

INTELLIGENCE SERVICES OVERSIGHT ACT 40 OF 1994

(Short title, previously 'Committee of Members of Parliament on and Inspectors-General of Intelligence' and then 'Intelligence Services Control Act', substituted respectively by s. 7 of Act 31 of 1995 and by s. 9 of Act 66 of 2002)

[ASSENTED TO 23 NOVEMBER 1994]

[DATE OF COMMENCEMENT: 1 JANUARY 1995]

(Afrikaans text signed by the President)

as amended by

Committee of Members of Parliament on and Inspectors-General of Intelligence Amendment Act 31 of 1995
Intelligence Services Control Amendment Act 42 of 1999
Intelligence Services Control Amendment Act 66 of 2002
General Intelligence Laws Amendment Act 52 of 2003
Prevention and Combating of Corrupt Activities Act 12 of 2004

also amended by

Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002

[with effect from a date to be proclaimed - see PENDLEX]

ACT

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

1 Definitions

In this Act, unless the context otherwise indicates-

'Academy' means the South African National Academy of Intelligence established in terms of the Intelligence Services Act, 2002;

[Definition of 'Academy' inserted by s. 1 (a) of Act 66 of 2002.]

'accounting officer' means the Head of a Service;

'Agency' means the National Intelligence Agency referred to in section 3 of the Intelligence Services Act, 1994 (Act 38 of 1994);

[Definition of 'Agency' substituted by s. 1 (b) of Act 66 of 2002.]

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

[Definition of 'Auditor-General' substituted by s. 1 (a) of Act 42 of 1999.]

'**CEO**' means the Chief Executive Officer of the Academy or Comsec, as the case may be;

[Definition of 'CEO' inserted by s. 1 (c) of Act 66 of 2002.]

'**chairperson**' means the person appointed under section 2 (4) (b) as chairperson of the Committee;

'**Commission**'.....

[Definition of 'Commission' deleted by s. 1 (a) of Act 31 of 1995.]

'**Committee**' means the Joint Standing Committee on Intelligence established by section 2;

[Definition of 'Committee' substituted by s. 1 (b) of Act 31 of 1995.]

'**Comsec**' means the Electronic Communications Security (Pty) Ltd established in terms of the Electronic Communications Security (Pty) Ltd Act, 2002;

[Definition of 'Comsec' inserted by s. 1 (d) of Act 66 of 2002.]

'**Constitution**' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'Constitution' substituted by s. 1 (b) of Act 42 of 1999.]

'**counter-intelligence**' means counter-intelligence as defined in section 1 of the National Strategic Intelligence Act, 1994;

'**Director**' means Director as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002);

[Definition of 'Director' inserted by s. 3 (a) of Act 52 of 2003.]

'**Evaluation Committee**' means the Secret Services Evaluation Committee established by section 2 of the Secret Services Act, 1978 (Act 56 of 1978);

'**Head of a Service**' means the Director-General of the Agency or of the South African Secret Service, the head of the Intelligence Division of the National Defence Force or the head of the Intelligence Division of the South African Police Service, but for the purposes of financial and administrative accounting, the head of the Intelligence Division of the South African National Defence Force means the Secretary for Defence and of the South African Police Service means the National Commissioner;

[Definition of 'Head of a Service' substituted by s. 1 (e) of Act 66 of 2002.]

'**Inspector-General**' means the person appointed under section 7;

[Definition of 'Inspector-General' substituted by s. 1 (f) of Act 66 of 2002.]

'**intelligence**' means the process of gathering, evaluation, correlation and interpretation of security information, including activities related thereto, as performed by the Services;

'intelligence services' means the National Intelligence Agency and the South African Secret Services as referred to in section 1 of the Intelligence Services Act, 2002;

[Definition of 'intelligence services' inserted by s. 1 (h) of Act 66 of 2002.]

'Intelligence Services Entities' means Comsec, the Academy and the Office;

[Definition of 'Intelligence Services Entities' inserted by s. 3 (b) of Act 52 of 2003.]

