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OFFICE OF THE PRESIDENCY

KANTOOR VAN DIE PRESIDENSIE

No. 1397. 19 November 1999

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

No. 42 of 1999: Intelligence Services Control Amendment Act, 1999.

No. 1397. 19 November 1999

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

No. 42 van 1999: Wysigingswet op Beheer oor Intelligensiedienste, 1999.

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 18 November 1999.)

ACT

To amend the Intelligence Services Control Act, 1994, so as to amend certain definitions; to alter the procedure for the appointment of members of the Joint Standing Committee on Intelligence; to make further provision for the appointment and conditions of service of the Inspectors-General; to delete certain obsolete references; and to make further provision for reports to the Joint Standing Committee on Intelligence; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 40 of 1994, as amended by section 1 of Act 31 of 1995

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

- (a) by the substitution for the definition of "Auditor-General" of the following definition:

" 'Auditor-General' means the Auditor-General referred to in section [191] 188 of the Constitution;";
- (b) by the substitution for the definition of "Constitution" of the following definition:

" 'Constitution' means the Constitution of the Republic of South Africa, [1993 (Act No. 200 of 1993)] 1996 (Act No. 108 of 1996);"; and
- (c) by the substitution for the definition of "Speaker" of the following definition:

" 'Speaker' means the Speaker of the National Assembly contemplated in section [41] 52 of the Constitution.".

Amendment of section 2 of Act 40 of 1994, as amended by section 2 of Act 31 of 1995

2. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for subsection (2) of the following subsection:

"(2) (a) The Committee shall consist of [— (a) nine] 15 members of [the Majority Party in] Parliament [;] appointed on the basis of proportional representation determined according to the formula in paragraph (c): Provided that—

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 18 November 1999.)

WET

Tot wysiging van die Wet op Beheer oor Intelligensiedienste, 1994, ten einde sekere omskrywings te wysig; die prosedure vir die aanstelling van lede van die Gesamentlike Staande Komitee oor Intelligensie te wysig; verder voorsiening te maak vir die aanstelling en diensvoorwaardes van die Inspekteurs-generaal; sekere verouderde verwysings te skrap; en verder voorsiening te maak vir die verslae van die Gesamentlike Staande Komitee oor Intelligensie; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 40 van 1994, soos gewysig deur artikel 1 van Wet 31 van 1995

- 5 1. Artikel 1 van die Wet op Beheer oor Intelligensiedienste, 1994 (hierna die Hoofwet genoem), word hierby gewysig—
- (a) deur die omskrywing van “Ouditeur-generaal” deur die volgende omskrywing te vervang:
- 10 “‘Ouditeur-generaal’ die Ouditeur-generaal bedoel in artikel [191] 188 van die Grondwet;”;
- (b) deur die omskrywing van “Grondwet” deur die volgende omskrywing te vervang:
- “‘Grondwet’ die Grondwet van die Republiek van Suid-Afrika, [1993 (Wet No. 200 van 1993)] 1996 (Wet No. 108 van 1996);”;
- 15 (c) deur die omskrywing van “Speaker” deur die volgende omskrywing te vervang:
- “‘Speaker’ die Speaker van die Nasionale Vergadering in artikel [41] 52 van die Grondwet beoog;”.

Wysiging van artikel 2 van Wet 40 van 1994, soos gewysig deur artikel 2 van Wet 31 van 1995

2. Artikel 2 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (2) deur die volgende subartikel te vervang:
- 25 “(2) (a) Die Komitee bestaan uit [— (a) nege] 15 lede [van die Meerderheidsparty in] van die Parlement [;] wat op die grondslag van proporsionele verteenwoordiging aangewys word ooreenkomstig die formule in paragraaf (c): Met dien verstande dat—

