

REPUBLIC OF SOUTH AFRICA

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# INTELLIGENCE SERVICES AMENDMENT BILL

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*(As introduced in the National Assembly (proposed section 75); explanatory summary of  
Bill published in Government Gazette No. 31126 of 5 June 2008)  
(The English text is the official text of the Bill)*

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(MINISTER FOR INTELLIGENCE)

**[B 37—2008]**

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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.

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# BILL

**To amend the Intelligence Services Act, 2002, so as to insert certain definitions; to provide for the establishment of the National Communications Centre; to remove the requirements of a training fund for the Academy; and to grant members the right to retire from the Intelligence Services or the Academy on or after the date on which they reach the age of 55 years; and to provide for matters connected therewith.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### **Amendment of section 1 of Act 65 of 2002, as amended by section 8 of Act 53 of 2003**

1. Section 1 of the Intelligence Services Act, 2002 (hereinafter referred to as the principal Act), is hereby amended— 5

- (a) by the deletion of the definition of “**Advisory Committee**”;
- (b) by the substitution for the definition of “**Intelligence Services**” of the following definition:

“**Intelligence Services**” means the Agency, [or] the Service or the NCC, as the case may be;” 10

- (c) by the insertion after the definition of “**National Intelligence Structures**” of the following definition:

“**NCC** means the National Communications Centre established by section 3(2A).”

### **Substitution of heading to Chapter II of Act 65 of 2002** 15

2. The following heading is hereby substituted for the heading to Chapter II of the principal Act:

**“ESTABLISHMENT, COMPOSITION AND ORGANISATION OF AGENCY, SERVICE, NCC AND ACADEMY”.**

### **Amendment of section 3 of Act 65 of 2002** 20

3. Section 3 of the principal Act is hereby amended—

- (a) by the substitution for the heading of the following heading:

“**Continued existence of Agency and Service and establishment of NCC**”; and

(b) by the insertion after subsection (2) of the following subsection:

“(2A) (a) The National Communications Centre is hereby established as part of the Intelligence Services.

(b) The NCC consists of persons appointed as members in terms of section 8.”.

#### **Substitution of heading to section 4 of Act 65 of 2002**

4. The following heading is hereby substituted for the heading to section 4 of the principal Act:

“**Composition of Agency [and], Service and NCC**”.

#### **Amendment of section 5 of Act 65 of 2002**

5. Section 5 of the principal Act is hereby amended by the deletion of subsections (3), (4), (5) and (6).

#### **Amendment of section 6 of Act 65 of 2002**

6. Section 6 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Minister **[must]** may appoint a deputy head of the Academy who is responsible for the curriculum and research function of the Academy: Provided that if the post level of the deputy head is at the level of a deputy director-general, the Minister must make the appointment with the concurrence of the President.”.

#### **Repeal of section 9 of Act 65 of 2002**

7. Section 9 of the principal Act is hereby repealed.

#### **Amendment of section 10 of Act 39 of 1994, as amended by section 9 of Act 52 of 2003**

8. Section 10 of the principal Act is hereby amended—

(a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“The **[Director General]** Director-General concerned or the Chief Executive Officer, as the case may be, may, in a prescribed manner and subject to the **[approval of the Minister and]** the provisions of this Act, issue functional directives applicable to—”; and

(b) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“The Director-General concerned may, in a prescribed manner [,] **and** subject to **[the approval of the Minister and]** the provisions of this Act, issue functional directives applicable to—”.

#### **Amendment of section 12 of Act 65 of 2002, as amended by section 11 of Act 52 of 2003**

9. Section 12 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) acquire any immovable property, with or without any buildings thereon which is necessary for the efficient functioning of the Intelligence Services or the Academy, and erect or maintain any buildings on the property so acquired and, **[subject to section 70 of the Public Finance Management Act, 1999 (Act No. 1 of 1999)]** with the concurrence of the Minister of Finance, supply guarantees, indemnities and securities for those purposes;”.

**Amendment of section 13 of Act 65 of 2002**

10. Section 13 of the principal Act is hereby amended by the addition of the following subsection:

“(4) Despite subsection (1) a member may retire from the Intelligence Services or the Academy, as the case may be, on the date on which he or she attains the age of 55 years, or on any date after that date.” 5

**Amendment of section 20 of Act 65 of 2002, as substituted by section 13 of Act 52 of 2003**

11. Section 20 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection: 10

“(1) The Minister may, in writing and on such conditions as he or she may deem fit, delegate any power conferred upon or duty assigned to him or her by this Act, excluding any power conferred upon or duty assigned to him or her by sections 4(1)(a) and (b), 5(1), (2)(a) and (4)(c), 6(2), 9(3), (4), (5), (8) and (9), 10(1), (2) and (3), 12(1) [**and (2)(a) and (b)**], 13(3), 14(6), (7), (8), (9) and (11), 15(b) and (c), 16(2), 17(2), 18(3), 19(4), 21(2), 22(1), (5) and (7), 23(3)(a)(i) and (ii), 28(2), 30 and 37, to the Director-General concerned, the Chief Executive Officer or any other member of the Intelligence Services or the Academy, as the case may be.” 15

**Substitution of long title** 20

12. The following long title is hereby substituted for the long title of the principal Act:

“ACT

**To regulate the establishment, administration, organisation and control of the National Intelligence Agency, the South African Secret Service, the National Communications Centre and the South African National Academy of Intelligence; to establish and regulate the Intelligence Services Council on Conditions of Service; to repeal an Act; and to provide for matters connected therewith.” 25**

**Amendment of laws**

13. The laws mentioned in the first column of the Schedule are hereby amended to the extent set out in the third column of that schedule. 30

**Short title**

14. This Act is called Intelligence Services Amendment Act, 2008, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

**SCHEDULE**

**PART A**

**LAWS AMENDED**

(Section 13)

