

PROTECTION OF INFORMATION ACT 84 OF 1982

[ASSENTED TO 3 JUNE 1982] [DATE OF COMMENCEMENT: 16 JUNE 1982]

(Afrikaans text signed by the State President)

as amended by

Intelligence Services Act 38 of 1994
Justice Laws Rationalisation Act 18 of 1996
Intelligence Services Act 65 of 2002
Electronic Communications Security (Pty) Ltd Act 68 of 2002
General Intelligence Laws Amendment Act 52 of 2003

ACT

To provide for the protection from disclosure of certain information; and to provide for matters connected therewith.

1 Definitions

(1) In this Act, unless the context otherwise indicates-

'agent' means any person who is or has been or is reasonably suspected of being or having been directly or indirectly used by or in the name of or on behalf of any foreign State or any hostile organization for the purpose of committing in the Republic or elsewhere an act prejudicial to the security or interests of the Republic, or who has or is reasonably suspected of having committed or attempted to commit such an act in the Republic or elsewhere in the interests of any foreign State or any hostile organization;

'armaments' means armaments as defined in section 1 of the Armaments Development and Production Act, 1968 (Act 57 of 1968);

'document' means-

- (a) any note or writing, whether produced by hand or by printing, typewriting or any other similar process;
- (b) any copy, plan, picture, sketch or photographic or other representation of any place or article;
- (c) any disc, tape, card, perforated roll or other device in or on which sound or any signal has been recorded for reproduction;

'foreign State' means any State other than the Republic;

'Government' includes the South African Transport Services, the Department of Posts and Telecommunications and any provincial administration;

[NB: In terms of s. 36 (1) of the Legal Succession to the South African Transport Services Act 9 of 1989, the reference to 'the South African Transport Services' in the above provision shall be construed as a reference to the Company (Transnet Limited) and the Corporation (the South African Rail Commuter Corporation Limited).]

'hostile organization' means-

- (a) any organization declared by or under any Act of Parliament to be an unlawful organization;
- (b) any association of persons or any movement or institution declared under section 14 to be a hostile organization;

'military' includes army, air force and naval;

'model' includes any design, pattern or specimen;

'prohibited place' means-

- (a) any work of defence belonging to or occupied or used by or on behalf of the Government, including-
 - (i) any arsenal, military establishment or station, factory, dockyard, camp, ship, vessel or aircraft;
 - (ii) any telegraph, telephone, radio or signal station or office; and
 - (iii) any place used for building, repairing, making, keeping or obtaining armaments or any model or document relating thereto;
- (b) any place where armaments or any model or document relating thereto is being built, repaired, made, kept or obtained under contract with or on behalf of the Government of the Government or of any foreign State;
- (c) any place or area declared under section 14 to be a prohibited place;

'security matter' includes any matter which is dealt with by-

- (a) Comsec as defined in section 1 of the Electronic Communications Security (Pty) Ltd Act, 2002 (Act 68 of 2002);
- (b) the Intelligence Services or the Academy as defined in section 1 of the Intelligence Services Act, 2002 (Act 65 of 2002); or
- (c) the Office as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002),

or which relates to the functions of Comsec, the Intelligence Services, the Academy or the Office or to the relationship existing between any person and Comsec, the Intelligence Services, the Academy or the Office.

[Definition of 'security matter' substituted by s. 32 (1) of Act 38 of 1994, by s. 40 (1) of Act 65 of 2002, by s. 26 of Act 68 of 2002 and by s. 25 (2) of Act 52 of 2003.]

(2) In this Act, unless the context otherwise indicates-

- (a) any reference to the disclosing or receiving of anything includes a reference to the disclosing or receiving of any part or the substance, effect or description thereof;
- (b) any reference to the obtaining or retaining of anything includes a reference to the obtaining or retaining of any part or the copying or causing to be copied of the whole or any part thereof, whether by photography or otherwise;
- (c) any reference to the disclosing of anything includes a reference to the transmission or transfer thereof; and
- (d) any reference to any offence or prosecution under any provision of this Act includes a reference to an offence or a prosecution under the provisions of section 18 of the Riotous Assemblies Act, 1956 (Act 17 of 1956), read with the relevant provisions of this Act.