'Minister' means the President or the member of the Cabinet designated by the President in terms of section 209 (2) of the Constitution to assume political responsibility for the control and direction of the intelligence services established in terms of section 209 (1) of the Constitution;

[Definition of 'Minister' substituted by s. 1 (g) of Act 66 of 2002.]

'money' means all money whatsoever received or held by an accounting officer for or on behalf of the State;

'National Defence Force' means the Force established by section 224 of the Constitution;

'Office' means Office as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002);

[Definition of 'Office' inserted by s. 3 (c) of Act 52 of 2003.]

'prescribed' means prescribed by regulation;

[Definition of 'prescribed' inserted by s. 1 (i) of Act 66 of 2002.]

'regulation' means a regulation made under this Act;

'Services' means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force and the Intelligence Division of the South African Police Service;

[Definition of 'Services' substituted by s. 1 (j) of Act 66 of 2002.]

'South African Police Service' means the service referred to in section 214 of the Constitution;

'South African Secret Service' means the South African Secret Service referred to in section 3 of Intelligence Services Act, 1994 (Act 38 of 1994);

[Definition of 'South African Secret Service' substituted by s. 1 (k) of Act 66 of 2002.]

'Speaker' means the Speaker of the National Assembly contemplated in section 52 of the Constitution;

[Definition of 'Speaker' inserted by s. 1 (c) of Act 31 of 1995 and substituted by s. 1 (c) of Act 42 of 1999.]

'this Act' includes the regulations.

2 Establishment of Committee on Intelligence

(1) There is hereby established a Parliamentary Committee to be known as the Joint Standing Committee on Intelligence, which shall, subject to the Constitution, perform the oversight functions set out in this Act-

- (a) in relation to the intelligence and counter-intelligence functions of the Services, which include the administration, financial management and expenditure of the Services; and
- (b) in respect of the administration, financial management and expenditure of the Intelligence Services Entities,

and report thereon to Parliament.

[Sub-s. (1) substituted by s. 2 (a) of Act 66 of 2002 and by s. 4 of Act 52 of 2003.]

(2) (a) The Committee shall consist of 15 members of Parliament appointed on the basis of proportional representation determined according to the formula in paragraph (c): Provided that-

- (i) if the total number of seats on the Committee allocated to the political parties in terms of paragraph (c) is less than 15, the unfilled seats shall not be allocated to any political party, but the Committee shall nevertheless be deemed to be properly constituted; and
- (ii) if one political party has been allocated more than eight seats in terms of paragraph (c) and more than five political parties are represented in Parliament, the five minority parties with the largest representation in Parliament are entitled to at least one member each on the Committee, and the Committee so constituted shall be deemed to be properly constituted regardless of whether the total number of seats so allocated on the Committee is more or less than 15; and
- (iii) if any political party is unwilling to serve or to continue to serve on the Committee, the seats of such political party on the Committee shall not be allocated to any other political party but the Committee shall nevertheless be deemed to be properly constituted.

(b) No member of Parliament shall be appointed as a member of the Committee before the Agency has issued a security clearance in the prescribed manner in respect of that member.

[Para. (b) substituted by s. 2 (b) of Act 66 of 2002.]

(c) Political parties shall be entitled to designate a member or members to the Committee in accordance with the principle of proportional representation and as determined according to the following formula: By dividing the number of seats held by the party in the National Assembly by the total number of seats in the National Assembly, multiplying the result by 15 and discarding all decimals.

[Sub-s. (2) substituted by s. 2 (a) of Act 42 of 1999.]

(3) (a) A member referred to in subsection (2) shall be appointed by the Speaker or the Chairperson of the National Council of Provinces, depending upon the House of Parliament from which the member is

appointed, acting with the concurrence of the President, who shall act with the concurrence of the leader of the political party concerned.

[Para. (a) substituted by s. 2 (b) of Act 42 of 1999.]

(b) In the event that agreement is not reached in respect of the appointment of a particular member, the matter shall be referred for determination to a committee consisting of the President, the Speaker, the Chairperson of the National Council of Provinces and the leader of the political party concerned, and the decision of the committee shall be final.

[Para. (b) substituted by s. 2 (c) of Act 42 of 1999.]

