

NATIONAL STRATEGIC INTELLIGENCE ACT NO. 39 OF 1994

[View Regulation]

[ASSENTED TO 23 NOVEMBER, 1994]
[DATE OF COMMENCEMENT: 1 JANUARY, 1995]

(English text signed by the President)

This Act has been updated to *Government Gazette* 36714 dated 29 July, 2013.

as amended by

National Strategic Intelligence Amendment Act, No. 37 of 1998

General Intelligence Law Amendment Act, No. 66 of 2000

National Strategic Intelligence Amendment Act, No. 67 of 2002

General Intelligence Laws Amendment Act, No. 52 of 2003

General Intelligence Laws Amendment Act, No. 11 of 2013

ACT

To define the functions of members of the National Intelligence Structures; to establish a national Intelligence Co-ordinating Committee and to define its functions in respect of intelligence relating to the security of the Republic; and to provide for the appointment of a Co-ordinator for Intelligence as chairperson of the National Intelligence Co-ordinating Committee, and to define his or her functions; and to provide for matters connected therewith.

ARRANGEMENT OF SECTIONS

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1. Definitions.—In this Act, unless the context otherwise indicates—

“Agency” means the State Security Agency as referred to in section 3 (1) of the Intelligence Services Act, 2002 (Act No. 65 of 2002);

[Definition of “Agency” substituted by s. 1 (a) of Act No. 37 of 1998, by s. 1 (a) of Act No. 52 of 2003 and by s. 1 (a) of Act No. 11 of 2013.]

“Cabinet” means the Cabinet of the Republic of South Africa referred to in section 91 (1) of the Constitution;

[Definition of “Cabinet” substituted by s. 1 (b) of Act No. 37 of 1998.]

“Constitution” means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

[Definition of “Constitution” substituted by s. 1 (c) of Act No. 37 of 1998.]

“Co-ordinator for Intelligence”

[Definition of “Co-ordinator for Intelligence” deleted by s. 1 (d) of Act No. 37 of 1998.]

“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 intelligence and any classified information, to conduct vetting investigations and to counter any threat or potential threat to national security;

[Definition of “counter-intelligence” substituted by s. 1 (a) of Act No. 67 of 2002 and by s. 1 (b) of Act No. 11 of

"covert collection" means the acquisition of information which cannot be obtained by overt means and for which complete and continuous secrecy is a requirement;

"crime intelligence" means intelligence used in the prevention of crime or to conduct criminal investigations and to prepare evidence for the purpose of law enforcement and the prosecution of offenders;

"departmental intelligence" means intelligence on any threat or potential threat to national security which falls within the functions of a department of State, and includes intelligence needed by such department in order to neutralise such a threat;

[Definition of "departmental intelligence" substituted by s. 1 (c) of Act No. 11 of 2013.]

"domestic intelligence" means intelligence on any internal threat or potential threat to national security;

[Definition of "domestic intelligence" substituted by s. 1 (d) of Act No. 11 of 2013.]

"domestic military intelligence" means intelligence required for the planning and conduct of military operations within the Republic to ensure security and stability for its people;

"evaluate" means the process of determining and assessing whether or not information is possibly correct, probably correct or factually correct;

"foreign intelligence" means intelligence on any external threat or potential threat to the national interests of the Republic and its people, and intelligence regarding opportunities relevant to the protection and promotion of such national interests irrespective of whether or not it can be used in the formulation of the foreign policy of the Republic;

"foreign military intelligence" means intelligence regarding the war potential and military establishment of foreign countries (including their capabilities, intentions, strategies and tactics) which can be used by the Republic in the planning of its military forces in time of peace and for the conduct of military operations in time of war;

"intelligence" means any information obtained and processed by a National Intelligence Structure for the purposes of informing any government decision or policy-making process carried out in order to protect or advance the national security, and includes—

- (a) counter-intelligence;
- (b) crime intelligence;
- (c) departmental intelligence;
- (d) domestic intelligence;
- (e) domestic military intelligence;
- (f) foreign intelligence; and
- (g) foreign military intelligence;

[Definition of "intelligence" inserted by s. 1 (e) of Act No. 11 of 2013.]

"Minister" means the President or the member of Cabinet designated by the President to assume the responsibility for intelligence services as contemplated in section 209 (2) of the Constitution;

[Definition of "Minister" inserted by s. 1 (e) of Act No. 37 of 1998.]