2 Prohibition of certain acts in relation to prohibited places

Any person who approaches, inspects, passes over, is in the neighbourhood of or enters any prohibited place for any purpose prejudicial to the security or interests of the Republic, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding 20 years.

3 Prohibition of obtaining and disclosure of certain information

Any person who, for purposes of the disclosure thereof to any foreign State or to any agent, or to any employee or inhabitant of, or any organization, party, institution, body or movement in, any foreign State, or to any hostile organization or to any office-bearer, officer, member or active supporter of any hostile organization-

- (a) obtains or receives any secret official code or password or any document, model, article or information used, kept, made or obtained in any prohibited place; or
- (b) prepares, compiles, makes, obtains or receives any document, model, article or information relating to-
 - (i) any prohibited place or anything in any prohibited place, or to armaments; or
 - (ii) the defence of the Republic, any military matter, any security matter or the prevention or combating of terrorism; or
 - (iii) any other matter or article, and which he knows or reasonably should know may directly or indirectly be of use to any foreign State or any hostile organization and which, for considerations of the security or the other interests of the Republic, should not be disclosed to any foreign State or to any hostile organization,

shall be guilty of an offence and liable on conviction to the penalty prescribed in section 2.

4 Prohibition of disclosure of certain information

(1) Any person who has in his possession or under his control or at his disposal-

- (a) any secret official code or password; or
- (b) any document, model, article or information-
 - (i) which he knows or reasonably should know is kept, used, made or obtained in a prohibited place or relates to a prohibited place, anything in a prohibited place, armaments, the defence of the Republic, a military matter, a security matter or the prevention or combating of terrorism;
 - (ii) which has been made, obtained or received in contravention of this Act;
 - (iii) which has been entrusted in confidence to him by any person holding office under the Government;
 - (iv) which he has obtained or to which he has had access by virtue of his position as a person who holds or has held office under the Government, or as a person who holds or has held a contract made on behalf of the Government, or a contract the performance of which takes place entirely or partly in a prohibited place, or as a person who is or has been employed under a person who holds or has held such office or contract,

and the secrecy of which document, model, article or information he knows or reasonably should know to be required by the security or the other interests of the Republic; or

- (v) of which he obtained possession in any manner and which document, model, article or information he knows or reasonably should know has been obtained by any other person in any of the ways referred to in paragraph (iii) or (iv) and the unauthorized disclosure of such document, model, article or information by such other person he knows or reasonably should know will be an offence under this Act,

and who-

- (aa) discloses such code, password, document, model, article or information to any person other than a person to whom he is authorized to disclose it or to whom it may lawfully be disclosed or to whom, in the interests of the Republic, it is his duty to disclose it;
- (bb) publishes or uses such code, password, document, model, article or information in any manner or for any purpose which is prejudicial to the security or interests of the Republic;
- (cc) retains such code, password, document, model, article or information when he has no right to retain it or when it is contrary to his duty to retain it, or neglects or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof; or
- (dd) neglects or fails to take proper care of such code, password, document, model, article or information, or so to conduct himself as not to endanger the safety thereof,

shall be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment, or, if it is proved that the publication or disclosure of such secret official code or password or of such document, model, article or information took place for the purpose of its being disclosed to a foreign State or to a hostile organization, to the penalty prescribed in section 2.

(2) Any person who receives any secret official code or password or any document, model, article or information, knowing or having reasonable grounds to believe, at the time when he receives it, that such code, password, document, model, article or information is being disclosed to him in contravention of the provisions of this Act, shall, unless he proves that the disclosure thereof to him was against his wish, be guilty of an offence and liable on conviction to a fine not exceeding R10 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment.

5 Prohibition of certain acts prejudicial to security or interests of Republic

(1) Any person who, for the purpose of gaining or assisting any other person to gain admission to any prohibited place, or for any other purpose prejudicial to the security or interests of the Republic-

- (a) without lawful authority uses or wears any military, police or other official uniform of the Republic, or any uniform worn by a person employed at or in a prohibited place, or any uniform so closely resembling any of the said uniforms as to be calculated to deceive, or falsely represents himself to be a person who is or has been entitled to use or wear any such uniform;