(c) The Committee shall within a period of two years after its first meeting review the appointment procedures referred to in paragraphs (a) and (b).

(4) The Speaker and the Chairperson of the National Council of Provinces acting with the concurrence of the President, who shall act after consultation with the leaders of the political parties represented on the Committee, shall appoint a member of Parliament, excluding a member appointed to the Committee in terms of subsection (3), as the chairperson of the Committee and subsection (2) (b) shall apply with the necessary changes to such member.

[Sub-s. (4) substituted by s. 2 (d) of Act 42 of 1999 and by s. 2 (c) of Act 66 of 2002.]

(5) A member of the Committee-

- (a) shall, subject to paragraph (b), be appointed as a member until the Parliament to which he or she has been elected under the Constitution, is dissolved in terms of the Constitution;
- (b) shall be replaced with a member of his or her party in accordance with subsection (3) or (4), as the case may be-
 - (i) at the request of the leader of his or her party; or
 - (ii) if he or she has conducted himself or herself in a manner which constitutes a threat to national security in the opinion of the Speaker or the Chairperson of the National Council of Provinces, as the case may be, with the concurrence of the Committee and the President, acting after consultation with the leader of the party concerned.

[Sub-para. (ii) substituted by s. 2 (e) of Act 42 of 1999.]

- (c) may resign by notice in writing to the Speaker or the Chairperson of the National Council of Provinces, as the case may be, in which event a substitute shall be appointed in accordance with paragraph (b) and subsection (3) or (4), as the case may be.

[Para. (c) substituted by s. 2 (f) of Act 42 of 1999.]

(6) (a) The Committee shall meet at such times and follow such procedures as may be prescribed by the rules and orders contemplated in section 45 of the Constitution.

[Para. (a) substituted by s. 2 (g) of Act 42 of 1999.]

(b) The Committee may initiate and recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the functions and activities of the Committee.

[Para. (b) substituted by s. 2 (d) of Act 66 of 2002.]

(7) No person other than members of the Committee or members of the staff referred to in subsection (8) may be present during the proceedings of the Committee, except with the permission of the Committee.

(8) The Committee shall be assisted in the performance of its functions by-

- (a) officers of Parliament designated for that purpose by the Speaker and the Chairperson of the National Council of Provinces; and

[Para. (a) substituted by s. 2 (h) of Act 42 of 1999.]

- (b) persons designated for that purpose by the Minister, after consultation with the Speaker, the Chairperson of the National Council of Provinces, the chairperson and the Heads of the Services.

[Para. (b) substituted by s. 2 (h) of Act 42 of 1999.]
[S. 2 substituted by s. 2 of Act 31 of 1995.]

3 Functions of Committee

The functions of the Committee are-

- (a) notwithstanding anything to the contrary contained in any other law or the common law, to obtain from-
 - (i) the Auditor-General an audit report compiled in accordance with section 4 (6) of the Auditor-General Act, 1995 (Act 12 of 1995), and after obtaining the report, to consider-
 - (aa) the financial statements of the Services, Academy and Comsec;
 - (bb) any audit reports issued on those statements; and
 - (cc) any reports issued by the Auditor-General on the affairs of the Services and the Intelligence Services Entities,

[Item (cc) substituted by s. 5 (a) of Act 52 of 2003.]

and report thereon to Parliament;

[Sub-para. (i) substituted by s. 3 (a) of Act 42 of 1999 and by s. 3 (a) of Act 66 of 2002.]

- (ii) the Evaluation Committee a report on the secret services and intended secret services evaluated and reviewed by it, together with any comments or

recommendations which the Evaluation Committee may deem appropriate;

- (iii) any judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act 127 of 1992), a report regarding the functions performed by him or her in terms of that Act including statistics regarding such functions, together with any comments or recommendations which such judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction contemplated in section 3 of that Act;

[NB: Sub-para. (iii) has been substituted by s. 61 of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

- (iv) the Ministers responsible for the Services and the Intelligence Services Entities, a report regarding the budget for each Service or Entity for which he or she is responsible;

[Sub-para. (iv) substituted by s. 3 (b) of Act 66 of 2002 and by s. 5 (b) of Act 52 of 2003.]

