

REPUBLIC OF SOUTH AFRICA

DEFENCE BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of Bill published in Government Gazette No 22543 of 1 August 2001) (The English text is the official text of the Bill)

(MINISTER OF DEFENCE)

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BILL

To provide for the defence of the Republic and for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1 35

INTRODUCTORY PROVISIONS

Definitions

- (1) In this Act, unless the context indicates otherwise—
 - “**auxiliary service**” means any service established under section 15(1);

- (ii) “**Chief of the Defence Force**” means the Chief of the South African National Defence Force contemplated in section 12(1);
- (iii) “**citizen**” means a South African citizen as contemplated in the South African Citizenship Act, 1995 (Act No. 88 of 1995);
- (iv) “**Code**” means the Military Discipline Code referred to in section 104(1) of the Defence Act, 1957 (Act No. 44 of 1957); 5
- (v) “**command**” means a verbal or written order given to a member or a group of members to achieve a desired result;
- (vi) “**conscientious objection**” means an objection, against the rendering of military service or against participating in a military operation, on grounds of conscience based on compelling religious, ethical or moral beliefs; 10
- (vii) “**court**”, in relation to a visiting force, means a body which or person who, by virtue of the laws of the country to which such visiting force belongs, is empowered to investigate any matter under the military law of that country or to try any person for an offence under such military law or to review the proceedings in connection with the investigation of any such matter or the trial of any person in respect of any such offence; 15
- (viii) “**Defence Force**” means the South African National Defence Force contemplated in section 10(1), and includes any portion of that Force;
- (ix) “**Defence Secretariat**” means the secretariat established by section 5(1); 20
- (x) “**Department**” means the Department of Defence;
- (xi) “**directives**” means written communications defining the authority, responsibility and accountability of any member, or defining policy issues and associated guidelines;
- (xii) “**Division**” means any division of the Defence Secretariat or the Defence Force, based at the Head Office of the Department, and established by the Minister by or under the Public Service Act, 1994 (Proclamation No. 103 of 1994), or under section 5(2), as the case may be; 25
- (xiii) “**employee**” means a person appointed to the Department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or a person contemplated in section 5(4) or (5); 30
- (xiv) “**enrol**” means to accept and record the attestation of any person as a member of the Regular Force or the Reserve Force;
- (xv) “**force**” means a military force;
- (xvi) “**instructions**” means communications which define and set out mission aims and restrictions, doctrines, process descriptions, operating procedures and internal policies; 35
- (xvii) “**member**”—
 - (a) in relation to the Defence Force, means any officer and any person of any other rank; and 40
 - (b) in relation to a visiting force, means any person who is—
 - (i) subject to the military law of the country of that visiting force;
 - (ii) a member of another force but who is attached to such visiting force; or
 - (iii) a civilian who entered into employment in connection with such visiting force outside the Republic; 45
- (xviii) “**Minister**” means the Minister of Defence;
- (xix) “**officer**”, in relation to the Defence Force, means a person on whom permanent or temporary commission has been conferred by or under this Act, and who has been appointed to the rank of officer; 50
- (xx) “**order**” means a written order by a superior officer initiating and regulating events or activities;
- (xxi) “**other force**” means a military force of a country or state other than the Republic;
- (xxii) “**other rank**”, in relation to the Defence Force, means any member thereof other than an officer; 55
- (xxiii) “**prescribed**” means prescribed by regulation;
- (xxiv) “**registered address**”, in relation to a person, means the address of that person as notified from time to time to the proper authority in terms of this Act; 60
- (xxv) “**Regular Force**” means the Regular Force contemplated in section 10(a);
- (xxvi) “**regulation**” means a regulation made under section 77;
- (xxvii) “**Reserve Force**” means the Reserve Force contemplated in section 10(b);