- (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 a security clearance has been issued in respect of that member by the National Intelligence Agency in a manner determined by the Minister as defined in section 1 of the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), by regulation.
- (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.
- [(b) three members of the Largest Minority Party in Parliament;**
(c) one member of the Second Largest Minority Party in Parliament;
(d) one member of each other political party represented in Parliament:
Provided that if any political party is unwilling to serve or to continue to serve on the Committee, the membership of such political party shall not be allocated to any other political party and the Committee shall nevertheless be deemed to be properly constituted]];
- (b) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
- “(a) a member referred to in subsection (2) shall be appointed by the Speaker or the **[President of the Senate] 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.”;
- (c) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
- “(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 **[President of the Senate] Chairperson of the National Council of Provinces** and the leader of the political party concerned, and the decision of the committee shall be final.”;
- (d) by the substitution for subsection (4) of the following subsection:
- “(4) The Speaker and the **[President of the Senate] 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.”;
- (e) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph:
- “(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 **[President of the Senate] 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.”;
- (f) by the substitution in subsection (5) for paragraph (c) of the following paragraph:
- “(c) may resign by notice in writing to the Speaker or the **[President of the**

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- (i) indien die totale aantal setels in die Komitee wat aan politieke partye ingevolge paragraaf (c) toegeken word minder is as 15, die oorblywende setels nie aan enige politieke party toegeken word nie, maar dat die Komitee desnieteenstaande geag word behoorlik saamgestel te wees; en
- 5 (ii) indien daar aan een politieke party meer as agt setels ingevolge paragraaf (c) toegeken is en daar meer as vyf politieke partye in die Parlement verteenwoordig word, die vyf minderheidspartye met die grootste verteenwoordiging in die Parlement op ten minste een lid elk in die Komitee geregtig is, en dat die Komitee aldus saamgestel geag word
- 10 behoorlik saamgestel te wees ongeag of die totale aantal setels aldus toegeken meer of minder is as 15; en
- (iii) indien 'n politieke party nie gewillig is om in die Komitee te dien of om voort te gaan om daarin te dien nie, die setels van dié politieke party in die Komitee nie aan 'n ander politieke party toegewys word nie, maar
- 15 dat die Komitee nogtans geag word behoorlik saamgestel te wees.
- (b) Geen lid van die Parlement word as lid van die Komitee aangestel nie alvorens 'n veiligheidsklaring ten opsigte van daardie lid deur die Nasionale Intelligensie-agentskap uitgereik is op 'n wyse deur die Minister soos omskryf in artikel 1 van die Wet op Nasionale Strategiese Intelligensie, 1994
- 20 (Wet No. 39 van 1994), by regulasie bepaal.
- (c) Politieke partye is geregtig om 'n lid of lede in die Komitee op grondslag van proporsionele verteenwoordiging aan te wys en soos bepaal ooreenkomstig die volgende formule: Deur die aantal setels deur die party in die Nasionale Vergadering gehou deur die totale aantal setels in die
- 25 Nasionale Vergadering te deel, die uitslag met 15 te vermenigvuldig en alle desimale uit te gooi.
- [(b) drie lede van die grootste Minderheidsparty in die Parlement;**
- (c) een lid van die tweede grootste Minderheidsparty in die Parlement;**
- (d) een lid van elke ander politieke party wat in die Parlement**
- 30 **verteenwoordig is:**
- Met dien verstande dat indien 'n politieke party nie gewillig is om in die Komitee te dien nie, die lidmaatskap van daardie politieke party nie aan 'n ander politieke party toegewys word nie, maar dat die Komitee nogtans geag word behoorlik saamgestel te wees.]”;**
- 35 (b) deur in subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang:
- “(a) 'n Lid bedoel in subartikel (2) word deur die Speaker of die **[President van die Senaat]** Voorsitter van die Nasionale Raad van Provinsies aangestel, na gelang van die Huis van die Parlement waaruit die lid aangestel word, wat optree met die instemming van die President, wat met die instemming van die leier van die betrokke politieke party optree.”;
- 40 (c) deur in subartikel (3) paragraaf (b) deur die volgende paragraaf te vervang:
- “(b) Indien ooreenkoms nie bereik word met betrekking tot die aanstelling van 'n bepaalde lid nie, word die aangeleentheid verwys vir beslissing na 'n komitee bestaande uit die President, die Speaker, die **[President van die Senaat]** Voorsitter van die Nasionale Raad van Provinsies en die leier van die betrokke politieke party, en die beslissing van die komitee is afdoende.”;
- 45 (d) deur subartikel (4) deur die volgende subartikel te vervang:
- “(4) Die Speaker en die **[President van die Senaat]** Voorsitter van die Nasionale Raad van Provinsies handelende met instemming van die President, wat optree na oorleg met die leiers van die politieke partye wat lede in die Komitee het, stel 'n lid van die Parlement, welke lid nie ingevolge subartikel (3) in die Komitee aangestel is nie, as voorsitter van die komitee aan.”;
- 50 (e) deur in subartikel (5)(b) subparagraaf (ii) deur die volgende subparagraaf te vervang:
- 55 “(ii) indien hy of sy volgens die oordeel van die Speaker of die **[President van die Senaat]** Voorsitter van die Nasionale Raad van Provinsies, na gelang van die geval, met die instemming van die Komitee en die President, wat optree na oorleg met die leier van die betrokke party, homself of haarself op 'n wyse gedra wat 'n bedreiging vir die nasionale veiligheid uitmaak.”;
- 60 (f) deur in subartikel (5) paragraaf (c) deur die volgende paragraaf te vervang:
- “(c) kan by skriftelike kennisgewing aan die Speaker of die **[President van die Senaat]** Voorsitter van die Nasionale Raad van Provinsies, na gelang

