



REPUBLIEK VAN SUID-AFRIKA

# STAATSKOERANT

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# GOVERNMENT GAZETTE

OF THE REPUBLIC OF SOUTH AFRICA

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1915. 10 Julie 1992

No. 1915. 10 July 1992

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

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

No. 127 van 1992: Wet op die Verbod op Onderskepping en Meeluistering, 1992.

No. 127 of 1992: Interception and Monitoring Prohibition Act, 1992.

# WET

**Om die onderskepping van sekere mededelings en die meeluistering na sekere gesprekke te verbied; voorsiening te maak vir die onderskepping van posstukke en mededelings en vir die meeluistering na gesprekke in die geval van 'n ernstige misdryf of indien die veiligheid van die Republiek bedreig word; en voorsiening te maak vir aangeleenthede wat daarmee in verband staan.**

*(Afrikaanse teks deur die Staatspresident geteken.)  
(Goedgekeur op 2 Julie 1992.)*

**D**AAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

## Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—
- (i) “afdeling” ’n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika; (i) 5
  - (ii) “ernstige misdryf”—
    - (a) enige misdryf vermeld in Bylae 1 by die Strafproseswet, 1977 (Wet No. 51 van 1977), met inbegrip van ’n sameswering, uitlokking of poging om ’n misdryf in daardie Bylae vermeld, te pleeg, mits— 10
      - (i) daardie misdryf na bewering oor ’n lang tydperk gepleeg is of word;
      - (ii) daardie misdryf na bewering op ’n georganiseerde basis deur die persone daarby betrokke gepleeg is of word;
      - (iii) daardie misdryf na bewering op ’n gereëelde basis deur die persoon of persone daarby betrokke gepleeg is of word; of 15
      - (iv) daardie misdryf na bewering die ekonomie van die Republiek kan benadeel; of
    - (b) enige misdryf bedoel in artikels 13(f) en 14(b) van die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992; (vi) 20
  - (iii) “meeluister” ook die opneem van gesprekke deur middel van ’n meeluisterapparaat; (iii)
  - (iv) “meeluisterapparaat” enige instrument, toestel of toerusting wat gebruik word of gebruik kan word, hetsy alleen of saam met enige ander instrument, toestel of toerusting, om na ’n gesprek te luister of dit op te neem; (iv) 25
  - (v) “posstuk” ’n brief, poskaart, antwoordkaart, briefkaart, koerant, boek, pakket, patroon- of monsterpakket of enige pakket of ander artikel terwyl dit deur die pos onderweg is, en ook ’n telegram wanneer per pos vervoer; (v) 30
  - (vi) “regter” enige regter wat kragtens artikel 3 van die Wet op Besoldiging en Diensvoorwaardes van Regters, 1989 (Wet No. 88 van 1989), van aktiewe diens onthef is en wat deur die Minister van Justisie aangewys is om die werksaamhede van ’n regter binne ’n bepaalde afdeling vir die doeleindes van hierdie Wet te verrig; (ii) 35
  - (vii) “telegram” ’n berig in geskrewe vorm of inligting in die vorm van ’n beeld wat oor ’n telekommunikasielyn oorgesein en in enige van sodanige vorms bestel word, of bestem is om aldus oorgesein en bestel te word, of vanuit ’n poskantoor soos omskryf in die Poswet, 1958 (Wet No. 44 van 1958), bestel word of bestem is om aldus bestel te word as ’n berig of inligting wat geheel of gedeeltelik oor ’n telekommunikasielyn oorgesein is; (viii) 40
  - (viii) “telekommunikasielyn” ook ’n toestel, instrument, paal, mas, draad, pyp, lugdrukpospyp of ander buis, voorwerp of middel wat vir of in verband met die versending, oorbring, transmissie of ontvangs van 45

# ACT

**To prohibit the interception of certain communications and the monitoring of certain conversations; to provide for the interception of postal articles and communications and for the monitoring of conversations in the case of a serious offence or if the security of the Republic is threatened; and to provide for matters connected therewith.**