- (b) to consider and make recommendations on the report and certificate transmitted to it in terms of section 7 (7) (d);
- (c) to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities;
- (d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994 (Act 39 of 1994), and regulations regarding the intelligence and counter-intelligence functions of a Service, made under section 29 of the Intelligence Services Act, 1994 (Act 38 of 1994), section 87 of the Defence Act, 1957 (Act 44 of 1957), or section 24 of the South African Police Service Act, 1995 (Act 68 of 1995);

[Para. (d) substituted by s. 3 (b) of Act 42 of 1999.]

- (e) to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the South African Secret Service, the National Defence Force and the South African Police Service;
- (f) to order investigation by and to receive a report from the Head of a Service or the Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property: Provided that the Committee is satisfied that such complaint is not trivial or vexatious or made in bad faith;

[Para. (f) amended by s. 3 (c) of Act 66 of 2002.]

- (g) to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights

entrenched in Chapter 2 of the Constitution to the South African Human Rights Commission referred to in section 184 of the Constitution, and to receive a report from such Commission concerning the matter;

[Para. (g) substituted by s. 3 (c) of Act 42 of 1999.]

- (h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, any Minister responsible for a Service or Parliament;

[Para. (h) substituted by s. 3 (d) of Act 66 of 2002.]

- (i) to request the officials or bodies referred to in paragraphs (a), (b) and (f) to explain any aspect of a report;

[Para. (i) substituted by s. 3 (b) of Act 31 of 1995.]

- (j) to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security, including administration and financial expenditure;

[Para. (j) substituted by s. 3 (e) of Act 66 of 2002.]

- (k) to consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act;
- (l) to consider and report on the appropriation of revenue or moneys for the functions of the Services and the Intelligence Services Entities.

[Para. (l) added by s. 3 (c) of Act 31 of 1995 and substituted by s. 3 (f) of Act 66 of 2002 and by s. 5 (c) of Act 52 of 2003.]

[S. 3 amended by s. 3 (a) of Act 31 of 1995.]

4 Access to intelligence, information and documents

(1) The Committee shall, notwithstanding anything to the contrary contained in any other law or the common law, but subject to subsection (2) and the proviso to section 3 (1) (a) (iii), in the performance of its functions, have access to intelligence, information and documents in the possession or under the control of a Service, on condition that-

- (a) such access is necessary for the performance of such functions;
- (b) such intelligence, information and documents shall be handled in accordance with the written security guidelines and measures of, or the conditions prescribed or determined by, the chairperson with the concurrence of the Heads of the Services; and
- (c) such documents shall after inspection thereof be returned to a Service as determined by the Head of that Service.

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

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

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

- (i) the provisions of paragraph (a) as to whether or not the disclosure of any intelligence, information or document may reveal the name or identity of any person or body engaged in intelligence or counter-intelligence activities or intelligence or counter-intelligence methods employed or the identity of the source of intelligence, information or document; or
- (ii) the provisions of subsection (1) (a) as to whether access to certain intelligence, information or any document is necessary to perform the functions of the Committee,

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

[Para. (b) amended by s. 4 (a) of Act 66 of 2002.]

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

- (a) be given reasonable notice of such appearance;
- (b) be given reasonable details regarding the purpose of such appearance; and
- (c) have the right to be assisted by members of the Services or Intelligence Services Entities in question.

[Para. (c) substituted by s. 4 (c) of Act 66 of 2002 and by s. 6 (b) of Act 52 of 2003.]

[Sub-s. (3) amended by s. 4 (b) of Act 66 of 2002 and by s. 6 (a) of Act 52 of 2003.]

5 Secrecy

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

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

- (a) to the extent to which it may be necessary for the proper administration of any provision of this Act;
- (b) to any person who of necessity requires it for the performance of any function in terms of this Act;
- (c) with the written permission of the chairperson, which permission may be given only with the concurrence of the Head of a Service and the Inspector-General;

[Para. (c) substituted by s. 5 of Act 66 of 2002.]

