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THE PRESIDENCY

No. 179 22 February 2001

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

No. 66 of 2000: General Intelligence Law Amendment Act, 2001



AIDS HELPLINE: 0800-123-22 Prevention is the cure

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the Acting President.)
(Assented to 20 February 2001.)

ACT

To amend the Intelligence Services Act, 1994, so as to provide for a retirement age for members; to regulate labour relations and strikes; to restrict former members of the National Intelligence Agency or South African Secret Service from using their skills to the detriment of the Agency or Service; to provide for the disposal of lawfully obtained material; and to delete certain obsolete references and provisions; to amend the National Strategic Intelligence Act, 1994, so as to further provide for the power of the Minister to make regulations; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 38 of 1994 as amended by section 35 of Act 47 of 1997

1. Section 1 of the Intelligence Services Act, 1994 (hereinafter referred to as the principal Act), is hereby amended by—

- (a) the substitution for the definition of “Agency” of the following definition:
“ ‘Agency’ means the National Intelligence Agency [established by] referred to in section 3;”;
- (b) the deletion of the definition of “Deputy President”; 10
- (c) the insertion after the definition of “Director-General” of the following definitions:
“ ‘former member’ means, any member of the Agency or the Service whose services have been terminated for any reason;
‘Intelligence Review Board’ means the Intelligence Review Board established by section 22B;”;
- (d) the substitution for the definition of “Minister” of the following definition:
“ ‘Minister’ means the Minister [designated by the President] as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);”;
- (e) the deletion of the definition of “misconduct”; and
- (f) the insertion after the definition of “Minister” of the following definitions:
“ ‘person’ includes—
- | | |
|-----------------------|----|
| (a) a natural person; | 25 |
| (b) a partnership; | |
| (c) a business trust; | |
| (d) a foundation; | |

- (e) any company or close corporation incorporated or registered in terms of any law; or
- (f) any other body of persons corporate or unincorporated; 'polygraphist' means a person who, in order to ascertain, confirm or examine in a 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 this purpose;"
- (g) the insertion after the definition of "prescribed" of the following definition: " 'private investigator' means a person who for the benefit of another person—
- (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 background 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;
- (c) searches for missing persons, property or other assets, or investigates the costs or responsibility for accidents, injuries or damage; or
- (d) conducts surveillance or counter-surveillance;
- 'security equipment' includes the following security equipment:
- (a) An alarm system;
- (b) a safe, vault or secured container;
- (c) satellite tracking;
- (d) closed circuit television;
- (e) other electronic monitoring or surveillance equipment or monitoring device;
- (f) intrusion detection, access control, bomb detection, fire detection, metal detection, x-ray inspection and telephone security equipment, used for the protection or safeguarding of persons or property;
- 'security service' includes the following services or activities:
- (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;
- (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 at 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) 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 (j) to another person;
- (l) managing, controlling or supervising the rendering of any of the services referred to in paragraphs (a) to (k);
- (m) creating an impression in any manner that one or more of the services in paragraphs (a) to (l) is rendered;"

Act No. 66, 2000 GENERAL INTELLIGENCE LAW AMENDMENT ACT, 2001

- (h) the substitution for the definition of "Service" of the following definition:
 " 'Service' means the South African Secret Service [established by referred to in section 3];";
- (i) the insertion after the definition of "Service" of the following definition:
 " 'strike' means a strike as defined in section 213 of the Labour Relations Act, 1995 (Act No. 66 of 1995);".

Substitution of section 3 of Act 38 of 1994

2. The following section is hereby substituted for section 3 of the principal Act:

"Continued existence of Agency and Service

3. (1) There continues to exist in the Republic the Agency and the Service, as the case may be, which consist of persons who became members in terms of this Act on 1 January 1995 and persons appointed as members in terms of the provisions of this Act after commencement.

(2) The Minister shall for the purpose of the Agency and the Service—

- (a) create deputy Directors-General posts;
- (b) establish chief directorates, directorates and divisions; and
- (c) prescribe the functions and post structures:

Provided that the creation of deputy Directors-General posts shall be done in consultation with the President."

