

OFFICE OF THE PRESIDENT

No. 2079 2 December 1994

NO. 38 OF 1994: INTELLIGENCE SERVICES ACT, 1994.

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

General Explanatory Note:

Words in ***bold italic*** indicate omissions from existing enactments.

Words in *italic* indicate insertions in existing enactments.

ACT

To regulate the establishment, organisation and control of the National Intelligence Agency and the South African Secret Service; and to provide for matters connected therewith.

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

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

CHAPTER

I

Definitions and application of Act

Definitions

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

- (i) "Agency" means the National Intelligence Agency established by section 3; (ii)
- (ii) "department" means a department as defined in section I of the Public Service Act, 1994; (iii)
- (iii) "Deputy President" means the Executive Deputy President designated by the President; (i)
- (iv) "Director-General" means the person appointed as the Director-General of the Agency or the Service, as the case may be, under section 3; (v)
- (v) "member" means a member of the Agency or the Service, as the case may be; (vii)
- (vi) "Minister" means the Minister designated by the President; (viii)

(vii) "misconduct" means-

(a) the commission of any offence; or

(b) a contravention of or failure to comply with any provision of this Act which is not an offence; (xiii)

(viii) "premises" includes any land, building, building works, instrument, equipment or means of transport; (ix)

(ix) "prescribed" means prescribed by regulation; (xii)

(x) "Public Service Commission" means the Public Service Commission established by section 209 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993); (xi)

(xi) "regulation" means a regulation made under this Act; (x)

(xii) "Service" means the South African Secret Service established by section 3; (iv)

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

Application of Act

2. Unless the context otherwise indicates, the provisions of this Act shall apply in respect of all members, irrespective of whether they became members at the commencement of this Act or were appointed as members 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 and Service

Establishment of Agency and Service

3. (1) There is hereby established a National Intelligence Agency and a South African Secret Service, which shall consist of-

(a) the persons who, on the date of the commencement of this Act, are members of the Bureau as defined in section I of the Bureau for State Security Act, 1978 (Act No. 104 of 1978);

(b) the persons who, on the date of the commencement of this Act, are members of the Department of Intelligence and Security of the African National Congress;

(c) the persons who, on the date of the commencement of this Act, are 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 are appointed in terms of section 15 of the National Security Council Act, 1981 (Act No. 27 of 1981), of Bophuthatswana;

(d) the persons who, on the date of the commencement of this Act, are 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) the persons who, on the date of the commencement of this Act, are members of the Venda National Intelligence Service by virtue of their appointment in terms of the National Intelligence Service Act, 1988 (Act No. 31 of 1988), of Venda; the persons who, 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, and in respect of whom such service or structure applies within seven days after the commencement of this Act, to the Director-General to become members of the Agency or the Service; and

(g) the persons appointed after the commencement of this Act in terms of the provisions thereof, as members of the Agency or the Service: Provided that any person contemplated in paragraphs (a) to (f) who, within two months after the commencement of this Act elects in writing to the Director-General not to be a member of the Agency or the Service, shall be deemed to have resigned voluntarily with effect from the date of such election: Provided further that the persons contemplated in paragraphs (a) to (f) are South African citizens and that their names appear on a personnel list submitted by the head of each organisational component referred to in subsection (2)(a) to the President within seven days after the commencement of this Act.

(2) (a) The persons referred to in subsection (1)(a) to (f), shall continue in their service and shall form organisational components of both the Agency and the Service until their integration into and the rationalisation of the Agency and the Service in terms of subsection (3).

(b) Any person who at the commencement of this Act, is the head of a Bureau, Service, Department or structure contemplated in paragraph (a) shall be the organisational head of the corresponding organisational component of the Agency and the Service, but shall manage such component subject to the control of both Directors-General: Provided that a Director-General may not also be the head of an organisational component.

(c) If an organisational component, for whatever reason, does not have a head at the commencement of this Act, the Directors-General may, after consultation with the advisory board contemplated in section 31 and with the concurrence of the President, appoint a member as head of such component.

(d) The Directors-General may designate a member or members to form a management committee for an organisational component, and in such a case the head of such organisational component shall manage such component with the concurrence of such management committee: Provided that the Directors-General may, in the case where an organisational component does not have a head, appoint a management committee as head of such organisational component.

(e) The head of an organisational component and a management committee (if any) shall report to and act upon the directions of the Directors-General.

(f) The salary, salary scale and other conditions of employment of a member serving in an organisational component contemplated in paragraph (a) shall be those that were applicable to such member immediately before the commencement of this Act by virtue of a law repealed by section 32: Provided that the salary, salary scale and other conditions of employment of persons referred to in subsection (1)(b) and (f)(ii) shall be determined by the advisory board contemplated in section 31, acting with the concurrence of the Directors-

General and the President: Provided further that if the salary which a member receives in terms of this paragraph after the commencement of this Act is less than the salary on the scale determined for him or her after his or her appointment or allocation under subsection (3), such member will be entitled to a sum equal to the difference between the salary received and the salary determined, calculated from the commencement of this Act.

