

(29 July 2013 – to date)

[This is the **current** version and applies as from **29 July 2013**, i.e. the date of commencement of the General Intelligence Laws Amendment Act 11 of 2013 – **to date**]

INTELLIGENCE SERVICES ACT 65 OF 2002

(Government Notice 236 in Government Gazette 24390 dated 13 February 2003. Commencement date: 13 February 2003.

To be amended by:

General Intelligence Laws Amendment Bill, 2023

as amended by:

General Intelligence Laws Amendment Act 52 of 2003 – Government Notice 83 in Government Gazette 25961 dated 30 January 2004. Commencement date: 14 May 2004 [Proc. 27 in Gazette 26363 dated 17 May 2004]

Public Service Amendment Act 30 of 2007 – Government Notice 22 in Government Gazette 30675 dated 17 January 2008. Commencement date: 1 April 2008 [Proc. R8 in Gazette 30935 dated 1 April 2008]

General Intelligence Laws Amendment Act 11 of 2013 – Government Notice 528 in Government Gazette 36695 dated 23 July 2013. Commencement date: 29 July 2013 [Proc 32 in Gazette 36714 dated 29 July 2013]

*(English text signed by the President.)
(Assented to 27 September 1996.)*

ACT

To regulate the establishment, administration, organisation and control of the State Security Agency; to establish and regulate the Intelligence Council on Conditions of Service; to repeal certain laws; and to provide for certain transitional measures and savings; and to provide for matters connected therewith.

(Long title substituted by section 52 of Act 11 of 2013)

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

Prepared by:

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SCHEDULE – LAWS REPEALED

CHAPTER I DEFINITIONS AND APPLICATION OF ACT

1. Definitions

In this Act, unless the context indicates otherwise –

“Academy”

(Definition of "Academy" deleted by section 13(a) of Act 11 of 2013)

"accounting officer" means the accounting officer as defined in section 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);

(Definition of "accounting officer" inserted by section 13(b) of Act 11 of 2013)

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

“Agency” means the State Security Agency referred to in section 3;

(Definition of "Agency" substituted by section 13(c) of Act 11 of 2013)

"Auditor-General" means the Auditor-General referred to in section 188 of the Constitution;

(Definition of "Auditor-General" inserted by section 13(d) of Act 11 of 2013)

“Chief Executive Officer”

(Definition of "Chief Executive Officer" deleted by section 13(e) of Act 11 of 2013)

"classified information" means the State information that has been classified under national legislation;

(Definition of "classified information" inserted by section 13(d) of Act 11 of 2013)

"Council" means the Intelligence Council on Conditions of Service established by section 22;

(Definition of "Council" inserted by section 13(d) of Act 11 of 2013)

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

(Definition of "counter-intelligence" substituted by section 8(a) of Act 52 of 2003)

"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 Agency or of the former National Intelligence Agency, South African Secret Service or South African National Academy of Intelligence whose services have been terminated for any reason;

(Definition of "former member" substituted by section 8(b) of Act 52 of 2003)

(Definition of "former member" substituted by section 13(f) of Act 11 of 2013)

"Intelligence Services"

(Definition of "Intelligence Services" deleted by section 13(g) of Act 11 of 2013)

"Intelligence Services Council"

(Definition of "Intelligence Services Council" deleted by section 13(h) of Act 11 of 2013)

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

"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;

"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), the Azanian Peoples Liberation Army (APLA), the Pan Africanist Security Service of the Azanian Peoples Liberation Army and the Department of Intelligence and Security of the African National Congress;

“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 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 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 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 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 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) 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 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;

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

(Definition of “security competence” inserted by section 13(i) of Act 11 of 2013)

“security equipment” means security equipment as defined in section 1 of the 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;

- (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”

(Definition of "Service" deleted by section 13(j) of Act 11 of 2013)

“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.

"vetting investigation" means vetting investigation as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994).