*(Afrikaans text signed by the State President.)  
(Assented to 2 July 1992.)*

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

## Definitions

1. In this Act, unless the context otherwise indicates—
- 5 (i) “division” a provincial or local division of the Supreme Court of South Africa; (i)
- (ii) “judge” any judge discharged from active service under section 3 of the Judges’ Remuneration and Conditions of Employment Act, 1989 (Act No. 88 of 1989), and who is designated by the Minister of Justice to perform the functions of a judge within a particular division for the purposes of this Act; (vi)
- 10 (iii) “monitor” includes the recording of conversations by means of a monitoring device; (iii)
- (iv) “monitoring device” means any instrument, device or equipment which is used or can be used, whether by itself or in combination with any other instrument, device or equipment, to listen to or record any conversation; (iv)
- 15 (v) “postal article” means any letter, post-card, reply post-card, letter-card, newspaper, book, packet, pattern or sample packet or any parcel or other article while in transit by post, and includes a telegram when conveyed by post; (v)
- 20 (vi) “serious offence” means—
- (a) any offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977 (Act No. 51 of 1977), including any conspiracy, incitement or attempt to commit any offence referred to in that Schedule, provided that—
- 25 (i) that offence is allegedly being or has allegedly been committed over a lengthy period of time;
- (ii) that offence is allegedly being or has allegedly been committed on an organized basis by the persons involved therein;
- 30 (iii) that offence is allegedly being or has allegedly been committed on a regular basis by the person or persons involved therein; or
- (iv) that offence may allegedly harm the economy of the Republic; or
- 35 (b) any offence referred to in sections 13(f) and 14(b) of the Drugs and Drug Trafficking Act, 1992; (ii)
- (vii) “telecommunications line” includes any apparatus, instrument, pole, mast, wire, pipe, pneumatic or other tube, thing or means which is or may be used for or in connection with the sending, conveying, transmitting or receiving of signs, signals, sounds, communications or other information; (viii)
- 40 (viii) “telegram” means any communication in written form or information in the form of an image transmitted over a communications line and delivered in any such form, or intended to be thus transmitted and delivered, or delivered from any post office as defined in the Post Office Act, 1958 (Act No. 44 of 1958), or intended to be thus delivered
- 45

tekens, seine, klanke, mededelings of ander inligting gebruik word of kan word. (vii)

### Verbod op onderskepping en meeluistering

2. (1) Niemand mag—
- (a) 'n mededeling wat per telefoon of op enige ander wyse oor 'n telekommunikasielyn versend is of word of bedoel is om aldus versend te word, opsetlik en sonder die medewete of toestemming van die versender onderskep nie; of 5
  - (b) opsetlik meeluister na 'n gesprek deur middel van 'n meeluisterapparaat ten einde vertroulike inligting aangaande enige persoon, liggaam of organisasie in te win nie. 10
- (2) Ondanks die bepalings van subartikel (1) of andersluidende bepalings van enige ander wet, kan 'n regter gelas dat—
- (a) 'n bepaalde posstuk of 'n bepaalde mededeling wat per telefoon of op enige ander wyse oor 'n telekommunikasielyn versend is of word of bedoel is om aldus versend te word, onderskep word; 15
  - (b) alle posstukke aan of vanaf 'n persoon, liggaam of organisasie of alle mededelings wat per telefoon of op enige ander wyse oor 'n telekommunikasielyn versend is of word of bedoel is om aldus versend te word aan of vanaf 'n persoon, liggaam of organisasie, onderskep word; of 20
  - (c) op enige wyse deur middel van 'n meeluisterapparaat na gesprekke van of met 'n persoon, liggaam of organisasie meegeluister word, hetsy 'n telekommunikasielyn vir die voer van daardie gesprekke gebruik word al dan nie.