(3) The President shall for the purpose of the Agency and the Service-

(a) appoint a Director-General for the Agency and a Director-General for the Service;

(b) establish chief directorates, directorates and divisions for the Agency and the Service, and prescribe the post structures thereof;

(c) prescribe the functions of the structures contemplated in paragraph (b);

(d) appoint managers and allocate members to the structures referred to in paragraph (b) from among members of the organisational components; and

(e) in general, but subject to the provisions of this Act, determine and prescribe all matters that are necessary or expedient for the creation and establishment of the Agency and the Service out of the organisational components.

(3) The Director-General shall, 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 or the Service, as the case may be, are protected from unauthorised disclosure;

(b) no action is carried out that could give rise to any reasonable suspicion that the Agency or the Service, as the case may be, is concerned in furthering, protecting or undermining the interests of any section of the population or any political party or organisation; and

(c) the functions of the Agency or the Service, as the case may be, are limited to what is necessary for the purposes of the discharge of its functions in terms of the National Strategic Intelligence Act, 1994, and the Secret Services Act, 1978 (Act No. 56 of 1978).

(4) The Directors-General shall take steps to ensure the expeditious integration and rationalisation of the organisational components into the Agency and the Service.

Powers and duties of members

5. (1) A member may exercise such powers and shall perform such duties as are by or under this Act or any other law conferred or imposed upon him or her, and shall in the performance of his or her functions obey all lawful directions which he or she may from time to time receive from a person having the authority to give such directions.

(2) If a judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), is convinced, on the grounds mentioned in a written application complying with directives issued under subsection (7), that-

(a) information which has or could probably have a bearing on the functions of the Agency or the Service as contemplated in section 2 of the National Strategic Intelligence Act, 1994, can be obtained on any premises and such information is of substantial importance to the Agency or the Service in the discharge of its functions; or

(b) there is on any premises information which has or could probably have a bearing on the functions of the Agency or the Service as contemplated in section 2 of the National Strategic Intelligence Act, 1994, which information is required by the Agency or the Service for the proper discharge of its functions, and that such information cannot reasonably be obtained by other means, he or she may issue the Agency or the Service with a direction authorising any member when reasonably necessary-

(i) to enter such premises;

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

(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) shall be issued by the judge concerned 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 or the Service, as the case may be, provided that such member has been authorised thereto by another member of such Agency or Service holding a post of at least chief manager.

(4) The judge referred to in subsection (2) may, upon a written application complying with the directives issued under subsection (7), extend the period referred to in subsection (3) for a further period not exceeding three months at a time, if that judge is convinced that the extension is necessary for a reason mentioned in subsection (2).

(5) An application referred to in subsections (2) and (4) shall be heard and a direction issued without any notice to the person, body or organisation to which the application applies and without hearing such person, body or organisation.

(6) Notwithstanding anything to the contrary contained in any other law or the common law, the entry of any premises or the handling of any property, article, document or any other material in or on or relating to such premises by a member shall not be unlawful if it is done on the authority of a direction issued in terms of this section.

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

General powers of Deputy President or Minister

6. (1) The Deputy President or the Minister may, subject to the provisions of this Act, do or cause to be done all things which in his or her opinion are necessary for the efficient superintendence, control and functioning of, and action taken by, the Agency or the Service.

(2) Without derogating from the generality of his or her powers in terms of subsection (1), the Deputy President or the Minister may-

(a) acquire or hire any premises, with or without any buildings thereon, which may be necessary for the efficient functioning of the Agency or the Service, and erect and maintain any buildings so required and, with the concurrence of the Minister of Finance, supply guarantees, indemnities and securities for those purposes;

(b) acquire and utilise any premises, movable property and any other equipment which may be necessary for the efficient functioning of the Agency or the Service;

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

Appointment, promotion, discharge, demotion and transfer of members

7. (1) The Deputy President or the Minister may, subject to the provisions of this Act, appoint any person as a member and any member may in accordance with the said provisions be promoted, discharged, reduced in rank or grade or transferred.

(2) Any document in the prescribed form purporting to have been signed by the Deputy President or the Minister and certifying that any person has been appointed as a member shall be prima facie proof that such person has been so appointed.