(Definition of "vetting investigation" inserted by section 13(k) of Act 11 of 2013)

2. Application of Act

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

(Heading of Chapter II substituted by section 14 of Act 11 of 2013)

3. Continued existence of Agency

(Heading of section 3 substituted by section 15(a) of Act 11 of 2013)

- (1) The State Security Agency referred to in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), and established by virtue of Proclamation No. 59 of 2009, continues to exist and consists of the following persons—

(Words in section 3(1) preceding paragraph (a) substituted by section 15(b) of Act 11 of 2013)

- (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.

- (1A) The following government components listed in Part A of Schedule 3 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), as that Part read immediately prior to the commencement of the General Intelligence Laws Amendment Act, 2013, are hereby absorbed into and make up the State Security Agency:

- (a) Electronic Communications Security (Pty) Ltd;
- (b) the South African National Academy of Intelligence;
- (c) the National Intelligence Agency; and
- (d) the South African Secret Service.

(Section 3(1A) inserted by section 15(c) of Act 11 of 2013)

- (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 the Agency.

(b) The Director-General is the head and accounting officer of the Agency.

(Section 3(3) substituted by section 15(d) of Act 11 of 2013)

4. Composition of Agency

(1) The Minister must for the Agency -

(a) create posts at the equivalent level of Deputy Director-General;

(b) establish branches, chief directorates and directorates and prescribe the functions and post structures thereof;

(c) establish divisions and components and prescribe the functions and post structures thereof.

(2) The creation of posts at the equivalent level of Deputy Director-General must be done in consultation with the President.

(Section 4 substituted by section 16 of Act 11 of 2013)

5. Establishment of Training Fund for Agency

(Heading of section 5 substituted by section 17(a) of Act 11 of 2013)

(1)

(Section 5(1) amended by section 42 read with the Schedule to Act 30 of 2007)

(Section 5(1) deleted by section 17(b) of Act 11 of 2013)

(2) The Agency -

(Words in section 5(2) preceding paragraph (a) substituted by section 17(c) of Act 11 of 2013)

(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 Agency or departments, as the case may be, as the Minister may prescribe; and

(Section 5(2)(a) substituted by section 17(d) of Act 11 of 2013)

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

(3) The Agency must have a Training Fund of which the funding consists of -

(Words in section 5(3) preceding paragraph (a) substituted by section 17(e) of Act 11 of 2013)

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

(Section 5(3)(a) substituted by section 17(f) of Act 11 of 2013)

- (aA) all moneys which immediately prior to the commencement of the General Intelligence Laws Amendment Act, 2011, were moneys defrayed for training under the South African National Academy of Intelligence;

(Section 5(3)(aA) inserted by section 17(g) of Act 11 of 2013)

- (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.

(4)

- (a) The Training Fund must be administered by the Director-General.

(Section 5(4)(a) substituted by section 17(h) of Act 11 of 2013)

- (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.

- (c) The Director-General 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.

(Section 5(4)(c) substituted by section 17(i) of Act 11 of 2013)

(5)

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

- (b) The Director-General must -

(Words in section 5(5)(b) preceding subparagraph (i) substituted by section 17(j) of Act 11 of 2013)

- (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.
- (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)

(Section 5(6) deleted by section 17(k) of Act 11 of 2013)

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

(Section 5(7) substituted by section 17(l) of Act 11 of 2013)

(8) The accreditation and recognition of the Agency's qualifications must be done in accordance with the provisions of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008).

(Section 5(8) substituted by section 17(l) of Act 11 of 2013)

6.

(Section 6 repealed by section 18 of Act 11 of 2013)

7.

(Section 7 repealed by section 19 of Act 11 of 2013)

8. Appointment, promotion, discharge, demotion and transfer of members

(1) The Minister may, subject to this Act -

(a) appoint any person as a member of the Agency;

(Section 8(1)(a) substituted by section 20 of Act 11 of 2013)

(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.

(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.

9. Establishment of Ministerial Advisory Committee on Training

(1) There is hereby established a Ministerial Advisory Committee on Training, which consists of -

(a)

(b)

(c) the heads of the National Intelligence Structures or their alternates; and

- (d) not more than eight other persons appointed by the Minister on the basis of necessity and required expertise.

