



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE PRESIDENT

No. 2081. 2 Desember 1994

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet, wat hierby ter algemene inligting gepubliseer word:

No. 40 van 1994: Wet op die Komitee van Parlementslede oor en Inspekteurs-generaal van Intelligensie, 1994.

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OFFICE OF THE PRESIDENT

No. 2081. 2 December 1994

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:

No. 40 of 1994: Committee of Members of Parliament on and Inspectors-general of Intelligence Act, 1994.

# WET

**Om voorsiening te maak vir die instelling van 'n Komitee van Parlementslede oor Intelligensie en sy werksaamhede te omskryf; en vir die aanstelling van Inspekteurs-generaal van Intelligensie en hulle werksaamhede te omskryf; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

*(Afrikaanse teks deur die President geteken.)  
(Goedgekeur op 23 November 1994.)*

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

## Woordomskrywing

1. In hierdie Wet tensy uit die samehang anders blyk, beteken—
  - (i) “Agentskap” die Nasionale Intelligensie-agentskap ingestel by artikel 3 van die Wet op Intelligensiedienste, 1994; (ii) 5
  - (ii) “Beoordelingskomitee” die Beoordelingskomitee oor Geheime Dienste ingestel by artikel 2 van die Wet op Geheime Dienste, 1978 (Wet No. 56 van 1978); (ix)
  - (iii) “Dienste” die Agentskap, die Suid-Afrikaanse Geheime diens, die Inligtingsafdeling van die Nasionale Weermag en die Nasionale Onderzoekdiens van die Suid-Afrikaanse Polisie; (xvii) 10
  - (iv) “geld” alle geld hoegenaamd wat deur 'n rekenpligtige beampte vir en ten behoeve van die Staat ontvang of gehou word; (xiv)
  - (v) “Grondwet” die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993); (vii) 15
  - (vi) “hierdie Wet” ook die regulasies; (xx)
  - (vii) “Hoof van 'n Diens” die Direkteur-generaal van die Agentskap of van die Suid-Afrikaanse Geheime diens, die Hoof van die Nasionale Weermag of die Kommissaris van die Suid-Afrikaanse Polisie; (x) 20
  - (viii) “Inspekteur-generaal” 'n persoon kragtens artikel 7 aangestel; (xi)
  - (ix) “intelligensie” die proses van insameling, evaluering, korrelering en vertolking van veiligheidsinligting, met inbegrip van bedrywighede in verband daarmee, deur die Dienste verrig; (xii)
  - (x) “Komitee” die Komitee van Parlementslede oor Intelligensie by artikel 2 ingestel; (vi) 25
  - (xi) “Kommissie” die Kommissie op Besoldiging van Verteenwoordigers bedoel in artikel 207 van die Grondwet; (v)
  - (xii) “Minister” die Minister aan wie die portefeulje van die Agentskap, die Suid-Afrikaanse Geheime diens, die Nasionale Weermag of die Suid-Afrikaanse Polisie kragtens artikel 88 van die Grondwet toegeken is; (xiii) 30
  - (xiii) “Nasionale Weermag” die Mag ingestel by artikel 224 van die Grondwet; (xv)
  - (xiv) “Ouditeur-generaal” die Ouditeur-generaal bedoel in artikel 191 van die Grondwet; (iii) 35
  - (xv) “regulasie” 'n regulasie kragtens hierdie Wet uitgevaardig; (xvi)
  - (xvi) “rekenpligtige beampte” die Hoof van 'n Diens; (i)
  - (xvii) “Suid-Afrikaanse Geheime diens” die Suid-Afrikaanse Geheime diens ingestel by artikel 3 van die Wet op Intelligensiedienste, 1994; (xix) 40
  - (xviii) “Suid-Afrikaanse Polisie” die diens bedoel in artikel 214 van die Grondwet; (xviii)
  - (xix) “teenintelligensie” teenintelligensie soos omskryf in artikel 1 van die Wet op Nasionale Strategiese Intelligensie, 1994; (viii)

# ACT

**To provide for the establishment of a Committee of Members of Parliament on Intelligence and to define its functions; and for the appointment of Inspectors-General of Intelligence and to define their functions; and to provide for matters connected therewith.**