Insertion of section 3A in Act 38 of 1994

3. The following section is hereby inserted after section 3 of the principal Act:

"Appointment, promotion, discharge, reduction in rank and transfer of members

3A. (1) The Minister may, subject to the provisions of this Act, appoint any person, with the exclusion of the Director-General, as a member, and any member may in accordance with the said provisions be promoted, discharged, reduced in rank or grade or transferred: Provided that such appointment, promotion, discharge, reduction in rank or transfer in respect of a Deputy Director-General shall be effected in consultation with the President.

(2) Any prescribed document signed by the Minister and certifying that any person has been appointed as a member shall be prima facie proof that such person has been so appointed."

Amendment of section 4 of Act 38 of 1994

4. Section 4 of the principal Act is hereby amended—
- (a) by the substitution for subsections (1) and (2) of the following subsections, respectively:
- "(1) The Director-General concerned shall, subject to the directions of the [President] Minister and the provisions of this Act, exercise command and control of the Agency or the Service, as the case may be.
- (2) The Director-General may, subject to the directions of the [President] 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 Agency or the Service, as the case may be."; and
- (b) by the deletion of subsection (4).

Amendment of section 5 of Act 38 of 1994

5. Section 5 of the principal Act is hereby amended—

(a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) A direction referred to in paragraph (a) may be executed by a member of the Agency or the Service, as the case may be, provided that such member has been authorised thereto by another member of such Agency or Service holding a post of at least [chief] general manager,” and

(b) by the insertion after paragraph (b) of the following paragraph: 10

“(c) A member who executes a direction or assists in the execution thereof shall not later than the expiry of the direction referred to in paragraph (a) return an article, document or other material that was taken into possession in terms of subparagraph (iv) of subsection (2) or cause it to be returned to the premises in question unless the judge referred to in subsection (2) is of the opinion that by returning the said article, document or material the security of the Republic will be prejudiced, and accordingly directs that it be disposed of otherwise.” 15

Substitution of section 7 of Act 38 of 1994

6. The following section is hereby substituted for section 7 of the principal Act: 20

“Retirement age for members

7. (a) A member shall have the right to retire and shall be so retired on the date when he or she attains the age of 60 years: Provided that a person who is an employee on the day immediately before the commencement of this Act, has the right to 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

(b) If such a member attains the said age 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

(c) 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 be retired in terms of subsection (1), he or she may with his or her consent, with the approval of the Minister, be so retained from time to time, for further periods which shall not, except with the approval of Parliament, granted by resolution, exceed two years.” 35

Amendment of section 8 of Act 38 of 1994

7. Section 8 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 40

“(1) Subject to [section 3(1)(a), (b), (c), (d), (e) and (f),] subsection 40

(2), no person may be appointed as a member [before] unless—

(a) information with respect to that person has been gathered in the prescribed manner in a security screening investigation by the Agency or the Service, as the case may be; and

(b) [the Deputy President or] the Minister after evaluating the [collected] gathered information, is reasonably of the opinion that such person may be appointed as a member without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to security interests of the Republic.”; and 45

(b) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 50

“(b) [the Deputy President or] the Minister obtains information regarding a person who became a member [in terms of section 3(1)(a), (b), (c), (d), (e) or (f)] which causes him or her to be reasonably of the opinion that that person could be a security risk or could possibly act in any manner prejudicial to security interests of the Republic.” 55

Amendment of section 9 of Act 38 of 1994

8. The following section is hereby substituted for section 9 of the principal Act:

“Discharge of members on account of long absence without leave

9. (1) Any member who absents himself or herself from his or her official duties without the permission of the Director-General concerned for a period exceeding 14 calendar days shall be deemed to have been discharged from the Agency or the Service, as the case may be, 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—

- (a) any member absents himself or herself from his or her official duties without such permission or accepts other employment, he or she shall be deemed to have been so discharged even if he or she has not yet so absented himself or herself for a period not exceeding 14 calendar days;
- (b) a member deemed to have been so discharged, again reports for duty, the Director-General concerned may, notwithstanding anything to the contrary contained in any law but subject to the approval of the Minister, reinstate him or her in his or her former post or appoint him or her to any other post in the Agency or the Service, as the case may be, on such conditions as the Director-General concerned may deem fit, and in that event the period of his or her absence from his or her official duties shall be deemed to have been absence on vacation leave without pay, or leave on such other conditions as the Director-General concerned may determine;
- (c) the Director-General refuses to reinstate the member, the latter may appeal to the Minister, stating the reasons why he or she should be reinstated.”

