



SUPPLEMENTARY SUBMISSION TO:

**THE AD HOC COMMITTEE ON THE PROTECTION OF INFORMATION
BILL [B6-2010]**

**ON THE IMPLICATIONS OF THE BILL FOR THE WORK OF MEMBERS
OF PARLIAMENT**

27 JULY 2010

**THE POLITICAL INFORMATION AND MONITORING SERVICE (PIMS)
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Yours Sincerely

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Background

1. This supplementary submission is made in response to the various requests by the Chairperson of the Committee, Mr Cecil Burgess, on Wednesday 21 July 2010, the first day of public hearings on the Bill.

Additional documentation requested and supplied

2. The Chairperson requested that PIMS provide the Committee with copies of two documents referred to during our oral submission, viz.:
 - (a) 'The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1996' as endorsed by the United Nations Special Rapporteur on Freedom of Opinion and Expression; and
 - (b) The unanimous decision of the Constitutional Court in *Dawood and Others v Minister of Home Affairs* CCT 35/99 2000 ZACC 8.
3. These documents were provided by email on 22 July 2010 to Ms Ntombe Mbuqe, and she has confirmed receipt.
4. Also provided were two other documents referred to during the oral submission, viz.:
 - (a) The Atlanta Declaration and Plan of Action for the Advancement of the Right of Access to Information, 2008; and
 - (b) African Regional Findings and Plan of Action for the Advancement of the Right of Access to Information, Accra, Ghana, 9 February 2010.

Introduction

5. This supplementary submission is intended primarily to respond to the Committee's request that Idasa elaborates on its views on the likely impact of the Bill on Parliament's ability to perform its oversight functions, which Idasa mentioned in paragraph 4.53 of its initial written submission dated 25 June 2010.

The likely impact on Parliament's oversight capacity

Legal framework for the work of Parliament

6. Parliament's responsibility to exercise oversight over the executive and all organs of state is derived from and delineated in a number of provisions of the Constitution, 1996. This consideration will focus on those relating to the National Assembly, but similar provisions exist in relation to the National Council of Provinces and joint sittings of the houses.

7. It should also be noted that much of this discussion would apply also to other public representatives in legislatures at provincial and municipal level.
8. **Section 42** 'Composition of Parliament' provides in subsection (3) that:

'The National Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does this by choosing the President, by providing a national forum for public consideration of issues, by passing legislation and by scrutinizing and overseeing executive action.' (Emphasis added)
9. **Section 55** 'Powers of the National Assembly' provides in subsection (2) that:

'The National Assembly must provide for mechanisms -
(a) to ensure that all executive organs of state in the national sphere of government are accountable to it; and
(b) to maintain oversight of-
(i) the exercise of national executive authority, including the implementation of legislation; and
(ii) any organ of state.'
10. The provisions in this section are complemented by the provisions of **section 92** 'Accountability and responsibilities' of the Constitution, as follows:

'(1) The Deputy President and Ministers are responsible for the powers and functions of the executive assigned to them by the President.
(2) Members of the Cabinet are accountable collectively and individually to Parliament for the exercise of their powers and the performance of their functions.
(3) Members of the Cabinet must-
(a) act in accordance with the Constitution; and
(b) provide Parliament with full and regular reports concerning matters under their control.'
11. To this end, **section 56** 'Evidence or information before National Assembly' provides that:

'The National Assembly or any of its committees may-
(a) summon any person to appear before it to give evidence on oath or affirmation, or to produce documents;
(b) require any person or institution to report to it;
(c) compel, in terms of national legislation or the rules and orders, any person or institution to comply with a summons or requirement in terms of paragraph (a) or (b); and
(d) receive petitions, representations or submissions from any interested persons or institutions.'