### Uitreik van lasgewing

25

3. (1) 'n Lasgewing bedoel in artikel 2(2) kan slegs uitgereik word deur 'n regter—
- (a) wat deur die Minister van Justisie aangewys is vir die afdeling—
    - (i) vanwaar die posstuk of mededeling bedoel in artikel 2(2)(a) of (b) versend is of waarskynlik versend sal word of waar daardie posstuk of mededeling waarskynlik ontvang sal word; of 30
    - (ii) waar die beoogde meeluistering bedoel in artikel 2(2)(c) uitgevoer sal word; en
  - (b) indien die betrokke regter op die gronde vermeld in 'n skriftelike aansoek wat voldoen aan die voorskrifte bedoel in artikel 6, oortuig is—
    - (i) dat die misdryf wat gepleeg is, gepleeg word of waarskynlik gepleeg sal word 'n ernstige misdryf is wat nie na behore op enige ander wyse ondersoek kan word nie en waarvan die ondersoek ingevolge hierdie Wet noodsaaklik is; of 35
    - (ii) dat die veiligheid van die Republiek bedreig word of dat die insameling van inligting aangaande 'n bedreiging van die veiligheid van die Republiek nodig is. 40
- (2) 'n Aansoek word—
- (a) vir die doeleindes van subartikel (1)(b)(i) of (ii) of subartikel (4) gedoen deur 'n offisier soos omskryf in artikel 1 van die Polisiewet, 1958 (Wet No. 7 van 1958), mits die betrokke offisier vooraf die goedkeuring verkry van 'n ander offisier in die Suid-Afrikaanse Polisie met minstens die rang van generaal-majoor wat skriftelik deur die Kommissaris van die Suid-Afrikaanse Polisie gemagtig is om sodanige goedkeuring te verleen; 50
  - (b) vir die doeleindes van subartikel (1)(b)(ii) of subartikel (4) gedoen deur 'n offisier soos omskryf in artikel 1 van die Verdedigingswet, 1957 (Wet No. 44 van 1957), mits die betrokke offisier vooraf die goedkeuring verkry van 'n ander offisier in die Suid-Afrikaanse Weermag met minstens die rang van generaal-majoor wat skriftelik deur die Hoof van die Suid-Afrikaanse Weermag gemagtig is om sodanige goedkeuring te verleen; of 55

as a communication or as information transmitted either wholly or in part over a telecommunications line. (vii)

### Prohibition on interception and monitoring

2. (1) No person shall—
- 5 (a) intentionally and without the knowledge or permission of the dispatcher intercept a communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications line; or
- 10 (b) intentionally monitor a conversation by means of a monitoring device so as to gather confidential information concerning any person, body or organization.
- (2) Notwithstanding the provisions of subsection (1) or anything to the contrary in any other law contained, a judge may direct that—
- 15 (a) a particular postal article or a particular communication which has been or is being or is intended to be transmitted by telephone or in any other manner over a telecommunications line be intercepted;
- 20 (b) all postal articles to or from a person, body or organization or all communications which have been or are being or are intended to be transmitted by telephone or in any other manner over a telecommunications line, to or from a person, body or organization be intercepted; or
- (c) conversations by or with a person, body or organization, whether a telecommunications line is being used in conducting those conversations or not, be monitored in any manner by means of a monitoring device.

### 25 Issue of direction

3. (1) A direction referred to in section 2(2) may only be issued by a judge—
- (a) designated by the Minister of Justice for the division—
- 30 (i) from where the postal article or communication referred to in section 2(2)(a) or (b) has been or will probably be dispatched or transmitted or where that postal article or communication will probably be received; or
- (ii) where the proposed monitoring referred to in section 2(2)(c) will be carried out; and
- 35 (b) if the judge concerned is convinced, on the grounds mentioned in a written application that complies with the directives referred to in section 6—
- (i) that the offence that has been or is being or will probably be committed, is a serious offence that cannot be properly investigated in any other manner and of which the investigation in terms
- 40 of this Act is necessary; or
- (ii) that the security of the Republic is threatened or that the gathering of information concerning a threat to the security of the Republic is necessary.
- (2) An application shall—
- 45 (a) for the purposes referred to in subsection (1)(b)(i) or (ii) or subsection (4), be made by an officer as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), provided that the officer concerned obtained in advance the approval of another officer in the South African Police with at least the rank of major-general who shall be authorized in writing by the Commissioner of the South African Police to grant such approval;
- 50 (b) for the purposes of subsection (1)(b)(ii) or subsection (4), be made by an officer as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), provided that the officer concerned obtained in advance the approval of another officer in the South African Defence Force with at least the rank of major-general who shall be authorized in writing by the Chief of the South African Defence Force to grant such approval;
- 55 or