*(Afrikaans text signed by the President.)  
(Assented to 23 November 1994.)*

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

## Definitions

1. In this Act, unless the context otherwise indicates—
- 5 (i) “accounting officer” means the Head of a Service; (xvi)  
 (ii) “Agency” means the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994; (i)  
 (iii) “Auditor-General” means the Auditor-General referred to in section 191 of the Constitution; (xiv)  
 10 (iv) “chairperson” means the person appointed under section 2(4)(b) as chairperson of the Committee; (xx)  
 (v) “Commission” means the Commission on Remuneration of Representatives referred to in section 207 of the Constitution; (xi)  
 (vi) “Committee” means the Committee of Members of Parliament on Intelligence established by section 2; (x)  
 15 (vii) “Constitution” means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (v)  
 (viii) “counter-intelligence” means counter-intelligence as defined in section 1 of the National Strategic Intelligence Act, 1994; (xix)  
 20 (ix) “Evaluation Committee” means the Secret Services Evaluation Committee established by section 2 of the Secret Services Act, 1978 (Act No. 56 of 1978); (ii)  
 (x) “Head of a Service” means the Director-General of the Agency or of the South African Secret Service, the Chief of the National Defence Force or the Commissioner of the South African Police Service; (vii)  
 25 (xi) “Inspector-General” means a person appointed under section 7; (viii)  
 (xii) “intelligence” means the process of gathering, evaluation, correlation and interpretation of security information, including activities related thereto, as performed by the Services; (ix)  
 30 (xiii) “Minister” means the Minister to whom the portfolio of the Agency, the South African Secret Service, the National Defence Force or the South African Police Service has been allocated in terms of section 88 of the Constitution; (xii)  
 (xiv) “money” means all money whatsoever received or held by an accounting officer for or on behalf of the State; (iv)  
 35 (xv) “National Defence Force” means the Force established by section 224 of the Constitution; (xiii)  
 (xvi) “regulation” means a regulation made under this Act; (xv)  
 (xvii) “Services” means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force and the National Investigation Service of the South African Police Service; (iii)  
 40 (xviii) “South African Police Service” means the service referred to in section 214 of the Constitution; (xviii)  
 (xix) “South African Secret Service” means the South African Secret Service established by section 3 of the Intelligence Services Act, 1994;  
 45 (xvi)

- (xx) "voorsitter" die persoon wat kragtens artikel 2(4)(b) as voorsitter van die Komitee aangestel is. (iv)

### Instelling van Komitee oor Intelligensie

2. (1) Daar word hierby 'n Komitee bekend as die Komitee van Parlementslede oor Intelligensie ingestel, wat, behoudens die Grondwet, die toesighoudende werksaamhede verrig wat in hierdie Wet uiteengesit word met betrekking tot die intelligensie- en teenintelligensiefunksies van die Dienste, en daarvoor aan die Parlement verslag doen. 5

(2) Die Komitee bestaan uit 11 lede van die Parlement.

(3) (a) Nege lede van die Komitee word deur die President aangestel ooreenkomstig die beginsel van proporsionele verteenwoordiging soos bepaal ooreenkomstig die formule in artikel 228(3)(c) van die Grondwet uiteengesit en met die instemming van die leiers van die politieke partye wat daarop geregtig is om ooreenkomstig daardie formule in die Komitee verteenwoordig te word. 10

(b) Twee lede van die Komitee word deur die President aangestel met die instemming van die party of partye wat setels in die Parlement hou, maar wat nie ingevolge paragraaf (a) in die Komitee verteenwoordig is nie: Met dien verstande dat as daar nie so 'n party is nie, daardie lede deur die President aangestel word met die instemming van die leiers van die partye wat setels in die Parlement hou. 15

(4) Die President stel een van die lede wat ingevolge subartikel (3) aangestel is as voorsitter van die Komitee aan. 20

(5) 'n Lid van die Komitee—

(a) word, behoudens paragraaf (b), as 'n lid aangestel totdat die Parlement waartoe hy of sy kragtens die Grondwet verkies is, ingevolge die Grondwet ontbind; 25

(b) kan, op versoek van die leier van sy of haar party aan die President, of as hy of sy homself of haarself op 'n wyse gedra wat volgens die oordeel van die President met die instemming van die Komitee 'n bedreiging vir die nasionale veiligheid uitmaak, as lid van die Komitee deur 'n ander lid van sy of haar party vervang word met die instemming van die leier van daardie party; 30

(c) kan by skriftelike kennisgewing aan die President bedank, in watter geval die President 'n plaasvervanger ooreenkomstig paragraaf (b) en subartikel (3) aanstel;

(d) kan die besoldiging en toelaes (as daar is) ontvang, wat die Kommissie bepaal. 35

(6) Die Komitee vergader op die tye en volg die prosedures wat by regulasie voorgeskryf word, maar die voorsitter kan bepaal wanneer die Komitee *in camera* sit.