12. **Section 57** 'Internal arrangements, proceedings and procedures of National Assembly' provides in subsection (1) that, in so doing:
- '(1) The National Assembly may-
- (a) determine and control its internal arrangements, proceedings and procedures; and
 - (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.'
13. In order to ensure that that the quality of discussion, debate and decision-making in and by the National Assembly is frank and open, and is fully informed, **Section 58** 'Privilege' provides as follows:
- '(1) Cabinet members, Deputy Ministers and members of the National Assembly-
- (a) have freedom of speech in the Assembly and in its committees, subject to its rules and orders; and
 - (b) are not liable to civil or criminal proceedings, arrest, imprisonment or damages for-
 - (i) anything that they have said in, produced before or submitted to the Assembly or any of its committees; or
 - (ii) anything revealed as a result of anything that they have said in, produced before or submitted to the Assembly or any of its committees.
- (2) Other privileges and immunities of the National Assembly, Cabinet members and members of the Assembly may be prescribed by national legislation.
...' (Emphasis added)
14. It is our understanding that these provisions would render MPs immune from prosecution for any disclosure of classified information that would otherwise constitute a criminal offence in terms of the provisions of the Bill.
15. Further details of these other privileges and immunities are contained in *inter alia* the Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act, 4 of 2004 (PPIPPLA).
16. Thus, **Section 7** 'Prohibited acts in respect of Parliament and members' of PIPPLA provides that:
- 'A person may not-
- (a) improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions;
 - (b) improperly interfere with the performance by a member of his or her functions as a member...'
17. In the present context, this provision is understood to affirm the obligation on all members of the executive and administrative branches of government, and all members of the public, to provide only truthful and accurate information to Parliament.

18. **Section 59** 'Public access to and involvement in National Assembly' of the Constitution provides that:

'(1) The National Assembly must-

(a) facilitate public involvement in the legislative and other processes of the Assembly and its committees; and

(b) conduct its business in an open manner, and hold its sittings, and those of its committees, in public, but reasonable measures may be taken-

(i) to regulate public access, including access of the media, to the Assembly its committees; and

(ii) to provide for the searching of any person and, where appropriate, the refusal of entry to, or the removal of, any person.

(2) The National Assembly may not exclude the public, including the media, from a sitting of a committee unless it is reasonable and justifiable to do so in an open and democratic society.' (Emphasis added)

Discussion

The existing environment for the work of MPs

19. Together, these provisions create a framework and a forum within which the free flow of information and opinion plays a vital role. Members of Parliament and members of the public are encouraged to participate and engage openly with each other. Parliament has, laudably we would submit, interpreted openness and participation to include actively reaching out to the public by establishing Parliamentary offices, and holding 'People's Parliaments' and committee hearings at various locations around the country.
20. Narrow exceptions to such openness are allowed, as set out above. In practice, therefore, it is the norm for the work of committees, for example, to be open to observers, including the public and the media. Moreover, MPs are provided with extraordinary powers and privileges in order to ensure a forum in which an environment is established for the free and frank exchange of information and for the expression of the broadest possible range of views and opinions.
21. MPs' principal task is 'to represent the people', which has led *inter alia* to the provision by Parliament of leave of absence and funding for MPs to undertake 'constituency work'. Despite the absence of constituencies demarcated in law, the primary objective of this support is to ensure that MPs have a structured opportunity and the necessary facilities and means to enable communication with voters and the broader public. Of course, members of the public are free to contact an MP at any time outside of these scheduled 'constituency' periods.
22. It is a fundamental part of the normal conduct of these interactions that information is exchanged, whether directly by voters and other residents, or indirectly on their behalf; whether actively, through oral or written complaints, or

passively, for example, by enabling MPs to see for themselves the realities of living conditions and the progress or otherwise of service provision, and the realisation of development objectives.

23. The purpose of this accessibility and exchange is to enable MPs, on an informed basis, to then engage in discussion and debate, and raise concerns or ask questions in the Assembly or its committees.

Provisions in the Bill likely to impact negatively on MPs

24. There is a strong likelihood, however, that these representative and oversight functions and responsibilities will be severely impacted and constrained by certain provisions of the Bill. Some of the most significant of these provisions, as highlighted in many written and oral submissions to the Committee, include:

- 24.1 The starting point for much of the shared concern elaborated below is the unjustifiably wide – and, significantly, non-exhaustive – definition of the ‘national interest’ in Clause 11, and the unclear reasoning behind the division of this complex concept into three sometimes overlapping sub-clauses. Thus, the various divisions of the concept present lists of categories of activity and information that are prefaced by wording such as ‘includes, but is not limited to...’.

- 24.2 Further, the standard content of legislation dealing with the management of information related to state or national security, viz. ‘the security and survival of the State and the people of South Africa’, is mentioned in sub-clause (2)(a) and elements of these concepts are again elaborated separately in sub-clause (3).

