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6 February
6 Februarie 2003

No. 24355

THE PRESIDENCY

No. 188

6 February 2003

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

No. 66 of 2002: Intelligence Services Control Amendment Act, 2002.

DIE PRESIDENSIE

No. 188

6 Februarie 2003

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

No. 66 van 2002: Wysigingswet op Beheer oor Intelligentsiedienste, 2002.

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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 30 January 2003.)*

ACT

To amend the Intelligence Services Control Act, 1994, so as to define an expression and to amend certain definitions; to reregulate the oversight functions of the Joint Standing Committee on Intelligence; to provide that only one Inspector-General of Intelligence may be appointed and to reregulate the functions of the Inspector-General; to provide for the appointment of personnel to the office of the Inspector-General; to extend the power of the Minister to make regulations; and to change the name of the Act; 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 and section 1 of Act 42 of 1999

1. Section 1 of the Intelligence Services Control Act, 1994 (hereinafter referred to as the principal Act), is hereby amended— 5
- (a) by the insertion before the definition of “accounting officer” of the following definition:
“‘Academy’ means the South African National Academy of Intelligence established in terms of the Intelligence Services Act, 2002;”; 10
 - (b) by the substitution for the definition of “Agency” of the following definition:
“‘Agency’ means the National Intelligence Agency [established by] referred to in section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);”; 15
 - (c) by the insertion after the definition of “Auditor-General” of the following definition:
“‘CEO’ means the Chief Executive Officer of the Academy or Comsec, as the case may be;”; 20
 - (d) by the insertion after the definition of “Committee” of the following definition:
“‘Comsec’ means the Electronic Communications Security (Pty) Ltd established in terms of the Electronic Communications Security (Pty) Ltd Act, 2002;”; 25
 - (e) by the substitution for the definition of “Head of a Service” of the following definition:
“‘Head of a Service’ means the Director-General of the Agency or of the South African Secret Service, the [Chief] head of the Intelligence Division of the National Defence Force or the [Commissioner] head of the Intelligence Division of the South African Police Service, but for the

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
- Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 30 Januarie 2003.)

WET

Tot wysiging van die Wet op Beheer oor Intelligensiedienste, 1994, ten einde 'n uitdrukking te omskryf en sekere omskrywings te wysig; die toesighoudende werksaamhede van die Gesamentlike Staande Komitee oor Intelligensie opnuut te reguleer; te bepaal dat slegs een Inspekteur-generaal van Intelligensie aangestel kan word en die werksaamhede van die Inspekteur-generaal opnuut te reguleer; voorsiening te maak vir die aanstelling van personeel in die kantoor van die Inspekteur-generaal; die Minister se bevoegdheid om regulasies uit te vaardig, uit te brei; en die naam van die Wet te verander; en om voorsiening te maak vir angeleenthede 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 en artikel 1 van Wet 42 van 1999

1. Artikel 1 van die Wet op Beheer oor Intelligensiedienste, 1994 (hierna die Hoofwet genoem), word hierby gewysig— 5

(a) deur die omskrywing van "Agentskap" deur die volgende omskrywing te vervang:

"‘Agentskap’ die Nasionale Intelligensie-agentskap [ingestel by bedoel in artikel 3 van die Wet op Intelligensiedienste, 1994 (Wet No. 38 van 1994);”;

(b) deur voor die omskrywing van "Beoordelingskomitee" die volgende omskrywing in te voeg:

"‘Akademie’ die Suid-Afrikaanse Akademie van Intelligensie by die Wet op Intelligensiedienste, 2002, ingestel;”;

(c) deur na die omskrywing van "Komitee" die volgende omskrywing in te voeg:
"‘Comsec’ die Electronic Communications Security (Pty) Ltd by die Wet op Electronic Communications Security (Pty) Ltd, 2002, ingestel;”;

(d) deur die omskrywing van "Dienste" deur die volgende omskrywing te vervang:
"‘Dienste’ die Agentskap, die Suid-Afrikaanse Geheimediens, die Inligtingsafdeling van die Nasionale Weermag en die [Nasionale Ondersoekdiens] Intelligensie-afdeling van die Suid-Afrikaanse Polisiediens;”;

(e) deur die omskrywing van "Hoof van 'n Diens" deur die volgende omskrywing te vervang:
"‘Hoof van 'n Diens’ die Direkteur-generaal van die Agentskap of van die Suid-Afrikaanse Geheimediens, die [Hoof] hoof van die