Security screening and discharge of members

8. (1) Subject to section 3(1)(a), (b), (c), (d), (e) and (f), no person may be appointed as a member before-

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

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

(2) If the Deputy President or the Minister is reasonably of the opinion that a person may be appointed without the possibility that such person might be a security risk or might act in a way prejudicial to security interests, as contemplated in subsection (1)(b), he or she shall issue a document with respect to such person in which it is certified that such person has successfully undergone a security clearance and is regarded by him or her as security competent: Provided that the Deputy President or the Minister may withdraw such certificate if he or she should obtain information which, after evaluation by him or her, causes him or her no longer to be reasonably of the opinion that the member may be employed as a member without the possibility that the member could be a security risk or could possibly act in any manner prejudicial to security interests of the Republic.

(3) If-

(a) the certificate, referred to in subsection (2), is withdrawn; or

(b) the Deputy President or the Minister obtains information regarding a person who became a member in terms of section 3(1)(a), (b), (c), (d), (e) or (f) which causes him or her to be reasonably of the opinion that that person could be a security risk or could possibly act in any manner prejudicial to security interests of the Republic, such member shall be deemed unfit for further membership of the Agency or the Service and the Deputy President or the Minister may-

(i) discharge such person or member from the Agency or the Service; or

(ii) after consultation with the Public Service Commission transfer such person or member to another department on the conditions determined by the Deputy President or the Minister.

Discharge of members on account of long absence without leave

9. Any member who absents himself or herself from his or her official duties without the permission of the Director-General concerned for a period exceeding one month, shall be deemed to have been discharged from the Agency or the Service, as the case may be, on account of misconduct with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty: Provided that if any member absents himself or herself from his or her official duties without such permission and accepts other employment he or she shall be deemed to have been so discharged even if he or she has not yet so absented himself or herself for a period of a month: Provided further that if a member deemed to have been so discharged, again reports for duty, the Director-General concerned may, notwithstanding anything to the contrary contained in any law but subject to the approval of the Deputy President or the Minister, reinstate him or her in his or her former post or appoint him or her to any other post or appointment in the Agency or the Service, as the case may be, on such conditions as the Director-General concerned may deem fit, and in that event the period of his or her absence from his or her official duties shall be deemed to have been absence on vacation leave without pay, or leave on such other conditions as the Director-General concerned may determine.

Discharge of members on account of ill-health

10. (1) Any member may be discharged from the Agency or the Service by the Director-General concerned if, after enquiry in the prescribed manner as to his or her state of health, such Director-General is of the opinion that he or she is by reason of ill-health unfit to remain in the Agency or the Service, as the case may be.

(2) Any member discharged in terms of subsection (1) may in the prescribed manner appeal to the Deputy President or the Minister, who may thereupon set aside or confirm his or her discharge.

Discharge or reduction in rank or grade of members on account of inefficiency

11. (1) A member may be discharged from the Agency or the Service or reduced in rank or grade by the Director-General concerned if, after enquiry in the prescribed manner as to his or her fitness to remain in employment or to retain his or her rank or grade, such Director-General 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 the Service, as the case may be, or reduced in rank or grade in terms of subsection (1), may in the prescribed manner appeal to the Deputy President or the Minister, who may thereupon set aside or confirm his or her discharge or reduction in rank or grade, as the case may be.

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

12. (1) If the public interest so requires, the Deputy President or the Minister may-

(a) transfer any member from the post held by him or her to any other post-

(i) in the Agency or the Service, as the case may be; or

(ii) if the Minister concerned has concurred therein and the Public Service Commission has so recommended, in any other department, 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 a transfer a member's salary and salary scale shall not be reduced without his or her consent, except in accordance with the provisions of Chapter III;

(bb) such a transfer to another department shall take place on such conditions as may be determined on the recommendation of the Public Service Commission; and

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

(b) discharge any such member from the Agency or the Service, as the case may be, on such conditions as the Deputy President or the Minister may determine.

(2) A member may, with his or her consent and upon such conditions as may be approved by the Deputy President or the Minister, be seconded by the Director-General concerned for the performance of a particular service or for a specified period, to the service of any other government or any other authority, or any board, institution or body, but shall, while so seconded, remain subject to the provisions of this Act and any other law which applies to him or her.

(3) The Director-General concerned may by contract engage any person for the performance of a particular service or for any period approved by the Deputy President or the Minister.

Delegation of powers

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

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

CHAPTER III

Discipline

Savings with respect to misconduct

14. Nothing in this Act contained shall be construed as indemnifying any member against prosecution in or conviction by any court of law in respect of any offence.

Procedure in case of alleged misconduct of members

15. (1) The Director-General concerned may, in the manner prescribed, charge any member with misconduct and request him or her to submit, within such period and in such manner as may be prescribed, a written admission or denial of the charge and any written explanation he or she may wish to offer in connection with the alleged misconduct.

(2) After the expiration of the said period the Director-General concerned may appoint a board of enquiry to investigate the charge in question.