- 24.3 The unclear motivation underlying the inclusion of information relating to several broad areas of state action in Chapter 5, including ‘commercial information’ (Clause 12), particularly when they are already adequately dealt with by the provisions of the Promotion of Access to Information Act, 2000 (PAIA).

- 24.4 This is likely to cause confusion, as the meaning of clause 1(3) is unclear. The sub-clause provides that:

‘When considering an apparent conflict between this legislation and other information-related legislation, every court must prefer any reasonable interpretation of the legislation that avoids a conflict over any alternative interpretation that results in a conflict.’ (Emphasis added)

It is unclear whether, if particular provisions of PAIA and PDA and this Bill cannot be easily reconciled by a court, it should then give preference the provisions of this Bill. This uncertainty arises primarily from the vagueness of the words ‘the legislation’; it does not indicate which law will take precedence. Will it be this Bill, once enacted, or ‘other information-related legislation’ such as PAIA, PDA and the Protection of Personal Information Bill, once it is enacted? Given that this Bill

includes several provisions that are in clear conflict with provisions of those laws, a court may well face a difficult decision in this regard.

24.5 The apparent conflict between certain provisions of the Bill resulting in a lack of clear guidance regarding classification criteria and their relative weight.

(a) Thus, for example, correctly, we submit:

(i) Sub-clause 11(4) requires that the determination of what is in the national interest of the Republic 'must at all times be guided by the values referred to in section 1 of the Constitution', which include equality, openness, responsiveness and accountability;

(ii) Clause 6(a)-(i) sets out general principles of State information that are consistent with Constitutional values and that are apparently intended to 'underpin this Act and inform its implementation'; and

(iii) Clause 17(1)(b)-(m) and sub-clause 17(2) provide principles and criteria to guide classification that we would generally support.

(b) However, these affirmations of the primacy of these Constitution values, principles and standards, appear to be contradicted by several other broadly phrased provisions. For example:

(i) The blunt and extraordinary assertion in clause 17(1)(a) that 'Secrecy exists to protect the national interest', thereby apparently ignoring the widely-acknowledged reality that secrecy can, in certain circumstances, also undermine both the national interest and national security.

(ii) Clause 6(j) expressly subordinates its preceding paragraphs (see para 24.5 (a)(ii) above) to 'the security of the Republic, in that the national security of the Republic may not be compromised'.

24.6 The harm test is inconsistently applied. The Bill recognises the appropriateness and utility of the harm test: Several of its provisions require that the state must show 'demonstrable' harm or a reasonable prospect of 'significant' harm. For example, it is mentioned in clause 17(1)(d) ('Directions for classification'); clause 20 ('Maximum protection periods') and clause 21 ('Continued classification of information'). It is unclear, however, why this same test should not also apply to breaches of the legislation, for example, arising from innocent possession or disclosure in the public interest.

24.7 The overall effect of this conflicting wording, as well as the placement or location in their contexts in the Bill of the particular phrases quoted, is to leave significant doubt in the mind of an official responsible for exercising the discretion to classify information as to which values and standards are intended to be given greater or lesser weight over others.

24.8 Additional significant factors include that there is no coherent system to disclose the fact of classification, and no requirement that reasons for classification should be recorded at the time of classification. Unintended breaches are the likely result,

with a potentially extensive impact on the caseload of prosecutors who will be required to adhere to complex, onerous and time-consuming court procedures – Chapter 12, clause 46.

25. This lack of clear and precise guidance, in combination with the signal sent by the relative severity of the sanctions for breach (unauthorised possessions and disclosure is more severely penalised than deliberately incorrect classification by an official with the intention to prevent revelation of wrongdoing or harm, for example) will have the probable effect of inclining the most well-intentioned public servant to caution and over-classification, thereby unnecessarily restricting even legitimate access to information.

The burden of proof (onus) on MPs

26. In addition, sub-clause 1(4) and, to a lesser extent sub-clause (5), regarding the inference that may be drawn concerning the existence of ‘knowledge’, are phrased so as to set the bar so high as to render unlawful even the otherwise lawful use or disclosure of classified information.