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- purposes of financial and administrative accounting, the head of the Intelligence Division of the South African National Defence Force means the Secretary for Defence and of the South African Police Service means the National Commissioner;”;
- (f) by the substitution for the definition of “Inspector-General” of the following definition: 5
“‘Inspector-General’ means [a] the person appointed under section 7;”;
- (g) by the substitution for the definition of “Minister” of the following definition: 10
“‘Minister’ means the [Minister to whom the portfolio of the Agency, the South African Secret Service, the National Defence Force or the South African Police Service has been allocated in terms of section 88 of the Constitution] President or the member of the Cabinet designated by the President in terms of section 209(2) of the Constitution to assume political responsibility for the control and direction of the intelligence services established in terms of section 209(1) of the Constitution;”;
- (h) by the insertion after the definition of “Inspector-General” of the following definition: 15
“‘intelligence services’ means the National Intelligence Agency and the South African Secret Services as referred to in section 1 of the Intelligence Services Act, 2002;”;
- (i) by the insertion after definition of “National Defence Force” of the following definition: 20
“‘prescribed’ means prescribed by regulation;”;
- (j) by the substitution for the definition of “Services” of the following definition: 25
“‘Services’ means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force and the [National Investigation Service] Intelligence Division of the South African Police Service;” and
- (k) by the substitution for the definition of “South African Secret Service” of the following definition: 30
“‘South African Secret Service’ means the South African Secret Service [established by] referred to in section 3 of Intelligence Services Act, 1994 (Act No. 38 of 1994);”.

**Amendment of section 2 of Act 40 of 1994, as substituted by section 2 of Act 31 of 35
1995 and amended by section 2 of Act 42 of 1999****2. Section 2 of the principal Act is hereby amended—**

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

“(1) There is hereby established a Parliamentary Committee to be known as the Joint Standing Committee on Intelligence, which shall, subject to the Constitution, perform the oversight functions set out in this Act in relation to the intelligence and counter-intelligence functions, which include the administration, financial management and expenditure of the Services, and report thereon to Parliament.”;

- (b) by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) No member of Parliament shall be appointed as a member of the Committee before the Agency has issued a security clearance [has been issued] in the prescribed manner 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) by the substitution for subsection (4) of the following subsection:

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

- Intelligenzie-afdeling van die Nasionale Weermag of die [Kommissaris] hoof van die Intelligenzie-afdeling van die Suid-Afrikaanse Polisiediens, maar vir die doeleinades van finansiële en administratiewe rekenpligtigheid, die hoof van die Intelligenzie-afdeling van die Nasionale Weermag die Sekretaris van Verdediging en vir die Suid-Afrikaanse Polisiediens die Nasionale Kommissaris;”; 5
- (f) deur na die omskrywing van “Hoof van ’n Diens” die volgende omskrywing in te voeg: “HUB die Hoof- Uitvoerende Beampte van die Akademie of Comsec, na gelang van die geval;”; 10
- (g) deur na die omskrywing van “intelligenzie” die volgende omskrywing in te voeg: “intelligenziedienste die Nasionale Intelligenzie-agentskap en die Suid-Afrikaanse Geheimediens soos bedoel in artikel 1 van die Wet op Intelligenziedienste, 2002;”; 15
- (h) deur die omskrywing van “Inspekteur-generaal” deur die volgende omskrywing te vervang: “‘Inspekteur-generaal’ [n] die persoon kragtens artikel 7 aangestel;”; 20
- (i) deur die omskrywing van “Minister” deur die volgende omskrywing te vervang: “‘Minister’ die [Minister aan wie die portefeuilje van die Agentskap, die Suid-Afrikaanse Geheimediens, die Nasionale Weermag of die Suid-Afrikaanse Polisiediens kragtens artikel 88 van die Grondwet toegeken is] President of die lid van die Kabinet wat ingevolge artikel 209(2) van die Grondwet deur die President aangewys is om politieke verantwoordelikheid te aanvaar vir die beheer en bestuur van die intelligenziedienste wat ingevolge artikel 209(1) van die Grondwet ingestel is;”; 25
- (j) deur die omskrywing van “Suid-Afrikaanse Geheimediens” deur die volgende omskrywing te vervang: “‘Suid-Afrikaanse Geheimediens’ die Suid-Afrikaanse Geheimediens [ingestel by] bedoel in artikel 3 van die Wet op Intelligenziedienste, 1994 (Wet No. 38 van 1994);”; en 30
- (k) deur die volgende omskrywing na die omskrywing van “teenintelligenzie” in te voeg: “‘voorgeskryf’ by regulasie voorgeskryf;”. 35

Wysiging van artikel 2 van Wet 40 van 1994, soos vervang deur artikel 2 van Wet 31 van 1995 en gewysig deur artikel 2 van Wet 42 van 1999

2. Artikel 2 van die Hoofwet word hierby gewysig—

- (a) deur subartikel (1) deur die volgende subartikel te vervang: 40
 “(1) Daar word hierby ’n Parlementêre Komitee bekend as die Gesamentlike Staande Komitee oor Intelligenzie ingestel, wat, behoudens die Grondwet, die toesighoudende werksaamhede verrig wat in hierdie Wet uiteengesit word met betrekking tot die intelligenzie- en teenintelligenziefunksies, wat insluit administrasie, finansiële bestuur en besteding van die Dienste, en daaroor aan die Parlement verslag doen.”;
- (b) deur paragraaf (b) in subartikel (2) deur die volgende paragraaf te vervang: 45
 “(b) Geen lid van die Parlement word as lid van die Komitee aangestel nie alvorens die Agentskap ’n veiligheidsklaring op die voorgeskrewe wyse ten opsigte van daardie lid [deur die Nasionale Intelligenzie-agentskap] uitgereik [is op ’n wyse deur die Minister soos omskryf in artikel 1 van die Wet op Nasionale Strategiese Intelligenzie, 1994 (Wet No. 39 van 1994), by regulasie bepaal] het.”; 50
- (c) deur subartikel (4) deur die volgende subartikel te vervang: 55
 “(4) Die Speaker en die Voorsitter van die Nasionale Raad van Provincies, handelende met die 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] Komitee