(7) Die Komitee word by die verrigting van sy werksaamhede deur 'n beampte of beamptes in die Staatsdiens bygestaan wat vir dié doel deur die President na oorleg met die voorsitter en die Hoofde van die Dienste en die Inspekteurs-generaal aangewys word. 40

### Werksaamhede van Komitee

3. (1) Die werksaamhede van die Komitee is— 45

(a) om ondanks andersluidende bepalings van enige ander wet of die gemene reg—

(i) van die Ouditeur-generaal, behoudens die bepalings van die Wet op die Ouditeur-generaal, 1989 (Wet No. 52 van 1989), 'n ouditverslag betreffende die rekeninge en finansiële state van die rekenpligtige beampte aangaande die geld wat aan die administrasie en werksaamhede van 'n Diens bestee is, en aangaande die geld wat ingevolge artikel 5 van die Wet op die Spesiale Rekening vir Veiligheidsdienste, 1969 (Wet No. 81 van 1969), belê word, te verkry; 50

(ii) van die Beoordelingskomitee 'n verslag oor die geheime dienste en beoogde geheime dienste wat deur hom geëvalueer en hersien is, 55

(xx) "this Act" includes the regulations. (vi)

### Establishment of Committee on Intelligence

2. (1) There is hereby established a Committee to be known as the Committee of Members of Parliament on Intelligence, which shall, subject to the Constitution, perform the oversight functions set out in this Act in relation to the intelligence and counter-intelligence functions of the Services, and report thereon to Parliament.

(2) The Committee shall consist of 11 members of Parliament.

(3) (a) Nine members of the Committee shall be appointed by the President in accordance with the principle of proportional representation as determined in accordance with the formula set out in section 228(3)(c) of the Constitution and with the concurrence of the leaders of the political parties entitled to be represented on the Committee according to that formula.

(b) Two members of the Committee shall be appointed by the President with the concurrence of the party or parties holding seats in Parliament but which are not represented on the Committee in terms of paragraph (a): Provided that if there is no such party, such members shall be appointed by the President with the concurrence of the leaders of the parties holding seats in Parliament.

(4) The President shall appoint one of the members appointed in terms of subsection (3) as chairperson of the Committee.

(5) A member of the Committee—

(a) shall, subject to paragraph (b), be appointed as a member until the Parliament to which he or she has been elected under the Constitution, is dissolved in terms of the Constitution;

(b) may, at the request of the leader of his or her party to the President, or if he or she conducted himself or herself in a manner which in the opinion of the President with the concurrence of the Committee constitutes a threat to the national security, be substituted as a member of the Committee with another member of his or her party with the concurrence of the leader of that party;

(c) may resign by notice in writing to the President, in which event the President shall appoint a substitute in accordance with paragraph (b) and subsection (3);

(d) may receive such remuneration and allowances (if any) as the Commission may determine.

(6) The Committee shall meet at such times and follow such procedures as may be prescribed by regulation, but the chairperson shall have the power to determine when the Committee shall meet *in camera*.

(7) The Committee shall be assisted in the performance of its functions by an officer or officers in the Public Service designated for that purpose by the President, after consultation with the chairperson and the Heads of the Services, and the Inspectors-General.

### Functions of Committee

3. (1) The functions of the Committee are—

(a) notwithstanding anything to the contrary contained in any other law or the common law, to obtain from—

(i) the Auditor-General, subject to the provisions of the Auditor-General Act, 1989 (Act No. 52 of 1989), an audit report regarding the accounts and financial statements of the accounting officer regarding money expended on the administration and functions of a Service and regarding the money invested in terms of section 5 of the Security Services Special Account Act, 1969 (Act No. 81 of 1969);

(ii) the Evaluation Committee a report on the secret services and intended secret services evaluated and reviewed by it, together