27. These sub-clauses have particular relevance in the context of clause 18 ‘Report and return of classified records’, which bears important implications for MPs:

‘A person who is in possession of a classified record knowing that such record has been unlawfully communicated, delivered or made available other than in the manner and for the purposes contemplated in this Act, except where such possession is for any purpose and in any manner authorised by law, must report such possession and return such record to a member of the South African Police Service [*sic* – ‘Force’] or the [State Security] Agency.’ (Emphasis added)

28. It is our understanding that an MP would, in the performance of his or her duties, be covered by this exception. Thus, an MP would be entitled to have and retain possession of classified information, in this context, provided that such possession is ‘authorised by law’. But as will be seen below, what this means is not at all clear.

29. It is worth noting that this provision applies only to information that is recorded in some physical form – a ‘record’; it would, of course, be impossible to require that memory be erased.

30. It seems clear that such possession would necessarily be subject also to the following provisions of the Bill. Sub-clause 1(4) provides that a person – read MP – is regarded as having knowledge of a fact if—

‘(a) that person has actual knowledge of the fact; or

(b) the court is satisfied that—

(i) the person believes that there is a reasonable possibility of the existence of that fact; and

(ii) the person has failed to obtain information to confirm the existence of that fact, and “knowing” shall be construed accordingly.’ (Emphasis added)

- ‘(5) For the purposes of this Act a person [read ‘MP’] ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached, are those which would have been reached by a reasonably diligent and vigilant person having both—
- (a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position [read ‘as an MP’]; and
 - (b) the general knowledge, skill, training and experience that he or she in fact has.’ (Emphasis added)
31. It is our understanding of these provisions that an MP’s ability to retain possession of and utilise classified information in a record arises only if they have checked and conclusively determined the lawfulness of the transfer of information record to them – the ‘fact’ referred to above.
32. This constitutes a very high threshold before an MP may lawfully take possession of a record containing classified information: an MP must obtain conclusive proof of whether or not the record containing classified information has been passed on to them lawfully. It is not sufficient that an MP has taken ‘reasonable steps’ to ascertain whether or not classified information has been passed on to them lawfully.
33. In practical terms, this places a heavy onus on an MP. He or she cannot legally retain possession of the record of information, or use it – even in the course of their duties – unless and until they have conclusive proof that the record came from a person authorised to transfer possession to the MP.
34. How should an MP establish this fact? He or she may, of course, ask the person delivering the record, which may be relatively easy within the Parliamentary context. But it is very likely to be inadequate in respect of a record received outside of that environment, and it will, of course, be impossible in respect of a record received anonymously. Possession will then be unlawful.
35. It seems probable that the MP would then be obliged to comply with the requirements of clause 18 and report the facts of receipt and possession, and return the record of information to either the police or the State Security Agency.
36. What might be the position if a record of information is received anonymously, or from a source that the MP should, given reasonable diligence and vigilance, and the general knowledge someone in their position should and does actually have (the standards in sub-clause 1(5)), suspect may be untrustworthy?
37. An MP may, of course, try to establish the lawfulness or otherwise of the delivery. If the transfer was lawful, would the MP be able to secure timely confirmation of this fact? Would the MP get a truthful answer from an official, if there is a reason

- to hide something? Or would the MP get any answer, given the bureaucracy of secrecy?
38. Perhaps more importantly, would the MP be acting unlawfully merely by making enquiries, if those enquiries do not entail making enquiries with the police or the Agency? The Bill appears to envisage no legal defence in such situations.
 39. Would an MP be prepared to make any such an enquiry in the first place if it is likely to lead to an investigation and prosecution of a known and otherwise trusted source, such as a constituent? Would the MP think differently if the person delivering the information is an innocent intermediary, or a member of the public motivated by and acting in the public interest? Again, the Bill contains no public interest defence for any of the parties in such circumstances.
 40. If it the transfer proves to be unlawful, and the record must be returned, could the MP nevertheless use the information in an otherwise lawful situation, such as in the Assembly or one of its committee?
 41. What if the nature and content of the information suggests the need for urgent action to prevent imminent harm to public health or safety, particularly is such immediate action does not entail disclosure to the police or the Agency first and foremost? It seems clear that the MP then be faced with a criminal prosecution for acting on their honest belief that immediate disclosure is warranted and justifiable. No exceptions are permitted by the Bill, and it is not clear that an MP's performance of their duties outside of Parliament would be covered by the exception in clause 18.
 42. What could be the effect on the work of committees if wide categories of information are, in fact, classified? It seems probable that committee hearings would be disrupted and at least part of each committee meeting would have to be held *in camera*.