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- chairperson of the Committee and subsection (2)(b) shall apply with the necessary changes to such member.”; and
- (d) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
- “(b) The Committee [shall be competent to] may initiate and recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the [functioning] functions and activities of the Committee.”.

Amendment of section 3 of Act 40 of 1994, as amended by section 3 of Act 31 of 1995 and section 3 of Act 42 of 1999

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3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in paragraph (a) for subparagraph (i) of the following subparagraph:
- “(i) the Auditor-General an audit report compiled in accordance with section 4(6) of the Auditor-General Act, 1995 (Act No. 12 of 1995),
and after obtaining the report, to consider—
(aa) the financial statements of the Services, Academy and Comsec;
(bb) any audit reports issued on those statements; and
(cc) any reports issued by the Auditor-General on the affairs of the Services, Academy and Comsec,
and report thereon to Parliament;”;
- (b) by the substitution in paragraph (a) for subparagraph (iv) of the following subparagraph:
- “(iv) [each] the Minister responsible for each Service, the Academy or Comsec, a report regarding the budget for [the] each Service [for which he or she is responsible], the Academy or Comsec;”;
- (c) by the substitution in paragraph (f) for the words preceding the proviso of the following words:
- “to order investigation by and to receive a report from the Head of a Service or [an] the Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property”;
- (d) by the substitution for paragraph (h) of the following paragraph:
- “(h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, [the] any Minister responsible for a Service or Parliament;”;
- (e) by the substitution for paragraph (j) of the following paragraph:
- “(j) to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security, including administration and financial expenditure;” and
- (f) by the substitution for paragraph (l) of the following paragraph:
- “(l) to consider and report on the appropriation of revenue or moneys for the functions of the [Agency and the South African Secret Service] Services, Academy and Comsec.”.

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Amendment of section 4 of Act 40 of 1994**4. Section 4 of the principal Act is hereby amended—**

- (a) by the substitution in subsection (2) for words following upon paragraph

(b)(ii) of the following words:

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

- aan, en subartikel (2)(b) is, met die nodige veranderinge, op sodanige lid van toepassing.”; en
- (d) deur paragraaf (b) in subartikel (6) deur die volgende paragraaf te vervang:
- “(b) Die Komitee [is bevoeg om] kan enige sodanige reëls en orders [voor te stel] voorstel en [aan te beveel] by die Gesamentlike Reëlskomitee van die Parlement aanbeveel vir sover hulle op die [funksionering] funksies en aktiwiteite van die Komitee betrekking het.”.

Wysiging van artikel 3 van Wet 40 van 1994, soos gewysig deur artikel 3 van Wet 31 van 1995 en artikel 3 van Wet 42 van 1999

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3. Artikel 3 van die Hoofwet word hierby gewysig—

- (a) deur subparagraph (i) in paragraaf (a) deur die volgende subparagraph te vervang:

“(i) van die Ouditeur-generaal ’n auditverslag te verkry wat saamgestel is in ooreenstemming met [die bepalings van] artikel [4 (6)] 4(6) van die Wet op die Ouditeur-generaal, 1995 (Wet No. 12 van 1995), en om, nadat die verslag verkry is—

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(aa) die finansiële state van die Dienste, Akademie en Comsec;

(bb) enige auditverslae wat oor daardie state uitgereik is; en

(cc) enige verslae wat deur die Ouditeur-generaal uitgereik is oor die sake van die Dienste, Akademie en Comsec,

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te oorweeg en daaroor aan die Parlement verslag te doen;”;

- (b) deur subparagraph (iv) in paragraaf (a) deur die volgende subparagraph te vervang:

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“(iv) van [elke] die Minister wat vir elke Diens, die Akademie of Comsec verantwoordelik is, ’n verslag betreffende die begroting vir [die] elke Diens [waarvoor hy of sy verantwoordelik is], die Akademie of Comsec, te verkry;”;

- (c) deur in paragraaf (f) die woorde wat die voorbehoudsbepaling voorafgaan, deur die volgende woorde te vervang:

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“om ondersoek te gelas deur en ’n verslag te ontvang van die Hoof van ’n Diens of [’n] die Inspekteur-generaal betreffende enige klagte wat deur die Komitee van ’n lid van die publiek ontvang is aangaande enigsy wat so ’n lid meen dat ’n [diens] Diens aan sy of haar persoon of eiendom berokken het”;

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- (d) deur paragraaf (h) deur die volgende paragraaf te vervang:

“(h) om aangaande enige aangeleenthed wat binne die trefwydte van hierdie Wet val en wat deur die President, [die] enige Minister wat vir ’n Diens verantwoordelik is of die Parlement na hom verwys is, te oorweeg en aanbevelings daaroor te doen;”;

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- (e) deur paragraaf (j) deur die volgende paragraaf te vervang:

“(j) te beraadslaag, verhore te hou, getuies te dagvaar en aanbevelings te doen oor enige aangeleenthed betreffende intelligensie en die nasionale veiligheid, insluitende administrasie en finansiële besteding;”; en

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- (f) deur paragraaf (l) deur die volgende paragraaf te vervang:

“(l) om die bewilliging van inkomste [en] of gelde vir die werksaamhede van die [Agentskap en die Suid-Afrikaanse Geheime Diens] Dienste, Akademie en Comsec te oorweeg en daaroor verslag te doen.”.

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Wysiging van artikel 4 van Wet 40 van 1994

4. Artikel 4 van die Hoofwet word hierby gewysig—

- (a) deur in subartikel (2) die woorde wat op paragraaf (b)(ii) volg, deur die volgende woorde te vervang:

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“word so ’n geskil vir beslissing verwys na ’n komitee bestaande uit die Inspekteur-generaal [wat vir ’n betrokke Diens verantwoordelik is], die Hoof van [daardie] die betrokke Diens, die voorsitter van die Komitee en die Minister verantwoordelik vir daardie Diens, welke beslissing van die Komitee afdoende is.”;

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- (b) by the substitution in subsection (3) for the words preceding the proviso of the following words:

“The Committee may, for the purposes of the performance of its functions, require [a] any Minister responsible for a Service, the Head of a Service, the CEO or the Inspector-General, [of a Service] to appear before it to give evidence, to produce any document or thing and answer questions put to him or her”; and

- (c) by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) have the right to be assisted by members of that Service, the Academy or Comsec, as the case may be.”.

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Amendment of section 5 of Act 40 of 1994, as amended by section 4 of Act 42 of 1999

- 5.** Section 5 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) with the written permission of the chairperson, which permission may be given only with the concurrence of the Head of a Service and the Inspector-General [concerned]; or”.

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Amendment of section 6 of Act 40 of 1994, as substituted by section 4 of Act 31 of 1995

- 6.** Section 6 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

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

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

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Substitution of section 7 of Act 40 of 1994, as amended by section 5 of Act 31 of 1995 and by section 5 of Act 42 of 1999

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- 7.** The following section is hereby substituted for section 7 of the principal Act:

“Inspector-General

- 7.** (1) The President shall appoint [one or more Inspectors-General] an Inspector-General of Intelligence—

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

Provided that[—

- (i) 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

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- (ii) if [any] the nomination is not approved as required in paragraph (b), the Committee shall nominate another person.

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

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(3) The remuneration and other conditions of employment of [an] the Inspector-General shall be determined by the President with the concur-

(b) deur in subartikel (3) die woorde wat die voorbehoudsbepaling voorafgaan, deur die volgende woorde te vervang:

“Die Komitee kan vir die doeleindes van die verrigting van sy werkzaamhede van [’n] enige Minister wat vir ’n Diens verantwoordelik is, die Hoof van ’n Diens, die HUB of die Inspekteur-generaal [van ’n Diens] vereis om voor hom te verskyn ten einde getuienis af te lê, enige stuk of saak [oor] voor te lê en vrae wat aan hom of haar gestel word, te beantwoord”; en

(c) deur die vervanging in subartikel (3) van paragraaf (c) deur die volgende paragraaf:

“(c) die reg hê om bygestaan te word deur lede van daardie Diens, die Akademie of Comsec, na gelang van die geval.”.

Wysiging van artikel 5 van Wet 40 van 1994, soos gewysig deur artikel 4 van Wet 42 van 1999

5. Artikel 5 van die Hoofwet word hierby gewysig deur paragraaf (c) in subartikel (2) deur die volgende paragraaf te vervang:

“(c) met die skriftelike toestemming van die voorsitter, welke toestemming slegs met die instemming van die Hoof van ’n [betrokke] Diens en die [betrokke] Inspekteur-generaal gegee word; of”.

Wysiging van artikel 6 van Wet 40 van 1994, soos vervang deur artikel 4 van Wet 31 van 1995

6. Artikel 6 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur onderskeidelik die volgende subartikels te vervang:

“(1) Die Komitee lê binne vyf maande na sy eerste aanstelling en daarna binne twee maande na 31 Maart in elke jaar ’n verslag in die Parlement ter [Tafel] tafel aangaande die bedrywighede van die Komitee gedurende die voorafgaande jaar, tesaam met sy bevindings en die aanbevelings wat hy geskik ag, en besorg ’n afskrif daarvan aan die President en aan [elke betrokke] die Minister wat vir elke Diens verantwoordelik is.