"national intelligence estimate" means the product of the process of considering and weighing the possibilities, probabilities and facts disclosed by national security intelligence with regard to any situation, and of drawing conclusions from such possibilities, probabilities and facts;

"National Intelligence Structures" means—

- (a) Nicoc;
- (b) the intelligence division of the National Defence Force, established under the Defence Act, 2002 (Act No. 42 of 2002);
- (c) the intelligence division of the South African Police Service; and
- (d) the Agency.

[Definition of "National Intelligence Structures" amended by s. 1 (f) of Act No. 37 of 1998, by s. 1 (c) of Act No. 52 of 2003 and substituted by s. 1 (f) of Act No. 11 of 2013.]

"national security" includes the protection of the people of the Republic and the territorial integrity of the Republic against—

- (a) the threat of use of force or the use of force;
- (b) the following acts:

- (i) Hostile acts of foreign intervention directed at undermining the constitutional order of the Republic;
 - (ii) terrorism or terrorist-related activities;
 - (iii) espionage;
 - (iv) exposure of a state security matter with the intention of undermining the constitutional order of the Republic;
 - (v) exposure of economic, scientific or technological secrets vital to the Republic;
 - (vi) sabotage; and
 - (vii) serious violence directed at overthrowing the constitutional order of the Republic;
- (c) acts directed at undermining the capacity of the Republic to respond to the use of, or the threat of the use of, force and carrying out of the Republic's responsibilities to any foreign country and international organisation in relation to any of the matters referred to in this definition, whether directed from, or committed within, the Republic or not,

but does not include lawful political activity, advocacy, protest or dissent;

[Definition of "national security" inserted by s. 1 (g) of Act No. 11 of 2013.]

"national security intelligence" means intelligence which relates to or may be relevant to the assessment of any threat or potential threat to the security of the Republic in any field;

"national strategic intelligence" means comprehensive, integrated and estimative intelligence on all the current and long-term aspects of national security which are of special concern to strategic decision-making and the formulation and implementation of policy and strategy at national level;

"Nicoc" means the National Intelligence Co-ordinating Committee established by section 4;

"prescribed" means prescribed by regulation;

[Definition of "prescribed" inserted by s. 24 of Act No. 66 of 2000.]

"regulation" means a regulation made under this Act;

"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; and
- (c) the Agency;

[Definition of "relevant members of the National Intelligence Structures" inserted by s. 1 (b) of Act No. 67 of 2002 and substituted by s. 1 (h) of Act No. 11 of 2013.]

"security competence" means a person's ability to act in such a manner that he or she does not cause classified information or material to fall into unauthorised hands, thereby harming or endangering the security or interests of the State, and is measured against a person's—

- (a) susceptibility to extortion or blackmail;
- (b) amenability to bribes and susceptibility to being compromised due to his or her behaviour; and
- (c) loyalty to the State and the relevant institution;

[Definition of "security competence" inserted by s. 1 (i) of Act No. 11 of 2013.]

"Service"

[Definition of "Service" substituted by s. 1 (b) of Act No. 52 of 2003 and deleted by s. 1 (j) of Act No. 11 of 2013.]

"South African Police Service" means the South African Police Service established by section 5 (1) of the South African Police Service Act, 1995 (Act No. 68 of 1995);

[Definition of "South African Police Service" substituted by s. 1 (g) of Act No. 37 of 1998.]

"state security matter" includes any matter which has been classified in terms of any national law and which is dealt with by the Agency or which relates to the functions of the Agency or to the relationship existing between any person and the Agency;

[Definition of "state security matter" inserted by s. 1 (k) of Act No. 11 of 2013.]

"terrorist and related activities" means terrorist and related activities as defined in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);

[Definition of "terrorist and related activities" inserted by s. 1 (k) of Act No. 11 of 2013.]

"subversion" means any activity intended to destroy or undermine the constitutionally established system of

government in the Republic of South Africa;

[Definition of "subversion" inserted by s. 1 (c) of Act No. 67 of 2002.]

"this Act" includes the regulations;

"vetting field work units" means vetting field work units referred to in section 2A (5A);

[Definition of "vetting field work units" inserted by s. 1 (l) of Act No. 11 of 2013.]

"vetting investigation" means the prescribed investigation followed in determining a person's security competence;

[Definition of "vetting investigation" inserted by s. 1 (l) of Act No. 11 of 2013.]