Amendment of section 12 of Act 38 of 1994

9. Section 12 of the principal Act is hereby amended by the substitution for item (aa) of subsection (1)(a)(ii) of the following item:

- “(aa) upon such a transfer a member’s salary and salary scale shall not be reduced without his or her consent, except [in accordance with the provisions of Chapter III] as prescribed.”

Substitution of section 13 of Act 38 of 1994

10. The following section is hereby substituted for section 13 of the principal Act:

“Delegation of powers

13. (1) The [Deputy Minister or] Minister may in writing on such conditions as he or she may deem fit delegate any power conferred upon him or her by this Act, excluding any power conferred upon him or her by section 3(2), 6(1), [8(3)(b)(i) and (ii)] 9, 10(2), 11(2), [12(1)(a)(ii) and 12(1)(b)], [15(9), 16, 17(4)] 19(3)(a) and (4), 19A(2), 21, 22B, 22E, 22F and 22G, 24(1), 25(2), 29, 30(2), (3) and (4) or 32(4), to the Director-General or any other member of the Agency or the Service, as the case may be, and any such power exercised in terms of such a delegation shall be deemed to have been exercised by such [Deputy President or] Minister:

(2) The Director-General may delegate any power conferred upon him or her by or under this Act to any other member of the Agency or the Service, as the case may be, and any power exercised in terms of such a delegation shall be deemed to have been exercised by that Director-General.”

Act No. 66, 2000 GENERAL INTELLIGENCE LAW AMENDMENT ACT, 2001

Repeal of section 14 of Act 38 of 1994

11. Section 14 of the principal Act is hereby repealed.

Repeal of section 15 of Act 38 of 1994

12. Section 15 of the principal Act is hereby repealed.

Repeal of section 16 of Act 38 of 1994

13. Section 16 of the principal Act is hereby repealed.

Repeal of section 17 of Act 38 of 1994

14. Section 17 of the principal Act is hereby repealed.

Repeal of section 18 of Act 38 of 1994

15. Section 18 of the Act is hereby repealed.

Insertion of section 19A in Act 38 of 1994

16. The following section is hereby inserted after section 19 of the principal Act:

“Labour Relations

19A. (1) No member of the Agency or the Service shall strike or induce or conspire with any other member of the Agency or the Service to strike. 15
 (2) The Minister shall in the prescribed manner make provision for internal mechanisms with a view to fair labour practices and proper consultation on conditions of service within the Agency and the Service.
 (3) A regulation made under this section with reference to members may not be published in the *Gazette* but shall be notified to members in such manner as the Minister may determine.” 20

Substitution of section 22 of Act 38 of 1994

17. The following section is hereby substituted for section 22 of the principal Act:

“Offences

22. (1) Any person who— 25
 (a) not being a member [who]—
 (i) by words, conduct or demeanour pretends that he or she is such a member;
 (ii) persuades any member to omit to carry out his or her duty or to do any act in conflict with his or her duty; or 30
 (iii) is an accomplice to the commission of any act whereby any lawful order given to a member or any regulation may be evaded;
 (b) [subpoenaed in terms of section 15 to appear as a witness at an enquiry who fails to attend at the time and place mentioned in the subpoena, or having attended, refuses to answer all questions lawfully put out to him or her] fails to comply with a requirement in terms of section 19(3)(b); 35
 (c) [subpoenaed in terms of section 15 to appear as a witness at an enquiry and at any such enquiry makes any false statement on oath knowing it to be false] not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned, makes use of any decoration or medal established or introduced under this Act, or of its 40

- bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive;
- (d) [who unlawfully and intentionally violates a provision of the regulations mentioned in the second proviso to section 16;] 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 indicating or conveying or purporting to indicate or is calculated or is likely to lead other persons to believe or infer that such activity is carried on or under or by virtue of this Act or under the patronage of the Agency or the Service, as the case may be, or is in any manner associated or connected with the Agency or the Service; 5
- (e) who enters upon or is on or in any premises in contravention of any prohibition or restriction under section 24, 10
- (f) who, not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned, makes use of any decoration or medal established or introduced under this Act, or of its bar, clasp or ribbon, or anything to closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive; 15
- (g) who, without the approval of the Deputy President or 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 indicating or conveying or purporting to indicate or convey or is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Agency or the Service, as the case may be, or is in any manner associated or connected with the Agency or the Service;] 20
- shall be guilty of an offence. 25
- (2) Any person convicted of an offence under this Act shall be liable, in the case of a contravention of— 30
- (a) subsection (1)(a) [or (b)], to a fine, or to imprisonment for a period not exceeding six months;
- (b) subsection (1) [(c)] (b) or (c), to [the penalties prescribed by law for perjury] a fine, or to imprisonment for a period not exceeding one year; 35
- (c) subsection (1)(d) [(e) or (f)], to a fine, or to imprisonment for a period not exceeding [one] two years;
- (d) subsection (1) [(g)] (e), to a fine, or to imprisonment for a period not exceeding [two] 15 years; or 40
- (e) [subsection 1(h)] sections 22A, 22B, 22C(1), 22D and 22E(1), to a fine or to imprisonment for a period not exceeding 15 years.”.

Insertion of section 22A in Act 38 of 1994

18. The following sections are hereby inserted after section 22 of the principal Act: 45

“Disclosure of classified information by former members of Agency or Service

- 22A.** (1) A former member may not disclose in any form or any manner any information or material to any other person unless— 50
- (a) the person to whom the information or material is disclosed is authorised by the Director-General to receive it;
- (b) the Intelligence Review Board has granted permission for the disclosure of the information or material.

(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 Agency or Service—

(a) that was marked as classified or that the former member knew or ought reasonably to have known was classified;

(b) that the former member knew or ought reasonably to have known was in the process of being classified at the time of disclosure.

Establishment of Intelligence Review Board

22B. (1) An Intelligence Review Board is hereby established, consisting of not less than three but not more than five persons appointed by the Minister of whom one shall be designated by him or her as the chairperson.

(2) The functions of the Intelligence Review Board are to—

(a) consider and approve any application by a former member to disclose information or material in terms of subsection (1);

(b) perform any other prescribed function.

(3) The Minister shall appoint as members of the Board, fit and proper persons with integrity.

(4) No person shall be appointed as a member of the Intelligence Review Board before a security clearance has been issued in respect of that person by the relevant authority.

(5) The Minister may determine—

(a) the term of office of the members of the Board;

(b) with the concurrence of the Minister of Finance, the remuneration and allowances to be paid to members of the Board;

Provided that members of the Board who are employees appointed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and members of the Agency or the Service, as the case may be, shall not be entitled to such remuneration and allowances; and

(c) any other conditions of appointment.

(6) The Minister may remove a member of the Intelligence Review Board from office prior to the expiry of that member's term of office if—

(a) a member of the Intelligence Review Board is found guilty of an offence or a misdemeanour as prescribed;

(b) is unable to carry out responsibilities as a member of the Intelligence Review Board;

(c) the security clearance of the member is withdrawn.

(7) The Minister may prescribe all matters which are necessary or expedient for the functioning of the Intelligence Review Board.

Prohibited communications by former members

22C. (1) No former member of the Agency or Service, as the case may be, 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 Agency or the Service, as the case may be;

(b) who co-operates or has co-operated with the Agency or the Service, as the case may be, in respect of matters concerning the security of the Republic.

(2) Subsection (1) does not apply to communications of a purely personal nature.

