

REPUBLIC OF SOUTH AFRICA

INTELLIGENCE SERVICES 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 58B—2002]

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BILL

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

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

CHAPTER I

DEFINITIONS AND APPLICATION OF ACT

Definitions

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

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

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

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“Agency” means the National Intelligence Agency referred to in section 3;

“Chief Executive Officer” means the head of the Academy appointed in terms of section 6(1);

“counter-intelligence” means counter-intelligence as defined in section 1 the National Strategic Intelligence Act, 1994 (Act No.39 of 1994);

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

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

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

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

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

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

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“member” means a person appointed in terms of section 8, 9 or 19 or referred to in section 3;

“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;

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

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

“non-statutory service” means the former Umkhonto weSizwe (MK), Azanian Peoples Liberation Army (APLA) the Pan Africanist Security Service of the Azanian Peoples Liberation and Department of Intelligence and Security of the African National Congress;

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“person” includes—

- (a) a trust;
- (b) a foundation; and
- (c) any body of persons corporate or unincorporate;

“personnel list” means the personnel list submitted to the President within seven 5 days after the commencement of the Intelligence Services Act, 1994 (Act No. 38 of 1994), by the head of each of the following organisational components which were integrated to comprise the Intelligence Services, with the names of the persons who—

- (a) on the date of the commencement of the said Act, were members of the Bureau 10 as defined in section 1 of the Bureau for State Security Act, 1978 (Act No. 104 of 1978);
- (b) on the date of the commencement of the said Act, were members of the Department of Intelligence and Security of the African National Congress;
- (c) on the date of the commencement of the said Act, were members of the 15 Bophuthatswana Internal Intelligence Service by virtue of their appointment in terms of the Bophuthatswana Internal Intelligence Service Act, 1982 (Act No. 25 of 1982), or were appointed in terms of section 15 of the National Security Council Act, 1981 (Act No. 27 of 1981), of Bophuthatswana;
- (d) on the date of the commencement of the said Act, were members of the 20 Transkei Intelligence Service by virtue of their appointment in terms of the Intelligence Service and State Security Council Act, 1987 (Act No. 67 of 1987), of Transkei;
- (e) on the date of the commencement of the said Act, were members of the Venda 25 National Intelligence Service by virtue of their appointment in terms of the Intelligence Service Act, 1988 (Act No. 31 of 1988), of Venda;
- (f) immediately before the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), were members of any intelligence service or intelligence structure of—
 - (i) any Government of a self-governing territory as defined in section 38(1) 30 of the Self-Governing Territories Constitution Act, 1971 (Act No. 21 of 1971); or
 - (ii) any political party or organisation;

“polygraphist” means a person who, in order to ascertain, confirm or examine in a 35 scientific manner the truthfulness or otherwise of statements made by another person, uses skills and techniques in conjunction with any equipment and instrument designed or adapted for that purpose;

“premises” means any site, place or location regardless of whether it is or forms part of any temporary or permanent structure, building, vessel, vehicle or aircraft;

“prescribed” means prescribed by regulation; 40

“private investigator” means a person who for reward—

- (a) investigates and furnishes information regarding the identity, actions, whereabouts, movements, affiliations, associations, habits, personal character, reputation, trustworthiness, loyalty, occupation, previous employment, integrity, creditworthiness, transactions, financial position, life history or back- 45 ground 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; 50
- (c) searches for missing persons, property or other assets, or investigates the costs relating to or responsibility for accidents, injuries or damage; or
- (d) conducts surveillance or counter-surveillance;

“regulation” means a regulation made under this Act;

“security equipment” means security equipment as defined in section 1 of the 55 Private Security Industry Regulation Act, 2001 (Act No. 56 of 2001);

“security service” means a service that entails—

- (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; 60
- (c) providing a reactive or response service in connection with the safeguarding of a person or property in any manner;

- (d) providing a service aimed at ensuring order and safety on premises used for sporting, recreational, entertainment or similar purposes;
 - (e) manufacturing, importing, distributing or advertising of monitoring devices contemplated in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992);
 - (f) performing the functions of a private investigator;
 - (g) performing the functions of a polygraphist;
 - (h) installing, servicing or repairing security equipment;
 - (i) monitoring signals or transmissions from electronic security equipment;
 - (j) performing the functions of a locksmith;
 - (k) performing the functions of a cryptographer;
 - (l) providing training on the services referred to in paragraphs (a) to (k);
 - (m) making a person or the services of a person available, whether directly or indirectly, for the rendering of any service referred to in paragraphs (a) to (l) to another person;
 - (n) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (m);
- “Service” means the South African Secret Service referred to in section 3;
- “staff forum” means a consultation forum for members on conditions of service and human resources;
- “strike” means a strike as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);
- “this Act” includes the regulations.