(2) Die Komitee kan op versoek van die Parlement, die President of die [betrokke] Minister wat vir elke Diens verantwoordelik is, of te eniger tyd wat die Komitee nodig ag, die Parlement, die President of so ’n Minister voorsien van ’n spesiale verslag betreffende die verrigting van sy werkzaamhede, en moet ’n afskrif van sodanige verslag in die Parlement ter [Tafel] tafel lê of afskrifte aan die President en die betrokke Minister besorg, na gelang van die geval.”.

Vervanging van artikel 7 van Wet 40 van 1994, soos gewysig deur artikel 5 van Wet 31 van 1995 en deur artikel 5 van Wet 42 van 1999

7. Artikel 7 van die Hoofwet word hierby deur die volgende artikel vervang:

“Inspekteur-generaal”

7. (1) Die President stel [een of meer Inspekteurs-generaal] ’n Inspekteur-generaal van Intelligenzie aan wat—

- (a) deur die Komitee benoem is; en
- (b) goedgekeur is deur die Nasionale Vergadering by ’n besluit ondersteun deur minstens twee derdes van sy lede:

Met dien verstande dat[—]

(i) een Inspekteur-generaal met betrekking tot sommige of al die Dienste aangewys kan word solank die aktiwiteitie van al die Dienste deur ’n Inspekteur-generaal gemoniteer word; en

(ii)] indien [’n] die benoeming nie volgens voorskrif van paragraaf (b) goedgekeur word nie, die Komitee ’n ander persoon moet benoem.

(2) [’n] Die Inspekteur-generaal moet ’n Suid-Afrikaanse burger wees wat ’n gepaste en geskikte persoon is om so ’n amp te beklee en wat kennis van intelligensie het.

(3) Die besoldiging en ander voorwaardes van diens van [’n] die Inspekteur-generaal, [is die wat] word deur die President met die

rence of the Committee and such remuneration shall not be reduced, nor shall such conditions be adversely altered during his or her term of office]; **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)].**

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

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

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

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(7) The functions of [an] the Inspector-General are, in relation to the Service [in respect of which he or she is appointed]—

- (a) to monitor compliance by [the] any Service with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence;
- (b) to review the intelligence and counter-intelligence activities of [the] any Service;
- (c) to perform all functions designated to him or her by the President or [the] any Minister [concerned] responsible for a Service;
- (cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), corruption and [the] improper enrichment of any person through an act or omission of any member;
- (d) to submit certificates to [the] every Minister [concerned] responsible for a Service pursuant to subsection (11)(c); [and]
- (e) to submit reports to the Committee pursuant to section 3 (1) (f); and
- (f) to submit reports to every Minister responsible for a Service pursuant to the performance of functions contemplated in paragraphs (a), (b), (c) and (cA): Provided that where the Inspector-General performs functions designated to him or her by the President, he or she shall report to the President.

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

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

- (a) shall have access to any intelligence, information or premises under the control of [the] any 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 in question and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of his or her functions;

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(aA) shall inform the Head of a Service prior to his or her access to the premises of such Service in writing of his or her intention to have access to such premises: Provided that the notice shall specify the date and the nature of access to the premises;

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instemming van die Komitee bepaal en sodanige besoldiging word nie verminder en sodanige voorwaardes word nie nadelig verander nie gedurende sy of haar ampstermy [: Met dien verstande dat sodanige vergoeding dieselfde sal wees as dié van die Openbare Beskermer aangestel ingevolge artikel 1A van die Wet op die Openbare Beskermer, 1994 (Wet No. 23 van 1994)].

(4) [**n**] Die Inspekteur-generaal kan deur die President van sy of haar amp onthef word, maar slegs op grond van wangedrag, onvermoë, intrekking van sy of haar sekerheidsklaring, swak prestasie of onbekwaamheid [wat vasgestel is deur die Komitee] soos voorgeskryf.

(5) [**n**] Indien die Inspekteur-generaal [wat onderworpe is] onderwerp word aan 'n ondersoek deur die Komitee ingevolge subartikel (4), kan hy of sy deur die President geskors word hangende 'n beslissing in sodanige ondersoek.

(6) [**n**] Die Inspekteur-generaal [doen verantwoording] is aan die [President] Komitee verantwoordbaar betreffende die algehele werking van sy of haar kantoor, en doen minstens een keer per jaar aan die Komitee verslag oor sy of haar bedrywighede en die verrigting van sy of haar werkzaamhede.