(Section 9(1) substituted by section 21(a) of Act 11 of 2013)

- (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.
- (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.
- (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.
- (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 Director-General to develop a curriculum and to make recommendations to the Minister in that regard.

(Section 9(7)(b) substituted by section 21(b) of Act 11 of 2013)

- (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.

10. Head of Agency

(Heading of section 10 substituted by section 22(a) of Act 11 of 2013)

- (1) The Director-General must, subject to the directions of the Minister and this Act, exercise command and control of the Agency.

(Section 10(1) substituted by section 22(b) of Act 11 of 2013)

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

- (a) conditions of service and human resources of the Agency: Provided that such functional directives must be submitted to the Council for consideration; and
- (b) any other matter he or she may deem expedient for the efficient command and control of the Agency.

(Section 10(2) substituted by section 9(a) of Act 52 of 2003)

(Section 10(2) substituted by section 22(b) of Act 11 of 2013)

(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 –

(Words in section 10(3) preceding paragraph (a) substituted by section 9(b) of Act 52 of 2003)

(Words in section 10(3) preceding paragraph (a) substituted by section 22(c) of Act 11 of 2013)

- (a) physical security;
- (b) computer security;
- (c) communication security;
- (d) protection of classified information;
- (e)

(Section 10(3)(e) deleted by section 9(c) of Act 52 of 2003)

- (f) any other matter that is necessary for the intelligence and counter-intelligence functions of the Agency.

(Section 10(3)(f) substituted by section 22(d) of Act 11 of 2013)

(4) The Director-General 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 Agency, are protected from unauthorised disclosure;
- (b) neither the Agency nor any of its 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

- (c) the powers of the Agency 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).

(Section 10(4) substituted by section 22(e) of Act 11 of 2013)

(5)

- (a) The Director-General must at the end of each financial year submit to the Minister a report on the activities of the Agency for the relevant financial year, that must—
 - (i) include information about any co-operation by the Agency with an authority of another country in planning or undertaking activities pertaining to the Agency's mandate; and
 - (ii) except for classified information, be publicly accessible.
- (b) As soon as practicable after receipt of the report contemplated in paragraph (a), the Minister must table it in Parliament.

(Section 10(5) added by section 22(f) of Act 11 of 2013)

11. Powers and duties of members

- (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 designated judge as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002), is satisfied, on the grounds mentioned in a written application complying with directives issued under subsection (5), that—

(Words in section 11(2) preceding paragraph (a) substituted by section 10(a) of Act 52 of 2003)

- (a) there is on any premises information which has or could probably have a bearing on the functions of the Agency 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 Agency;

(Section 11(2)(a) substituted by section 23(a) of Act 11 of 2013)

- (b) such information cannot reasonably be obtained by other means, he or she may issue the Agency with a direction authorising any member when reasonably necessary -

(Words in section 11(2)(b) preceding subparagraph (i) amended by section 23(b) of Act 11 of 2013)

- (i) to enter such premises;
- (ii) to search such premises with the purpose of obtaining such information;

- (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.

(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 Agency who is authorised to do so by a senior member of the Agency holding a post of at least a General Manager.

(Section 11(3)(b) substituted by section 10(b) of Act 52 of 2003)

(Section 11(3)(b) substituted by section 23(c) of Act 11 of 2013)

- (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.

- (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).
- (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).

12. General powers of Minister

- (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 Agency.

(Section 12(1) substituted by section 24(a) of Act 11 of 2013)

- (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 -

- (a) acquire any immovable property, with or without any buildings thereon which is necessary for the efficient functioning of the Agency and, subject to section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), supply guarantees, indemnities and securities for that purpose;
(Section 12(2)(a) substituted by section 11 of Act 52 of 2003)
(Section 12(2)(a) substituted by section 24(b) of Act 11 of 2013)
- (aA) erect or maintain buildings on the property so acquired;
(Section 12(2)(aA) inserted by section 24(c) of Act 11 of 2013)
- (b) sell or otherwise dispose of immovable property which is no longer required for any purpose contemplated in paragraph (a);
(Section 12(2)(b) substituted by section 11 of Act 52 of 2003)
- (c) acquire, hire or utilise any movable property and any other equipment which may be necessary for the efficient functioning of the Agency;
(Section 12(2)(c) substituted by section 11 of Act 52 of 2003)
(Section 12(2)(c) substituted by section 24(d) of Act 11 of 2013)
- (d) sell, let or otherwise dispose of anything contemplated in paragraph (c), which is no longer required for the said purposes.
(Section 12(2)(d) added by section 11 of Act 52 of 2003)