- (c) vir die doeleindes van subartikel (1)(b)(ii) of subartikel (4) gedoen deur 'n lid soos omskryf in artikel 1 van die Wet op die Buro vir Staatsveiligheid, 1978 (Wet No. 104 van 1978), mits die betrokke lid vooraf die goedkeuring verkry van 'n ander lid van die Nasionale Intelligensiediens wat minstens 'n pos van hoofdirekteur beklee. 5
- (3) 'n Lasgewing bedoel in artikel 2(2) word vir 'n tydperk van hoogstens drie maande op 'n keer deur die betrokke regter uitgereik, en die tydperk waarvoor dit uitgereik is, moet in die lasgewing vermeld word.
- (4) Die regter bedoel in subartikel (1) kan, op 'n aansoek wat voldoen aan die voorskrifte bedoel in artikel 6, die tydperk bedoel in subartikel (3) vir 'n verdere tydperk van hoogstens drie maande op 'n keer verleng indien daardie regter oortuig is dat die verlenging nodig is om 'n rede vermeld in subartikel (1)(b)(i) of (ii). 10
- (5) 'n Aansoek bedoel in subartikel (1)(b)(i) of (ii) of subartikel (4) word aangehoor en 'n lasgewing uitgereik sonder enige kennisgewing aan die persoon, liggaam of organisasie waarop die aansoek of lasgewing betrekking het en sonder om sodanige persoon, liggaam of organisasie aan te hoor. 15
- (6) 'n Aansoek bedoel in subartikel (1)(b)(i) of (ii) of subartikel (4) kan ook toegestaan word indien 'n ondersoek ingevolge hierdie Wet inligting kan openbaar wat kan bydra om die pleging van 'n ernstige misdryf te voorkom. 20

#### Uitvoering van lasgewing

4. (1) Indien 'n lasgewing ingevolge artikel 3 uitgereik is, kan enige lid van die Mag soos omskryf in artikel 1 van die Polisiewet, 1958 (Wet No. 7 van 1958), of 'n lid, uitgesonderd 'n lid van 'n besoekende mag, soos omskryf in artikel 1 van die Verdedigingswet, 1957 (Wet No. 44 van 1957), of 'n lid van die Nasionale Intelligensiediens daardie lasgewing uitvoer, mits die betrokke lid deur die offisier of lid wat die aansoek ingevolge artikel 3(2) gerig het, gemagtig word om daardie lasgewing uit te voer of met die uitvoering van die betrokke lasgewing behulpsaam te wees. 25
- (2) 'n Lid wat 'n lasgewing uitvoer of met die uitvoering van 'n lasgewing behulpsaam is, kan— 30
- (a) besit neem van enige posstuk of telegram waarop die lasgewing van toepassing is en dit ondersoek, of, na gelang van die geval, inluister na of 'n opname maak van enige mededeling waarop die lasgewing van toepassing is; 35
- (b) 'n posstuk of telegram wat ingevolge paragraaf (a) in besit geneem is, aan die persoon of organisasie wat vir die versending van die posstuk of telegram verantwoordelik is, terugbesorg of laat terugbesorg vir versending aan die betrokke geadresseerde indien so 'n posstuk of telegram na die oordeel van— 40
- (i) 'n offisier met minstens die rang van generaal-majoor in die Suid-Afrikaanse Polisie of die Suid-Afrikaanse Weermag, na gelang van die geval; of
- (ii) 'n lid van die Nasionale Intelligensiediens wat minstens 'n pos van hoofdirekteur beklee, 45
- sonder benadeling van die handhawing van wet en orde in die Republiek of sonder benadeling van die veiligheid van die Republiek, na gelang van die geval, terugbesorg kan word;
- (c) in opdrag van die offisier of lid wat die aansoek ingevolge artikel 3(2) gedoen het, oor die posstuk of telegram wat ingevolge paragraaf (a) in besit geneem is, beskik op 'n wyse wat die handhawing van wet en orde in die Republiek of die veiligheid van die Republiek vereis indien sodanige offisier of lid, na gelang van die geval, van oordeel is dat die betrokke posstuk of telegram nie sonder benadeling van die handhawing van wet en orde in die Republiek of sonder benadeling van die veiligheid van die Republiek, na gelang van die geval, ingevolge paragraaf (b) terugbesorg kan word nie. 50
- (3) Die offisier of lid wat die magtiging bedoel in subartikel (1) verleen, kan soveel lede magtig om met die uitvoering van 'n lasgewing behulpsaam te wees as wat hy nodig ag. 55
- (4) 'n Lid wat 'n lasgewing uitvoer of met die uitvoering van 'n lasgewing 60