- saam met enige kommentaar of aanbevelings wat die Beoordelingskomitee geskik ag, te verkry;
- (iii) van 'n regter soos omskryf in artikel 1 van die Wet op die Verbod op Onderskepping en Meeluistering, 1992 (Wet No. 127 van 1992), 'n verslag te verkry betreffende die werksaamhede deur hom of haar ingevolge daardie Wet verrig met inbegrip van statistieke betreffende sodanige werksaamhede, saam met die kommentaar of aanbevelings wat so 'n regter geskik ag: Met dien verstande dat so 'n verslag nie enige informasie vervat in 'n aansoek of lasgewing beoog in artikel 3 van daardie Wet mag openbaar nie;
- (iv) van elke Minister 'n verslag betreffende die begroting vir die Diens waarvoor hy of sy verantwoordelik is, te verkry;
- (b) om die verslag en sertifikaat wat ingevolge artikel 7(7)(d) aan hom deurgestuur is, te oorweeg en aanbevelings daarvoor te doen;
- (c) om alle voorgestelde wetgewing betreffende 'n Diens en enige ander intelligensie- en intelligensieverwante bedrywighede te oorweeg en aanbevelings daarvoor te doen, en om wetgewing in verband met sodanige Diens, intelligensie en bedrywighede te inisieer;
- (d) om regulasies kragtens artikel 6 van die Wet op Nasionale Strategiese Intelligensie, 1994, uitgevaardig, en regulasies betreffende die intelligensie- en teenintelligensiewerksaamhede van 'n Diens wat kragtens artikel 29 van die Wet op Intelligensiedienste, 1994, artikel 87 van die Verdedigingswet, 1957 (Wet No. 44 van 1957), of artikel 33 van die Polisie wet, 1958 (Wet No. 7 van 1958), uitgevaardig is, te hersien en aanbevelings daarvoor te doen;
- (e) om interdepartementele samewerking en die rasionalisering en afbakening van werksaamhede betreffende intelligensie en teenintelligensie tussen die Agentskap, die Suid-Afrikaanse Geheime diens, die Nasionale Weermag en die Suid-Afrikaanse Polisie diens te hersien en aanbevelings daarvoor te doen;
- (f) om ondersoek te gelas deur en 'n verslag te ontvang van die Hoof van 'n Diens of 'n Inspekteur-generaal betreffende enige klagte wat deur die Komitee van 'n lid van die publiek ontvang is aangaande enigets wat so 'n lid meen dat 'n Diens aan sy of haar persoon of eiendom berokken het: Met dien verstande dat die Komitee tevrede is dat so 'n klagte nie beuselagtig of kwelsugtig is of te kwader trou gemaak is nie;
- (g) om enige aangeleentheid met betrekking tot 'n Diens of intelligensie-bedrywigheid wat onder sy aandag kom en wat hy van belang ag by die bevordering van, respek vir, en beskerming van die regte wat in Hoofstuk 3 van die Grondwet verskans word na die Menseregte kommissie ingestel by artikel 115 van die Grondwet, te verwys en 'n verslag van daardie Kommissie betreffende die aangeleentheid te ontvang;
- (h) om aangaande enige aangeleentheid wat binne die trefwydte van hierdie Wet val en wat deur die President, die Minister of die Parlement na hom verwys is, te oorweeg en aanbevelings daarvoor te doen;
- (i) om die beamptes of liggame bedoel in subartikel (1)(a), (b) en (f) te versoek om enige aspek van 'n verslag te verduidelik;
- (j) om aangaande enige aspek met betrekking tot intelligensie en die nasionale veiligheid te beraadslaag, ondersoek te hou, getuies te dagvaar en aanbevelings te doen;
- (k) om met enige lid van die Kabinet wat ingevolge die Grondwet aangestel is, oorleg te pleeg betreffende die verrigting van die werksaamhede van die Komitee ingevolge hierdie Wet.

#### Toegang tot intelligensie, informasie en stukke

4. (1) Die Komitee het, ondanks andersluidende bepalinge van enige ander wet of die gemene reg, maar behoudens subartikel (2) en die voorbehoud by artikel 3(1)(a)(iii), by die verrigting van sy werksaamhede, toegang tot intelligensie, informasie en stukke in die besit of onder die beheer van 'n Diens, op voorwaarde dat—
- (a) sodanige toegang vir die verrigting van daardie werksaamhede nodig is;
- (b) met sodanige intelligensie, informasie en stukke gehandel word ooreenkomstig die skriftelike veiligheidsriglyne en maatreëls van, of die

- with any comments or recommendations which the Evaluation Committee may deem appropriate;
- (iii) any judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), a report regarding the functions performed by him or her in terms of that Act including statistics regarding such functions, together with any comments or recommendations which such judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction contemplated in section 3 of that Act;
- (iv) each Minister, a report regarding the budget for the Service for which he or she is responsible;
- (b) to consider and make recommendations on the report and certificate transmitted to it in terms of section 7(7)(d);
- (c) to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities;
- (d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994, and regulations regarding the intelligence and counter-intelligence functions of a Service, made under section 29 of the Intelligence Services Act, 1994, section 87 of the Defence Act, 1957 (Act No. 44 of 1957), or section 33 of the Police Act, 1958 (Act No. 7 of 1958);
- (e) to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the South African Secret Service, the National Defence Force and the South African Police Service;
- (f) to order investigation by and to receive a report from the Head of a Service or an Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property: Provided that the Committee is satisfied that such complaint is not trivial or vexatious or made in bad faith;
- (g) to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights entrenched in Chapter 3 of the Constitution to the Human Rights Commission established by section 115 of the Constitution, and to receive a report from such Commission concerning the matter;
- (h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, the Minister or Parliament;
- (i) to request the officials or bodies referred to in subsection (1)(a), (b) and (f) to explain any aspect of a report;
- (j) to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security;
- (k) to consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act.