(3) A board of enquiry may subpoena any person as a witness and administer an oath to a person so subpoenaed or, in lieu thereof, accept an affirmation from him or her.

(4) At the investigation of any charge in terms of this section, the law relating to evidence and witnesses as applicable in connection with criminal proceedings in a magistrate's court, except the proviso to section 217(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall, subject to the provisions of this Act, apply.

(5) Where a member is charged with misconduct which constitutes an offence in respect of which he or she has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by any person, be admissible in evidence before the board of enquiry investigating the charge, and a certified copy of the charge and conviction in question shall, on its mere production by any person to such board, be prima facie proof of the commission of such offence by the member concerned.

(6) After considering the evidence adduced at the enquiry and affording the member charged or another member referred to in section 16 assisting or representing him or her an opportunity of addressing the board of enquiry, the board shall find the member charged guilty or not guilty of the misconduct with which he or she has been charged and inform him or her of its finding: Provided that if the member charged admits, pursuant to a request under subsection (1) or to the board, that he or she is guilty of the misconduct in question, he or she may be found guilty without any evidence having been adduced.

(7) A member found guilty of misconduct may, within such period and in such manner as may be prescribed, appeal to the Deputy President or the Minister against the finding of the board of enquiry and make representations in writing to the Deputy President or the Minister in regard to the imposition of punishment.

(8) The board of enquiry shall and the Director-General concerned may make recommendations to the Deputy President or the Minister regarding the punishment which may be imposed upon a member found guilty.

(9) The Deputy President or the Minister may, after considering the record of the proceedings before the board of enquiry and the recommendations of the board, and the recommendations of the Director-General concerned and the grounds of appeal of, and any representations made by, the member charged, direct that the conviction and sentence be set aside, or confirm the conviction on any charge and-

- (a) direct that no further action be taken in the matter;
- (b) direct that the member concerned be cautioned or reprimanded;
- (c) impose upon the member concerned a fine not exceeding the amount determined from time to time by the Deputy President or the Minister by regulation, and which may be recovered by way of deductions from his or her salary or allowances;
- (d) direct that his or her salary, rank or grade or both his or her salary and rank or grade be reduced to such extent as may be recommended;
- (e) direct that the member be called upon to resign from the Agency or the Service, as the case may be, from a date specified by the Deputy President or the Minister; or discharge the member from the Agency or the Service, as the case may be, from a date specified by the Deputy President or the Minister.

Representation at Board of Enquiry

16. Any member may-

- (a) with respect to his or her appearance before a board of enquiry referred to in section 15;
- (b) with respect to an investigation held in terms of sections 10 and 11; and
- (c) with respect to any other investigation held in terms of this Act and as a consequence of which a decision or finding that may be prejudicial to his or her rights may be made, be represented and assisted only by another member: Provided that if there is no member who satisfies the requirements for a degree entitling him or her to admission as an attorney in terms of the Attorneys Act, 1979 (Act No. 53 of 1979), or as an advocate in terms of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and who is available and prepared to represent and assist the member, that particular member, should he or she so insist, shall be entitled to legal representation by a person from outside the Agency or the Service, as the case may be: Provided further that the Deputy President or the Minister may make regulations which he or she deems necessary and advisable to protect intelligence, information and documents in the possession or under the control of the Agency or the Service, as the case may be, from unauthorised disclosure and which shall also apply to the said legal representative from outside the Agency or the Service.

Suspension of members

17. (1) A member may be suspended from his or her office on full salary and benefits pending his or her trial or after his or her conviction of any offence, whether under this Act or otherwise, or pending any enquiry at which a charge of misconduct against him or her or his or her fitness to remain in the Agency or the Service, as the case may be, or to retain his or her rank or grade is being investigated, and shall be so suspended during any period during which he or she is under arrest or detention or is serving a term of imprisonment, but shall not by reason of such suspension cease to be a member.
- (2) During the suspension of a member his or her powers, functions and authority as such a member shall be in abeyance, but he or she shall continue to be subject to the same duties and discipline as if he or she had not been suspended.
- (3) The suspension of a member may be terminated at any time.

(4) The suspension or the termination of the suspension of a member shall take place on the instructions of the Deputy President or the Minister or, as a provisional measure pending the decision of the Deputy President or the Minister, on the instructions of the Director-General concerned.

Manner in which notice may be given or process served

18. If by this Act it is provided-

(a) that any notice, statement or other document is to be given or supplied to or served upon any person or that any matter is to be or may be conveyed to any person in writing, the notice, statement, document or writing may be sent by post in a registered letter or be delivered to him or her or left at his or her last known place of residence; or

(b) that any person is to be informed of any decision or finding, he or she may be informed thereof verbally or by writing sent by post in a registered letter or delivered to him or her or left at his or her last known place of residence.