- (xxviii) “**secondary strike**” means a strike, or conduct in contemplation or furtherance of a strike, by members of the Defence Force or any auxiliary service in support of a strike or in solidarity with a strike undertaken by persons other than such members against any employer;
- (xxix) “**Secretary for Defence**” means the Secretary for Defence appointed in terms of section 6(1); 5
- (xxx) “**Service**” means any Service referred to in section 11(1);
- (xxxii) “**strike**” means the partial or complete concerted refusal to render service, or the retardation or obstruction of the rendering of service, or failure to serve, by members of the Defence Force or any auxiliary service for purposes of protest, petition or remedying a grievance or resolving a dispute in respect of any matter of mutual interest between the employer and such members and every reference to “serve” in this definition includes overtime service or duty, whether it is voluntary or compulsory; 10
- (xxxiii) “**superior officer**”, in relation to another member of the Defence Force, means any officer, warrant officer, non-commissioned officer or candidate officer of the Defence Force who holds— 15
 - (a) or is regarded by or under this Act to hold, a higher rank than such other member of the Defence Force; or
 - (b) the same or an equivalent rank as such other member of the Defence Force, but is in a position of authority over that member; 20
- (xxxiv) “**this Act**” includes the regulations;
- (xxxv) “**time of war**” means any time during which the Republic is under threat of war, armed conflict, armed invasion or armed insurrection or is at war, and in respect of which the Defence Force has been employed for service in the defence of the Republic; 25
- (xxxvi) “**training**” includes education and development in the defence environment;
- (xxxvii) “**visiting force**” means a military force of any country present in the Republic with the consent of the President and, in sections 92, 93, 94 and 95, also such force on a routine visit to the Republic where prior agreement regarding the matters referred to in those sections has been concluded between the Government of the Republic and the government of the country in question. 30
- (2) Any reference in this Act to—
 - (a) an obligation to render service in the Defence Force, includes an obligation to undergo training; or 35
 - (b) a rank, includes the equivalent of such rank in any Service.

Principles

2. The Minister and any organ of state defined in section 239 of the Constitution, as well as all members of the Defence Force and any auxiliary service and employees, must, in exercising any power or performing any duty in terms of this Act, have regard to the following principles: 40
- (a) The formulation and execution of defence policy is subject to the authority of Parliament and the national executive.
 - (b) The primary object of the Defence Force is to defend and protect the Republic, its people and its territorial integrity. 45
 - (c) The Defence Force must perform its functions in accordance with the Constitution and international law regulating the use of force.
 - (d) The Defence Force must have a primarily defensive orientation and posture.
 - (e) No member of the Defence Force may obey a manifestly illegal order.
 - (f) Neither the Defence Force nor its members may, in the performance of their functions, prejudice a political party interest that is legitimate in terms of the Constitution, or, in a partisan fashion, further any interest of a political party. 50
 - (g) The Defence Force must respect the rights and dignity of its members and of all persons.

Application of Act 55

3. (1) Unless the context indicates otherwise, this Act applies to—
- (a) all members of the Defence Force and any auxiliary service, and all employees, whether they are posted or employed inside or outside the Republic; and

- (b) any persons who, with the consent of the commanding officer concerned, are with or accompanying the Defence Force whilst outside the borders of the Republic.
- (2) In the event of any inconsistency between this Act and any other legislation in force at the commencement of this Act other than the Constitution, this Act prevails. 5

CHAPTER 2

DEPARTMENT OF DEFENCE

Composition of Department of Defence

4. The Department of Defence consists of— 10
- (a) the Defence Secretariat;
 - (b) the South African National Defence Force; and
 - (c) any auxiliary service.

Defence Secretariat

Establishment of Defence Secretariat

5. (1) The civilian secretariat for defence contemplated in section 204 of the Constitution is hereby established as the Defence Secretariat. 15
- (2) Despite section 3(3) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), the Minister may establish, amalgamate or abolish such division, section and subsection in the Secretariat as may be necessary.
- (3) The Minister must, subject to the laws governing the public service, appoint such number of persons to posts in the Defence Secretariat as may be necessary. 20
- (4) Despite subsection (3), members of the Defence Force may, with their consent, be placed at the disposal of the Secretary for Defence to serve in posts in the Defence Secretariat.
- (5) Any person serving in the Defence Secretariat established by section 7A(1) of the Defence Act, 1957 (Act No. 44 of 1957), immediately before the commencement of this Act must be regarded as having been appointed to a post in the Defence Secretariat in terms of subsection (3) or having been placed at the disposal of the Secretary for Defence as contemplated in subsection (4), as the case may be. 25
- (6) Members of the Defence Force serving in posts in the Defence Secretariat must obey the instructions and directions of civilian superiors in the Defence Secretariat as well as those of superior officers. 30