Application of Act

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

CHAPTER II

ESTABLISHMENT, COMPOSITION AND ORGANISATION OF AGENCY, SERVICE AND ACADEMY

Continued existence of Agency and Service

3. (1) The National Intelligence Agency and the South African Secret Service continue to exist and consist of the persons—
- (a) who became members in terms of the Intelligence Services Act, 1994 (Act No. 38 of 1994), whose names appear on the personnel list;
 - (b) appointed as members in terms of the Intelligence Services Act, 1994, after its commencement;
 - (c) appointed as members in terms of this Act after its commencement.
- (2) A former member of a non-statutory service may apply to have his or her years of service in a non-statutory service recognised for purposes of pension benefits, subject to the provisions of the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), if he or she became a member of the Agency or the Service between 1 January 1995 and 31 March 2004.
- (3) (a) The President must appoint a Director-General for each of the Intelligence Services.
- (b) A Director-General is the head and accounting officer of the Intelligence Service in question.

Composition of Agency and Service

4. (1) The Minister must for each of the Intelligence Services—
- (a) create posts of Deputy Director-General and of Assistant Director-General;
 - (b) establish chief directorates and directorates and prescribe the functions and post structures thereof;
 - (c) establish divisions and prescribe the functions and post structures thereof.

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

Establishment of South African National Academy of Intelligence

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

(2) The Academy—

(a) must provide training for persons in, or conduct such examinations or tests as a qualification for the appointment, promotion or transfer of persons in or to, the Intelligence Services or departments, as the case may be, as the Minister may prescribe; and 10

(b) may issue diplomas or certificates to persons who have passed such examinations or tests.

(3) The Academy must have a Training Fund of which the funding consists of— 15

(a) all moneys which immediately prior to the commencement of this Act were moneys defrayed for training under the Agency;

(b) money appropriated by Parliament from time to time for promoting training under this Act;

(c) any other money accruing to the Training Fund in terms of this Act or from any other source. 20

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

(b) Money in the Training Fund must be utilised to promote training under this Act, but money or other property donated or bequeathed to the Training Fund must be utilised in accordance with the conditions of the donation or bequest in question. 25

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

(5) (a) The end of the financial year of the Training Fund is on the last day of March in each year. 30

(b) The Chief Executive Officer must—

(i) keep records of money received by, and disbursements made from, the Training Fund and of its assets, liabilities and financial transactions;

(ii) at the end of each financial year, prepare annual financial statements reflecting money received by, and disbursements made from, the Training Fund and its assets and liabilities. 35

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

(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. 40

(7) The Academy may co-operate with any institution of higher learning, in the Republic or elsewhere, to achieve its objectives. 45

(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).

Appointment of head and deputy head of Academy 50

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

(2) The Minister must appoint a deputy head of the Academy who is responsible for the curriculum and research function of the Academy: Provided that if the post level of the deputy head is at the level of a deputy director-general, the Minister must make the appointment with the concurrence of the President. 55

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

Composition of Academy

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

Appointment, promotion, discharge, demotion and transfer of members 5

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

- (a) appoint any person as a member of the Intelligence Services or the Academy;
- (b) promote, discharge, demote or transfer any member:

Provided that such appointment, promotion, discharge, demotion or transfer in respect of a Deputy Director-General or equivalent post may only be effected in consultation with the President. 10

(2) A prescribed document signed by the Minister and certifying that any person has been appointed as a member is *prima facie* proof that such person has been so appointed.

Establishment of Ministerial Advisory Committee on Training

9. (1) There is hereby established a Ministerial Advisory Committee on Training which consists of— 15

- (a) the head of the Academy;
- (b) the deputy head of the Academy;
- (c) the heads of the National Intelligence Structures or their alternates; and
- (d) not more than 8 other persons appointed by the Minister on the basis of necessity and required expertise. 20

(2) The persons appointed under subsection (1)(d) may hold office for a renewable period of three years, and at least three of them must have extensive academic experience and knowledge.

(3) In addition to the members contemplated in subsection (1) the Minister must, subject to subsection (4), appoint a fit and proper person who is a South African citizen, with experience in higher education, to be the Chairperson of the Advisory Committee. 25

(4) The Minister must by notice in the *Gazette*, and by such other means as may be viable, invite nominations for the position of Chairperson of the Advisory Committee from the public. 30

(5) A member of the Advisory Committee who is not in the full-time employment of the State must be paid the remuneration and allowances determined by the Minister with the concurrence of the Minister of Finance.

(6) The period of office of the Chairperson is three years and may be renewed for a further period not exceeding two years. 35

(7) The functions of the Advisory Committee are to—

- (a) conduct research and make recommendations to the Minister on the formulation and review of policies on training;
- (b) assist the head and deputy head of the Academy to develop a curriculum and business plans for the Academy and to make recommendations to the Minister in that regard. 40

(8) The Advisory Committee must within three months after its establishment submit rules and procedures governing its functions to the Minister for approval.

(9) The Advisory Committee may, in consultation with the Minister, establish such subcommittees as may be necessary for the performance of its functions. 45

Heads of Intelligence Services and Academy

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

(2) The Director-General concerned or the Chief Executive Officer may, subject to the directions of the Minister and the provisions of this Act, make such rules and issue such directions as he or she may deem expedient for the efficient command and control of the Intelligence Services or the Academy, as the case may be. 50

(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— 55

- (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— 5
 - (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. 10
- (4) The Director-General concerned or the Chief Executive Officer must, as far as is reasonably practicable, take steps to ensure that—
- (a) national security intelligence, intelligence collection methods, sources of information and the identity of members of the Intelligence Services or the Academy, as the case may be, are protected from unauthorised disclosure; 15
 - (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 20
 - (c) the powers of the Intelligence Services or the Academy are limited to what is necessary for the purposes of the discharge of its functions in terms of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), and the Secret Services Act, 1978 (Act No. 56 of 1978).