- (b) orally or in writing in any declaration or application, or in any document signed by him or on his behalf, knowingly makes any false statement or omits any relevant fact;
- (c) forges, alters or tampers with any passport or any official pass, permit, certificate, licence or other similar document (hereinafter in this section referred to as an official document), or uses or has in his possession any forged, altered or irregular official document;
- (d) impersonates or falsely represents himself to be a person holding, or in the employment of a person holding, office under the Government, or to be or not to be a person to whom an official document or a secret official code or password has been duly issued or disclosed, or, with intent to obtain an official document or any secret official code or password, whether for himself or for any other person, knowingly makes any false statement; or
- (e) uses or has in his possession or under his control, without lawful authority, any official die, seal or stamp of the Republic or any die, seal or stamp so closely resembling any such official die, seal or stamp as to be calculated to deceive, or counterfeits any such official die, seal or stamp, or uses or has in his possession or under his control any such counterfeited die, seal or stamp,

shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(2) Any person who-

- (a) retains for any purpose prejudicial to the security or interests of the Republic any official document, whether or not completed or issued for use, when he has no right to retain it or when it is contrary to his duty to retain it, or neglects or fails to comply with any directions issued by lawful authority with regard to the return or disposal thereof;
- (b) allows any other person to have possession of any official document issued for his use alone, or without lawful authority or excuse has in his possession any official document or secret official code or password issued for the use of some person other than himself, or, on obtaining possession of any official document, whether by finding or otherwise, neglects or fails to hand it over to the person or authority by whom or for whose use it was issued or to a member of the South African Police Service; or

[Para. (b) amended by s. 4 of Act 18 of 1996.]
- (c) without lawful authority or excuse manufactures or sells, or has in his possession for sale, any die, seal or stamp referred to in paragraph (e) of subsection (1),

shall be guilty of an offence and liable on conviction to the penalties prescribed in subsection (1).

6 Obstructing persons on guard at prohibited places

Any person who obstructs, knowingly misleads or otherwise interferes with any person engaged on guard, sentry, patrol or other similar duty in relation to any prohibited place shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both

such fine and such imprisonment.

7 Harboursing or concealing certain persons and failing to report information relating to agents

Any person who-

- (a) knowingly harbours or conceals any person whom he knows or has reason to believe to be a person who is about to commit or who has committed an offence under this Act, or knowingly permits any such persons to meet or assemble in any premises in his occupation or under this control;
- (b) having harboured or concealed any such person, or permitted such persons to meet or assemble in any premises in his occupation or under his control, wilfully omits or refuses to disclose to any member of the South African Police Service any information it is in his power to give in relation to any such person; or
- (c) knowing that any agent or any person who has been or is in communication with an agent, whether in the Republic or elsewhere, is in the Republic, fails forthwith to report to any member of the South African Police Service the presence of or any information it is in his power to give in relation to any such agent or person,

shall be guilty of an offence and liable on conviction to a fine not exceeding R1 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment.

[S. 7 amended by s. 4 of Act 18 of 1996.]

8 Communication with agent proof of certain facts

(1) If in any prosecution upon a charge under section 3, or upon a charge under section 4 (1) in connection with the publication or disclosure of a secret official code or password or a document, model, article or information as referred to in that section, it is proved that the accused-

- (a) has been in communication, or has attempted to communicate, with an agent in the Republic or elsewhere; or
- (b) is an agent or is being or has been or is reasonably suspected of being or having been directly or indirectly used by a foreign or international body or institution, or has entered or is within the Republic in contravention of any law,

it shall, unless the contrary is proved, be presumed that the document, model, article or information referred to in section 3 has been prepared, compiled, made, obtained or received, or the secret official code or password or the model, article, document or information referred to in section 4 (1) has been published or disclosed, as the case may be, for purposes of the disclosure thereof to a foreign State or to a hostile organization.

(2) For the purposes of subsection (1)-

- (a) a person shall, unless he proves the contrary, be presumed to have been in communication with an agent if-
 - (i) he has, in the Republic or elsewhere, visited the address of an agent or associated with an agent; or
 - (ii) in the Republic or elsewhere, the name or address of or any other information regarding an agent has been found in his possession or under his control, or has been supplied by him to any other person or has been obtained by him from any other

person;

- (b) any address, in the Republic or elsewhere, reasonably suspected to be an address used for the receipt of communications intended for an agent, or at which an agent resides, or to which he resorts for the purpose of giving or receiving communications, or at which he carries on any business, shall be deemed to be the address of an agent, and any person who addresses communications to such address shall be deemed to have been in communication with an agent.