(7) Die werkzaamhede van [**n**] die Inspekteur-generaal met betrekking tot die Diens [ten opsigte waarvan hy of sy aangestel is,] is—

(a) om te moniteer of [die] enige Diens die Grondwet, toepaslike wette en tersaaklike beleid aangaande intelligensie en teenintelligensie nakom;

(b) om die [bedrywighede] intelligensie- en teenintelligensie-bedrywighede van [die] enige Diens te beoordeel;

(c) om alle werkzaamhede te verrig wat [aan hom of haar] deur die President of [die betrokke] enige Minister wat vir 'n Diens verantwoordelik is, aan hom of haar toegewys is[, te verrig];

(cA) om klages van lede van die publiek en lede van die Dienste te ontvang en te ondersoek oor beweerde wanadministrasie, magsmisbruik, oortreding van die Grondwet, wette en [beleide] beleid bedoel in paragraaf (a), korruksie en [die] onbehoorlike verrigting van enige persoon deur 'n handeling of [late] versuum van enige lid;

(d) om sertifikate ingevolge subartikel (11)(c) voor te lê aan [die betrokke] enige Minister wat vir 'n Diens verantwoordelik is [voor te lê]; [en]

(e) om verslae ingevolge artikel 3(1)(f) aan die Komitee voor te lê[.]; en

(f) om verslae voor te lê aan elke Minister wat vir 'n Diens verantwoordelik is, ooreenkomsdig die verrigting van werkzaamhede in paragrawe (a), (b), (c) en (cA) beoog: Met dien verstande dat waar die Inspekteur-generaal werkzaamhede verrig wat deur die President aan hom of haar opgedra is, hy of sy aan die President verslag doen.

(7A) Die verslae van die Inspekteur-generaal in subartikel (7)(f) beoog betreffende monitering en beoordeling moet die bevindinge en aanbevelings van die Inspekteur-generaal bevat.

(8) Ondanks andersluidende bepalings van hierdie Wet of enige ander wet of die gemene reg—

(a) het [**n**] die Inspekteur-generaal toegang tot enige intelligensie, informasie of perseel onder die beheer van [die] enige Diens [ten opsigte waarvan hy of sy aangestel is] indien daardie toegang deur die Inspekteur-generaal vir die verrigting van sy of haar werkzaamhede nodig is, en hy of sy is geregtig om van die Hoof van die betrokke Diens en [sy of haar] die werknelers daarvan die intelligensie, informasie, verslae en verduidelikings op te eis wat die Inspekteur-generaal vir die verrigting van sy of haar werkzaamhede nodig ag;

(aA) lig die Inspekteur-generaal, voor sy of haar toegang tot die perseel van 'n Diens, die Hoof van sodanige Diens skriftelik in van sy of haar voorneme om toegang tot sodanige perseel te verkry: Met dien verstande dat die kennisgewing die datum en aard van die toegang tot die perseel moet spesifiseer;

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- (b) may, if the intelligence or information received by him or her in terms of paragraph (a) is subject to any restriction in terms of any law, disclose it only—
- (i) after consultation with the President and the Minister responsible for the Service in question; and 5
 - (ii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and
 - (iii) to the extent that such disclosure is not detrimental to the national interest;
- (c) shall have access to any other intelligence, information or premises which is not under the control of any Service if such access is necessary for the performance of his or her functions in terms of subsection (7) and he or she shall be entitled to demand from any such person such intelligence, information, reports and explanations as he or she may deem necessary for the performance of his or her functions: Provided that the Inspector-General shall not have access if such intelligence or information is not necessary for the performance of his or her functions: Provided further that the Inspector-General shall first obtain a warrant issued in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), if such information, intelligence or premises are 20 not under the control of the Services in question; 10
- (d) may, if the intelligence or information received by him or her in terms of paragraph (c) is subject to any privilege or restriction in terms of any law, disclose it only—
- (i) after he or she has given written notice of his or her intention to do so to the lawful possessor of such intelligence or information; and 25
 - (ii) after consultation with the President and the Minister responsible for the Service in question; and
 - (iii) subject to appropriate restrictions placed on such intelligence or 30 information by the Inspector-General, if necessary; and
 - (iv) to the extent that such disclosure is not detrimental to the national interest.
- (9) No access to intelligence, information or premises contemplated in subsection (8)(a) may be withheld from [an] the Inspector-General on any ground. 35
- (10) [An] The Inspector-General—
- (a) shall comply with all security requirements applicable to the employees of the Service in respect of which he or she has been appointed intelligence services; and 40
 - (b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.
- (11) (a) Each Head of a Service shall, in respect of every period of 12 months or such lesser period as is specified by the Minister [concerned] responsible for that Service, submit to that Minister, [at such times as the Minister may specify,] a report on the activities of that Service during that period, and shall cause a copy of such report to be submitted to the Inspector-General [appointed for that Service]. 45
- (b) (i) Each Head of a Service shall report to the Inspector-General [appointed for that Service] regarding any unlawful intelligence activity or significant intelligence failure of that Service and any corrective action that has been taken or is intended to be taken in connection with such activity or failure. 50
 - (ii) [A] Each Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector-General [concerned] within a reasonable 55