2. Functions relating to intelligence.—(1) The functions of the Agency shall, subject to section 3, be—

- (a) to gather, correlate, evaluate and analyse domestic and foreign intelligence (excluding foreign military intelligence), in order to—
 - (i) identify any threat or potential threat to national security;
[Sub-para. (i) substituted by s. 2 (b) of Act No. 11 of 2013.]
 - (ii) supply intelligence regarding any such threat to Nicoc;
[Para. (a) amended by s. 2 (a) of Act No. 11 of 2013.]
- (b) to fulfil the national counter-intelligence responsibilities and for this purpose to conduct and co-ordinate counter-intelligence and to gather, correlate, evaluate, analyse and interpret information regarding counter-intelligence in order to—
 - (i) identify any threat or potential threat to the security of the Republic or its people;
 - (ii) inform the President of any such threat;
 - (iii) supply (where necessary) intelligence relating to any such threat to the South African Police Service for the purposes of investigating any offence or alleged offence;
 - (iv) supply intelligence relating to any such threat to the Department of Home Affairs for the purposes of fulfilment of any immigration function; and
[Sub-para. (iv) added by s. 2 (a) of Act No. 67 of 2002.]
 - (ivA) supply intelligence relating to any such threat to any other department of State for the purposes of fulfilment of its departmental functions; and
[Sub-para. (ivA) inserted by s. 2 (c) of Act No. 11 of 2013.]
 - (v) supply intelligence relating to national strategic intelligence to Nicoc;
[Sub-para. (v) added by s. 2 (a) of Act No. 67 of 2002.]
- (c) to gather departmental intelligence at the request of any interested department of State, and, without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the Agency and which constitutes departmental intelligence, to the department concerned and to Nicoc.
[Para. (c) substituted by s. 2 (a) of Act No. 37 of 1998.]

(2) It shall, subject to section 3, also be the functions of the Agency—

- (a) to gather, correlate, evaluate and analyse foreign intelligence, excluding foreign military intelligence, in order to—
 - (i) identify any threat or potential threat to the security of the Republic or its people;
 - (ii) supply intelligence relating to any such threat to Nicoc;
[Sub-para. (ii) substituted by s. 2 (b) of Act No. 37 of 1998.]
- (b) in the prescribed manner, and in regard to communications and cryptography—
 - (i) to identify, protect and secure critical electronic communications and infrastructure against unauthorised access or technical, electronic or any other related threats;
 - (ii) to provide cryptographic and verification services for electronic communications security systems, products and services used by organs of state;
 - (iii) to provide and coordinate research and development with regard to electronic communications security systems, products and services and any other related services;
[Para. (b) substituted by s. 2 (c) of Act No. 37 of 1998 and by s. 2 (e) of Act No. 11 of 2013.]
- (c) to liaise with intelligence or security services or other authorities, of other countries or inter-

governmental forums of intelligence or security services;

[Para. (c) substituted by s. 2 (c) of Act No. 37 of 1998 and by s. 2 (e) of Act No. 11 of 2013.]

- (d) to train and support users of electronic communications systems, products and related services;
[Para. (d) added by s. 2 (f) of Act No. 11 of 2013.]
- (e) to develop, design, procure, invent, install or maintain secure electronic communications systems or products and do research in this regard; and
[Para. (e) added by s. 2 (f) of Act No. 11 of 2013.]
- (f) to cooperate with any organisation in the Republic or elsewhere to achieve its objectives.
[Sub-s. (2) amended by s. 2 (d) of Act No. 11 of 2013. Para. (f) added by s. 2 (f) of Act No. 11 of 2013.]

(2A) When performing any function referred to in subsection (2) (b) the Agency is exempted from any licensing requirement contemplated in—

- (a) the Broadcasting Act, 1999 (Act No. 4 of 1999); and
- (b) the Electronic Communications Act, 2005 (Act No. 36 of 2005).
[Sub-s. (2A) inserted by s. 2 (g) of Act No. 11 of 2013.]

(3) It shall be the function of the South African Police Service, subject to section—

- (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;
[Para. (a) substituted by s. 2 (d) of Act No. 37 of 1998 and by s. 2 (b) of Act No. 67 of 2002.]
- (b) to institute counter-intelligence measures within the South African Police Service;
[Para. (b) substituted by s. 2 (b) of Act No. 67 of 2002.]
- (c) to supply crime intelligence relating to national strategic intelligence to Nicoc.
[Sub-s. (3) amended by s. 2 of Act No. 67 of 2002. Para. (c) added by s. 2 (c) of Act No. 67 of 2002.]