The limits of privilege

43. As alluded to above, MPs are public representatives not only when they are in committee, or in the National Assembly, but also in a range of other processes when they are called upon by the public in general, and their constituents in particular, for assistance.
44. Sometimes they will be receipt of information that triggers remarks in the National Assembly or a committee. At other times they may choose to resolve an issue by contacting a state official like a police officer, or a councillor; or they may bring a matter to their caucus, or write a letter to a newspaper. Not all of these actions are covered by privilege, and yet they are crucial to any fully realised sense of the work of an MP.
45. What is more, they may be in receipt of information that they are enjoined not to reveal, and in such cases they may act on it by asking a parliamentary question that

- approaches the issue from a different angle. What is the status of records that form the background for such action, but that are never explicitly mentioned or brought before Parliament?
46. Similarly, it is easy to imagine a situation in which replies to parliamentary questions become far less precise, with ministers and other accountable persons relying on 'classification' as a reason not to answer, or to not provide the documentary record on which the answer is based. The provisions of the Constitution and PIPPA mentioned above prohibit 'interference' with a legislator's performance of their duties and, therefore, require the provision of truthful, accurate and comprehensive information and responses to questions.
 47. But it will be immeasurably easier for a dishonest official, or a dishonest member of the executive for that matter, to provide inaccurate, incomplete or misleading information to a legislator who will have no basis upon which to question the initial response, and no means of cross-checking or verifying that information against information obtained independently from a constituent or via the media. If the Bill passes in its current form, MPs' sources of information will be unduly restricted, and they will be entirely reliant on what they are given through official channels.
 48. In short, privilege isn't enough, and pursuit of 'lawful duty' is far too vague and imprecise when it comes to the many and varied tasks of MPs.
 49. The free flow of government information is the lifeblood of Parliament and every legislature, and the current formulation of this law threatens to cut it off at source.

Conclusions

50. The ultimate effect of these provisions, and of the uncertainty that currently characterises so many of them, is likely to be that some information – potentially the most critically important information requiring urgent intervention by an MP – will no longer be available to MPs. For, if it becomes a criminal offence for anyone to either possess (in terms of Clause 18 read with Clause 39) or disclose (in terms of Clause 18 read with Clause 38) classified information, even to an MP, it becomes highly probable that important concerns will not be raised directly with MPs by members of the public. Nor, as discussed above, would that information be communicated via the media.
51. Again, it is worth emphasising that the maximum prescribed punishment for the offences of possession and disclosure are more severe than for an official who unlawfully destroys 'valuable' information, or who deliberately classifies information incorrectly with the ulterior purpose of concealing the truth (Clause 42). If this disjuncture is deliberate, it appears to signal the true impetus underlying the Bill.
52. This narrowing of the range and scope of interaction between the public and MPs can only exacerbate their already indirect and indistinct relationship, reducing

both access by the public to MPs, and the accountability of MPs to voters. The effect will be to reduce the meaning, content and efficacy of MPs' representative responsibilities to only relatively minor and insignificant matters.

53. That is a **first risk** arising from this Bill. This important constraint on information available to both the public and to MPs can only be compounded by the **second danger** – the equivalent effect of these same prohibitions on the role of a free media in a democracy. As mentioned in other submissions, the Constitutional Court in CCT 53/01 has declared that:

'The print, broadcast and electronic media have a particular role in the protection of freedom of expression in our society. Every citizen has the right to freedom of the press and the media and the right to receive information and ideas. The media are key agents in ensuring that these aspects of the right to freedom of information are respected.

The ability of each citizen to be a responsible and effective member of our society depends upon the manner in which the media carry out their constitutional mandate.

As Deane J stated in the High Court of Australia:

“. . . the freedom of the citizen to engage in significant political communication and discussion is largely dependent upon the freedom of the media.”

The media thus rely on freedom of expression and must foster it. In this sense they are both bearers of rights and bearers of constitutional obligations in relation to freedom of expression.'

(Case CCT 53/01, at paragraph 22)

54. The constitutional mandate of the media is not merely passive reporting, however, but active inquiry and investigation. The Constitutional Court observed in the same case:

'Furthermore, the media are important agents in ensuring that government is open, responsive and accountable to the people as the founding values of our Constitution require.