13. Retirement age of members

- (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 former National Intelligence Agency or the South African Secret Service 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.
(Section 13(1) substituted by section 25(a) of Act 11 of 2013)
- (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.
- (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.
- (4) Notwithstanding subsection (1), a member shall have the right to retire from the Agency on the date on which he or she attains the age of 55 years, or on any date after that date.
(Section 13(4) added by section 25(b) of Act 11 of 2013)

14. Vetting and discharge of members

(Heading of section 14 substituted by section 26(a) of Act 11 of 2013)

- (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 vetting investigation by the Agency; and
(Section 14(1)(a) substituted by section 26(b) of Act 11 of 2013)
 - (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 Agency may, in a prescribed manner, have access to -
(Words in section 14(2) preceding paragraph (a) substituted by section 26(c) of Act 11 of 2013)

- (a) criminal records;
- (b) financial records;
- (c) personal information; and
- (d) any other information which is relevant to determine the security clearance of the person:

Provided that where the gathering of information contemplated in paragraphs (c) and (d) requires the interception and monitoring of the communication of such a person, the Agency must perform this function in accordance with the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).

(Proviso to section 14(2) substituted by section 12(a) of Act 52 of 2003)

(Proviso to section 14(2) substituted by section 26(d) of Act 11 of 2013)

- (3) The Director-General may, in a prescribed manner, engage the services of a polygraphist to determine the reliability of the information gathered.
- (4) The Director-General may, in the prescribed manner, issue directives on -
- (a) polygraph testing;
 - (b) the level of security clearance; and

(c) criteria for evaluating the security competence.

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

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

(Section 14(6) substituted by section 26(e) of Act 11 of 2013)

(7) If the certificate referred to in subsection (5) is withdrawn, the member concerned is deemed unfit for further membership of the Agency, and the Minister may -

(Words in section 14(7) preceding paragraph (a) substituted by section 12(b) of Act 52 of 2003)

(Words in section 14(7) preceding paragraph (a) substituted by section 26(f) of Act 11 of 2013)

(a) discharge such person or member from the Agency; or

(Section 14(7)(a) substituted by section 26(g) of Act 11 of 2013)

(b) with the approval of the Minister responsible for the department in question, transfer such person or member to that department subject to any law governing the transfer.

(8)

(a) A person whose security clearance has been degraded, withdrawn or refused by the Director-General may, in the prescribed manner, appeal to the Minister.

(Section 14(8)(a) substituted by section 12(c) of Act 52 of 2003)

(b) Such appeal must -

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

(ii) set out the grounds for the appeal.

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

(i) confirm, set aside or vary the decision; or

(ii) substitute any other decision for the decision of the Director-General.

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

(Section 14(9) substituted by section 26(h) of Act 11 of 2013)

- (10) All the provisions regarding vetting investigations, applicable to a person contemplated in subsection (1), apply to the vetting of a member contemplated in subsection (9).

(Section 14(10) substituted by section 12(d) of Act 52 of 2003)

(Section 14(10) substituted by section 26(h) of Act 11 of 2013)

- (11) The Minister may, in a prescribed manner, for the purposes of any appeal lodged in terms of this Act, establish a panel of appeal to assist him or her to consider any such appeal.

(Section 14(11) added by section 12(e) of Act 52 of 2003)

15. Discharge of members on account of long absence without leave

- (1) Any member who absents himself or herself, whether voluntarily or involuntarily, from his or her official duties without the permission of the Director-General for a period exceeding 10 consecutive working days, is deemed to have been discharged from the Agency 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 -

- (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 10 consecutive working days;
- (b) a member deemed to have been so discharged again reports for duty, the Director-General may, on good cause shown and 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 Agency, on such conditions as the Director-General 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 absent [*sic*] on vacation leave without pay, or leave on such other conditions as the Director-General 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.