9 Proof that certain information may directly or indirectly be of use to foreign State or hostile organization

If in any prosecution against any person for an offence under section 3 it is proved that he is an agent or that he is or has been or is reasonably suspected of being or having been directly or indirectly used by or on behalf of any foreign or international body or institution or that he has entered or is within the Republic in contravention of any law and that he has prepared, compiled, made, obtained or received any document, model, article or information other than that referred to in section 3 (a) , or any document, model, article or information relating to a place, article or matter other than that referred to in section 3 (b) (i) or (ii), it shall, unless the contrary is proved, be presumed that such document, model, article or information may directly or indirectly be of use to a foreign State or a hostile organization.

10 Proof of purpose prejudicial to security or interests of Republic

(1) In any prosecution under this Act upon a charge of committing an act for a purpose prejudicial to the security or interests of the Republic, it shall, if, from the circumstances of the case or the conduct of the accused, it appears that his purpose was a purpose prejudicial to the security or interests of the Republic, be presumed, unless the contrary is proved, that the purpose for which that act has been committed, is a purpose prejudicial to the security or interests of the Republic.

(2) If in any prosecution under this Act upon a charge of publishing or disclosing any secret official code or password or any document, model, article or information for a purpose prejudicial to the security or interests of the Republic, it is proved that it was published or disclosed by any person other than a person acting under lawful authority, or by an agent or by a person who is or has been or is reasonably suspected of being or having been directly or indirectly used by any foreign or international body or institution or who has entered or is within the Republic in contravention of any law, it shall, unless the contrary is proved, be presumed that the purpose for which it was published or disclosed is a purpose prejudicial to the security or interests of the Republic.

11 Extra-territorial application of Act, and jurisdiction

(1) Any act constituting an offence 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 under this Act shall, for the purposes of determining the jurisdiction of a court to try the offence, be deemed to have been committed at a place where it actually was committed and also at any place where the accused happens to be.

12 Authority of attorney-general required for institution of criminal proceedings

No trial or preparatory examination in respect of any offence under this Act, except any contravention of section 6, shall be instituted without the written authority of the attorney-general having jurisdiction in the area concerned.

13 Criminal proceedings may take place behind closed doors

Any court may, if it appears to that court to be necessary for considerations of the security or the other interests of the Republic, direct that any trial or preparatory examination in respect of an offence under this Act, shall take place behind closed doors or that the general public or any section thereof, shall not be present thereat, and if the court issues any such direction, the court shall have the same powers as those conferred upon a court by section 154 (1) of the Criminal Procedure Act, 1977 (Act 51 of 1977), and the provisions of subsections (1), (4) and (5) of the said section 154 shall apply *mutatis mutandis* .

14 Prohibited places and hostile organizations

The President may, for the purposes of this Act, by proclamation in the *Gazette* declare-

- (a) any place or area to be a prohibited place if he is satisfied that information with respect to that place or area, or the loss, damage, disruption or immobilization thereof, could be of use to a foreign State or a hostile organization; or
- (b) any association of persons, movement or institution outside the Republic to be a hostile organization if he is satisfied that that association of persons, movement or institution incites, instigates, commands, aids, advises, encourages or procures any person in the Republic or elsewhere to commit in the Republic an act of violence for any purpose prejudicial to the security or interests of the Republic, and may, in like manner at any time repeal or amend any such proclamation.

[S. 14 amended by s. 4 of Act 18 of 1996.]

15 Repeal of laws

The laws specified in the Schedule are hereby repealed to the extent set out in the third column of the Schedule.

16 Short title

This Act shall be called the Protection of Information Act, 1982.

Schedule LAWS REPEALED

| No and year of law | Title | Extent of repeal |
|--------------------|--------------------------------------|-------------------------|
| Act 16 of 1956 | Official Secrets Act, 1956 | The whole. |
| Act 65 of 1956 | Official Secrets Amendment Act, 1956 | The whole. |
| Act 7 of 1958 | Police Act, 1958 | Section 27C. |
| Act 101 of 1969 | General Law Amendment Act, 1969 | Sections 10, 11 and 12. |
| Act 102 of 1972 | General Law Amendment Act, 1972 | Section 10. |