



Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUID-AFRIKA

Vol. 452

Cape Town,
Kaapstad, 13 February
Februarie 2003

No. 24391

THE PRESIDENCY

No. 237

13 February 2003

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

No. 67 of 2002: National Strategic Intelligence Amendment Act, 2002.

DIE PRESIDENSIE

No. 237

13 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. 67 van 2002: Wysigingswet op Nasionale Strategiese Intelligensie, 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 National Strategic Intelligence Act, 1994, so as to exclude the Minister as a member of Nicoc; to redefine counter-intelligence; to provide for security screening by the relevant members of the national intelligence structures; to further define the functions of the Minister pertaining to co-ordination of intelligence; and to regulate the functions of the National Intelligence Structures; 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 39 of 1994, as amended by section 1 of Act 37 of 1998 and section 24 of Act 66 of 2000

1. Section 1 of the National Strategic Intelligence Act, 1994 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the substitution for the definition of “counter-intelligence” of the following definition:

“‘counter-intelligence’ means measures and activities conducted, instituted or taken to impede and to neutralise the effectiveness of foreign or hostile intelligence operations, to protect [classified] intelligence and any classified information, to conduct security screening investigations and to counter subversion, treason, sabotage and terrorism aimed at or against personnel, strategic installations or resources of the Republic;”; and 10

(b) by the insertion after the definition of “regulation” of the following definition:

“‘relevant members of the National Intelligence Structures’ means—

(a) the intelligence division of the National Defence Force;
(b) the intelligence division of the South African Police Service;
(c) the Agency; and
(d) the Service;”; and 20

(c) by the insertion after the definition of “South African Police Service” of the following definition:

“‘subversion’ means any activity intended to destroy or undermine the constitutionally established system of government in the Republic of South Africa.”. 25

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordnings aan.
- _____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordnings aan.
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*(Engelse teks deur die President geteken.)
(Goedgekeur op 30 Januarie 2003.)*

WET

Tot wysiging van die Wet op Nasionale Strategiese Intelligenzie, 1994, ten einde die Minister as lid van Nikok uit te sluit; teenintelligenzie te heromskryf; voorsiening te maak vir veiligheidskeuring deur die tersaaklike lede van die nasionale intelligensiestructure; die werksaamhede van die Minister met betrekking tot die koördinering van intelligensie verder te omskryf; en die werksaamhede van die Nasionale Intelligenziestructure te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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

Wysiging van artikel 1 van Wet 39 van 1994, soos gewysig deur artikel 1 van Wet 37 van 1998 en artikel 24 van Wet 66 van 2000

1. Artikel 1 van die Wet op Nasionale Strategiese Intelligenzie, 1994 (hierna die Hoofwet genoem), word hierby gewysig—
- (a) deur die omskrywing van "teenintelligenzie" deur die volgende omskrywing te vervang:
 “‘teenintelligenzie’ maatreëls en bedrywigheid verryg, ingestel of getref om die doeltreffendheid van buitelandse of vyandelike intelligensiebedrywighede te belemmer en te neutraliseer, om [geklassifiseerde] intelligensie en enige geklassifiseerde inligting te beskerm, om sekerheidsklaringsbedrywighede te verryg en om ondermyning, hoogverraad, sabotasie en terrorisme wat teen personeel, strategiese installasies of hulpbronne van die Republiek gerig is, teen te werk;”;
- (b) deur die invoeging, na die omskrywing van "Nasionale Weermag", van die volgende omskrywing:
 “‘ondermyning’ enige aktiwiteit wat bedoel is om die grondwetlik gestigte stelsel van regering in die Republiek van Suid-Afrika te vernietig of te ondermy;”; en
- (c) deur na die omskrywing van "teenintelligenzie" die volgende omskrywing in te voeg:
 “‘tersaaklike lede van die Nasionale Intelligenziestructure’—
 (a) die intelligensie-afdeling van die Nasionale Weermag;
 (b) die intelligensie-afdeling van die Suid-Afrikaanse Polisiediens;
 (c) die Agentskap; en
 (d) die Diens;”.