Secretary for Defence

6. (1) The President must, subject to the laws governing the public service, appoint a person to the post of Secretary for Defence as head of the Defence Secretariat. 35
- (2) The Secretary for Defence serves in that post for the period and subject to the terms and conditions of service otherwise applicable to heads of department under the laws governing the public service and must receive the salary, benefits and privileges to which such heads of department are entitled.
- (3) The Secretary for Defence must be a citizen and may not be a member of the Defence Force. 40
- (4) The Secretary for Defence who immediately before the commencement of this Act served as the Secretary for Defence—
- (a) must be regarded as having being appointed in terms of subsection (1); and
 - (b) continues to serve in that capacity under the terms and conditions of service of his or her existing appointment for the remainder of the period of service in terms of such appointment. 45

Functions of Secretary for Defence

7. The Secretary for Defence—
- (a) is the Head of the Department and the accounting officer for the Department as contemplated in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 50

- (b) is the principal departmental adviser to the Minister on defence policy matters;
- (c) must advise the Minister on any matter referred to him or her by the Minister;
- (d) must perform such functions as may be entrusted to the Secretary for Defence by the Minister, in particular those necessary or expedient to enhance— 5
 - (i) Parliamentary oversight over the Department; and
 - (ii) civil control by the Minister over the Department;
- (e) must monitor compliance with policies and directions issued by the Minister to the Chief of the Defence Force and report thereon to the Minister; and
- (f) is responsible for the discipline of, administrative control over and management of employees, including their effective utilisation and training. 10

Delegation of powers by Secretary for Defence

8. (1) The Secretary for Defence may, subject to such conditions as he or she may impose, in writing delegate any power conferred upon him or her in terms of this Act to— 15

- (a) any employee;
- (b) the Chief of the Defence Force; and
- (c) with the consent of the Chief of the Defence Force, any member of the Defence Force.

(2) A delegation under subsection (1) does not prevent the Secretary for Defence from exercising the power in question himself or herself. 20

Departmental investigations by Secretary for Defence

9. The Secretary for Defence may instruct—

- (a) any employee to carry out an inspection or investigation within the Department; 25
- (b) the Chief of the Defence Force to convene a board of inquiry in order to investigate any matter which affects the Defence Force; and
- (c) the military police to investigate any matter which affects the Defence Force.

South African National Defence Force

Composition of South African National Defence Force 30

10. The South African National Defence Force established by section 224(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), continues to exist and consists of the—

- (a) Regular Force, the members of which serve full-time until— 35
 - (i) reaching their age of retirement;
 - (ii) expiry of their contracted term of service; or
 - (iii) otherwise discharged from the Defence Force in accordance with the law; and
- (b) Reserve Force, the members of which serve on a part-time basis for such periods as they have contracted for, unless their service is terminated in accordance with the law. 40

Services of Defence Force, and structural components

11. (1) The Defence Force consists of the following Services:

- (a) The South African Army;
- (b) the South African Air Force; 45
- (c) the South African Navy; and
- (d) the South African Military Health Service.

(2) Despite subsection (1), the—

- (a) Minister may establish a structural component consisting of members of— 50
 - (i) any of the Services; and
 - (ii) either the Regular Force or the Reserve Force or both; and

- (b) Chief of the Defence Force may establish such temporary task force, group, element or unit as may be required for military exercises or operations, and may for that purpose establish such number of temporary headquarters as may be required.

Chief of Defence Force 5

- 12.** (1) The President appoints the Chief of the South African National Defence Force.
- (2) The Chief of the Defence Force serves in that capacity for the period and subject to the terms and conditions of service otherwise applicable to heads of department under the laws governing the public service and must receive the salary, benefits and privileges to which such heads of departments are entitled. 10
- (3) The Chief of the Defence Force must be a citizen and must be a member of the Regular Force.
- (4) The Chief of the Defence Force who immediately before the commencement of this Act served as the Chief of the Defence Force—
 - (a) must be regarded as having being appointed in terms of subsection (1); and 15
 - (b) continues to serve in that capacity under the terms and conditions of service of his or her existing appointment for the remainder of the period of service in terms of such appointment.

