

REPUBLIC OF SOUTH AFRICA

**COMMITTEE AMENDMENTS
TO
NATIONAL STRATEGIC
INTELLIGENCE AMENDMENT
BILL**

[B 51—2002]

*(As agreed to by the Ad Hoc Committee on Intelligence Legislation
(National Assembly))*

[B 51A—2002]

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AMENDMENTS AGREED TO
NATIONAL STRATEGIC INTELLIGENCE AMENDMENT BILL
[B 51—2002]

CLAUSE 1

1. On page 2, in line 11, to omit “classified [intelligence]” and to substitute “[classified] intelligence and any classified”.
2. On page 2, after line 20, to add:
 - (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;”

CLAUSE 2

1. On page 2, in line 24, to omit “on request”.

NEW CLAUSE

1. That the following be a new Clause:

Insertion of section 2A in Act 39 of 1994

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

“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;
- (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 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).

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

(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).

(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.

(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 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 provisions of the Interception and Monitoring Prohibition Act, 1992 (Act No.127 of 1992).

(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.

(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.

(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 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.

(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 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."

CLAUSE 6

1. On page 4, in line 20, to omit "Nicoc or its" and to substitute "the National Intelligence Structures or their".