Act No. 67, 2002

NATIONAL STRATEGIC INTELLIGENCE
AMENDMENT ACT, 2002**Amendment of section 2 of Act 39 of 1994, as amended by section 2 of Act 37 of 1998****2. Section 2 of the principal Act is hereby amended—**

- (a) by the addition to subsection (1)(b) of the following subparagraphs:

“(iv) supply intelligence relating to any such threat to the Department of Home Affairs for the purposes of fulfilment of any immigration function; and

(v) supply intelligence relating to national strategic intelligence to Nicoc;”;

- (b) by the substitution for subparagraphs (a) and (b) of subsection (3) of the following subparagraphs:

“(a) to gather, correlate, evaluate, co-ordinate and use crime intelligence in support of the objects of the South African Police Service as contemplated in section 205(3) of the Constitution;

(b) to institute counter-intelligence measures within the South African Police Service;”; and

- (c) by the addition to subsection (3) of the following paragraph:

“(c) to supply crime intelligence relating to national strategic intelligence to Nicoc.”.

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Insertion of section 2A in Act 39 of 1994

- 3. The following section is hereby inserted in the principal Act after section 2:** 20

“Security screening investigations

2A. (1) The relevant members of the National Intelligence Structures may conduct a security screening investigation to determine the security competence of a person if such a person—

(a) is employed by or is an applicant to an organ of state; or

(b) is rendering a service or has given notice of intention to render a service to an organ of state, which service may—

(i) give him or her access to classified information and intelligence in the possession of the organ of state; or

(ii) give him or her access to areas designated national key points in terms of the National Key Points Act, 1980 (Act No. 102 of 1980).

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(2) The Agency shall be responsible for security screening of persons contemplated in subsection (1) and, on request of the South African Police Service, the Service or the National Defence Force, persons employed by, applicants to or persons rendering a service to the South African Police Service, the Service or the Department of Defence.

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(3) Notwithstanding the provisions of subsection (2), the Agency may request the assistance of the South African Police Service or the National Defence Force in the performance of the function contemplated in subsection (2).

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(4) (a) In performing the security screening investigation contemplated in subsection (1), the relevant members of the National Intelligence Structures may use a polygraph to determine the reliability of information gathered during the investigation.

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(b) For the purpose of this section, “polygraph” means an instrument used to ascertain, confirm or examine in a scientific manner the truthfulness of a statement made by a person.

(5) The relevant members of the National Intelligence Structures may, in the prescribed manner, gather information relating to—

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(a) criminal records;

(b) financial records;

(c) personal information; or

(d) any other information which is relevant to determine the security clearance of a person:

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Provided that where the gathering of information contemplated in paragraphs (c) and (d) requires the interception and monitoring of the communication of such a person, the relevant members shall perform this

Wysiging van artikel 2 van Wet 39 van 1994, soos gewysig deur artikel 2 van Wet 37 van 1998**2.** Artikel 2 van die Hoofwet word hierby gewysig—

(a) deur die volgende subparagrawe by subartikel (1)(b) te voeg:

“(iv) intelligensie betreffende enige sodanige bedreiging op versoek aan die Departement van Binnelandse Sake te voorsien met die oog op die verrigting van enige immigrasiewerksaamheid; en

(v) intelligensie betreffende nasionale strategiese intelligensie aan Nikok te voorsien;”;

(b) deur subparagrawe (a) en (b) van subartikel (3) deur die volgende subparagrawe te vervang:

“(a) om misdaadinligting in te samel, te korreleer, te evalueer, te koördineer en te gebruik ter ondersteuning van die doelstellings van die Suid-Afrikaanse Polisiediens soos beoog in artikel 205(3) van die Grondwet; [en]

(b) om teenintelligensiemaatreëls binne die Suid-Afrikaanse Polisiediens in te stel; en; en

(c) deur die volgende paragraaf by subartikel (3) te voeg:

“(c) om misdaadintelligensie betreffende nasionale strategiese intelligensie aan Nikok te voorsien.”.

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Invoeging van artikel 2A in Wet 39 van 1994**3.** Die volgende artikel word hierby na artikel 2 in die Hoofwet ingevoeg:**“Veiligheidskeuringsondersoek****2A.** (1) Die betrokke lede van die Nasionale Intelligensiestructure mag veiligheidskeuringsondersoek uitvoer om die veiligheidsbevoegdheid van 'n persoon vas te stel, indien so 'n persoon—

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(a) in diens is by, of 'n applikant is aan, 'n staatsorgaan; of

(b) 'n diens verskaf of kennis gegee het van sy of haar voorname om 'n diens aan 'n staatsorgaan te verskaf, welke diens hom of haar toegang mag gee tot—

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(i) geklassifiseerde inligting en intelligensie wat in die besit is van die staatsorgaan; of

(ii) gebiede wat ingevolge die Wet op Nasionale Sleutelpunte, 1980 (Wet No. 102 van 1980), as nasionale sleutelpunte aangewys is.