#### Access to intelligence, information and documents

4. (1) The Committee shall, notwithstanding anything to the contrary contained in any other law or the common law, but subject to subsection (2) and the proviso to section 3(1)(a)(iii), in the performance of its functions, have access to intelligence, information and documents in the possession or under the control of a Service, on condition that—
- (a) such access is necessary for the performance of such functions;
- (b) such intelligence, information and documents shall be handled in accordance with the written security guidelines and measures of, or the

- voorwaardes voorgeskryf of bepaal deur, die voorsitter met die instemming van die Hoofde van die Dienste; en
- (c) sodanige stukke na ondersoek daarvan aan 'n Diens terugbesorg word soos deur die Hoof van daardie Diens bepaal.
- (2) (a) Ondanks andersluidende bepalings van hierdie Wet of enige ander wet, is 'n Diens nie verplig om aan die Komitee—
- (i) die naam of identiteit van enige persoon of liggaam wat by intelligensie- of teenintelligensiebedrywighede betrokke is, te openbaar nie;
- (ii) enige intelligensie, informasie of stuk in 'n vorm wat die identiteit van enige bron van sodanige intelligensie, informasie of stuk kan openbaar indien daardie intelligensie, informasie of stuk aan so 'n Diens onder 'n uitdruklike of geïmpliseerde versekering van vertroulikheid voorsien is, te openbaar nie;
- (iii) enige intelligensie- of teenintelligensiemetode wat deur 'n Diens aangewend word, te openbaar nie, indien so 'n openbaarmaking die naam of identiteit van enige persoon of liggaam wat by intelligensie- of teenintelligensiebedrywighede betrokke is of die identiteit van die bron van intelligensie, informasie of 'n stuk kan blootlê of tot die blootlegging daarvan kan lei: Met dien verstande dat hierdie bepaling nie die openbaarmaking belet nie van enige gedeelte van intelligensie, informasie of 'n stuk indien sodanige gedeelte geskei kan word van die gedeelte wat die naam, identiteit of metode bedoel in subparagrafe (i) en (ii) en hierdie subparagraaf kan blootlê.
- (b) Indien 'n geskil ontstaan weens—
- (i) die bepalings van paragraaf (a), oor die vraag of die openbaarmaking van enige intelligensie, informasie of stuk die naam of identiteit van enige persoon of liggaam wat by intelligensie- of teenintelligensiebedrywighede of die intelligensie- of teenintelligensiemetodes wat aangewend word, betrokke is, of die identiteit of die bron van enige intelligensie, informasie of stuk, kan blootlê of nie; of
- (ii) die bepalings van subartikel (1)(a) oor die vraag of toegang tot sekere intelligensie, informasie of enige stuk nodig is om die werksaamhede van die Komitee te verrig,
- word so 'n geskil vir beslissing verwys na 'n komitee bestaande uit die Inspekteur-generaal wat vir 'n betrokke Diens verantwoordelik is, die Hoof van daardie Diens, die voorsitter van die Komitee en die Minister verantwoordelik vir daardie Diens, welke beslissing van die Komitee afdoende is.
- (3) Die Komitee kan vir die doeleindes van die verrigting van sy werksaamhede van 'n Minister, die Hoof van 'n Diens of die Inspekteur-generaal van 'n Diens vereis om voor hom te verskyn ten einde getuienis af te lê, enige stuk of saak oor te lê en vrae wat aan hom of haar gestel word, te beantwoord: Met dien verstande dat so 'n persoon—
- (a) redelike kennis van so 'n verskyning moet ontvang;
- (b) van redelike besonderhede voorsien word betreffende die doel van die verskyning; en
- (c) daarop geregtig is om deur lede van daardie Diens bygestaan te word.

### Geheimhouding

5. (1) Die Komitee verrig sy werksaamhede op 'n wyse wat met die beskerming van nasionale sekuriteit ooreenkom.

(2) Geen persoon mag enige intelligensie, informasie of stuk waarvan die publikasie by wet beperk word en wat deur so 'n persoon by die verrigting van sy of haar werksaamhede ingevolge hierdie Wet verkry is, openbaar maak nie, behalwe—

- (a) in die mate waarin dit nodig is vir die behoorlike uitvoering van enige bepaling van hierdie Wet;
- (b) aan enige persoon wat dit noodsaaklikerwys nodig het vir die verrigting van enige werksaamheid ingevolge hierdie Wet;
- (c) met die skriftelike toestemming van die voorsitter, welke toestemming slegs met die instemming van die Hoof van 'n betrokke Diens en die betrokke Inspekteur-generaal gegee word; of
- (d) soos by regulasie voorgeskryf.



COMMITTEE OF MEMBERS OF PARLIAMENT ON  
AND INSPECTORS-GENERAL OF INTELLIGENCE ACT, 1994

Act No. 40, 1994

conditions prescribed or determined by, the chairperson with the concurrence of the Heads of the Services; and

(c) such documents shall after inspection thereof be returned to a Service as determined by the Head of that Service.