Powers and duties of members 25

- 11.** (1) A member must, in the performance of his or her functions, obey all lawful directions received from a person having the authority to give such directions.
- (2) If a judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), is satisfied, on the grounds mentioned in a written application complying with directives issued under subsection (5), that— 30
- (a) there is on any premises information which has or could probably have a bearing on the functions of the Intelligence Services as contemplated in section 2 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), which information is of substantial importance and is necessary for the proper discharge of the functions of the Intelligence Services; 35
 - (b) such information cannot reasonably be obtained by other means, he or she may issue the Intelligence Services with a direction authorising any member when reasonably necessary—
 - (i) to enter such premises;
 - (ii) to search such premises with the purpose of obtaining such information; 40
 - (iii) to examine, copy, photograph or transcribe any article, document or other material on such premises; and
 - (iv) to remove any article, document or other material from the premises, for as long as is reasonably necessary, for the purposes of examining, copying, photographing or transcribing it, as the case may be. 45
- (3) (a) A direction referred to in subsection (2) must be issued for a specific period not exceeding three months.
- (b) A direction referred to in paragraph (a) may be executed by a member of the Intelligence Services who is authorised to do so by a senior member of such Intelligence Services holding a post of at least a director. 50
- (c) A member who executes a direction or assists in the execution thereof must, not later than the date of expiry of the direction referred to in paragraph (a), return any article, document or other material that was removed in terms of subsection (2)(b)(iv) to the premises in question unless the judge referred to in subsection (2) is of the opinion that the return of the said article, document or material will prejudice the security of the Republic, in which case the judge may direct that it be destroyed or stored elsewhere. 55
- (4) The judge referred to in subsection (2) may, upon a written application complying with the directives issued under subsection (5), extend the period of validity of the direction for a further period not exceeding three months at a time, if the extension is necessary for a reason mentioned in subsection (2). 60

(5) The Judges President of the several Divisions of the High Court of South Africa may jointly issue directives to uniformly regulate the manner and procedure of applications in terms of subsection (2).

General powers of Minister

12. (1) The Minister may, subject to this Act, do or cause to be done all things which are necessary for the efficient superintendence, control and functioning of the Intelligence Services and the Academy. 5

(2) Without derogating from the generality of his or her powers in terms of subsection (1), and notwithstanding anything to the contrary contained in any other law, the Minister may— 10

(a) acquire or hire any immovable property, with or without any buildings thereon, which is necessary for the efficient functioning of the Intelligence Services or the Academy, and erect or maintain any buildings on the property so acquired and, with the concurrence of the Minister of Finance, supply guarantees, indemnities and securities for those purposes; 15

(b) acquire and utilise any movable property and any other equipment which may be necessary for the efficient functioning of the Intelligence Services or the Academy;

(c) with the concurrence of the Minister of Finance, sell, let or otherwise dispose of any immovable property, with or without any building thereon, and anything referred to in paragraph (b), which is no longer required for the said purposes. 20

Retirement age of members

13. (1) A member must be retired on the date when he or she attains the age of 60 years: Provided that a person who was an employee of the Intelligence Services on the day immediately before the date of commencement of this Act may retire on reaching the retirement age or prescribed retirement date provided for in any other law applicable to him or her on that day. 25

(2) If a member attains the retirement age referred to in subsection (1) after the first day of a month, he or she shall be deemed to have attained it on the first day of the following month. 30

(3) If it is in the public interest to retain a member in his or her post beyond the age at which he or she is required to retire in terms of subsection (1), his or her services may, with his or her consent and with the approval of the Minister, be so retained from time to time, for further periods not exceeding five years in total. 35

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 40

(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— 45

(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: 50

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. 55

(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. 5
- (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. 10
- (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— 15
- (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. 20
- (8) (a) A person whose security clearance has been refused may, in the prescribed manner, appeal to the Minister.
- (b) Such appeal must— 25
- (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— 30
- (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. 35
- (10) All the provisions regarding security screening investigations, applicable to a person contemplated in subsection (1) applies to security screening of members.