CHAPTER IV

General

Whole time of members to be at disposal of State

19. (1) Unless otherwise provided in this Act-

(a) every member shall place the whole of his or her time at the disposal of the State;

(b) no member shall 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 the provisions of subsection (1), the Deputy President or 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 whatsoever in connection with the performance of his or her work, otherwise than in accordance with the provisions of this Act or in contravention of the provisions of subsection (1)(b), such member shall pay to the Agency or the Service, as the case may be, an amount equal to the amount of such remuneration, allowance or reward or, where it does not consist of money the value thereof, as determined by the Director-General concerned, and if he or she does not do so, such Director-General may recover it from him or her by way of legal proceedings or in such manner as such Director-General may deem fit: Provided that-

(i) there shall be a right of appeal to the Deputy President or the Minister against that determination by the Director-General; and

(ii) the Deputy President or the Minister may approve the retaining by a member of the whole or a portion of that remuneration, allowance or reward.

(b) Where in the opinion of the Director-General concerned a member has received any remuneration, allowance or other reward as contemplated in paragraph (a) and it 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, the post office savings bank or any building society or other financial institution in his or her name or in the name of some other person on his or her behalf, such Director-General may in writing require such member or such other person or such bank, the post office or such building society 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.

(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, institution or body in terms of section 12(2), shall be paid to the Agency or the Service, as the case may be: Provided that in special circumstances the Deputy President or 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.

Reward for extraordinary diligence or devotion

20. The Director-General concerned may, with the approval of the Deputy President or 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 such a member, such monetary or other reward as he or she considers appropriate in the circumstances.

Establishment of decorations and medals for members

21. The Deputy President or 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 such a member or to any other person who has rendered exceptional services to the Agency or the Service.

Offences

22. (1) Any person-

(a) not being a member, who-

(i) by words, conduct or demeanour pretends that he or she is such a member;

(ii) persuades any member to omit to carry out his or her duty or to do any act in conflict with his or her duty; or

(iii) is an accomplice to the commission of any act whereby any lawful order given to a member or any regulation may be evaded;

(b) subpoenaed in terms of section 15 to appear as a witness at an enquiry who fails to attend at the time and

place mentioned in the subpoena, or, having attended, refuses to answer all questions lawfully put to him or her;

(c) subpoenaed in terms of section 15 to appear as a witness at an enquiry and at any such enquiry makes any false statement on oath knowing it to be false;

(d) who unlawfully and intentionally violates a provision of the regulations mentioned in the second proviso to section 16;

(e) who fails to comply with a requirement in terms of section 19(3)(b); who, not being the person to whom a decoration or medal was awarded, wears it or, without the written permission of the Director-General concerned, makes use of any decoration or medal established or introduced under this Act, or of its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive;

(g) who, without the approval of the Deputy President or the Minister, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or by virtue of the provisions of this Act or under the patronage of the Agency or the Service, as the case may be, or is in any manner associated or connected with the Agency or the Service;

(h) who enters upon or is on or in any premises in contravention of any prohibition or restriction under section 24, shall be guilty of an offence.

(2) Any person convicted of an offence under this Act shall be liable-

(a) in the case of a contravention of subsection (1) (a) or (b) to a fine, or to imprisonment for a period not exceeding six months;

(b) in the case of a contravention of subsection (1)(c) to the penalties prescribed by law for perjury;

(c) in the case of a contravention of subsection (1)(d), (e) or (f) to a fine, or to imprisonment for a period not exceeding one year;

(d) in the case of a contravention of subsection (1)(g) to a fine, or to imprisonment for a period not exceeding two years;

(e) in the case of a contravention of subsection (1)(h) to a fine, or to imprisonment for a period not exceeding 15 years.

Extraterritorial application of Act, and jurisdiction

23. (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 shall be deemed to have been committed also in the Republic.

(2) Any offence or misconduct under this Act shall, for the purposes of determining the jurisdiction of a court

or board of enquiry to try the offence or misconduct, be deemed to have been committed at a place where it actually was committed and also at any place where the accused or person concerned happens to be.

Prohibition of access to premises

24. (1) The Deputy President or the Minister may by notice in the Gazette or in any other manner which he or she deems sufficient in the circumstances, prohibit or restrict access to any premises under the control of the Agency or the Service.

(2) The Deputy President or the Minister may take or cause to be taken such measures as he or she deems necessary for the security of, or the application 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 erected as he or she may in each particular case deem necessary.

Canteens

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

(2) The production of an official document signed by the Deputy President or the Minister and indicating that he or she has established a canteen for the purposes of this section, shall be 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 the Service 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.

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

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

(2) If any notice contemplated in subsection (1) is given to the Director-General concerned, it shall be deemed to be notification to the defendant concerned.