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- Senate]** 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.”;
- (g) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 5
 “(a) the Committee shall meet at such times and follow such procedures as may be prescribed by the rules and orders contemplated in section **[58]** 45 of the Constitution.”; and
- (h) by the substitution in subsection (8) for paragraphs (a) and (b) of the following paragraphs, respectively: 10
 “(a) officers of Parliament designated for that purpose by the Speaker and the **[President of the Senate]** Chairperson of the National Council of Provinces; and
 (b) persons designated for that purpose by the Minister, after consultation with the Speaker, the **[President of the Senate]** Chairperson of the National Council of Provinces, the chairperson and the Heads of the Services.”. 15

Amendment of section 3 of Act 40 of 1994, as amended by section 3 of Act 31 of 1995

3. Section 3 of the principal Act is hereby amended—
- (a) by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph: 20
 “(i) the Auditor-General **[subject to the provisions of the Auditor-General Act, 1989 (Act No. 52 of 1989),]** an audit report compiled in accordance with section 4(6) of the Auditor-General Act, 1995 (Act No. 12 of 1995); **[regarding the accounts and financial statements of the accounting officer regarding money expended on the administration and functions of a Service and regarding the money invested in terms of section 5 of the Security Services Special Account Act, 1969 (Act No. 81 of 1969)]**”; 25
- (b) by the substitution for paragraph (d) of the following paragraph: 30
 “(d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994 (Act No. 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 No. 38 of 1994), section 87 of the Defence Act, 1957 (Act No. 44 of 1957), or section **[33 of the Police Act, 1958 (Act No. 7 of 1958)]** 24 of the South African Police Service Act, 1995 (Act No. 68 of 1995)”; and 35
- (c) by the substitution for paragraph (g) of the following paragraph: 40
 “(g) to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights entrenched in Chapter **[3]** 2 of the Constitution to the South African Human Rights Commission [established by] referred to in section **[115]** 184 of the Constitution, and to receive a report from such Commission concerning the matter;”. 45

Amendment of section 5 of Act 40 of 1994

4. Section 5 of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 7 of Act 40 of 1994, as amended by section 5 of Act 31 of 1995

5. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 50
 “(1) The President shall appoint **[for each Service an Inspector-General]** one or more Inspectors-General of Intelligence—

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van die geval, bedank in watter geval 'n plaasvervanger ooreenkomstig paragraaf (b) en subartikel (3) of (4), na gelang van die geval, aangestel word.”;

- (g) deur in subartikel (6) paragraaf (a) deur die volgende paragraaf te vervang:
 5 “(a) Die Komitee vergader op die tye en volg die prosedure wat by die reëls en orders in artikel [58] 45 van die Grondwet beoog, voorgeskryf word.”; en
- (h) deur paragraawe (a) en (b) van subartikel (8) deur onderskeidelik die volgende paragraawe te vervang:
 10 “(a) amptenare van die Parlement wat vir [die] dié doel deur die Speaker en die [President van die Senaat] Voorsitter van die Nasionale Raad van Provinsies aangewys is; en
- (b) persone wat vir [die] dié doel deur die Minister, na oorleg met die Speaker, die [President van die Senaat] Voorsitter van die Nasionale Raad van Provinsies, die voorsitter en die Hoofde van die Dienste,
 15 aangewys [word] is.”.