Discharge of members on account of long absence without leave

- 15.** Any member who absents himself or herself, whether voluntarily or involuntarily, from his or her official duties without the permission of the Director-General concerned or the Chief Executive Officer, as the case may be, for a period exceeding 14 consecutive days, is deemed to have been discharged from the Intelligence Services or the Academy, as the case may be, on account of misconduct, with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty: Provided that if— 45
- (a) any member absents himself or herself from his or her official duties without such permission and accepts other employment, he or she is deemed to have been discharged even if he or she has not yet absented himself or herself for a period of 14 calendar days;
 - (b) a member deemed to have been so discharged again reports for duty, the Director-General concerned or the Chief Executive Officer, as the case may be, may, notwithstanding anything to the contrary contained in any law but subject to the approval of the Minister, reinstate the member in his or her former post or appoint him or her to any other post in the Intelligence Services or the Academy, as the case may be, on such conditions as the Director-General concerned or the Chief Executive Officer, as the case may be, may deem fit, and in that event the period of his or her absence from his or her official duties is deemed to have been absence on vacation leave without pay, or leave on such other conditions as the Director-General concerned or the Chief Executive Officer, as the case may be, may determine; 50 55 60

- (c) the Director-General concerned or the Chief Executive Officer, as the case may be, refuses to reinstate the member, the latter may appeal to the Minister, stating the reasons why he or she should be reinstated.

Discharge of members on account of ill-health

16. (1) Any member may be discharged from the Intelligence Services or the Academy, as the case may be, by the Director-General concerned or the Chief Executive Officer, as the case may be, if, after a hearing in the prescribed manner as to his or her state of health, such Director-General or the Chief Executive Officer, as the case may be, is of the opinion that the member is by reason of ill-health unfit to remain in the Intelligence Services or the Academy, as the case may be. 5
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(2) Any member discharged from the Intelligence Services or the Academy in terms of subsection (1) may in the prescribed manner appeal to the Minister, who may thereupon set aside or confirm his or her discharge.

Discharge or demotion of members on account of poor performance

17. (1) A member may be discharged from the Intelligence Services or the Academy or demoted by the Director-General concerned or the Chief Executive Officer, as the case may be, if, after a hearing in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, such Director-General or the Chief Executive Officer, as the case may be, is of the opinion that such member is incapable of performing his or her duties efficiently. 15
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(2) A member who has been discharged from the Intelligence Services or the Academy or demoted in terms of subsection (1) may in the prescribed manner appeal to the Minister, who may thereupon set aside or confirm his or her discharge or demotion, as the case may be.

Discharge or demotion of members on account of misconduct 25

18. (1) A member is guilty of misconduct if that member—

- (a) commits a crime or an offence; or
- (b) contravenes or fails to comply with any provision of this Act.

(2) A member may be discharged from the Intelligence Services or the Academy or demoted by the Director-General concerned or the Chief Executive Officer, as the case may be, if, after an inquiry in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, such Director-General or the Chief Executive Officer, as the case may be, is of the opinion that such member is guilty of misconduct. 30

(3) A member who has been discharged from the Intelligence Services or the Academy or demoted in terms of subsection (2) may in the prescribed manner appeal to the Minister, who may thereupon set aside or confirm his or her discharge or demotion, as the case may be. 35

Transfer and discharge of members on account of public interest, secondment of members, and temporary employment of other persons 40

19. (1) If it is in the public interest, the Minister may—

- (a) transfer any member from the post held by him or her to any other post—
 - (i) in the Intelligence Services or the Academy;
 - (ii) in any entity or establishment under the political control of the Minister; or
 - (iii) in another department, if the Minister responsible for the department in question has granted his or her approval,

whether or not such post is of a lower grade than that of the post held by him or her, and whether or not such post is within or outside the Republic: Provided that— 45

- (aa) upon such transfer the member's salary and salary scale and such benefits as may be approved by the Minister, may not be reduced or altered without his or her consent, except in accordance with sections 17 and 18;
- (bb) such transfer to another department, entity or establishment is subject to the conditions imposed by any law governing that transfer; and 50
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(cc) a member may not without his or her consent be transferred to a post outside the Intelligence Services or the Academy if such transfer will, save for his or her salary, result in a change in his or her conditions of service;

(b) discharge any member from the Intelligence Services or the Academy on such conditions as the Minister may determine. 5

(2) The Minister may, with the consent of a member and upon such conditions as the Minister may determine, second a member, for the performance of a particular service or for a specified period, to the service of any other department, or the Intelligence Services or the Academy, or to any other authority, board, entity, establishment, institution or body, but, while so seconded, the member remains subject to this Act and any other law which applies to him or her. 10

(3) The Minister may by contract engage any person for the performance of a particular service, or for any period and on such terms as the Minister may deem fit.

(4) Subject to subsection (3) the Minister may determine that a person engaged on contract be designated as a member for the duration of the contract. 15

Delegation of powers

20. (1) The Minister may in writing and on such conditions as he or she may deem fit delegate any power conferred upon or duty assigned to him or her by this Act, excluding any power conferred upon or duty assigned to him or her by sections 4(1)(a) and (b), 5(1), (2)(a) and (4)(c), 6(2), 9(3), (4), (5), (8) and (9), 10(1) and (2), 12, 13(3), 14(6), (7), (8) and (9) and (3), 15(1)(b) and (c), 16(2), 17(2), 18(3), 19(1) and (4), 21(2), 22(1), (6) and (7), 23(3)(a)(i) and (ii), 28(2), 30 and 38 to the Director-General concerned, the Chief Executive Officer or any other member of the Intelligence Services or the Academy, as the case may be. 25

(2) A Director-General or the Chief Executive Officer may delegate any power conferred upon or duty assigned to him or her by or under this Act to any other member of the Intelligence Services or the Academy, as the case may be, but not any power or duty delegated under subsection (1).