Prohibited employment by former members

22D. (1) No former member may utilise in the Republic or elsewhere any skills, information or material acquired as a result of his or her employment by the Agency or the Service in any manner, which may be detrimental to the security of the Republic or to the interests of the Agency or Service, as the case may be. 5

Employment in private security industry

22E. (1) A former member may not render a security service for a period of three years after leaving the Agency or the Service, as the case may be, unless he or she has first obtained a clearance certificate from the Director-General. 10

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

Appeals

22F. (1) A former member may appeal to the Minister against the decision of the Intelligence Review Board in terms of section 22B(2). 15

(2) A former member may appeal to the Minister against the decision of the Director-General to issue a clearance certificate in terms of section 22E.

(3) The Minister may prescribe the procedure of appeal by former members. 20

Conduct of former members

22G. (1) The Minister may prescribe the manner in which former members of the Agency or the Service may conduct themselves in order to protect the interests of the Agency or the Service and the security of the Republic. 25

(2) Regulations made by the Minister in terms of sections 22B, 22E, 22F and 22G shall be made by notice in the *Gazette*."

Amendment of section 26 of Act 38 of 1994

19. Section 26 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 30

"(1) Any civil proceedings against the State or any person in respect of anything done in pursuance of this Act, shall be instituted within [two] three years after becoming aware that the cause of action arose, and notice in writing of any such proceedings and of the cause thereof shall be given to the defendant not less than [one month] 30 calendar days before it is instituted." 35

Amendment of section 28 of Act 38 of 1994

20. Section 28 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of the [Police Act, 1958 (Act No. 7 of 1958),] South African Police Service Act, 1995 (Act No. 68 of 1995), relating to the establishment or function of a service or training in, the Police Reserve, shall not apply to any member of the Agency or the Service." 40

Amendment of section 29 of Act 38 of 1994

21. Section 29 of the principal Act is hereby amended by—

(a) the substitution for paragraph (f) of subsection (1) of the following paragraph: 45

"(f) [the definition of offences against duty and discipline and, generally, the control and, discipline of the Agency and the Service] as to all matters relating to discipline, command and control of members of the Agency or the Service;"

- (b) the deletion of paragraphs (k), (l), (m), (n), (p), (q) and (r) of subsection (1);
- (c) the substitution for paragraph (i) of subsection (1) of the following paragraph:
 “(i) [the charging of members with misconduct] procedures to be followed in respect of cases of alleged or presumed medical unfitness;” 5
- (d) the substitution for paragraph (j) of subsection (1) of the following paragraph:
 “(j) [appeals in terms of this Act] procedure to be followed in respect of cases of alleged or presumed inefficiency;”;
- (e) the substitution of paragraph (u) of subsection (1) for the following paragraph:
 “(u) [the regulation of labour relations and the creation of accompanying structures] all matters relating to representivity and equity, as far as is possible in accordance with the Employment Equity Act, 1998 (Act No. 55 of 1998).;” and 10
- (f) the deletion of subsection (3).

Repeal of section 31 of Act 38 of 1994 15

22. Section 31 of the principal Act is hereby repealed.

Deletion of expression “the Deputy President or” in Act 38 of 1994

23. The principal Act is hereby amended by the deletion of the expression “the Deputy President or” wherever it occurs.

Amendment of section 1 of Act 39 of 1994 20

24. Section 1 of the National Strategic Intelligence Act, 1994, is hereby amended by the insertion after the definition of “Nicoc” of the following definition:

“ ‘prescribed’ means prescribed by regulation;”.

Amendment of section 4 of Act 39 of 1994

25. Section 4 of the National Strategic Intelligence Act, 1994 is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph: 25

“(f) the [head of the service of the South African Police Service under which its intelligence division falls] head of the intelligence division of the South African Police Service.”

Amendment of section 6 of Act 39 of 1994 30

26. Section 6 of the National Strategic Intelligence Act 1994, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 “(1) The Minister may, subject to the provisions of subsection (2), make such regulations as [are] to any matter which is necessary or expedient to be prescribed in order that the purpose of [effective administration of] this Act may be achieved.” 35
- (b) by the insertion after subsection (2) of the following subsection:
 “(2A) A regulation made in terms of this section may not be published in the Gazette but shall be notified to persons to whom it applies in such manner as the Minister may determine.” 40

Short title and commencement

27. This Act is the General Intelligence Law Amendment Act, 2000, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.