Wysiging van artikel 3 van Wet 40 van 1994, soos gewysig deur artikel 3 van Wet 31 van 1995

3. Artikel 3 van die Hoofwet word hierby gewysig—

- (a) deur in paragraaf (a) subparagraaf (i) deur die volgende subparagraaf te vervang:
 20 “(i) van die Ouditeur-generaal [behoudens die bepalings van die Wet op die Ouditeur-generaal, 1989 (Wet No. 52 van 1989)] ’n auditverslag saamgestel in ooreenstemming met die bepalings van artikel 4(6) van die Wet op die Ouditeur-generaal, 1995 (Wet No. 12 van 1995);
 25 [betreffende die rekeninge en finansiële state van die rekenpligtige beampte aangaande die geld wat aan die administrasie en werksaamhede van ’n Diens bestee is, en aangaande die geld wat ingevolge artikel 5 van die Wet op die Spesiale Rekening vir Veiligheidsdienste, 1969 (Wet No. 81 van 1969), belê word, te verkry]”;
- (b) deur paragraaf (d) deur die volgende paragraaf te vervang:
 “(d) om regulasies kragtens artikel 6 van die Wet op Nasionale Strategiese Intelligensie, 1994 (Wet No. 39 van 1994), uitgevaardig, en regulasies
 35 betreffende die intelligensie- en teenintelligensiewerksaamhede van ’n Diens wat kragtens artikel 29 van die Wet op Intelligensiedienste, 1994 (Wet No. 38 van 1994), artikel 87 van die Verdedigingswet, 1957 (Wet No. 44 van 1957), of artikel [33 van die Polisiewet, 1958 (Wet No. 7 van 1958)] 24 van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), uitgevaardig is, te hersien en aanbevelings
 40 daaroor te doen”; en
- (c) deur paragraaf (g) deur die volgende paragraaf te vervang:
 “(g) om enige aangeleentheid met betrekking tot ’n Diens of intelligensie-bedrywigheid wat onder sy aandag kom en wat hy van belang ag by die
 45 bevordering van, respek vir, en beskerming van die regte wat in Hoofstuk [3] 2 van die Grondwet verskans word na die Suid-Afrikaanse Menseregtekommissie [ingestel by] bedoel in artikel [115] 184 van die Grondwet, te verwys en ’n verslag van daardie Kommissie betreffende die aangeleentheid te ontvang”.

50 Wysiging van artikel 5 van Wet 40 van 1994

4. Artikel 5 van die Hoofwet word hierby gewysig deur subartikel (3) te skrap.

Wysiging van artikel 7 van Wet 40 van 1994, soos gewysig deur artikel 5 van Wet 31 van 1995

5. Artikel 7 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
 55 “(1) Die President stel [vir elke Diens ’n Inspekteur-generaal] een of meer Inspekteurs-generaal van Intelligensie aan wat—

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- (a) nominated by the Committee; and
- (b) approved by the National Assembly **[and the Senate]** by a resolution **[adopted]** supported by **[a majority of at least 75 per cent]** at least two thirds of **[the members present and voting at a joint meeting]** its members:

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Provided that—

- (i) **[the same]** one Inspector-General may be appointed with regard to some of or all the Services as long as the activities of all the Services are monitored by an Inspector-General; and
- (ii) if any nomination is not approved as required in paragraph (b), the Committee shall nominate another person.”;
- (b) by the addition to subsection (3) of the following proviso:
 “: Provided that such remuneration shall be the same as that of the Public Protector appointed in terms of section 1A of the Public Protector Act, 1994 (Act No. 23 of 1994).”;
- (c) by the substitution in subsection (7) for paragraphs (a) and (c) of the following paragraphs, respectively:
 “(a) to monitor compliance by the Service with **[its]** the Constitution, applicable laws and policies;
 (c) to perform all functions designated to him or her by the President or the Minister concerned;”;
- (d) by the insertion in subsection (7) after paragraph (c) of the following paragraph:
 “(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 laws and policies referred to in paragraph (a), corruption and the improper enrichment of any person through an act or omission of any member;”;
- (e) by the substitution for subsection (8) of the following subsection:
 “(8) Notwithstanding anything to the contrary contained in this or any other law or the common law, an Inspector-General—
 (a) shall have access to any intelligence, information or premises under the control of the Service in respect of which he or she has been appointed, if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of the Service and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of **[such]** his or her functions;
 (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; 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;
 (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—