- (2) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (1)(c), establish an advisory panel to assist him or her in considering the appeal.

(Section 15 substituted by section 27 of Act 11 of 2013)

16. Discharge of members on account of ill-health

Prepared by:

- (1) Any member may be discharged from the Agency by the Director-General if, after a hearing in the prescribed manner as to his or her state of health, the Director-General is of the opinion that the member is by reason of ill-health unfit to remain in the Agency.
- (2) Any member discharged from the Agency 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.
- (3) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (2), establish an advisory panel to assist him or her in considering the appeal.

(Section 16 substituted by section 28 of Act 11 of 2013)

17. Discharge or demotion of members on account of poor performance

- (1) A member may be discharged from the Agency or demoted by the Director-General 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, the Director-General is of the opinion that such member is incapable of performing his or her duties efficiently.
- (2) A member who has been discharged from the Agency 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.
- (3) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (2), establish an advisory panel to assist him or her in considering the appeal.

(Section 17 substituted by section 29 of Act 11 of 2013)

18. Discharge or demotion of members on account of misconduct

- (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 Agency or demoted by the Director-General 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, the Director-General is of the opinion that such member is guilty of misconduct.

(Section 18(2) substituted by section 30(a) of Act 11 of 2013)

- (3) A member who has been discharged from the Agency 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.

(Section 18(3) substituted by section 30(a) of Act 11 of 2013)

- (4) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (3), establish an advisory panel to assist him or her in considering the appeal.

(Section 18(4) added by section 30(b) of Act 11 of 2013)

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

- (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 Agency;

(Section 19(1)(a)(i) substituted by section 31(a) of Act 11 of 2013)

- (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 -

- (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

- (cc) a member may not without his or her consent be transferred to a post outside the Agency if such transfer will, save for his or her salary, result in a change in his or her conditions of service;

(Item (cc) of the proviso to section 19(1)(a) substituted by section 31(b) of Act 11 of 2013)

- (b) discharge any member from the Agency on such conditions as the Minister may determine.

(Section 19(1)(b) substituted by section 31(c) of Act 11 of 2013)

- (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 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.

(Section 19(2) substituted by section 31(d) of Act 11 of 2013)

- (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.

20. Delegation of powers

- (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), 9(3), (4), (5), (8) and (9), 10(1), (2) and (3), 12(1) and (2)(a) and (b), 13(3), 14(6), (7), (8), (9) and (11), 15(b) and (c), 16(2), 17(2), 18(3), 19(4), 21(2), 22(1), (5) and (7), 23(3)(a)(i) and (ii), 28(2), 30 and 37, to the Director-General or any other member of the Agency.
- (2) The Director-General may delegate any power conferred upon or duty assigned to him or her by or under this Act to any other member of the Agency but not any power or duty delegated under subsection (1).

(Section 20 amended by section 13 of Act 52 of 2003)

(Section 20 substituted by section 32 of Act 11 of 2013)

21. Labour relations

- (1) No member of the Agency may strike or induce or conspire with any other member or person 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 Agency.

(Section 21(2) substituted by section 33 of Act 11 of 2013)

- (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.