(2) Die Agentskap is verantwoordelik vir veiligheidskeuring van persone in subartikel (1) beoog en, op versoek van die Suid-Afrikaanse Polisiediens, die Diens of die Nasionale Weermag, persone in diens van, applikante aan of persone wat 'n diens verskaf aan die Suid-Afrikaanse Polisiediens, die Diens of die Departement van Verdediging.

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(3) Ondanks die bepalings van subartikel (2) kan die Agentskap die bystand van die Suid-Afrikaanse Polisiediens, die Diens of die Departement van Verdediging versoek in die uitvoer van die werksaamheid in subartikel (2) beoog.

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(4)(a) In die uitvoer van die veiligheidskeuringondersoek in subartikel (1) beoog, kan die betrokke lede van die Nasionale Intelligensiestructure 'n poligraaf gebruik om die betroubaarheid van die inligting wat tydens die ondersoek ingesamel is, te bepaal.

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(b) Vir doeleindes van hierdie artikel beteken "poligraaf" 'n instrument wat gebruik word om die waarheid van 'n verklaring deur 'n persoon op 'n wetenskaplike manier vas te stel, te bevestig of te ondersoek.

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(5) Die betrokke lede van die Nasionale Intelligensiestructure kan, op die voorgeskrewe wyse, inligting insamel wat betrekking het op—

(a) kriminele rekords;

(b) finansiële rekords;

(c) persoonlike inligting; of

(d) enige ander inligting wat relevant is om die veiligheidsklaring van 'n persoon vas te stel:

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<p>function in accordance with the provisions of the Interception and Monitoring Prohibition Act, 1992 (Act No.127 of 1992).</p> <p>(6) The head of the relevant National Intelligence Structure may, after evaluating the information gathered during the security screening investigation, issue, degrade, withdraw or refuse to grant a security clearance.</p> <p>(7) The head of the relevant National Intelligence Structure may establish a security screening Advisory Board comprising of members or employees of the relevant National Intelligence Structure to assist him or her in the determination of the security competency of a person.</p> <p>(8) (a) A person whose security clearance has been refused, withdrawn or degraded may in the prescribed manner appeal to the Minister responsible for the relevant National Intelligence Structure.</p> <p>(b) Such appeal shall—</p> <ul style="list-style-type: none"> (i) be lodged within 60 days from the date on which the decision was made known by the head of the relevant National Intelligence Structure or such later date as the Minister permits; and (ii) set out the grounds for the appeal. <p>(c) After considering the grounds of appeal and the head of the relevant National Intelligence Structure's reasons for the decision, the Minister responsible for the relevant National Intelligence Structure shall as soon as practicable—</p> <ul style="list-style-type: none"> (i) confirm, set aside or vary the decision; or (ii) substitute any other decision for the decision of the relevant National Intelligence Structure. <p>(9) The Director-General of the Agency may in the prescribed manner issue functional directives on—</p> <ul style="list-style-type: none"> (a) usage and application of polygraph; (b) criteria for determining security competence; and (c) levels of security clearance. <p>(10) The directives contemplated in subsection (9) shall be issued with the approval of the Minister, who shall act in consultation with the Minister of Safety and Security and the Minister of Defence, and shall apply to all the relevant National Intelligence Structures.”.</p>	5
Amendment of section 4 of Act 39 of 1994, as amended by section 37 of Act 37 of 1998 and section 25 of Act 66 of 2000	35
4. Section 4 of the principal Act is hereby amended by the deletion of paragraph (a) of subsection (1).	35
Amendment of section 5 of Act 39 of 1994, as amended by section 5 of Act 37 of 1998	
5. Section 5 of the principal Act is hereby amended by the deletion of paragraph (b) of subsection (1).	40
Amendment of section 5A of Act 39 of 1994, as inserted by section 5 of Act 37 of 1998	
6. Section 5A of the principal Act is hereby amended by the substitution for subsection (3) of the following subsections:	45
“(3) Subject to subsection (2), the Minister may, for the purposes of the functions contemplated in subsection (1), establish such support structures as are necessary—	45
(a) for the efficient co-ordination of intelligence; and	
(b) to assist the Minister to advise the President and the national executive.	
4. The Minister may delegate, the function contemplated in subsection (3) to the Co-ordinator for Intelligence.	50
5. The Minister shall advise the President and the national executive on national strategic intelligence and co-ordination of intelligence.”.	
Substitution of section 6 of Act 39 of 1994, as amended by section 7 of Act 37 of 1998 and section 26 of Act 66 of 2000	55
7. The following section is hereby substituted for section 6 of the principal Act:	