Labour relations 30

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

(2) The Minister must in the prescribed manner make provision for internal rules to deal with complaints, grievances and consultation on conditions of service and human resources within the Academy or Intelligence Services, as the case may be. 35

(3) A regulation made under this section with reference to members may not be published in the *Gazette* but must be notified to members in such manner as the Minister may determine.

Establishment of Intelligence Services Council on Conditions of Service

22. (1) There is hereby established an Intelligence Services Council on Conditions of Service which consists of not more than three persons or members appointed on contract by the Minister, one of whom must be Chairperson. 40

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

(3) The functions of the Intelligence Services Council are— 45

(a) to make recommendations to the Minister on the development of policies on conditions of service and human resource matters;

(b) to make recommendations to the Minister on improvements of salaries and fringe benefits of members on an annual basis;

(c) for purposes of making recommendations as contemplated in paragraphs (a) and (b)— 50

(i) to conduct research;

(ii) to review such policies;

(iii) to evaluate and monitor the implementation of such policies;

(iv) to invite the Directors-General, the Chief Executive Officer, the Chairpersons of the staff forum, members and any other interested party 55

to give representations on any matter relating to the purview of its functions;

- (v) to evaluate representations contemplated in subparagraph (iv);
- (vi) to confer with the Public Service Commission.

(4) The Chairperson may co-opt a Director-General or the Chief Executive Officer to participate in the functioning of the Intelligence Services Council: Provided that such Director-General or the Chief Executive Officer does not have voting powers. 5

(5) The conditions of service of the members of the Intelligence Services Council may be determined by the Minister in accordance with the conditions of service applicable to members. 10

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

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

CHAPTER III 15

GENERAL

Whole time of members to be at disposal of State

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

- (a) every member must place the whole of his or her time at the disposal of the State; 20
- (b) no member must perform or engage himself or herself to perform any remunerative work outside his or her employment; and
- (c) no member may claim as of right additional remuneration in respect of any official duty or work which he or she is required by a competent authority to perform. 25

(2) Notwithstanding subsection (1), the Minister may grant permission to a member to perform or engage himself or herself to perform remunerative work outside his or her employment.

(3) (a) Where a member receives any remuneration, allowance or other reward in connection with the performance of his or her work, otherwise than in accordance with this Act or in contravention of subsection (1)(b), such member must pay to the Intelligence Services or the Academy, as the case may be, an amount equal to the amount of such remuneration, allowance or reward or, where it does not consist of money, the value thereof as determined by the Director-General concerned or the Chief Executive Officer, as the case may be, and if he or she does not do so, such Director-General or the Chief Executive Officer may recover it from him or her by way of legal proceedings: 30
Provided that— 35

- (i) the member has a right of appeal to the Minister against the determination by the Director-General concerned or the Chief Executive Officer of the value of the remuneration, allowance or reward; 40
- (ii) the Minister may approve the retaining by a member of the whole or a portion of that remuneration, allowance or reward.

(b) Where a member has received any remuneration, allowance or other reward as contemplated in paragraph (a) which is still in his or her possession or under his or her control or in the possession or under the control of some other person on his or her behalf or, if it is money, has been deposited in any bank or other financial institution in his or her name or in the name of some other person on his or her behalf, the Director-General concerned or Chief Executive Officer, as the case may be, may in writing require such member or such other person or such bank or financial institution not to dispose thereof, or, if it is money, to retain a corresponding sum of money, as the case may be, pending the outcome of any legal proceedings for the recovery of such remuneration, allowance or reward or the value thereof. 45 50

(4) Any salary, allowance, fee, bonus or honorarium which may be payable in respect of the service of a member seconded to any other government or any other authority or to any board, entity, establishment, institution or body shall be paid to the Academy or the Intelligence Services: Provided that in special circumstances the Minister may approve the payment to such member of an amount equal to the said salary, allowance, fee, bonus or honorarium, or a portion thereof. 55

Reward for extraordinary diligence or devotion

24. The Director-General concerned or the Chief Executive Officer, as the case may be, may, with the approval of the Minister, award to any person who is or was a member, for extraordinary diligence or devotion in the performance of his or her duties as a member, such monetary or other reward as he or she considers appropriate in the circumstances. 5

Establishment of decorations and medals for members

25. The Minister may establish and introduce decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by him or her, subject to such conditions as may be prescribed, to any person who is or was a member in respect of his or her services as a member or to any other person who has rendered exceptional services to the Intelligence Services or the Academy. 10