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- (a) deur die Komitee benoem is; en
- (b) goedgekeur is deur die Nasionale Vergadering **[en die Senaat]** by 'n besluit **[aangeneem deur minstens 75 persent]** ondersteun deur minstens twee derdes van **[die lede wat by 'n gesamentlike vergadering teenwoordig is en stem]** sy lede:
- 5 Met dien verstande dat—
- (i) **[dieselfde]** een Inspekteur-generaal met betrekking tot sommige of al die Dienste aangewys kan word solank die aktiwiteite van al die Dienste deur 'n Inspekteur-generaal gemoniteer word; en
- 10 (ii) indien 'n benoeming nie volgens voorskrif van paragraaf (b) goedgekeur word nie, die Komitee 'n ander persoon moet benoem.”;
- (b) deur in subartikel (3) die volgende voorbehoudsbepaling by te voeg:
- 15 “: Met dien verstande dat sodanige vergoeding dieselfde is as dié van die Openbare Beskermer aangestel ingevolge artikel 1A van die Wet op die Openbare Beskermer, 1994 (Wet No. 23 van 1994).”.
- (c) deur in subartikel (7) paragrawe (a) en (c) deur onderskeidelik die volgende paragrawe te vervang:
- 20 “(a) om te moniteer of die Diens **[sy]** die Grondwet, toepaslike wette en beleid nakom;
- (c) om alle werksaamhede wat aan hom of haar deur die President of die betrokke Minister toegewys is, te verrig;”;
- (d) deur in subartikel (7) die volgende paragraaf na paragraaf (c) in te voeg:
- 25 “(cA) om klagtes van lede van die publiek en lede van die Dienste te ontvang en te ondersoek oor beweerde wanadministrasie, magsmisbruik, oortreding van wette en beleide bedoel in paragraaf (a), korruptsie en die onbehoorlike verryking van enige persoon deur 'n handeling of late van enige lid;”;
- (e) deur subartikel (8) deur die volgende subartikel te vervang:
- 30 “(8) Ondanks andersluidende bepalinge van enige ander wet of die gemene reg—
- (a) het 'n Inspekteur-generaal toegang tot enige intelligensie, informasie of perseel onder die beheer van die Diens ten opsigte waarvan hy of sy aangestel is indien daardie toegang deur die Inspekteur-generaal vir die verrigting van sy of haar werksaamhede nodig is, en hy of sy is geregtig om van die Hoof van die Diens en sy of haar werknemers die intelligensie, informasie, verslae en verduidelikings op te eis wat die Inspekteur-generaal vir die verrigting van **[sodanige]** sy of haar werksaamhede nodig ag;
- 35 (b) kan 'n Inspekteur-generaal, indien die intelligensie of informasie wat deur hom of haar ingevolge paragraaf (a) ontvang is, aan enige beperking ingevolge enige wet onderworpe is, dit openbaar slegs—
- 40 (i) na oorleg met die President en die Minister; en
- (ii) onderworpe aan gepaste beperkings wat op sodanige intelligensie of informasie deur die Inspekteur-generaal geplaas word, indien nodig; en
- 45 (iii) in die mate wat dié bekendmaking nie tot nadeel van die nasionale belang strek nie;
- (c) het 'n Inspekteur-generaal toegang tot enige ander intelligensie, informasie of perseel wat nie onder beheer van 'n Diens is nie, indien sodanige toegang vir die verrigting van sy of haar werksaamhede ingevolge subartikel (7) noodsaaklik is, en is hy of sy daarop geregtig om van enige sodanige persoon sodanige intelligensie, informasie, verslae en verduidelikings te eis wat hy of sy vir die verrigting van sy of haar werksaamhede nodig ag: Met dien verstande dat die Inspekteur-generaal nie toegang het indien sodanige intelligensie of informasie nie nodig is vir die verrigting van sy of haar werksaamhede nie;
- 50 (d) kan 'n Inspekteur-generaal, indien die intelligensie of informasie wat deur hom of haar ingevolge paragraaf (c) ontvang is, aan enige privilegie of beperking ingevolge enige wet onderworpe is, dit openbaar slegs—
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- (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; 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.”; and
- (f) by the substitution for subsection (9) of the following subsection:
 “(9) No access to intelligence, information or premises contemplated in subsection [(3)] (8)(a) may be withheld from an Inspector-General on any ground.”.