22. Establishment of Intelligence Council on Conditions of Service

- (1) There is hereby established an Intelligence Council on Conditions of Service which consists of not more than three persons appointed on contract by the Minister, one of whom must be Chairperson.
- (2) The persons contemplated in subsection (1) must be fit and proper persons to fulfil the functions referred to in subsection (3).
- (3) The functions of the Council are -
 - (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;
 - (bA) to promote measures and set standards to ensure the effective and efficient performance and implementation of policies on human resources within the Agency and to make recommendations to the Minister;
 - (c) for the purposes of making recommendations as contemplated in paragraphs (a), (b) and (bA) -
 - (i) to conduct research;
 - (ii) to review such policies;
 - (iii) to evaluate and monitor the implementation of such policies;
 - (iv) to invite the Director-General, the Chairpersons of the staff forum, members and any other interested party 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 the Director-General to participate in the functioning of the Council: Provided that the Director-General does not have voting powers.
- (5) The conditions of service of the members of the Council may be determined by the Minister in accordance with the conditions of service applicable to members.
- (6) The 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 Council.
- (8) The Council—
 - (a) is accountable to the Minister; and
 - (b) must at the end of each financial year submit a report on its activities and findings to the Minister.
- (9)
 - (a) The Minister must submit the report referred to in subsection (8)(b) to the Joint Standing Committee on Intelligence and to the Minister for the Public Service and Administration.
 - (b) The report must not contain confidential information that would be detrimental to national security
(Section 22 amended by section 14 of Act 52 of 2003)
(Section 22 substituted by section 34 of Act 11 of 2013)

CHAPTER III

GENERAL

23. Whole time of members to be at disposal of State

- (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;
 - (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.
- (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 Agency 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, and if he or she does not do so, the Director-General may recover it from him or her by way of legal proceedings: Provided that -

- (i) the member has a right of appeal to the Minister against the determination by the Director-General of the value of the remuneration, allowance or reward;
- (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 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.

(Section 23(3) substituted by section 35 of Act 11 of 2013)

- (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.

24. Reward for extraordinary diligence or devotion

The Director-General 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.

(Section 24 substituted by section 36 of Act 11 of 2013)

25. Establishment of decorations and medals for members

- (1) 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 Agency.
- (2) The medals contemplated in subsection (1) must be registered with the Bureau of Heraldry in terms of the Heraldry Act, 1962 (Act No. 18 of 1962), and in the prescribed manner.

(Section 25 substituted by section 37 of Act 11 of 2013)

26. Offences

Prepared by:

- (1) A person commits an offence if he or she -
- (a) not being a member -
 - (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 or a member without the permission of the Director-General;
(Section 26(1)(a)(iii) substituted by section 38(a) of Act 11 of 2013)
 - (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, 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;
(Section 26(1)(c) substituted by section 38(b) of Act 11 of 2013)
 - (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 Agency or is in any manner associated or connected with the Agency;
(Section 26(1)(d) substituted by section 38(b) of Act 11 of 2013)
 - (e) enters upon any premises in contravention of any prohibition or restriction under section 33;
 - (f) being a former member -
 - (i) discloses classified information or material without the permission of the Director-General;
(Section 26(1)(f)(i) substituted by section 38(c) of Act 11 of 2013)
 - (ii) renders security services in contravention of section 28; or
 - (iii) contravenes section 29;
 - (g) being a member, discloses classified information or material to an unauthorised person without the permission of the Director-General.

(Section 26(1)(g) substituted by section 15 of Act 52 of 2003)

(Section 26(1)(g) substituted by section 38(d) of Act 11 of 2013)

- (2) Any person convicted of an offence in terms of this Act is liable, in the case of a contravention referred to in -
- (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;
 - (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;
 - (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.

27. Disclosure of classified information or material by former members

- (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 has granted permission for the disclosure of such information or material.

(Section 27(1) substituted by section 39 of Act 11 of 2013)

- (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 with the former National Intelligence Agency, the South African Secret Service or the South African Academy of Intelligence, that was marked as classified or that the former member knew or ought reasonably to have known was classified.

(Section 27(2) substituted by section 39 of Act 11 of 2013)

- (3) For the purposes of subsection (1), the Director-General 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.

(Section 27(3) substituted by section 39 of Act 11 of 2013)

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

28. Employment in private security industry

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

(Section 28(1) substituted by section 40 of Act 11 of 2013)

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

29. Prohibited communications by former members

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 Agency or of the former National Intelligence Agency, the South African Secret Service or the South African Academy of Intelligence or a foreign intelligence service;

(Section 29(a) substituted by section 41 of Act 11 of 2013)

- (b) who co-operates or who has co-operated with the Agency or with the former National Intelligence Agency, the South African Secret Service or the South African Academy of Intelligence in respect of matters concerning the security of the Republic.