(d) as prescribed by regulation.

(3)

[Sub-s. (3) deleted by s. 4 of Act 42 of 1999.]

6 Report to Parliament

(1) The Committee shall, within five months after its first appointment, and thereafter within two months after 31 March in each year, table in Parliament a report on the activities of the Committee during the preceding year, together with the findings made by it and the recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service.

[Sub-s. (1) substituted by s. 6 of Act 66 of 2002.]

(2) The Committee may at the request of Parliament, the President or the Minister responsible for each Service or at any other time which the Committee deems necessary, furnish Parliament, the President or such Minister with a special report concerning any matter relating to the performance of its functions, and shall table a copy of such report in Parliament or furnish the President and the Minister concerned with copies, as the case may be.

[Sub-s. (2) substituted by s. 6 of Act 66 of 2002.]

(3) Nothing shall be included in any report of the Committee, the inclusion of which will be more harmful to the national security than its exclusion will be to the national interest.

[S. 6 substituted by s. 4 of Act 31 of 1995.]

7 Inspector-General

(1) The President shall appoint an Inspector-General of Intelligence-

- (a) nominated by the Committee; and
- (b) approved by the National Assembly by a resolution supported by at least two thirds of its members:

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

(2) The Inspector-General shall be a South African citizen who is a fit and proper person to hold such office and who has knowledge of intelligence.

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

(4) The Inspector-General may be removed from office by the President, but only on the grounds of misconduct, incapacity, withdrawal of his or her security clearance, poor performance or incompetence as prescribed.

(5) If the Inspector-General is the subject of an investigation by the Committee in terms of subsection (4) he or she may be suspended by the President pending a decision in such investigation.

(6) The Inspector-General shall be accountable to the Committee for the overall functioning of his or her office, and shall report on his or her activities and the performance of his or her functions to the committee at least once a year.

(7) The functions of the Inspector-General are, in relation to the Services-

- (a) to monitor compliance by any Service with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence;
- (b) to review the intelligence and counter-intelligence activities of any Service;
- (c) to perform all functions designated to him or her by the President or any Minister responsible for a Service;
- (cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), the commission of an offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member;

[Para. (cA) substituted by s. 36 (1) of Act 12 of 2004.]

- (d) to submit the certificates contemplated in subsection (11) (c) to the relevant Ministers;

[Para. (d) substituted by s. 7 (b) of Act 52 of 2003.]

- (e) to submit reports to the Committee pursuant to section 3 (1) (f); and
- (f) to submit reports to every Minister responsible for a Service pursuant to the performance of functions contemplated in paragraphs (a), (b), (c) and (cA): Provided that where the Inspector-General performs functions designated to him or her by the President, he or she shall report to the President.

[Sub-s. (7) amended by s. 7 (a) of Act 52 of 2003.]

(7A) The reports of the Inspector-General contemplated in subsection (7) (f) in respect of monitoring and reviewing shall contain the findings and recommendations of the Inspector-General.

(8) Notwithstanding anything to the contrary contained in this or any other law or the common law, the Inspector-General-

- (a) shall have access to any intelligence, information or premises under the control of any Service if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of the Service in question and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of his or her functions;
- (aA) shall inform the Head of a Service prior to his or her access to the premises of such Service in writing of his or her intention to have access to such premises: Provided that the notice shall specify the date and the nature of access to the premises;
- (b) may, if the intelligence or information received by him or her in terms of paragraph (a) is subject to any restriction in terms of any law, disclose it only-
 - (i) after consultation with the President and the Minister responsible for the Service in question; and
 - (ii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and
 - (iii) to the extent that such disclosure is not detrimental to the national interest;
- (c) shall have access to any other intelligence, information or premises which is not under the control of any Service if such access is necessary for the performance of his or her functions in terms of subsection (7) and he or she shall be entitled to demand from any such person such intelligence, information, reports and explanations as he or she may deem necessary for the performance of his or her functions: Provided that the Inspector-General shall not have access if such intelligence or information is not necessary for the performance of his or her functions: Provided further that the Inspector-General shall first obtain a warrant issued in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977), if such information, intelligence or premises are not under the control of the Services in question;

- (d) may, if the intelligence or information received by him or her in terms of paragraph (c) is subject to any privilege or restriction in terms of any law, disclose it only-
 - (i) after he or she has given written notice of his or her intention to do so to the lawful possessor of such intelligence or information; and
 - (ii) after consultation with the President and the Minister responsible for the Service in question; and
 - (iii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and
 - (iv) to the extent that such disclosure is not detrimental to the national interest.