(4) The National Defence Force shall, subject to section 3—

- (a) gather, correlate, evaluate and use foreign military intelligence, and supply foreign military intelligence relating to national strategic intelligence to Nicoc, but the National Defence Force shall not gather intelligence of a non-military nature in a covert manner;
- (b) gather, correlate, evaluate and use domestic military intelligence excluding covert collection, except when employed for service as contemplated in section 201 (2) (a) of the Constitution and under conditions set out in section 3 (2) of this Act, and supply such intelligence to Nicoc; and
[Para. (b) amended by s. 2 (e) of Act No. 37 of 1998.]
- (c) institute counter-intelligence measures within the National Defence Force.

2A. Vetting investigations.—(1) The relevant members of the National Intelligence Structures may conduct a vetting investigation in the prescribed manner 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).
[Sub-s. (1) amended by s. 2 (a) of Act No. 52 of 2003 and by s. 3 (b) of Act No. 11 of 2013.]

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

[Sub-s. (2) substituted by s. 3 (c) of Act No. 11 of 2013.]

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

[Sub-s. (3) substituted by s. 3 (c) of Act No. 11 of 2013.]

(4) (a) In performing the vetting 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.

(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—

- (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:

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 function in accordance with the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act No. 70 of 2002).

[Sub-s. (5) amended by s. 2 (b) of Act No. 52 of 2003.]

(5A) (a) Departments of State may, at the request of the Agency, establish units to be known as vetting field work units.

(b) Vetting field work units may, on request by the Agency, assist a relevant National Intelligence Structure in gathering the information contemplated in subsection (5).

[Sub-s. (5A) inserted by s. 3 (e) of Act No. 11 of 2013.]

(6) The head of the relevant National Intelligence Structure or any officials delegated by him or her in writing may, after evaluating the information gathered during the vetting investigation, issue, degrade, withdraw or refuse to grant a security clearance.

[Sub-s. (6) substituted by s. 3 (f) of Act No. 11 of 2013.]

(7) The head of the relevant National Intelligence Structure may establish a Vetting Advisory Board comprising of members or employees of the relevant National Intelligence Structure to assist him or her or any delegated officials contemplated in subsection (6) in the determination of the security competence of a person.

[Sub-s. (7) substituted by s. 3 (f) of Act No. 11 of 2013.]

(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.

(b) Such appeal shall—

- (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.

(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—

- (i) confirm, set aside or vary the decision; or
- (ii) substitute any other decision for the decision of the relevant National Intelligence Structure.

(8A) The Minister responsible for the relevant National Intelligence Structure may establish a panel of appeal to assist him or her in the consideration of an appeal lodged in terms of this Act.

[Sub-s. (8A) inserted by s. 2 (c) of Act No. 52 of 2003.]

(9) The Director-General of the Agency may in the prescribed manner issue functional directives on—

- (a) usage and application of polygraph;
- (b) criteria for determining security competence; and
- (c) levels of security clearance.

(10) The directives contemplated in subsection (9) shall—

- (a) 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
- (b) notwithstanding any other law, apply to all the relevant National Intelligence Structures.

[S. 2A inserted by s. 3 of Act No. 67 of 2002 and amended by s. 3 (a) of Act No. 11 of 2013. Sub-s. (10) substituted by s. 2 (d) of Act No. 52 of 2003.]

3. Functions of other departments of State with reference to national security intelligence.—(1) If any law

expressly or by implication requires any department of State, other than the Agency, to perform any function with regard to the security of the Republic or the combating of any threat to the security of the Republic, such law shall be deemed to empower such department to gather departmental intelligence, and to evaluate, correlate and interpret such intelligence for the purpose of discharging such function: Provided that such department of State—

- (a) other than the National Defence Force when employed for service as contemplated in section 201 (2) of the Constitution or when discharging the counter-intelligence responsibilities entrusted to its intelligence division;

[Para. (a) substituted by s. 3 (a) of Act No. 37 of 1998.]