WYSIGINGSWET OP NASIONALE STRATEGIESE
INTELLIGENSIE, 2002

Wet No. 67, 2002

<p>Met dien verstande dat waar die insameling van inligting in paragrawe (c) en (d) beoog die onderskepping en meeluistering van die kommunikasie van sodanige persoon verg, die betrokke lede hierdie werksaamheid dienooreenkomsdig die bepalings van die Wet op die Verbod op Onderskepping en Meeluistering, 1992 (Wet No. 127 van 1992), sal uitvoer.</p> <p>(6) Die hoof van die betrokke Nasionale Intelligensiestructuur kan, na evaluering van die inligting wat tydens die veiligheidskeuringsondersoek ingesamel is, 'n veiligheidsklaring uitreik, afgrader of terugtrek, of weier om 'n veiligheidsklaring uit te reik.</p> <p>(7) Die hoof van die betrokke Nasionale Intelligensiestructuur kan 'n Adviserende Raad op Veiligheidskeurings instel, saamgestel uit lede of werknemers van die betrokke Nasionale Intelligensiestructuur, om hom of haar met die bepaling van 'n persoon se veiligheidsbevoegdheid by te staan.</p> <p>(8)(a) 'n Persoon wie se veiligheidsklaring geweier, teruggetrek of afgegrader is, mag op die voorgeskrewe manier aan die Minister wat vir die betrokke Nasionale Intelligensiestructuur verantwoordelik is, appelleer.</p> <p>(b) Sodanige appélsal—</p> <ul style="list-style-type: none"> (i) binne 60 dae vanaf die datum waarop dit deur die hoof van die betrokke Nasionale Intelligensiestructuur, of sodanige latere datum wat die Minister toelaat, bekend gemaak is, aangeteken word; en (ii) die gronde van die appél uiteensit. <p>(c) Na oorweging van die gronde van appél en die hoof van die betrokke Nasionale Intelligensiestructuur se redes vir die besluit, moet die Minister verantwoordelik vir die betrokke Nasionale Intelligensiestructuur so gou doenlik—</p> <ul style="list-style-type: none"> (i) die besluit bevestig, tersyde stel of wysig; of (ii) die besluit van die betrokke Nasionale Intelligensiestructuur met enige ander besluit vervang. <p>(9) Die Direkteur-generaal van die Agentskap kan op die voorgeskrewe manier funksionele direktiewe uitvaardig oor—</p> <ul style="list-style-type: none"> (a) die gebruik en toepassing van die poligraaf; (b) kriteria vir die bepaling van veiligheidsbevoegdheid; en (c) vlakte van veiligheidsklaring. <p>(10) Die direktiewe in subartikel (9) beoog, sal met die goedkeuring van die Minister uitgevaardig word, wat in oorleg met die Minister van Veiligheid en Sekuriteit en die Minister van Verdediging sal optree, en sal op al die betrokke Nasionale Intelligensiestructure van toepassing wees.”.</p>	<p style="margin-left: 20px;">5</p> <p style="margin-left: 20px;">10</p> <p style="margin-left: 20px;">15</p> <p style="margin-left: 20px;">20</p> <p style="margin-left: 20px;">25</p> <p style="margin-left: 20px;">30</p> <p style="margin-left: 20px;">35</p> <p style="margin-left: 20px;">40</p>
Wysiging van artikel 4 van Wet 39 van 1994, soos gewysig deur artikel 37 van Wet 37 van 1998 en artikel 25 van Wet 66 van 2000	40
4. Artikel 4 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) te skrap.	45
Wysiging van artikel 5 van Wet 39 van 1994, soos gewysig deur artikel 5 van Wet 37 van 1998	50
5. Artikel 5 van die Hoofwet word hierby gewysig deur paragraaf (b) van subartikel (1) te skrap.	55
Wysiging van artikel 5A van Wet 39 van 1994, soos ingevoeg deur artikel 5 van Wet 37 van 1998	
6. Artikel 5A van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikels te vervang:	50
“(3) Behoudens subartikel (2) kan die Minister met die oog op die werksaamhede beoog in subartikel (1) die ondersteuningstelsels instel wat nodig is—	55
(a) vir die doeltreffende koördinering van intelligensie; en	
(b) om die Minister by te staan om die President en die nasionale uitvoerende gesag van raad te dien.	
(4) Die Minister kan die werksaamheid beoog in subartikel (3) aan die Intelligensiokoördineerde deleger.	