(3) Any process by which any proceedings contemplated in subsection (1) is instituted and in which the Deputy President or the Minister is the defendant or respondent, may be served on the Director-General concerned.

Missing members

27. (1) If a member is missing and the Director-General concerned 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 or the Service, as the case may be, from the first day after the day on which such absence commenced until the day on which he or she again reports for duty or, in the opinion

of the Director-General concerned, should have so reported, or a competent court issued an order whereby the death of such member is presumed.

(2) The salary or wages and allowances accruing to a member during his or her absence contemplated in subsection (1) shall, subject to the provisions of 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, in the opinion of the Director-General concerned, 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) shall 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 the provisions of subsection (2) the Director-General concerned may in his or her discretion direct that only a portion of the salary or wages and allowances of a member be paid in terms of the said subsection or that no portion thereof be so paid.

Exemption from training and compulsory service in National Defence Force and South African Police Service

28. (1) The provisions of the Defence Act, 1957 (Act No. 44 of 1957), relating to service or the liability to undergo training shall not apply to any member of the Agency or the Service.

(2) The provisions of the Police Act, 1958 (Act No. 7 of 1958), relating to the establishment or functioning of, or service or training in, the Police Reserve, shall not apply to any member of the Agency or the Service.

(3) (a) Notwithstanding the provisions of subsections (1) and (2), the Deputy President or the Minister may, in the event of war or when, in his or her opinion, a state of emergency exists, and having regard to the requirements of the Agency and the Service, second any member for service or training in the National Defence Force or the South African Police Service.

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

Regulations

29. (1) The Deputy President or the Minister may make regulations as to-

(a) the employment, training, promotion, posting, transfer, leave of absence, resignation, discharge, dismissal, suspension or reduction in rank or grade of members and the personnel management of those members in general;

(b) the standards of physical and mental fitness and the medical examination of members, and the medical, dental and hospital treatment of such members and their families;

(c) the provision of medical, dental and hospital treatment of members who have retired on pension, and their families and of the families of members who have died or die;

- (d) the numerical establishment of the Agency or the Service, 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 and the Service;
- (e) the establishment and maintenance of training institutions or centres for members, and the instruction, training, discipline and control of such members at such institutions or centres; the definition of offences against duty and discipline and, generally, the control and discipline of the Agency and the Service;
- (g) the deductions to be made from the salaries, wages or allowances of members;
- (h) the assembly of boards of enquiry appointed under this Act, the procedure at the proceedings of such boards and the attendance of witnesses thereat;
- (i) the charging of members with misconduct;
- (j) appeals in terms of this Act;
- (k) the provision of stores, accessories, other equipment and means of transport required for the Agency and the Service, and the care, safe custody and maintenance thereof;
- (l) the exercise of their powers and the performance of their functions by members;
- (m) the design, award, use, care, loss, forfeiture and restoration of any decoration or medal established or introduced in terms of this Act, and its bar, clasp or ribbon;
- (n) returns, registers, records, books, forms, other documents and correspondence relating to the Agency and the Service;
- (o) the recovery from a member of any deficiency, loss, damage or expense which he or she has unlawfully caused to the State;
- (p) the establishment and conduct, and the control of the funds, of canteens contemplated in section 25;
- (q) the control of funds collected or received by members for the benefit of members or ex-members, or their dependants;
- (r) the general management and maintenance of the Agency and the Service;
- (s) the retention of rank on retirement or resignation from the Agency or the Service and the award of honorary ranks;
- (t) the control over and administration of funds appropriated for the Agency or the Service in order to bring about the systematic and orderly management thereof and to promote efficiency and economy in the utilisation thereof;
- (u) the regulation of labour relations and the creation of accompanying structures;

(v) the conditions for and procedures regarding the permission of access to any premises under the control of the Agency or the Service and matters relating thereto;

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

(x) the establishment of procedures regarding the presentation, consideration and adjudication of grievances of members;

(y) any matter which in terms of this Act shall or may be prescribed;

(z) generally, all matters which are necessary or expedient to prescribe in order that the purposes of this Act may be achieved.

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

(3) A regulation relating to conditions of service of members may be applied also to persons who were members but who had ceased to be members not more than two years previously, calculated from the date on which the regulation concerned is so applied: Provided that such a regulation shall not apply in respect of a particular person if it would be to his or her detriment.

(4) Regulations under subsection (1) (c) may provide for benefits in respect of medical, dental and hospital treatment of members who have retired on pension and their families and of the families of members who have died on the same basis on which provision therefor is made for members and their families.

(5) A regulation made in terms of this section with reference to members need not be published in the Gazette but shall be notified to members to whom it applies in such manner as the Deputy President or the Minister may determine.

