis mutandis* in respect of the information to be recorded, stored and verified. Provision is also made for the service of a customer to be terminated by the service providers if the prescribed information of a customer is not recorded within the 12 month period.

- 2.6 Clause 5 inserts sections 62A, 62B and 62C in the principal Act. The proposed section 62A provides that the Minister may determine uniform tariffs of compensation payable by the electronic communication service providers to persons employed in order to record and store the information contemplated in sections 40 and 62(6) of the principal Act. The proposed section 62B places an obligation on electronic communication service providers to inform their customers of their obligations in terms of the proposed sections 40, 41 and 62(6) of the principal Act and the manner in which such obligations must be complied with, as well as the consequences of non-compliance with these obligations. This clause also requires juristic persons which provide cellular phones or SIM-cards to their employees, to keep record of the particulars of these employees. It also requires persons who, for reward, hire out cellular phones or SIM-cards to record and store the particulars required in section 40(2) and verify the personal particulars of their clients. This information must be stored for a period of 5 years. Failure to comply is criminalised (R2 million or 10 years).

### **3. CONSULTATION**

The following entities were consulted: Vodacom, MTN, Cell C, the South African Police Service, the South African National Defence Force, the National Intelligence Agency, the South African Secret Service, the Department of Communications and the National Director of Public Prosecutions.

### **4. IMPLICATIONS FOR PROVINCES**

None

### **5. FINANCIAL IMPLICATIONS FOR STATE**

None

### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the 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.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.