- (c) for the purposes of subsection (1)(b)(ii) or subsection (4), be made by a member as defined in section 1 of the Bureau for State Security Act, 1978 (Act No. 104 of 1978), provided that the member concerned obtained in advance the approval of another member of the National Intelligence Service holding a post of at least chief director.
- 5 (3) A direction referred to in section 2(2) shall be issued by the judge concerned for a period not exceeding three months at a time, and the period for which it has been issued shall be mentioned in the direction.
- (4) The judge referred to in subsection (1) may, upon an application that  
10 complies with the directives referred to in section 6, extend the period referred to in subsection (3) for a further period not exceeding three months at a time if that judge is convinced that the extension is necessary for a reason mentioned in subsection (1)(b)(i) or (ii).
- (5) An application referred to in subsection (1)(b)(i) or (ii) or subsection (4)  
15 shall be heard and a direction issued without any notice to the person, body or organization to which the application applies and without hearing such person, body or organization.
- (6) An application referred to in subsection (1)(b)(i) or (ii) or subsection (4)  
20 may also be granted if an investigation in terms of this Act may disclose information that may contribute to preventing the perpetration of a serious offence.

#### Execution of direction

4. (1) If a direction has been issued in terms of section 3, any member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), or a  
25 member, excluding a member of a visiting force, as defined in section 1 of the Defence Act, 1957 (Act No. 44 of 1957), or a member of the National Intelligence Service may execute that direction, provided that the member concerned has been authorized by the officer or member who made the application in terms of section 3(2) to execute that direction or to assist with the  
30 execution of the direction concerned.
- (2) A member who executes a direction or assists with the execution of a direction may—
- (a) take possession of and examine any postal article or telegram to which the direction applies, or, as the case may be, listen in to or make a  
35 recording of any communication to which the direction applies;
- (b) return a postal article or telegram that was taken into possession in terms of paragraph (a) or cause it to be returned to the person or organization responsible for the transmission of the postal article or telegram, for transmission to the addressee concerned if such postal  
40 article or telegram, in the opinion of—
- (i) an officer of at least the rank of major-general in the South African Police or the South African Defence Force, as the case may be; or
- (ii) a member of the National Intelligence Service holding a post of at least chief director,  
45 may be returned without prejudice to the maintenance of law and order in the Republic or without prejudice to the security of the Republic, as the case may be;
- (c) on the instructions of the officer or member who made the application in terms of section 3(2), dispose of the postal article or telegram that was taken into possession in terms of paragraph (a) in such manner as the maintenance of law and order in the Republic or the security of the Republic requires, if such officer or member, as the case may be, is of the opinion that the postal article or telegram concerned cannot be  
50 returned in terms of paragraph (b) without prejudice to the maintenance of law and order in the Republic, or without prejudice to the security of the Republic, as the case may be.
- (3) The officer or member who granted the authorization referred to in subsection (1), may authorize such number of members to assist with the execution of the direction as he deems necessary.
- 60 (4) A member who executes a direction or assists with the execution of a

behulpsaam is, kan te eniger tyd enige perseel betree ten einde vir die doeleindes van hierdie Wet 'n meeluisterapparaat te installeer, te onderhou of te verwyder, of 'n posstuk te onderskep of in besit te neem, of 'n mededeling te onderskep, of 'n apparaat te installeer, te onderhou of te verwyder deur middel waarvan 'n mededeling onderskep kan word.