Discoveries, inventions and improvements by members

30. (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, shall vest in the Agency or the Service, as the case may be.

(2) The Deputy President or 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 Deputy President or the Minister may determine.

(3) If the rights in any discovery, invention or improvement vest in the Agency or the Service in terms of subsection (1), the Deputy President or 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 Deputy President or the Minister may determine with the concurrence of the Minister of Finance.

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

Advisory Board

31. The President shall for such period as he may determine appoint the heads of the organisational components contemplated in section 3 to form an advisory board, on such conditions and remuneration (if any) prescribed by him or her, to advise him or her on the exercise of his or her powers under section 3 and matters relating thereto, and to advise the Director-General concerned on the exercise of his or her powers under section 4 and matters relating thereto.

Repeal of laws, and savings

32. (1) Subject to the provisions of subsection (2) the laws mentioned in the Schedule are hereby repealed or amended to the extent indicated in the third column thereof.

(2) Subject to section 3(2)(f) anything done under any provision of a law repealed in terms of subsection (1) and which could have been done under a provision of this Act, shall be deemed to have been done under the latter provision.

(3) All assets, liabilities, rights and duties including funds, resources and administrative records of a Service, Department or government establishment which ceases to exist by virtue of subsection (1) shall vest in the Agency or the Service, as the case may be, and shall be deemed to have been acquired or incurred by the Agency or the Service, as the case may be, under the provisions of this Act.

(4) A registrar of deeds shall, upon the production to him or her of a certificate by the Deputy President or the Minister that immovable property described in the certificate vests in the Agency or the Service in terms of subsection (3), make such entries and endorsements as he and 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 (3).

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

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

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

Short title and commencement

33. This Act shall be called the Intelligence Services Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

Schedule

No. and year of law Short title *Extent of repeal or amendment* **Laws repealed or amended (Section 32)**

Act No. 81 of 1969 (Republic of South Africa) Security Services Special Account Act, 1969 *Extent of repeal or amendment:*

1. The substitution for section 2 of the following section:

"Payments from account

2. The moneys in the account shall be utilised for the defraying of expenses in connection with-

(a) the performance of the function and the duty of the National Intelligence ****Service**** Agency and the South African Secret Service as referred to in ****section 2 of**** the ****Security Intelligence and State Security Council Act, 1972(Act No. 64 of 1972)**** National Strategic Intelligence Act, 1994; and

(b) the organisation of, the exercising of the powers and the performance of the duties and functions of any member of, the exercising of the powers of the *President or the responsible Executive Deputy President or Minister* in relation to the superintendence and control of, and the action by and functioning of, the ****National Intelligence Service as referred to in the Bureau for State Security Act, 1978 (Act No. 104 of 1978)**** Agency and the Service as defined in section 1 of the Intelligence Services Act, 1994, and matters in connection therewith which the said President, Executive Deputy President or Minister, *as the case may be*, may from time to time approve as being in the national interest, and shall be paid out subject to the directions of the said President, Executive Deputy President or Minister, as the case may be."

2. The amendment of section 3 by the insertion after the word "Intelligence" of the words "Agency and the Director-General: South African Secret".

3. The substitution for section 5 of the following section: "Investment of balances

5. Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as may be determined by the *President, Executive Deputy President or Minister* responsible for the National Intelligence Agency or the South African Secret Service ****in consultation**** with the concurrence of the Minister ****for State Expenditure**** of Finance."

Act No. 57 of 1973 (Republic of South Africa) Government Service Pension Act, 1973 *Extent of repeal or amendment*

1. The amendment of section 1-

(a) by the insertion after the definition of "Administrator" of the following definition: " 'Agency' means the Agency as defined in section 1 of the Intelligence Services Act, 1994;";

(b) by the deletion of the definition of "Bureau";

(c) by the substitution for the definition of "police force" of the following definition: " 'police force' means the Force referred to in section 2 of the Police Act, 1958 (Act No. 7 of 1958), with the exception of members of the Police Reserve of Officers or the Reserve Police Force and

special constables, and includes persons employed in the ****Bureau**** *Agency or the Service*"; and

(d) by the insertion after the definition of "revenue" of the following definition: " *'Service' means the Service as defined in section 1 of the Intelligence Services Act, 1994;*".

2. The amendment of section 6 by the substitution in subsection (6) in the words preceding paragraph (a) and in paragraph (a), for the word "Bureau" of the words "Agency or the Service".

3. The amendment of section 17 by the substitution for subsection (6) of the following subsection:

"(6) The regulations contemplated in this section shall be made by the Minister with the concurrence of the Minister of Finance and after consultation with the ****Administrators*
* Premiers** and the *President, Executive Deputy President or Minister*, responsible for the ****Bureau**** *Agency or the Service, the Public Service Commission* ****for Administration****, the ****permanent force, the police force**** *National Defence Force, the South African Police Service, the prisons service, National Education and Posts and Telecommunications.*".