“Regulations

6. (1) The Minister may, after consultation with the Joint Standing Committee on Intelligence, subject to subsection (2), make regulations regarding—

- (a) the protection of information and intelligence;
- (b) the carrying out of security screening investigations by members of the National Intelligence Structures;
- (c) co-ordination of intelligence as an activity;
- (d) production and dissemination of intelligence for consideration by Cabinet and the executive;
- (e) the co-ordination of counter-intelligence by the Agency;
- (f) the co-ordination of crime intelligence; and
- (g) any other matter necessary for the effective administration of this Act.

(2) Any regulation which may affect a function of the National Defence Force or the South African Police Service shall be made in consultation with the Minister responsible for that Force or Service, as the case may be.

(3) A security screening investigation contemplated in subsection (1)(b) may entitle the relevant members of the National Intelligence Structures concerned to subject the person undergoing a security screening investigation to a polygraph examination as prescribed, in order to determine the reliability of information provided by him or her.

(4) A regulation made under this Act may not be published in the *Gazette*, but where such a regulation only affects the members of the National Intelligence Structures or their functioning, the affected parties must be notified in a manner determined by the Minister.

(5) A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.”.

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Short title and commencement

8. This Act is called the National Strategic Intelligence Amendment Act, 2002, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

(5) Die Minister moet die President en die nasionale uitvoerende gesag van raad |
dien oor nasionale strategiese intelligensie en koördinering van intelligensie.”.

**Vervanging van artikel 6 van Wet 39 van 1994, soos gewysig deur artikel 7 van Wet
37 van 1998 en artikel 26 van Wet 66 van 2000**

7. Artikel 6 van die Hoofwet word hierby deur die volgende artikel vervang: 5

“Regulasies

6. (1) Die Minister kan, na oorlegpleging met die Gesamentlike Staande Komitee oor Intelligensie, behoudens subartikel (2) regulasies uitvaardig betreffende—

- (a) die beskerming van inligting en intelligensie; 10
- (b) die uitvoer van sekerheidsklaringsondersoek deur lede van die Nasionale Intelligensiestructure;
- (c) die koördinering van intelligensie as 'n aktiwiteit;
- (d) die produksie en verspreiding van intelligensie vir oorweging deur die Kabinet en die uitvoerende gesag; 15
- (e) die koördinering van teenintelligensie deur die Agentskap;
- (f) die koördinering van misdaadintelligensie; en
- (g) enige ander aangeleentheid wat vir die doeltreffende uitvoering van hierdie Wet nodig is.

(2) Enige regulasie wat moontlik 'n werksaamheid van die Nasionale Weermag of die Suid-Afrikaanse Polisiediens kan raak, moet in oorleg met die Minister verantwoordelik vir daardie Mag of Diens, na gelang van die geval, uitgevaardig word. 20

(3) 'n Sekerheidsklaringsondersoek beoog in subartikel (1)(b) kan die tersaaklike lede van die betrokke Nasionale Intelligensiestructure daarop geregtig maak om die persoon wat 'n sekerheidsklaringsondersoek ondergaan, te onderwerp aan 'n poligraafondersoek soos voorgeskryf ten einde die betroubaarheid vas te stel van inligting deur hom of haar verstrek. 25

(4) 'n Regulasie uitgevaardig kragtens hierdie Wet mag nie in die *Staatskoerant* gepubliseer word nie, maar waar so 'n regulasie slegs die lede van die Nasionale Intelligensiestructure of die werking daarvan raak, moet die partye wat geraak word, verwittig word op 'n wyse deur die Minister bepaal. 30

(5) 'n Regulasie uitgevaardig kragtens hierdie artikel kan bepaal dat enige persoon wat 'n bepaling daarvan oortree of versuim om daaraan te voldoen, skuldig is aan 'n misdryf en by skuldigbevinding met 'n boete of gevengenisstraf vir 'n tydperk van hoogstens vyf jaar strafbaar is.”. 35

Kort titel en inwerkingtreding

8. Hierdie Wet heet die Wysigingswet op Nasionale Strategiese Intelligensie, 2002, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* 40 vasgestel.