No. and year of Act	Short title	Extent of amendment
Act 81 of 1969	Security Services Special Account Act, 1969	<p>1. The substitution for section 3 of the following section:</p> <p><b>“Control of expenditure</b></p> <p>3. Subject to the provisions of section 2, the account shall be under the control of the Director-General: National Intelligence Agency <b>[and]</b>, the Director-General: South African Secret Service and the Director-General: <u>National Communications Centre</u>, who shall cause proper records to be kept of all moneys received or expended.”.</p> <p>2. The substitution for section 5 of the following section:</p> <p><b>“Investment of balances</b></p> <p>5. Moneys standing to the credit of the account which are not required for immediate use or as a reasonable working balance, may be invested in such manner as may be determined by the President or Minister responsible for the National Intelligence Agency, the South African Secret Service, <u>the National Communications Centre</u>, the South African National Academy of Intelligence, Comsec or the Office with the concurrence of the Minister of Finance.”.</p>
Proclamation 103 of 1994	Public Service Act	<p>1. Amendment of section 1 by the substitution for the definition of “member of the Intelligence Services” of the following definition:</p> <p>“<b>member of the Intelligence Services</b>’ means a member of—</p> <p>(a) the National Intelligence Agency appointed, or deemed to have been appointed, in terms of the Intelligence Services Act, 2002 (Act No. 65 of 2002);</p> <p>(b) the South African National Academy of Intelligence appointed, or deemed to have been appointed, in terms of that Act; <b>[or]</b></p> <p>(c) the South African Secret Service appointed, or deemed to have been appointed, in terms of that Act; <u>or</u></p> <p>(d) <u>the National Communications Centre appointed, or deemed to have been appointed, in terms of that Act;</u>”.</p>

No. and year of Act	Short title	Extent of amendment
Act 66 of 1995	Labour Relations Act, 1995	<p>1. Amendment of section 2 by the insertion after paragraph (e) of the following paragraph: “(f) the National Communications Centre.”.</p> <p>2. Amendment of section 213 by the insertion in the definition of “public service” of the following paragraph: “(d) the National Communications Centre.”.</p>
Act 75 of 1997	Basic Conditions of Employment Act, 1997	<p>1. Amendment of section 1 by the insertion in the definition of “public service” of the following paragraph: “(f) the National Communications Centre.”.</p> <p>2. Amendment of section 3 by the substitution in subsection (1) for paragraph (a) of the following paragraph: “(a) members of the National Intelligence Agency, the South African Secret Service, the National Communications Centre and the South African National Academy of Intelligence;”.</p>
Act 112 of 1998	Witness Protection Act, 1998	<p>1. Amendment of section 6 by the insertion in subsection (1) of the following paragraph: “(f) the Director-General: National Communications Centre;”.</p>
Act No. 131 of 1998	Medical Schemes Act, 1998	<p>1. Amendment of section 1 by the deletion of the definitions of “Academy”, “Agency” and “Service”.</p> <p>2. Amendment of section 2 by the deletion of subsection (3).</p>
Act 38 of 2001	Financial Intelligence Centre Act, 2001	<p>1. Amendment of section 19 by the insertion in subsection (1) of the following paragraph: “(fA) the Director-General of the National Communications Centre;”.</p>
Act 56 of 2001	Private Security Industry Regulation Act, 2001	<p>1. Amendment of section 23 by the substitution for subsection (5) of the following subsection: “(5) Despite any provision to the contrary, a person in the permanent employ of the Service, the Directorate of Special Operations, the National Intelligence Agency, the South African Secret Service, the National Communications Centre, the South African National Defence Force or the Department of Correctional Services may not be registered as a security service provider whilst so employed.”.</p>
Act 40 of 2002	Institution of Legal Proceedings against Certain Organs of State, 2002	<p>1. Amendment of section 5(b) by the substitution for subparagraph (i) of the following subparagraph: “(i) Minister for Intelligence is the defendant or respondent, may be served on the Director-General: National Intelligence Agency [or], the Director-General: South African Secret Service or Director-General: National Communications Centre, as the case may be;”.</p>

**PART B****AMENDMENT OF SCHEDULE 1 TO PUBLIC SERVICE ACT, 1994**

Schedule 1 to the Public Service Act, 1994 (Proclamation No 103 of 1994), is hereby amended by the insertion of the following after 'Inspectorate for Social Assistance':

<u>"National Communications Centre</u>	<u>Director-General: National Communications Centre"</u> .
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## **MEMORANDUM ON THE OBJECTS OF THE INTELLIGENCE SERVICES AMENDMENT BILL, 2008**

### **1. BACKGROUND**

The Intelligence Services Amendment Bill, 2008, introduces amendments to the Intelligence Services Act, 2002 (Act No. 65 of 2002) (hereinafter referred to as the principal Act). The Bill is largely technical in nature. It does not reflect any major policy shifts in relation to the structure and organisation of the civilian intelligence dispensation.

### **2. OBJECTS OF BILL**

The Bill seeks to—

- (a) insert certain definitions into the principal Act;
- (b) provide for the establishment of the National Communications Centre;
- (c) remove the legislative requirements of a training Fund to be established for the Academy; and
- (d) grant members the right to retire from the Intelligence Services or the Academy on or after the date on which they reach the age of 55 years.

### **3. DEPARTMENTS CONSULTED**

All government departments have been consulted.

### **4. FINANCIAL IMPLICATIONS FOR STATE**

There are no financial implications for the State.

### **5. CONSTITUTIONAL IMPLICATIONS**

None.

### **6. PARLIAMENTARY PROCEDURE**

- 6.1 The State Law Advisers and the Department of Intelligence are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.
- 6.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.