Offences

26. (1) A person commits an offence if he or she—
- (a) not being a member— 15
 - (i) by words, conduct or demeanour pretends that he or she is a member;
 - (ii) encourages a member not to carry out his or her duty or to perform any act in conflict with his or her duty;
 - (iii) discloses classified information or material entrusted to him or her by the Director-General, the Chief Executive Officer or a member; 20
 - (b) fails to comply with section 23(3)(b);
 - (c) not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned or the Chief Executive Officer, as the case may be, makes use of any decoration or medal established or introduced under this Act, or of its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive; 25
 - (d) without the approval of the Minister, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol that indicates or conveys or purports to indicate or which is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of this Act or under the patronage of the Intelligence Services or the Academy or is in any manner associated or connected with the Intelligence Services or the Academy; 30
 - (e) enters upon any premises in contravention of any prohibition or restriction under section 33; 35
 - (f) being a former member—
 - (i) discloses classified information or material without the permission of the Director-General concerned or the Chief Executive Officer;
 - (ii) renders security services in contravention of section 28; or 40
 - (iii) contravenes section 29;
 - (g) being a member, discloses classified information or material without the permission of the Director-General concerned or the Chief Executive Officer, as the case may be.
- (2) Any person convicted of an offence in terms of this Act is liable, in the case of a contravention referred to in— 45
- (a) subsection (1)(a)(i) or (ii), to a fine, or to imprisonment for a period not exceeding six months;
 - (b) subsection (1)(a)(iii), to a fine or to imprisonment for a period not exceeding five years; 50
 - (c) subsection (1)(b) or (c), to a fine or to imprisonment for a period not exceeding one year;
 - (d) subsection (1)(d), to a fine or to imprisonment for a period not exceeding two years;
 - (e) subsection (1)(e), to a fine or to imprisonment for a period not exceeding 15 years; 55
 - (f) subsection (1)(f), to a fine or to imprisonment for a period not exceeding 10 years; or

- (g) subsection (1)(g), to a fine or to imprisonment for a period not exceeding 10 years.

Disclosure of classified information or material by former members

27. (1) Subject to section 10(3)(a), a former member may not disclose in any form or any manner any information or material to any other person unless the Director-General concerned or the Chief Executive Officer, as the case may be, has granted permission for the disclosure of such information or material. 5

(2) Subsection (1) applies to any information or material received by the former member during, or subsequent to, the former member's employment or other service with the Intelligence Services or the Academy, as the case may be, that was marked as classified or that the former member knew or ought reasonably to have known was classified. 10

(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. 15

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

Employment in private security industry

28. (1) A former member may not, for a period of three years after leaving the Intelligence Services or the Academy, render a security service unless he or she has obtained a clearance certificate from the Director-General concerned or the Chief Executive Officer, as the case may be. 20

(2) The Minister may prescribe the manner in which any former member may apply for a clearance certificate referred to in subsection (1). 25

Prohibited communications by former members

29. No former member may communicate in the Republic or elsewhere in a manner that is likely to be detrimental to the security of the Republic with any person—

- (a) who is or was a member, representative or associate of the Intelligence Services or the Academy or a foreign intelligence service; 30
- (b) who co-operates or has co-operated with the Intelligence Services or the Academy in respect of matters concerning the security of the Republic.

Appeals

30. (1) A former member may appeal to the Minister against a decision of the Director-General concerned or the Chief Executive Officer in terms of section 27(1) or 28(1). 35

(2) The Minister may establish a panel of appeal to advise him or her on the appeal process by a former member: Provided that—

- (a) persons appointed to the panel of appeal have a security clearance certificate issued by the Agency; 40
- (b) the remuneration and allowances to be paid to such persons be determined by the Minister with the concurrence of the Minister of Finance.

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

Conduct of former members

31. The Minister may prescribe the manner in which former members must conduct themselves in order to protect the security of the Republic and the interests of the Intelligence Services and the Academy. 45

Extra-territorial application of Act and jurisdiction

32. (1) Any act constituting an offence or misconduct under this Act and which is committed outside the Republic by any South African citizen or any person domiciled in the Republic is deemed to have been committed also in the Republic. 50

(2) Any offence or misconduct contemplated in subsection (1) may be tried by the appropriate court or board of enquiry at the place in the Republic where the accused or person concerned happens to be despite any law regarding jurisdiction.

Prohibition of access to premises

33. (1) The Minister may by notice in the *Gazette* and in any other appropriate manner prohibit or restrict access to any premises under the control of the Intelligence Services or the Academy. 5

(2) The Minister may take or cause to be taken such measures as are necessary for the security of, or for the enforcement of a prohibition of or a restriction on access to, such premises, and may in connection with any measures so taken cause such notices to be published or such warning notices to be made as may in each particular case be necessary. 10

Canteens

34. (1) Notwithstanding anything to the contrary contained in any other law, the Minister may establish canteens for the Intelligence Services or the Academy and for the organisational components thereof. 15

(2) The production of an official document signed by the Minister and indicating that he or she has established a canteen for the purposes of this section, is conclusive proof that it is a canteen falling under this section.