- (b) other than a police service established under any Act of Parliament, when a member of such service is investigating any offence relating to the security of the Republic or is performing any other function relating to the security of the Republic,

shall not gather departmental intelligence within the Republic in a covert manner: Provided further that such department of State—

- (i) other than the National Defence Force through its intelligence division;

[Para. (i) amended by s. 3 (b) of Act No. 37 of 1998.]

- (ii) other than a police service established under any Act of Parliament, when a member of such a service is, with the knowledge and approval of Nicoc, investigating an offence relating to the security of the Republic or is performing any other function relating to the security of the Republic;

- (iii)

[Sub-para. (iii) deleted by s. 4 (b) of Act No. 11 of 2013.]

shall not gather departmental intelligence outside the Republic in a covert manner.

[Sub-s. (1) amended by s. 4 (a) of Act No. 11 of 2013.]

(2) Notwithstanding subsection (1), the National Defence Force through its intelligence division may—

- (a) whenever the President on the advice of the Minister of Defence is of the opinion that conditions are such that the said Force has to prepare itself for possible employment for service as contemplated in section 201 (2) (a) of the Constitution; and

- (b) upon having been authorised by Nicoc acting with the concurrence of the Cabinet,

gather domestic military intelligence in a covert manner within the geographical area and the time-scales specified in such authorisation.

[Sub-s. (2) substituted by s. 3 (c) of Act No. 37 of 1998.]

(3) It shall be the duty of any department of State that comes into possession of national security intelligence or information which may be of value in the preparation of the national intelligence estimate referred to in section 4 (2) (c) to transmit such intelligence and information without delay to the relevant service forming part of the National Intelligence Structures, with an indication of the reliability of the source of such information.

(4) Subsection (3) shall not be construed as affecting the continued existence and functioning or the establishment of any intelligence service by any department of State for the purpose of performing its departmental intelligence functions under this Act.

(5) Notwithstanding any law to the contrary, no department of State or statutory body shall withhold information in its possession or under its control from the Agency when such information is reasonably required for any investigation in terms of section 2 (1) and (2).

[Sub-s. (5) added by s. 4 (c) of Act No. 11 of 2013.]

(6) It shall be the duty of any of the members of the National Intelligence Structures to immediately transfer any intelligence in its possession that is required by another member of the National Intelligence Structures for the fulfilment of its statutory functions.

[Sub-s. (6) added by s. 4 (c) of Act No. 11 of 2013.]

(7) The head of an organ of state must ensure that the organ of state under his or her administration procures and accesses electronic communications products with the verification and approval of the Agency.

[Sub-s. (7) added by s. 4 (c) of Act No. 11 of 2013.]

(8) The head of an organ of state must, at the request of the Agency and in the prescribed manner, submit to the Agency an analysis of the electronic communications security needs of the organ of state under his or her administration.

[Sub-s. (8) added by s. 4 (c) of Act No. 11 of 2013.]

4. Establishment of National Intelligence Co-ordinating Committee.—(1) There is hereby established a National Intelligence Co-ordinating Committee, which shall consist of the following persons:

- (a) The Co-ordinator for Intelligence appointed under section 5 (1), who shall be the Chairperson;
- (b) the Director-General of the Agency;

- (c) the head of the domestic division of the Agency;
- (d) the head of the foreign division of the Agency;
- (e) the head of the intelligence division of the South African Police Service; and
- (f) the chief of the intelligence division of the National Defence Force,

or the alternates of the said persons, and such members of departments of State who may be co-opted by Nicoc on a permanent or an *ad hoc* basis.

[Sub-s. (1) amended by s. 4 of Act No. 67 of 2002, by s. 25 of Act No. 66 of 2000 and substituted by s. 5 of Act No. 11 of 2013.]

(2) The functions of Nicoc shall be—

- (a) to co-ordinate the intelligence supplied by the members of the National Intelligence Structures to Nicoc and interpret such intelligence for use by the State and the Cabinet for the purposes of—
 - (i) the detection and identification of any threat or potential threat to the national security of the Republic;
 - (ii) the protection and promotion of the national interests of the Republic;
- (b) for the purposes of the functions contemplated in paragraph (a)—
 - (i) to co-ordinate and prioritise intelligence activities within the National Intelligence Structures;
 - (ii) to prepare and interpret intelligence estimates;
- (c) to produce and disseminate intelligence which may have an influence on any state policy with regard to matters referred to in paragraph (a) for consideration by the Cabinet;
- (d) after consultation with the departments of the State entrusted with the maintenance of the security of the Republic, to co-ordinate the flow of national strategic intelligence between such departments;
- (e) at the request of any Department of State, to co-ordinate the gathering of intelligence and without delay to evaluate and transmit such intelligence and any other intelligence at the disposal of the National Intelligence Structures and which constitutes departmental intelligence, to the department concerned; and
- (f) to make recommendations to the Cabinet on intelligence priorities.