5 (2) (a) Notwithstanding anything to the contrary contained in this Act or any other law, a Service shall not be obliged to disclose to the Committee—

(i) the name or identity of any person or body engaged in intelligence or counter-intelligence activities;

10 (ii) any intelligence, information or document in a form which could reveal the identity of any source of such intelligence, information or document if that intelligence, information or document was provided to such Service under an express or implied assurance of confidentiality;

15 (iii) any intelligence or counter-intelligence method employed by a Service if such disclosure could reveal or lead to the revelation of the name or identity of any person or body engaged in intelligence or counter-intelligence activities or the identity of the source of any intelligence, information or document: Provided that this provision shall not prevent the disclosure of any part of intelligence, information or a document if such part can be separated from the part which could reveal the name, identity or method referred to in subparagraphs (i) and (ii) and this subparagraph.

(b) In the event of a dispute arising from—

25 (i) the provisions of paragraph (a) as to whether or not the disclosure of any intelligence, information or document may reveal the name or identity of any person or body engaged in intelligence or counter-intelligence activities or intelligence or counter-intelligence methods employed or the identity of the source of intelligence, information or document; or

30 (ii) the provisions of subsection (1)(a) as to whether access to certain intelligence, information or any document is necessary to perform the functions of the Committee,

such dispute shall be referred for determination to a committee composed of the Inspector-General responsible for a Service concerned, the Head of that Service, the chairperson of the Committee and the Minister responsible for that  
35 Service, which decision of the Committee shall be final.

(3) The Committee may, for the purposes of the performance of its functions, require a Minister, the Head of a Service or the Inspector-General of a Service to appear before it to give evidence, to produce any document or thing and answer questions put to him or her: Provided that such person shall—

40 (a) be given reasonable notice of such appearance;

(b) be given reasonable details regarding the purpose of such appearance; and

(c) have the right to be assisted by members of that Service.

**Secrecy**

45 5. (1) The Committee shall conduct its functions in a manner consistent with the protection of national security.

(2) No person shall disclose any intelligence, information or document the publication of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of this Act, except—

50 (a) to the extent to which it may be necessary for the proper administration of any provision of this Act;

(b) to any person who of necessity requires it for the performance of any function in terms of this Act;

55 (c) with the written permission of the chairperson, which permission may be given only with the concurrence of the Head of a Service and the Inspector-General concerned; or

(d) as prescribed by regulation.

(3) Iemand wat 'n bepaling van subartikel (1) oortree, is aan 'n misdaad skuldig en by skuldigbevinding strafbaar met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar.

### Verslag aan Parlement

6. (1) Die Komitee lê binne twee maande na 31 Maart in elke jaar aan die President en aan elke betrokke Minister 'n verslag voor aangaande die bedrywighede van die Komitee gedurende die voorafgaande jaar, tesaam met sy bevindings en die aanbevelings wat hy geskik ag, en die President laat so 'n verslag in die Parlement ter Tafel lê binne 15 sittingsdae van die Parlement, nadat die verslag aan hom of haar voorgelê is.

(2) Die Komitee kan op versoek van die President of die betrokke Minister of te eniger tyd wat die Komitee nodig ag die President of so 'n Minister voorsien van 'n spesiale verslag betreffende die verrigting van sy werksaamhede.

### Inspekteur-generaal

7. (1) Die President stel vir elke Diens 'n Inspekteur-generaal van Intelligensie aan wat—

- (a) deur die Komitee benoem is; en
- (b) goedgekeur is deur die Nasionale Vergadering en die Senaat by 'n besluit aangeneem deur minstens 75 persent van die lede wat by 'n gesamentlike vergadering teenwoordig is en stem:

Met dien verstande dat indien 'n benoeming nie volgens voorskrif van paragraaf (b) goedgekeur word nie, die Komitee 'n ander persoon moet benoem.

(2) 'n Inspekteur-generaal moet 'n Suid-Afrikaanse burger wees wat 'n gepaste en geskikte persoon is om so 'n amp te beklee.

(3) Die besoldiging en ander voorwaardes van diens van 'n Inspekteur-generaal, is die wat die President met die instemming van die Komitee bepaal en sodanige besoldiging word nie verminder en sodanige voorwaardes word nie nadelig verander nie gedurende sy of haar ampstermyn.

(4) 'n Inspekteur-generaal kan deur die President van sy of haar amp onthef word, maar slegs op grond van wangedrag, onvermoë of onbekwaamheid wat vasgestel is deur die Komitee.

(5) 'n Inspekteur-generaal wat onderworpe is aan 'n ondersoek deur die Komitee ingevolge subartikel (4), kan deur die President geskors word hangende 'n beslissing in sodanige ondersoek.

(6) 'n Inspekteur-generaal doen verantwoording aan die President.