(3) For the purposes of this section “canteen” includes any mess, pub or institution of the Intelligence Services or the Academy, as the case may be, or any premises temporarily or permanently used for providing recreation, refreshments or necessities mainly for members or retired members or for the families of such members or retired members or for persons employed in any work in or in connection with any such mess, pub, institution or premises. 25

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

35. (1) Any civil proceedings against the State or any person in respect of anything done under this Act must be instituted within three years after the plaintiff or applicant has become aware or could reasonably be expected to have become aware of the cause of action, and notice in writing of such proceedings and of the cause thereof must be given to the defendant not less than one month before they are instituted. 30

(2) If the notice contemplated in subsection (1) must be given to the Director-General concerned or the Chief Executive Officer, as the case may be, it is deemed to be notification to the defendant concerned. 35

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

Missing members

36. (1) If a member is missing and the Director-General concerned or the Chief Executive Officer, as the case may be, is satisfied that his or her absence arose from the performance of his or her functions in terms of this Act, such member shall for all purposes be deemed to be still employed by the Intelligence Services or the Academy, as the case may be, until the day on which he or she again reports for duty or until the day on which a competent court issues an order whereby the death of such member is presumed. 40 45

(2) The salary or wages and allowances accruing to a member during his or her absence as contemplated in subsection (1) must, subject to subsection (4), be paid to his or her spouse or, if he or she has no spouse, to his or her other dependants, or to any person who is competent to receive and administer such salary or wages and allowances on behalf of his or her spouse or such other dependants. 50

(3) Payment of any salary or wages and allowances in terms of subsection (2) must for all purposes be deemed to be payment thereof to the member concerned, and an amount so paid shall not be recoverable by the State from any person.

(4) Notwithstanding subsection (2), the Director-General concerned or the Chief Executive Officer may in a prescribed manner direct that only a portion of the salary or wages and allowances of a member be paid or that no portion thereof be so paid.

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

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37. (1) The Minister may, in the event of war or when a state of emergency exists and having regard to the requirements of the Intelligence Services or the Academy, second any member for service or training in the South African National Defence Force or the South African Police Service.

(2) A member is, while so seconded for service or training, subject to the discipline, command and control applicable to the South African National Defence Force or the South African Police Service, as the case may be, but is not thereby exempted from the application of this Act. 10

Regulations

38. (1) The Minister may, after consultation with the Joint Standing Committee on Intelligence, make regulations as to— 15

- (a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, dismissal, suspension or demotion of members and the personnel management of those members in general;
- (b) the provision of medical aid to, the standard of physical and mental fitness of and the medical examination of members, and the medical, dental and hospital treatment of members and their families; 20
- (c) the provision of medical aid to and dental and hospital treatment of members who have retired, and their families, and the families of members who have died or die; 25
- (d) the numerical establishment of the Intelligence Services and the Academy, the conditions of service of the members thereof, the salaries, salary scales, wages and allowances of members and the systems relating to the administration and determination thereof and the various divisions, branches, grades, ranks and designations in the Academy or the Intelligence Services; 30
- (e) the establishment and maintenance of training institutions or centres for members or any other persons and the instruction, training, security, discipline and control of such members at such institutions or centres;
- (f) all matters relating to discipline, command and control of members of the Intelligence Services and the Academy, the suspension of members and the establishment of boards of inquiry into the conduct and discipline of members; 35
- (g) the deductions to be made from the salaries, wages or allowances of members;
- (h) the assembly of boards of inquiry appointed under this Act, the procedure at the proceedings of such boards and the attendance of witnesses thereat; 40
- (i) procedures to be followed in respect of cases of alleged medical unfitness and the constitution of hearings into the alleged ill-health of members;
- (j) procedures to be followed in respect of cases of presumed poor performance and the constitution of hearings into the alleged poor performance of members; 45
- (k) the recovery from a member of any deficit, loss, damage or expense which he or she has unlawfully caused to the State;
- (l) the retention of rank on retirement or resignation from the Academy or the Intelligence Services, and the award of honorary ranks;
- (m) the control over and administration of funds appropriated to the Academy or the Intelligence Services in order to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof; 50
- (n) all matters relating to representivity and equity not inconsistent with the objectives and principles of the Employment Equity Act, 1998 (Act No. 55 of 1998); 55
- (o) the conditions for and procedures regarding the permission of access to any premises under the control of the Intelligence Services or the Academy, as the case may be, and matters relating thereto;

- (p) any matter relating to the information, communications, computer and physical security of the Intelligence Services and the Academy;
- (q) the functioning of the Intelligence Services Council;
- (r) a code of conduct to be adhered to by members;
- (s) security screening investigations of members and persons to be employed in the Intelligence Services or the Academy, as the case may be;
- (t) any matter which in terms of this Act must or may be prescribed.

(2) Regulations contemplated in paragraphs (b) and (c) of subsection (1) must be made in consultation with the Minister responsible for the administration of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

(3) The security screening investigations contemplated in subsection (1)(s) may entitle the Intelligence Services to subject the member or person undergoing a security screening investigation to a polygraph test as prescribed, in order to determine the reliability of information provided by him or her.

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

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

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

(5) Regulations made under this Act may provide that any person who contravenes a provision thereof, or fails to comply therewith, is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

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

(7) A regulation made in terms of this section with reference to members need not be published in the *Gazette*, but must be notified to members to whom it applies in such manner as the Minister may determine.

Discoveries, inventions and improvements by members

39. (1) The rights in respect of all discoveries and inventions and all improvements in respect of processes, apparatus and machinery made by a member resulting from research undertaken by such member in the course of his or her employment as a member vest in the Intelligence Services or the Academy, as the case may be.