(9) No access to intelligence, information or premises contemplated in subsection (8) (a) may be withheld from the Inspector-General on any ground.

(10) The Inspector-General-

- (a) shall comply with all security requirements applicable to the employees of the intelligence services; and
- (b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.

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

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

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

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

- (i) is unlawful or contravenes any directions issued by the Minister responsible for that Service; or
- (ii) involves an unreasonable or unnecessary exercise by that Service of any of its powers.

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

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

The National Commissioner of the South African Police Service and the Chief of the South African National Defence Force may, if requested by the Inspector-General, second employees of the Service or the Force, as the case may be, to the office of the Inspector-General with the consent of the employees concerned and in terms of the laws governing the secondment in question.

[Sub-s. (12A) inserted by s. 7 (c) of Act 52 of 2003.]

(13) The budget of the office of the Inspector-General shall be appropriated by Parliament as part of the budget vote of the intelligence services, and shall be expended in accordance with the rules and procedures as set out in the Public Finance Management Act, 1999 (Act 1 of 1999).

(14) The Inspector-General may, in writing, delegate any function contemplated in subsection (7) to any employee in his or her office, and any function performed in terms of such a delegation shall be deemed to have been performed by the Inspector-General.

[S. 7 amended by s. 5 of Act 31 of 1995 and by s. 5 of Act 42 of 1999 and substituted by s. 7 of Act 66 of 2002.]

7A Offences and penalties

Any person who-

- (a) contravenes section 5 (2) or 7 (9); or
- (b) fails to comply with section 7 (8),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[S. 7A inserted by s. 6 of Act 42 of 1999.]

8 Regulations

(1) The Minister, acting with the concurrence of the Committee, may make regulations regarding-

- (a) any matter that is required or permitted to be prescribed in terms of this Act;
- (b) the performance of his or her functions by the Inspector-General;
- (c) the reports to be submitted by the Inspector-General and the Heads of the Services;
- (d) the suspension or removal from office of the Inspector-General and the termination of

employment of the Inspector-General;

- (e) an oath or affirmation of secrecy to be subscribed to by the Inspector-General, members and staff of the Committee, the leaders of political parties represented or willing to serve on the Committee, and staff appointed in terms of section 7 (12);
- (f) security clearance for the Inspector-General and members of the Committee;
- (g) the procedure for appointment of staff to the office of the Inspector-General;
- (h) the conditions of employment applicable to the personnel appointed to the office of the Inspector-General; and
- (i) the procedure for the lodging and investigation of complaints.

[Sub-s. (1) amended by s. 7 of Act 42 of 1999 and substituted by s. 8 of Act 66 of 2002.]

(2) A regulation made under this section need not be published in the *Gazette*, but shall be notified to any person affected thereby in such manner as the Minister acting with the concurrence of the Committee may determine.

[Sub-s. (2) substituted by s. 8 of Act 66 of 2002.]

(3) A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[Sub-s. (3) added by s. 7 (d) of Act 42 of 1999.]
[S. 8 substituted by s. 6 of Act 31 of 1995.]

9 Short title

This Act shall be called the Intelligence Services Oversight Act, 1994.

[S. 9 substituted by s. 7 of Act 31 of 1995 and by s. 9 of Act 66 of 2002.]

PENDLEX: Intelligence Services Oversight Act 40 of 1994 after amendment by the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002

Section 3 (a) (iii)

any designated judge as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, a report regarding the functions performed by him or her in terms of that Act, including statistics regarding such functions, together with any comments or recommendations which such designated judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction referred to in that Act;