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- (b) kan [**'n**] die 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—
- (i) na oorleg met die President en die Minister wat vir die betrokke Diens verantwoordelik is; en
 - (ii) onderworpe aan gepaste beperkings wat op sodanige intelligensie of informasie deur die Inspekteur-generaal geplaas word, indien nodig; en
 - (iii) in die mate wat dié bekendmaking nie tot nadeel van die nasionale belang strek nie;
- (c) het [**'n**] die 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**] die 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: Voorts met dien verstande dat, indien sodanige informasie, intelligensie of perseel nie onder die beheer van die betrokke Dienste is nie, die Inspekteur-generaal eers 'n lasbrief moet verkry wat ingevolge die Strafproseswet, 1977 (Wet No. 51 van 1977), uitgereik is;
- (d) kan [**'n**] die 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—
- (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 wat vir die betrokke Diens verantwoordelik is; en
 - (iii) onderworpe aan gepaste beperkings wat deur die Inspekteur-generaal op sodanige intelligensie of informasie [**deur die Inspekteur-generaal**] geplaas word, indien nodig; en
 - (iv) in die mate [**wat**] dat dié bekendmaking nie tot nadeel van die nasionale belang strek nie.
- (9) Geen toegang tot intelligensie, informasie of 'n perseel in subartikel (8)(a) beoog, mag op enige grond van [**'n**] die Inspekteur-generaal weerhou word nie.
- (10) [**'n**] Die Inspekteur-generaal—
- (a) moet alle veiligheidsvereistes wat [**van toepassing is**] op die werknelmers van die [**Diens ten opsigte waarvan hy of sy aangestel is**] intelligensiedienste van toepassing is, nakom; en
 - (b) moet onpartydig en onafhanklik optree en sy of haar werksaamhede te goeder trou en sonder vrees, begunstiging, vooroordeel of benadeling verrig.
- (11) (a) Elke Hoof van 'n Diens lê ten opsigte van elke tydperk van 12 maande of die korter tydperk wat bepaal word deur die [**betrokke**] Minister wat vir daardie Diens verantwoordelik is [**bepaal word**], aan daardie Minister [**op die tye wat die Minister bepaal**], 'n verslag voor aangaande die bedrywigheid van daardie Diens gedurende daardie tydperk, en laat 'n afskrif van die verslag [**voorlē**] aan die Inspekteur-generaal [**wat vir daardie Diens aangestel is**] voorlē.
- (b) (i) Elke Hoof van 'n Diens doen aan die Inspekteur-generaal [**wat vir daardie Diens aangestel is**] verslag aangaande enige onwettige intelligensiebedrywigheid of wesentlike intelligensiemislukking van daardie Diens en van enige regstellende stappe wat in verband met sodanige bedrywigheid of mislukking gedoen is of wat beoog word om in verband [**met sodanige bedrywigheid of mislukking**] daarmee gedoen te word.
- (ii) [**Die**] Elke Hoof van 'n Diens lê die verslag in subparagraph (i) bedoel aan die [**betrokke**] Inspekteur-generaal voor binne 'n redelike tyd nadat die

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period after such unlawful intelligence activity or significant intelligence failure came to his or her attention.

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

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

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

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

(13) The budget of the office of the Inspector-General shall be appropriated by Parliament as part of the budget vote of the intelligence services, and shall be expended in accordance with the rules and procedures as set out in the Public Finance Management Act, 1999 (Act No. 1 of 1999).

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

Amendment of section 8 of Act 40 of 1994, as substituted by section 6 of Act 31 of 1995 and amended by section 7 of Act 42 of 1999

8. Section 8 of the principal Act is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) [A] The Minister, acting with the concurrence of [the President, and] the Committee, may make regulations [as to any matters which are necessary or expedient for the achievement of the purposes of this Act, including but not limited to] regarding—

- (a) any matter that is required or permitted to be prescribed in terms of this Act;
- (b) the [exercise of their the powers and the] performance of [their] his or her functions by [Inspectors-General] the Inspector-General;
- (c) the reports to be submitted by [an] the Inspector-General and the Heads of the Services[, as well as reports to be received by the Committee];
- (d) the suspension or removal from office of [Inspectors-General] the Inspector-General and the termination of employment of the Inspector-General;
- (e) an oath or affirmation of secrecy to be subscribed to by the Inspector-General, members and staff of the Committee, the leaders of political parties represented or willing to serve on the Committee, and staff appointed in terms of section 7(12);
- (f) [anything which shall or may be prescribed by regulation under this Act] security clearance for the Inspector-General and members of the Committee;
- (g) the procedure for appointment of staff to the office of the Inspector-General;

onwettige intelligensiebedrywigheid of wesenlike intelligensiemislukking onder sy of haar aandag gekom het.

(c) So gou moontlik [**nadat**] na ontvangs van 'n afskrif van 'n verslag bedoel in paragraaf (a) [**ontvang is**], lê [**'n**] die Inspekteur-generaal aan die [**betrokke**] Minister wat vir die betrokke Diens verantwoordelik is, 'n sertifikaat voor waarin vermeld word in watter mate [**daardie**] die Inspekteur-generaal met die verslag tevreden is, en of enigets deur daardie Diens verrig in die loop van sy bedrywighede gedurende die tydperk waarop die verslag betrekking het, na die mening van die Inspekteur-generaal—

- (i) onwettig is of enige bevel [**wat**] oortree wat gegee is deur [**daardie**] die Minister wat vir daardie Diens verantwoordelik is[**gegee is, oortree**]; of
- (ii) 'n onredelike of onnodige uitoefting deur daardie Diens van enige van sy bevoegdhede [**inhou**] behels.