(2) The Minister may make the discoveries, inventions and improvements referred to in subsection (1) available for use in the public interest subject to such conditions and the payment of such fees or royalties as the Minister may determine.

(3) If the rights in respect of any discovery, invention or improvement vest in the Intelligence Services or the Academy in terms of subsection (1), the Minister may award to the person responsible for the discovery, invention or improvement such bonus as he or she deems fit, or make provision for financial participation by such person in the profits derived from the discovery, invention or improvement to such extent as the Minister may determine with the concurrence of the Minister of Finance.

(4) The Minister may apply for a patent in the name of the Intelligence Services or the Academy, as the case may be, in respect of any discovery, invention or improvement referred to in subsection (1), and the Intelligence Services or the Academy, as the case may be, must for the purposes of the Patents Act, 1978 (Act No. 57 of 1978), be regarded as the assignee of the discoverer or inventor concerned.

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.

Repeal of laws and savings

41. (1) The laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof. 5

(2) All assets, liabilities, rights and duties including funds, resources and administrative records of the Agency with respect to training must be transferred to the Academy within six months after the commencement of this Act, and shall vest in and be deemed to have been acquired or incurred by the Academy. 10

(3) A registrar of deeds shall, upon the production to him or her of a certificate by the Minister that immovable property described in the certificate vests in the Academy in terms of subsection (2), make such entries and endorsements as he or she may deem necessary in or on any relevant register, title deed or other document in his or her office, so as to give effect to subsection (2). 15

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

(5) If an inquiry into alleged improper conduct instituted in terms of a law repealed by subsection (1) has not been concluded at the commencement of this Act, such proceedings must be continued and concluded in accordance with the law in terms of which the inquiry was instituted, as if such law had not been repealed. 20

(6) Notwithstanding subsection (1), disciplinary proceedings may be instituted and concluded in terms of this Act against any person who at any time prior to the commencement of this Act is alleged to have committed an act which may have constituted improper conduct in terms of a law repealed by subsection (1) or any regulation or rule made thereunder: Provided that no proceedings may be so instituted unless the act concerned is substantially the same as an act constituting improper conduct in terms of this Act. 25

(7) Any subordinate legislation issued in terms of the Intelligence Services Act, 1994 (Act No. 38 of 1994), shall remain in force for a period of six months after the date of commencement of this Act. 30

Short title and commencement

42. This Act is called the Intelligence Services Act, 2002, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.

SCHEDULE

LAWS REPEALED OR AMENDED

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

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

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

MEMORANDUM ON THE OBJECTS OF THE INTELLIGENCE SERVICES BILL, 2002

1. BACKGROUND

In 2001, the Minister of Intelligence (hereinafter referred to as “the Minister”) gave directions for the review of the intelligence dispensation with regard to the administration, control and supervision of the Intelligence Services. This process was in support of the process which was already underway under the auspices of the Presidential Intelligence Budget Advisory Committee (PIBAC) chaired by the Deputy President, which looked at, amongst other issues, building capacity within the Intelligence Services, resourcing and creating a conducive environment for optimal efficiency.

Pursuant to these initiatives the Minister, in conjunction with the Minister for Public Service and Administration, established a Task Team on Conditions of Service, comprising members of the Intelligence Services and the Department of Public Service and Administration, to conduct comparative research on administration and human resource management in the Intelligence Services.

Since the inception of the intelligence dispensation in 1995, there has been no consistency in the way best practice was imported from the Public Service to the Intelligence Services. This was further exacerbated by the fact that the Intelligence Services are excluded from the application of labour laws and thus did not participate in the Public Service Collective Bargaining Council, although they were expected to follow agreements that were reached through the said process. This anomaly had to be corrected and this inequity needed to be addressed by both Ministers.

2. CONTENTS OF BILL

The Bill seeks to regulate—

- (a) the retirement age of members of the Intelligence Services, which is 60 years, and to provide for the Minister to extend the years of service to 65 years on account of public interest;
- (b) the establishment of the Intelligence Services Council on Conditions of Service which will comprise:
 - a Chairperson, Deputy Chairperson, Commissioner and research staff who will:
 - * conduct research and make recommendations to the Minister on conditions of service; and
 - * review and monitor implementation of policies on conditions of service;
- (c) the establishment of the South African National Academy of Intelligence which will provide intelligence training;
- (d) the activities of former members of the Intelligence Services relating to:
 - Disclosure of classified information which is prohibited without the approval of the Director-General concerned or the Chief Executive Officer;
 - Employment in the security industry which is restricted for a period of three years after the former member has left the Intelligence Service concerned unless permission is granted by the Director-General concerned;
 - Communication with associates, members or representatives of the Intelligence Services in a manner that is likely to be detrimental to the security of the Republic.

3. DEPARTMENTS CONSULTED

- (a) Department of Defence
- (b) Department of Health
- (c) Department of Labour
- (d) Department of Public Service and Administration
- (e) Department of Safety and Security
- (f) Presidential Intelligence Budget Advisory Committee

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

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

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