(Section 29(b) substituted by section 41 of Act 11 of 2013)

30. Appeals

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

(Section 30(1) substituted by section 42 of Act 11 of 2013)

- (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;

- (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.

31. Conduct of former members

Prepared by:

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 Agency.

(Section 31 substituted by section 43 of Act 11 of 2013)

32. Extra-territorial application of Act and jurisdiction

- (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.
- (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.

33. Prohibition of access to premises

- (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 Agency.

(Section 33(1) substituted by section 44 of Act 11 of 2013)

- (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.

34. Canteens

- (1) Notwithstanding anything to the contrary contained in any other law, the Minister may establish canteens for the Agency and for the organisational components thereof.

(Section 34(1) substituted by section 45(a) of Act 11 of 2013)

- (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 Agency, 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.

(Section 34(3) substituted by section 45(b) of Act 11 of 2013)

35. Missing members

- (1) If a member is missing and the Director-General 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 Agency 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.

(Section 35(1) substituted by section 46(a) of Act 11 of 2013)

- (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.
- (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 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.

(Section 35(4) substituted by section 46(b) of Act 11 of 2013)

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

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

(Section 36(1) substituted by section 47 of Act 11 of 2013)

- (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.

37. Regulations

- (1) The Minister may, after consultation with the Joint Standing Committee on Intelligence, make regulations as to -
- (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;
- (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;
- (d) the numerical establishment of the Agency, 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 Agency;

(Section 37(1)(d) substituted by section 48(a) of Act 11 of 2013)

- (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 Agency, the suspension of members and the establishment of boards of inquiry into the conduct and discipline of members;

(Section 37(1)(f) substituted by section 48(b) of Act 11 of 2013)

- (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;
- (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;
- (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 Agency, and the award of honorary ranks;

(Section 37(1)(l) substituted by section 48(c) of Act 11 of 2013)

- (m) the control over and administration of funds appropriated to the Agency in order to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof;

(Section 37(1)(m) substituted by section 48(c) of Act 11 of 2013)

- (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);

- (o) the conditions for and procedures regarding the permission of access to any premises under the control of the Agency, and matters relating thereto;

(Section 37(1)(o) substituted by section 48(d) of Act 11 of 2013)

- (p) any matter relating to the information, communications, computer and physical security of the Agency;

(Section 37(1)(p) substituted by section 48(d) of Act 11 of 2013)

- (q) the functioning of the Council;

(Section 37(1)(q) substituted by section 48(d) of Act 11 of 2013)

- (r) a code of conduct to be adhered to by members;

- (s) vetting investigations of members and persons to be employed in the Agency;

(Section 37(1)(s) substituted by section 48(e) of Act 11 of 2013)

- (sA) the establishment, structure and functions of a civilian intelligence veterans association;

(Section 37(1)(sA) inserted by section 48(f) of Act 11 of 2013)

- (sB) the election, representation and functions of the staff forum;

(Section 37(1)(sB) inserted by section 48(f) of Act 11 of 2013)

- (sC) the supply of intelligence to the Minister;

(Section 37(1)(sC) inserted by section 48(f) of Act 11 of 2013)

- (sD) the supply of departmental intelligence to government departments;

(Section 37(1)(sD) inserted by section 48(f) of Act 11 of 2013)

- (sE) persons authorised to task the Agency to gather and produce intelligence;

(Section 37(1)(sE) inserted by section 48(f) of Act 11 of 2013)

- (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 –

- (a) as far as possible, be consistent with the general principles and objectives of the Medical Schemes Act, 1998 (Act No. 131 of 1998); and
- (b) be made in consultation with the Minister responsible for the administration of the Medical Schemes Act, 1998 (Act No. 131 of 1998).

(Section 37(2) substituted by section 16 of Act 52 of 2003)

- (3) 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.
- (4) Different regulations may be made with reference to different categories of members.
- (5) 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.

38. Discoveries, inventions and improvements by members

- (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 Agency.

(Section 38(1) substituted by section 49(a) of Act 11 of 2013)

- (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 Agency 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.