As Joffe J said in *Government of the Republic of South Africa v 'Sunday Times' Newspaper and Another* 1995 (2) SA 221 (T) at 227H - 228A:

"It is the function of the press to ferret out corruption, dishonesty and graft wherever it may occur and to expose the perpetrators. The press must reveal dishonest mal- and inept administration.... It must advance the communication between the governed and those who govern."

In a democratic society, then, the mass media play a role of undeniable importance. They bear an obligation to provide citizens both with information and with a platform for the exchange of ideas which is crucial to the development of a democratic culture.'

Case CCT 53/01 at paragraphs 23 and 24.

55. The result will be that MPs will have more limited and less comprehensive information available to them to faithfully and diligently represent some of the most pressing concerns of the public within Parliament.
56. This leads to consideration of a **third risk** – the growth in speculation and rumour that has always been sparked by extensive and excessive secrecy. Historically, this has commonly resulted in increased uncertainty, fear and instability. Relationships between the governors, the governed, and their representatives, would be diminished.
57. A **fourth risk** relates to the impact on Parliament's ability to undertake its oversight responsibilities. With considerably less information available from other sources, MPs will be far more reliant on what they are told by the executive and administrative branches of government. Parliamentarians will have little independent information against which to compare and test the information they are given in Parliament, save perhaps for reports from the Chapter Nine institutions.
58. Their role as effective independent watchdogs could become even more significant, but the delay while investigations are undertaken could be a hindrance in urgent situations. Moreover, the implications of such delays would only be aggravated by the inability of complainants to provide the type, class and quality of information that can currently be given to those institutions by complainants, as a result of this Bill. However, their ability to report largely openly, as they currently do, would also be constrained, leading to a decline in their benefit and the value of their contribution.
59. Similarly, reliance on a single annual report from an organ of state long after the fact is inadequate for real time oversight. Similarly, the utility of MPs' questions, a procedure which is already characterised by a constant backlog of unanswered questions, would be further diminished. In any event, questions will have markedly less significance and value if they are posed in the context of a vacuum of current information created by this Bill. MPs' reduced ability to rely on contemporaneous information provided by constituents and the media will hamper their ability to closely monitor and interrogate government's actions. In a fast-paced world, and in a dynamic country with many pressing needs, one has to doubt the adequacy of such a scenario.
60. A **fifth risk**, arising from these factors, is the impact of this on government's responsiveness to the real needs of the public. If a government is not confronted

in Parliament with any 'dishonest, mal- and inept administration', it will doubtless feel less inclined or obliged to diligently meet its responsibilities to respond to people's needs, as it is obliged to do in terms of the provisions of section 195(1)(e) of the Constitution.

61. Worse, government will itself be less well-informed of people's real needs. A government that is uninformed is out of touch with people's needs and aspirations, and such a government is unable to lead its country.

Recommendations

62. A clear, precise and narrow definition of 'national security', consistent with the standard scope of the concept.

63. Apply the same harm test consistently throughout the Bill, with variations appropriate to the different categories of classification, viz. confidential, secret and top secret. For example, consideration should be given to the use of wording – and standards – such as:

'is reasonably likely to cause demonstrable and substantial / serious harm'

- as that requires at least a 50% probability of severe harm.

64. Include a public interest override and associated defence.
- 65.1 Sanctions for intentional incorrect classification with an ulterior motive should attract a more severe punishment than unauthorised disclosure of classified information that is not justified by a compelling public interest.
- 65.2 Sanctions for everyone involved in the entire chain of disclosure are excessive. Instead, no sanction should be incurred after information is already in the public domain and the public interest in further disclosure exceeds the public interest in protecting legitimate and clearly defined national security.
66. Recognise the primacy of PAIA, PDA and s.159 of the Companies Act.
- 67.1 Establish an independent information commissioner to be an arbiter of disputes, and to provide direction and exercise oversight over classification of information.
- 67.2 Such a commissioner should have authority to scrutinise contested information and make binding rulings, without necessarily removing the right to review by a court of law.
- 67.3 Such a commissioner should be appointed through a public process by a special majority of Parliament, as is provided for Chapter Nine institutions.