(7) Die werksaamhede van 'n Inspekteur-generaal met betrekking tot die Diens ten opsigte waarvan hy of sy aangestel is, is—

- (a) om te moniteer of die Diens sy beleid nakom;
- (b) om die bedrywighede van die Diens te beoordeel;
- (c) om alle werksaamhede wat aan hom of haar deur die betrokke Minister toegewys is, te verrig;
- (d) om sertifikate ingevolge subartikel (11)(c) aan die betrokke Minister voor te lê; en
- (e) om verslae ingevolge artikel 3(1)(f) aan die Komitee voor te lê.

(8) Ondanks andersluidende bepalings van enige ander wet of die gemene reg, het 'n Inspekteur-generaal toegang tot enige intelligensie, informasie of perseel onder die beheer van die Diens ten opsigte waarvan hy of sy aangestel is indien daardie toegang deur die Inspekteur-generaal vir die verrigting van sy of haar werksaamhede nodig is, en hy of sy is geregtig om van die Hoof van die Diens en sy werknemers die intelligensie, informasie, verslae en verduidelikings op te eis wat die Inspekteur-generaal vir die verrigting van sodanige werksaamhede nodig ag.

(9) Geen toegang tot intelligensie, informasie of 'n perseel in subartikel (3) beoog, mag op enige grond van 'n Inspekteur-generaal weerhou word nie.

(10) 'n Inspekteur-generaal—

- (a) moet alle veiligheidsvereistes wat van toepassing is op die werknemers van die Diens ten opsigte waarvan hy of sy aangestel is, nakom; en
- (b) moet onpartydig en onafhanklik optree en sy of haar werksaamhede te goeder trou en sonder vrees, begunstiging, vooroordeel of benadeling verrig.

(3) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding five years.

### Report to Parliament

5 6. (1) The Committee shall, within two months after 31 March in each year, submit to the President and to each Minister concerned a report on the activities of the Committee during the preceding year, together with the findings made by it and the recommendations it deems appropriate, and the President shall cause  
10 such report to be tabled in Parliament within 15 days of session of Parliament after the report was submitted to him or her.

(2) The Committee may at the request of the President or the Minister concerned or at any other time which the Committee deems necessary, furnish the President or such Minister with a special report concerning any matter relating to the performance of its functions.

### 15 Inspector-General

7. (1) The President shall appoint for each Service an Inspector-General of Intelligence—

- (a) nominated by the Committee; and
- 20 (b) approved by the National Assembly and the Senate by a resolution adopted by a majority of at least 75 per cent of the members present and voting at a joint meeting;

Provided that if any nomination is not approved as required in paragraph (b), the Committee shall nominate another person.

25 (2) An Inspector-General shall be a South African citizen who is a fit and proper person to hold such office.

(3) The remuneration and other conditions of employment of an Inspector-General shall be determined by the President with the concurrence of the Committee and such remuneration shall not be reduced, nor shall such conditions be adversely altered during his or her term of office.

30 (4) An Inspector-General may be removed from office by the President, but only on the grounds of misbehaviour, incapacity or incompetence determined by the Committee.

(5) An Inspector-General who is the subject of an investigation by the Committee in terms of subsection (4) may be suspended by the President  
35 pending a decision in such investigation.

(6) An Inspector-General shall be responsible to the President.

(7) The functions of an Inspector-General are, in relation to the Service in respect of which he or she is appointed—

- (a) to monitor compliance by the Service with its policies;
- 40 (b) to review the activities of the Service;
- (c) to perform all functions designated to him or her by the Minister concerned;
- (d) to submit certificates to the Minister concerned pursuant to subsection (11)(c); and
- 45 (e) to submit reports to the Committee pursuant to section 3(1)(f).

(8) Notwithstanding anything to the contrary contained in any other law or the common law, an Inspector-General shall have access to any intelligence, information or premises under the control of the Service in respect of which he or she has been appointed if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to  
50 demand from the Head of the Service and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of such functions.

(9) No access to intelligence, information or premises contemplated in  
55 subsection (3) may be withheld from an Inspector-General on any ground.

(10) An Inspector-General—

- (a) shall comply with all security requirements applicable to the employees of the Service in respect of which he or she has been appointed; and
- 60 (b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.

(11) (a) Elke Hoof van 'n Diens lê ten opsigte van elke tydperk van 12 maande of die korter tydperk wat deur die betrokke Minister bepaal word, aan daardie Minister op die tye wat die Minister bepaal, 'n verslag voor aangaande die bedrywighede van daardie Diens gedurende daardie tydperk, en laat 'n afskrif van die verslag voorlê aan die Inspekteur-generaal wat vir daardie Diens aangestel is. 5

(b) (i) Elke Hoof van 'n Diens doen aan die Inspekteur-generaal wat vir daardie Diens aangestel is, verslag aangaande enige onwettige intelligensiebedrywigheid of wesenlike intelligensiemislukking van daardie Diens en van enige regstellende stappe wat gedoen is of wat beoog word om in verband met sodanige bedrywigheid of mislukking gedoen te word. 10

(ii) Die Hoof van 'n Diens lê die verslag in subparagraaf (i) bedoel aan die betrokke Inspekteur-generaal voor binne 'n redelike tyd nadat die onwettige intelligensiebedrywigheid of wesenlike intelligensiemislukking onder sy of haar aandag gekom het.