(Section 38(3) substituted by section 49(b) of Act 11 of 2013)

- (4) The Minister may apply for a patent in the name of the Agency in respect of any discovery, invention or improvement referred to in subsection (1), and the Agency 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.

(Section 38(4) substituted by section 49(b) of Act 11 of 2013)

39. Validation of misconduct proceedings

Prepared by:

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 in terms of the said regulations to -

- (a) charge members with misconduct; and
- (b) constitute a board of enquiry, which was provided for in 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.

40. Repeal of laws, transitional provisions and savings

- (1) The laws specified in the Schedule are hereby repealed to the extent indicated in the third column thereof.
- (2) All assets, liabilities, rights and duties, including funds, resources and administrative records of the former National Intelligence Agency, South African Secret Service, South African National Academy of Intelligence and Electronic Communications Security (Pty) Ltd (hereinafter referred to as Comsec) must be transferred to the Agency within six months after the commencement of the General Intelligence Laws Amendment Act, 2013, and vest from the date of transferral in, and must from that date be regarded as having been acquired or incurred by, the Agency.
- (3)
 - (a) Notwithstanding subsection (2) and section 3(1A), as from a date determined by the Minister by notice in the *Gazette*, Comsec ceases to exist as a juristic person and must for the purposes of the Companies Act, 2008 (Act No. 71 of 2008), be regarded as having been wound up.
 - (b) The Companies and Intellectual Property Commission must, upon receipt of a notification by the Director-General of the date contemplated in paragraph (a), deregister Comsec as a company in terms of the Companies Act, 2008 (Act No. 71 of 2008), with effect from the said date.
 - (c) No notice or filing fee or other charge is payable in respect of the deregistration of Comsec.
- (4)
 - (a) A registrar of deeds must, upon the production to him or her of a certificate by the Minister that immovable property described in the certificate vests in the Agency 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).
 - (b) No duty, office fee or other charge is payable in respect of any entry or endorsement in terms of paragraph (a).

- (5) If an inquiry into alleged misconduct has been instituted by an entity referred to in subsection (2) but not yet concluded at the commencement of the General Intelligence Laws Amendment Act, 2013, such proceedings must be continued and concluded in accordance with the law in terms of which the inquiry was instituted.
- (6) Disciplinary proceedings may be instituted and concluded in terms of this Act against alleged improper conduct of any person who at any time prior to the commencement of the General Intelligence Laws Amendment Act, 2013, was in the service of an entity referred to in subsection (2), provided that the act or omission concerned is substantially the same as an act constituting misconduct in terms of this Act.
- (7) Any regulation made under section 22 of the Electronic Communications Security (Pty) Ltd Act, 2002 (Act No. 68 of 2002), shall remain in force for a period of six months after the date of commencement of this Act unless it is inconsistent with this Act.
- (8)
 - (a) Any employee of Comsec, appointed in terms of section 14(1) of the Electronic Communications Security (Pty) Ltd Act, 2002 (Act No. 68 of 2002), must be transferred to the Agency on terms and conditions which may not be less favourable than the remuneration and terms and conditions applicable to that person immediately before his or her transfer and he or she remains entitled to all rights, benefits, including pension benefits, and privileges to which he or she was entitled immediately before such transfer.
 - (b) A person transferred to the Agency in terms of paragraph (a) remains subject to any decisions, proceedings, rulings and directions applicable to that person immediately before his or her transfer to the extent that they remain applicable.
- (9) Unless inconsistent with the context or clearly inappropriate, any reference in any law to the National Intelligence Agency, the South African Secret Service or the South African National Academy of Intelligence or to Electronic Communications Security (Pty) Ltd or Comsec, must be regarded as a reference to the Agency.

(Section 40 substituted by section 50 of Act 11 of 2013)

41. Short title and commencement

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

(Section 40)

No. and year of Act	Short title	Extent of repeal
Act 68 of 2002	Electronic Communications Security (Pty) Ltd Act, 2002	Repeal of the whole.
Act 52 of 2003	General Intelligence Laws Amendment Act, 2003	Repeal of sections 17, 18, 19, 20, 21, 22, 23 and 24

(Schedule substituted by section 51 of Act 11 of 2013)