(d) So gou moontlik na ontvangs van 'n verslag bedoel in paragraaf (a) en 'n sertifikaat van die Inspekteur-generaal bedoel in paragraaf (c), laat die [**betrokke**] Minister wat vir die betrokke Diens verantwoordelik is, behoudens artikel 4(2), die verslag en sertifikaat na die Komitee deurstuur.

(12) Die Minister [**wat vir 'n Diens verantwoordelik is,**] kan, na oorleg met die [**betrokke**] Inspekteur-generaal, die getal persone in die kantoor van die Inspekteur-generaal aanstel wat nodig is vir die verrigting van die werksaamhede van daardie kantoor [**van die Inspekteur-generaal**], op die diensvoorraades wat op lede van [**daardie Diens**] die intelligensiedienste van toepassing is.

(13) Die begroting van die kantoor van die Inspekteur-generaal word deur die Parlement bewillig as deel van die begrotingspos van die intelligensiedienste, en word bestee in ooreenstemming met die reëls en procedures soos uiteengesit in die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999).

(14) Die Inspekteur-generaal kan skriftelik enige werksaamheid in subartikel (7) beoog, aan enige werkneemster in sy of haar kantoor deleer, en enige werksaamheid wat ingevolge so 'n delegering verrig word, word geag deur die Inspekteur-generaal verrig te gewees het.”.

Wysiging van artikel 8 van Wet 40 van 1994, soos vervang deur artikel 6 van Wet 31 van 1995 en gewysig deur artikel 7 van Wet 42 van 1999 35

8. Artikel 8 van die Hoofwet word hierby gewysig deur subartikels (1) en (2) deur onderskeidelik die volgende subartikels te vervang:

“(1) [**'n**] Die Minister, handelende met die instemming van [**die President en**] die Komitee, kan regulasies uitvaardig aangaande [**enige aangeleenthede wat nodig of dienstig is om die oogmerke van hierdie Wet te verwesenlik, met inbegrip van, maar nie beperk nie tot**]—

(a) enige aangeleenthed wat ingevolge hierdie Wet voorgeskryf moet of kan word;

(b) die [**uitoefening van hul bevoegdhede en die**] verrigting van [**hul**] sy of haar werksaamhede, deur [**Inspekteurs-generaal**] die Inspekteur-generaal;

(c) die verslae wat deur [**'n**] die Inspekteur-generaal en Hoofde van die Dienste voorgely moet word[, sowel as verslae wat deur die Komitee ontvang moet word];

(d) die skorsing of ampsontheffing van [**Inspekteurs-generaal**] die Inspekteur-generaal en die beëindiging van diens van die Inspekteur-generaal;

(e) 'n eed of bevestiging van geheimhouding wat afgelê of gedoen moet word deur die Inspekteur-generaal, lede en personeellede van die Komitee, die leiers van politieke partye wat in die Komitee verteenwoordig is of gewillig is om daarin te dien, en die personeellede ingevolge artikel 7(12) aangestel;

(f) [**enigets wat kragtens hierdie Wet by regulasie voorgeskryf moet of kan word**] sekerheidsklaring vir die Inspekteur-generaal en lede van die Komitee;

(g) die prosedure vir aanstelling van personeel in die kantoor van die Inspekteur-generaal;

(h) die diensvoorraades wat van toepassing is op die personeel wat in die kantoor van die Inspekteur-generaal aangestel is; en

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- (h) the conditions of employment applicable to the personnel appointed to the office of the Inspector-General; and
(i) the procedure for the lodging and investigation of complaints.

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

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Substitution of section 9 of Act 40 of 1994, as substituted by section 7 of Act 31 of 1995

9. The following section is hereby substituted for section 9 of the principal Act: 10

“Short title

9. This Act shall be called the Intelligence Services [Control] Oversight Act, 1994.”.

Short title and commencement

10. This Act shall be called the Intelligence Services Control Amendment Act, 2002, 15 and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(i) die prosedure vir die indien van en die instel van ondersoek na klagtes.
(2) 'n Regulasie wat ingevolge hierdie artikel uitgevaardig word, hoef nie in die Staatskoerant gepubliseer te word nie, maar word aan enigiemand op wie dit van toepassing is, bekend gemaak op die wyse wat die [betrokke] Minister, met die instemming van die Komitee, bepaal[, aan enigiemand op wie dit van toepassing is, bekend gemaak].".

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Vervanging van artikel 9 van Wet 40 van 1994, soos vervang deur artikel 7 van Wet 31 van 1995

9. Artikel 9 van die Hoofwet word hierby deur die volgende artikel vervang:

"Kort titel

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9. Hierdie Wet heet die Wet op **[Beheer] Toesig** oor Intelligensiedienste, 1994.”.

Kort titel en inwerkingtreding

10. Hierdie Wet heet die Wysigingswet op Beheer oor Intelligensiedienste, 2002, en tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

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