Insertion of section 7A in Act 40 of 1994

6. The following section is hereby inserted after section 7 of the principal Act:

“Offences and penalties

- 7A.** 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.”.

Amendment of section 8 of Act 40 of 1994, as amended by section 6 of Act 31 of 1995

7. Section 8 of the principal Act is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
 “(1) A Minister, acting with the concurrence of the President and the Committee, may make regulations as to [all] any matters which are necessary or expedient for the achievement of the purposes of this Act, including but not limited to—”;
 - (b) by the deletion in subsection (1) of paragraph (a);
 - (c) by the substitution in subsection (1) for paragraph (c) of the following paragraph:
 “(c) the reports to be submitted by [Inspectors-General] an Inspector-General and the Heads of the Services [;], as well as reports to be received by the Committee;”;
 - (d) by the addition after subsection (2) of the following subsection:
 “(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.”.

Short title and commencement

8. This Act shall be called the Intelligence Services Control Amendment Act, 1999, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

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- (i) nadat hy of sy skriftelik kennis van sy of haar voorneme om dit te doen, gegee het aan die wettige besitter van die intelligensie of informasie; en
- (ii) na oorleg met die President en die Minister; en
- 5 (iii) onderworpe aan gepaste beperkings wat op sodanige intelligensie of informasie deur die Inspekteur-generaal geplaas word, indien nodig; en
- (iv) in die mate wat dié bekendmaking nie tot nadeel van die nasionale belang strek nie.”; en
- 10 (f) deur subartikel (9) deur die volgende subartikel te vervang:
 “(9) Geen toegang tot intelligensie, informasie of ’n perseel in subartikel [(3)](8)(a) beoog, mag op enige grond van ’n Inspekteur-generaal weerhou word nie.”.

Invoeging van artikel 7A in Wet 40 van 1994

- 15 6. Die volgende artikel word hierby in die Hoofwet na artikel 7 ingevoeg:

“Misdrywe en strawwe**7A. Enigiemand wat—**

- (a) artikel 5(2) of 7(9) oortree; of
- 20 (b) versuim om aan artikel 7(8) te voldoen,
 is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens vyf jaar.”.

Wysiging van artikel 8 van Wet 40 van 1994, soos gewysig deur artikel 6 van Wet 31 van 1995

7. Artikel 8 van die Hoofwet word hierby gewysig—
- 25 (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “(1) ’n Minister, handelende met die instemming van die President en die Komitee, kan regulasies uitvaardig aangaande [alle] enige aangeleenthede wat nodig of dienstig is om die oogmerke van hierdie Wet te verwesenlik, met inbegrip van, maar nie beperk nie tot—”;
- 30 (b) deur in subartikel (1) paragraaf (a) te skrap;
- (c) deur in subartikel (1) paragraaf (c) deur die volgende paragraaf te vervang:
 “(c) die verslae wat deur [Inspekteurs-generaal] ’n Inspekteur-generaal en Hoofde van die Dienste voorgelê moet word, sowel as verslae wat deur die Komitee ontvang moet word;”; en
- 35 (d) deur die volgende subartikel na subartikel (2) by te voeg:
 “(3) ’n Regulasie wat kragtens hierdie artikel uitgevaardig word, kan daarvoor voorsiening maak dat ’n persoon wat ’n bepaling daarvan oortree of versuim om daaraan te voldoen, aan ’n misdryf skuldig is en by skuldigbevinding strafbaar is met ’n boete of met gevangenisstraf vir ’n tydperk van
- 40 hoogstens vyf jaar.”.

Kort titel en inwerkingtreding

8. Hierdie Wet heet die Wysigingswet op Beheer oor Intelligensiedienste, 1999, en tree in werking op ’n datum wat die President by proklamasie in die Staatskoerant
- 45 bepaal.