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### Hulpverlening by uitvoering van lasgewing deur sekere persone of organisasies

5. (1) Indien 'n lasgewing bedoel in artikel 2(2) of 'n kopie daarvan aan die persoon of organisasie wat verantwoordelik is vir die versending van 'n posstuk of die versending van 'n mededeling oor 'n telekommunikasielyn, of vir die lewering van 'n posdiens of telekommunikasiediens, aan 'n persoon, liggaam of organisasie in daardie lasgewing vermeld, oorhandig word deur 'n lid wat daardie lasgewing uitvoer of met die uitvoering van daardie lasgewing behulpsaam is, moet die betrokke persoon, liggaam of organisasie so gou doenlik—

10

(a) die betrokke posstuk of telegram of alle posstukke of telegramme waarop die betrokke lasgewing van toepassing is, onderskep en oorhandig aan 'n lid wat ingevolge artikel 4(1) daartoe gemagtig is om die betrokke lasgewing uit te voer of met die uitvoering daarvan behulpsaam te wees;

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(b) die nodige fasiliteite en aparate beskikbaar stel en die lid wat ingevolge artikel 4(1) daartoe gemagtig is om 'n lasgewing uit te voer of met die uitvoering van 'n lasgewing behulpsaam te wees, in staat stel om die nodige verbindinge te bewerkstellig ten einde na gesprekke waarop die lasgewing betrekking het, mee te luister.

20

(2) Indien 'n persoon, liggaam of organisasie 'n fasiliteit, apparaat of telekommunikasielyn vir die doeleindes vermeld in subartikel (1)(b) beskikbaar stel, word aan daardie persoon, liggaam of organisasie die vergoeding betaal waarop die persoon, liggaam of organisasie en die Kommissaris van die Suid-Afrikaanse Polisie, die Hoof van die Suid-Afrikaanse Weermag of die Hoof van die Nasionale Intelligensiediens, na gelang van die geval, ooreenkom.

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(3) Indien 'n ooreenkoms nie ingevolge subartikel (2) bereik word nie, word 'n redelike vergoeding deur die Minister van Pos- en Telekommunikasiewese, met die instemming van die Minister van Staatsbesteding, bepaal ten einde die persoon, liggaam of organisasie minstens vir enige koste aangegaan as gevolg van enige optrede ingevolge hierdie Wet te vergoed.

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### Voorskrifte betreffende aansoeke

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6. Die onderskeie Regters-president van die Hooggeregshof van Suid-Afrika kan gesamentlik voorskrifte uitreik waarin die wyse en prosedure van aansoeke ingevolge artikel 3(1) en (4) eenvormig gereël word.

### Geheimhouding

7. (1) Iemand wat by die verrigting van 'n werksaamheid ingevolge hierdie Wet betrokke is of was, mag geen inligting wat hy by die verrigting van so 'n werksaamheid verkry het openbaar nie behalwe—

40

(a) aan iemand wat dit noodsaaklikerwys vir die verrigting van sy werksaamhede ingevolge hierdie Wet nodig het;

(b) indien hy iemand is wat dit noodsaaklikerwys by die verrigting van sy werksaamhede ingevolge hierdie Wet verstrek;

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(c) sodanige inligting wat ingevolge 'n wet of as getuienis in 'n geregshof vereis word; of

(d) aan 'n bevoegde gesag wat dit vir die instelling, of 'n ondersoek met die oog op die instelling, van 'n strafregtelike vervolging nodig het.

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(2) 'n Werknemer van 'n persoon, liggaam of organisasie bedoel in artikel 5(1) mag geen inligting wat hy in die loop van sy diens verkry het en wat met die verrigting van 'n werksaamheid ingevolge hierdie Wet in verband staan, hetsy daardie werknemer by die verrigting van daardie werksaamheid betrokke is al dan nie, openbaar nie behalwe vir die doeleindes in subartikel (1)(a) tot (d) vermeld.

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direction may at any time enter upon any premises in order to install, maintain or remove a monitoring device, or to intercept or take into possession a postal article, or to intercept any communication, or to install, maintain or remove a device by means of which any communication can be intercepted, for the purposes of this Act.

#### Assistance at execution of direction by certain persons or organizations

5. (1) If a direction referred to in section 2(2) or a copy thereof is handed to the person or organization who is responsible for the dispatching of a postal article or the transmission of a communication over a telecommunications line, or for the rendering of a postal service or telecommunication service, to a person, body or organization mentioned in that direction by a member who executes that direction or assists with the execution of that direction, the person, body or organization concerned shall as soon as possible—

- (a) intercept the postal article or telegram concerned or all postal articles or telegrams to which the direction applies and hand it or them over to a member who is authorized in terms of section 4(1) to execute the direction concerned or to assist with the execution thereof;
- (b) make available the necessary facilities and devices and enable the member who is authorized in terms of section 4(1) to execute a direction or to assist with the execution of a direction, to effect the necessary connections in order to monitor conversations to which the direction applies.