(3) The Agency shall provide logistical, technical and administrative support to Nicoc.

[S. 4 substituted by s. 4 of Act No. 37 of 1998.]

5. Co-ordinator for Intelligence.—(1) The President shall appoint a person as Co-ordinator for Intelligence, who shall, subject to the directions and supervision of the Minister—

- (a) manage and administer the functions of Nicoc referred to in section 4 (2); and
- (b)

[Para. (b) deleted by s. 5 of Act No. 67 of 2002.]

(2) The National Intelligence Structures shall, at the request of the Co-ordinator for Intelligence, render such assistance as is necessary for the performance of his or her functions contemplated in subsection (1).

[S. 5 substituted by s. 5 of Act No. 37 of 1998.]

5A. Functions of Minister.—(1) The Minister shall, subject to subsection (2), do everything necessary for the efficient functioning, control and supervision of the co-ordination of intelligence supplied by the National Intelligence Structures.

(2) The Minister shall perform a function contemplated in subsection (1) which affects a function of the National Defence Force or the South African Police Service in consultation with the Minister responsible for that Force or Service, as the case may be.

(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—

- (a) for the efficient co-ordination of intelligence; and
- (b) to assist the Minister to advise the President and the national executive.

[Sub-s. (3) substituted by s. 6 of Act No. 67 of 2002.]

(4) The Minister may delegate, the function contemplated in subsection (3) to the Co-ordinator for Intelligence.

[Sub-s. (4) added by s. 6 of Act No. 67 of 2002.]

(5) The Minister shall advise the President and the national executive on national strategic intelligence and

co-ordination of intelligence.

[S. 5A inserted by s. 6 of Act No. 37 of 1998. Sub-s. (5) added by s. 6 of Act No. 67 of 2002.]

5B. Compliance with Constitution.—When performing any function provided for in this Act, the Constitution, in particular section 199 (5) and (7), must be duly complied with.

[S. 5B inserted by s. 6 of Act No. 11 of 2013.]

6. Regulations.—(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 vetting investigations by members of the National Intelligence Structures;
[Para. (b) substituted by s. 7 (a) of Act No. 11 of 2013.]
- (c) the conduct of counter-intelligence operations, counter-measures and intrusive operations;
[Para. (c) substituted by s. 7 (a) of Act No. 11 of 2013.]
- (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 supply of intelligence products to the Minister;
[Para. (f) substituted by s. 7 (b) and amended by s. 7 (c) of Act No. 11 of 2013.]
- (fA) the manner and form in which departmental intelligence shall be supplied to State departments;
[Para. (fA) inserted by s. 7 (c) of Act No. 11 of 2013.]
- (fB) the manner and form in which Nicoc may be tasked to gather and produce intelligence products;
[Para. (fB) inserted by s. 7 (c) of Act No. 11 of 2013.]
- (fC) the provision of staff required for the administration of this Act;
[Para. (fC) inserted by s. 7 (c) of Act No. 11 of 2013.]
- (fD) any matter necessary for the effective execution and administration of counter-intelligence functions and the co-ordination and interpretation of intelligence products; and
[Para. (fD) inserted by s. 7 (c) of Act No. 11 of 2013.]
- (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 vetting investigation contemplated in subsection (1) (b) may entitle the relevant members of the National Intelligence Structures concerned to subject the person undergoing a vetting investigation to a polygraph examination as prescribed, in order to determine the reliability of information provided by him or her.

[Sub-s. (3) substituted by s. 7 (d) of Act No. 11 of 2013.]

(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.

[S. 6 substituted by s. 7 of Act No. 37 of 1998, amended by s. 26 of Act No. 66 of 2000 and substituted by s. 7 of Act No. 67 of 2002.]

7. Repeal of laws.—The Security Intelligence and State Security Council Act, 1972 (Act No. 64 of 1972), is hereby repealed.

8. Short title and commencement.—This Act shall be called the National Strategic Intelligence Act, 1994, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.