(c) So gou moontlik nadat 'n afskrif van 'n verslag bedoel in paragraaf (a) ontvang is, lê 'n Inspekteur-generaal aan die betrokke Minister 'n sertifikaat voor waarin vermeld word in watter mate daardie Inspekteur-generaal met die verslag tevrede is, en of enigiets deur daardie Diens verrig in die loop van sy bedrywighede gedurende die tydperk waarop die verslag betrekking het, na die mening van die Inspekteur-generaal— 15 20

(i) onwettig is of enige bevel wat deur daardie Minister gegee is, oortree; of

(ii) 'n onredelike of onnodige uitoefening deur daardie Diens van enige van sy bevoegdhede inhou.

(d) So gou moontlik na ontvangs van 'n verslag bedoel in paragraaf (a) en 'n sertifikaat van die Inspekteur-generaal bedoel in paragraaf (c), laat die betrokke Minister, behoudens artikel 4(2), die verslag en sertifikaat na die Komitee deurstuur. 25

(12) Die Minister wat vir 'n Diens verantwoordelik is, kan, na oorleg met die betrokke Inspekteur-generaal, die persone aanstel wat nodig is vir die verrigting van die werksaamhede van daardie kantoor van die Inspekteur-generaal, op die diensvoorwaardes wat op lede van daardie Diens van toepassing is. 30

### Regulasies

8. Die President kan regulasies uitvaardig aangaande alle aangeleenthede wat nodig of dienstig is om die oogmerke van hierdie Wet te verwesenlik, met inbegrip van maar nie beperk nie tot— 35

(a) die prosedures wat gevolg moet word aangaande die aanhoor van getuies en die bevoegdhede van die Komitee in verband daarmee;

(b) 'n eed of bevestiging van geheimhouding wat deur lede van die Komitee en personeellede ingevolge artikel 7(12) aangestel, afgelê of gedoen moet word; 40

(c) enigiets wat kragtens hierdie Wet voorgeskryf moet of kan word.

### Kort titel en inwerkingtreding

9. Hierdie Wet heet die Wet op die Komitee van Parlementslede oor en Inspekteurs-generaal van Intelligensie, 1994, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal. 45



COMMITTEE OF MEMBERS OF PARLIAMENT ON  
AND INSPECTORS-GENERAL OF INTELLIGENCE ACT, 1994

Act No. 40, 1994

(11) (a) Each Head of a Service shall, in respect of every period of 12 months or such lesser period as is specified by the Minister concerned, submit to that Minister, at such times as the Minister may specify, a report on the activities of that Service during that period, and shall cause a copy of such report to be  
5 submitted to the Inspector-General appointed for that Service.

(b) (i) Each Head of a Service shall report to the Inspector-General appointed for that Service regarding any unlawful intelligence activity or significant intelligence failure of that Service and any corrective action that has been taken or is intended to be taken in connection with such activity or failure.

10 (ii) A Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector-General concerned within a reasonable period after such unlawful intelligence activity or significant intelligence failure came to his or her attention.

(c) As soon as practicable after receiving a copy of a report referred to in  
15 paragraph (a), an Inspector-General shall submit to the Minister concerned a certificate stating the extent to which such Inspector-General is satisfied with the report and whether anything done by that Service in the course of its activities during the period to which the report relates, in the opinion of such Inspector-General—

20 (i) is unlawful or contravenes any direction issued by that Minister; or  
(ii) involves an unreasonable or unnecessary exercise by that Service of any of its powers.

(d) As soon as practicable after receiving a report referred to in paragraph (a) and a certificate of the Inspector-General referred to in paragraph (c), the  
25 Minister concerned shall, subject to section 4(2), cause the report and certificate to be transmitted to the Committee.

(12) The Minister responsible for a Service may, after consultation with the Inspector-General concerned, appoint such persons as may be necessary for the performance of the functions of that office of the Inspector-General, on such  
30 conditions of employment as are applicable to members of that Service.

**Regulations**

8. The President may make regulations as to all matters which are necessary or expedient for the achievement of the purposes of this Act, including but not limited to—

35 (a) the procedures to be followed regarding the hearing of evidence and the powers of the Committee in regard thereto;  
(b) an oath or affirmation of secrecy to be subscribed by members of the Committee, and staff appointed in terms of section 7(12);  
(c) anything which shall or may be prescribed under this Act.

**40 Short title and commencement**

9. This Act shall be called the Committee of Members of Parliament on and Inspectors-General of Intelligence Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