(2) If a person, body or organization has made a facility, device or telecommunications line available for the purposes mentioned in subsection (1)(b), the remuneration agreed upon by the person or organization and the Commissioner of the South African Police, the Chief of the South African Defence Force or the Chief of the National Intelligence Service, as the case may be, shall be paid to that person, body or organization.

(3) If an agreement is not reached in terms of subsection (2), a reasonable remuneration shall be determined by the Minister of Posts and Telecommunications, with the concurrence of the Minister of State Expenditure, in order to compensate the person, body or organization at least for any costs incurred as a result of any action in terms of this Act.

#### Directives regarding applications

6. The respective Judges-President of the Supreme Court of South Africa may jointly issue directives in which the manner and procedure of applications in terms of section 3(1) and (4) are uniformly regulated.

#### Secrecy

7. (1) Any person who is or was concerned in the performance of any function in terms of this Act, shall not disclose any information which he obtained in the performance of such a function except—

- (a) to any person who of necessity requires it for the performance of his functions in terms of this Act;
- (b) if he is a person who of necessity supplies it in the performance of his functions in terms of this Act;
- (c) such information which is required in terms of any law or as evidence in any court of law; or
- (d) to any competent authority which requires it for the institution, or an investigation with a view to the institution, of any criminal prosecution.

(2) An employee of a person, body or organization referred to in section 5(1) shall not disclose any information which he obtained in the course of his employment and which is connected with the performance of any function in terms of this Act, whether that employee is involved in the performance of that function or not, except for the purposes mentioned in subsection (1)(a) to (d).

**Misdrywe en strawwe**

8. (1) Iemand wat 'n bepaling van artikel 2(1) of 7 oortree is aan 'n misdryf skuldig en by skuldigbevinding strafbaar—

(a) in die geval van 'n oortreding van artikel 2(1), met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar; of 5

(b) in die geval van 'n oortreding van artikel 7, met 'n boete, of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar.

(2) Ondanks andersluidende bepalings van die een of ander wet is 'n landdroshof bevoeg om enige straf op te lê waarvoor hierdie Wet voorsiening maak. 10

**Herroeping van wette, en voorbehoud**

9. (1) Artikel 118A van die Poswet, 1958 (Wet No. 44 van 1958), word hierby herroep.

(2) 'n Lasgewing uitgereik kragtens artikel 118A(1) van die Poswet, 1958, en wat by die inwerkingtreding van hierdie Wet steeds van krag is, word geag 15 kragtens artikel 2(2) van hierdie Wet deur die regter bedoel in artikel 3(1)(a) van hierdie Wet uitgereik te wees en bly van krag totdat die tydperk of verlengde tydperk waarvoor daardie lasgewing uitgereik was, verval.

**Kort titel en inwerkingtreding**

10. Hierdie Wet heet die Wet op die Verbod op Onderskepping en 20 Meeluistering, 1992, en tree in werking op 'n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

**Offences and penalties**

8. (1) Any person who contravenes a provision of section 2(1) or 7 shall be guilty of an offence and liable on conviction—

- 5 (a) in the case of a contravention of section 2(1), to a fine, or to imprisonment for a period not exceeding two years; or  
(b) in the case of a contravention of section 7, to a fine, or to imprisonment for a period not exceeding five years.

(2) Notwithstanding anything to the contrary in any other law contained, a magistrate's court shall be competent to impose any penalty provided for in this  
10 Act.

**Repeal of laws, and saving**

9. (1) Section 118A of the Post Office Act, 1958 (Act No. 44 of 1958), is hereby repealed.

15 (2) A direction issued under section 118A(1) of the Post Office Act, 1958, and which is still in force at the commencement of this Act, shall be deemed to be issued under section 2(2) of this Act by the judge referred to in section 3(1)(a) of this Act and shall remain in force until the period or extended period for which that direction has been issued, lapses.

**Short title and commencement**

20 10. This Act shall be called the Interception and Monitoring Prohibition Act, 1992, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