Act No. 56 of 1978 (Republic of South Africa) Secret Services Act, 1978 *Extent of repeal of amendment*

1. The amendment of section 1-

(a) by the substitution for the definition of "responsible Minister" of the following definition: "responsible Executive Deputy President or Minister", in relation to any matter referred to in this Act, means the Executive Deputy President or Minister responsible for the department of State under which that matter falls;"; and (b) by the substitution in the definition of "secret service" for the words "responsible Minister" of the words "President or the responsible Executive Deputy President or Minister".

2. The amendment of section 2 by the substitution in subsection (2)(a) for the words "responsible Minister" of the words "President or the responsible Executive Deputy President or Minister".

3. The amendment of section 3A by the substitution in subsection (8)(a) for the words "a responsible Minister" of the words "the President or the responsible Executive Deputy President or Minister".

4. The amendment of section 3B by the substitution in subsection (1) for the words "responsible Minister" of the words "President or the responsible Executive Deputy President or Minister".

Act No. 104 of 1978 (Republic of South Africa) Act No. 84 of 1982 (Republic of South Africa) Bureau for State Security Act, 1982

Extent of repeal or amendment

Protection of Information Act, 1982

The repeal of the whole.

The amendment of section I by the substitution for the definition of "security matter" of the following definition:

"'security matter' includes any matter which is dealt with by the ****National Intelligence Service***
* *Agency or the Service as defined in section 1 of the Intelligence Services Act, 1994*, or which relates to the functions of that *Agency* or *Service* or to the relationship existing between any person and

Act No. 127 of 1992 (Republic of South Africa) Intercepting and Monitoring Prohibition Act, 1992

Extent of repeal of amendment

1. The amendment of section 1-

(a) by the insertion before the definition of "division" of the following definition: " 'Agency' means the Agency as defined in section 1 of the Intelligence Services Act, 1994;"; and

(b) by the insertion after the definition of "serious offence" of the following definition: *Service' means the Service as defined in section 1 of the Intelligence Services Act, 1994;*".

2. The amendment of section 3 by the substitution for paragraph (c) of subsection (2) of the following paragraph:

"(c) for the purposes of subsection (1)(b)(ii) or subsection (4), be made by a member as defined in section 1 of the ****Bureau for State Security Act, 1978 (Act No. 104 of 1978)**** *Intelligence Services Act, 1994*, provided the member concerned obtained in advance the approval of another member of the ****National Intelligence Service**** *Agency or the Service, as the case may be*, holding a post of at least chief director."

3. The amendment of section 4-

(a) by the substitution in subsection (1) for the words "National Intelligence" of the words "Agency or the"; and

(b) by the substitution in subsection (2)(b)(ii) for the words "National Intelligence" of the words "Agency or the".

4. The amendment of section 5 by the substitution in subsection (2) for the words "Chief of the National Intelligence" of the words "Director-General of the Agency or the".

Proclamation No. 103 of 1994 Public Service Act, 1994 *Extent of repeal or amendment:*

1. The amendment of section 1-

(a) by the insertion in subsection (1) before the definition of "agreement" of the following definition: " 'Agency' means the Agency as defined in section I of the Intelligence Services Act, 1994;";

(b) by the insertion in subsection (1) after the definition of "scale" of the following definition: "*'Service' means the Service as defined in section 1 of the Intelligence Services Act, 1994;*"; and

(c) by the deletion in subsection (1) of the definition of "the National Intelligence Services".

2. The amendment of the Act by the substitution for the words "National Intelligence Services", wherever they occur, of the words "Agency or the Service".

3. The amendment of Schedule I-

(a) by the deletion in Columns I and II of the words "Department of National Intelligence Services/Director-General: National Intelligence Services"; and

(b) by the insertion in Columns I and II after the words "National Defence Force/Chief of the National Defence Force" of the words "National Intelligence Agency/ Director-General: National Intelligence Agency" and "South African Secret Service/Director-General: South African Secret Service".

Act No. 27 of 1981 (Republic of Bophuthatswana) National Security Council Act, 1981 *The repeal of the whole.*

Act No. 25 of 1982 (Republic of Bophuthatswana) Bophuthatswana Internal Intelligence Service Act, 1982 *The repeal of the whole.*

Act No. 7 of 1987 (Republic of Transkei) Intelligence Service and State Security Council Act, 1987 *The repeal of the whole.*

Act No. 31 of 1988 (Republic of Venda) National Intelligence Service Act, 1988 *The repeal of the whole.*

Act No. 1 of 1991 (Republic of Ciskei) Ciskei Intelligence Service Decree, 1991 *The repeal of the whole.*