Functions of Chief of Defence Force

- 13.** The Chief of the Defence Force— 20
 - (a) is the principal adviser to the Minister on any military, operational and administrative matter within the competence of the Chief of the Defence Force;
 - (b) must comply with any direction issued by the Minister under the authority of the President as contemplated in section 202(2) of the Constitution; 25
 - (c) is responsible for formulating and issuing military policy and doctrines;
 - (d) must execute his or her command by issuing orders, directives and instructions, and by giving commands;
 - (e) is responsible for the direct management and administration of the Defence Force in an efficient way, including the effective utilisation and the education, training and development of all members of the Defence Force, and employees of the Department where so required by the Secretary for Defence; 30
 - (f) is responsible for the execution of approved programmes of the budget for the Defence Force;
 - (g) must supply the Secretary for Defence with such information with regard to the Defence Force as may be requested by the Secretary for Defence; 35
 - (h) is responsible for the employment of the Defence Force in accordance with an authorisation in terms of section 201(2) of the Constitution and section 17(1) of this Act;
 - (i) is responsible for the training of members of the Defence Force to act in accordance with the Constitution and the law, including customary international law and international agreements binding on the Republic; 40
 - (j) is responsible for the maintenance of such military response capability as may be authorised by the Minister;
 - (k) is responsible for planning for contingencies which may require the use of the Defence Force; 45
 - (l) must manage the Defence Force as a disciplined military force; and
 - (m) is responsible for the development of a non-racial, non-sexist and non-discriminatory institutional culture within the Defence Force in accordance with the Constitution and departmental policy on equal opportunity and affirmative action. 50

Delegation of powers by Chief of Defence Force

- 14.** (1) The Chief of the Defence Force may, subject to such conditions as he or she may impose, in writing delegate any power conferred upon him or her in terms of this Act— 55
 - (a) to any member of the Defence Force;

- (b) to any person employed in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and serving in a post within the Defence Force; and
 - (c) with the approval of the Secretary for Defence, to any employee.
- (2) A delegation under subsection (1) does not prevent the Chief of the Defence Force himself or herself from exercising the power in question. 5

Auxiliary services

Establishment of auxiliary services, and terms and conditions of service

15. (1) The Minister may establish, and designate for the purpose of support to the Defence Force, such auxiliary service as may be necessary. 10
- (2) The members of an auxiliary service serve for such period as the Minister may determine.
- (3) The organisation of and conditions of service in any auxiliary service, including enrolment prerequisites, enrolment, engagement, attestation, discharge, ranks, musterings, leave, duties, discipline, attire and any other matters convenient or necessary for the establishment, control and proper functioning of such auxiliary service are as prescribed. 15

Existing auxiliary services

16. Any auxiliary service in existence immediately before the commencement of this Act continues as an auxiliary service contemplated in section 15 under its existing name and in the way in which it was organised. 20

CHAPTER 3

EMPLOYMENT AND USE OF DEFENCE FORCE

Employment of Defence Force

17. (1) In addition to the employment of the Defence Force by the President as contemplated in section 201(2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for service inside the Republic or in international waters, in order to— 25
- (a) preserve life, health or property in emergency or humanitarian relief operations; 30
 - (b) ensure the provision of essential services;
 - (c) support any department of state, including support for purposes of socio-economic upliftment; and
 - (d) effect national border control.
- (2) When the Defence Force is employed for any purpose contemplated in paragraph (a), (b), (c) or (d) of subsection (1), the President or Minister, as the case may be, must inform Parliament promptly and in appropriate detail of the— 35
- (a) reasons for such employment;
 - (b) place where the Defence Force is being employed;
 - (c) number of people involved; 40
 - (d) period for which the Defence Force is expected to be employed; and
 - (e) expenditure incurred or expected to be incurred.
- (3) If Parliament does not sit during the first seven days after the employment of the Defence Force as contemplated in subsection (2), the President or Minister, as the case may be, must provide the information required in that subsection to the appropriate oversight committee of Parliament on Defence. 45
- (4) If the Defence Force is employed by the President for any purpose contemplated in section 201(2) of the Constitution, the President must also comply with subsection (2)(e).
- (5) Parliament may by resolution within seven days after receiving information contemplated in subsection (2) from the President or Minister— 50
- (a) confirm any such authorisation of employment;
 - (b) order the amendment of such authorisation;

- (c) order the substitution for such authorisation of any other appropriate authorisation; or
- (d) order the termination of the employment of the Defence Force.
- (6) An order contemplated in subsection (5)(b), (c) or (d) does not affect—
 - (a) the validity of the authorisation up to the moment of the passing of the resolution by Parliament; 5
 - (b) the validity of anything done by virtue of the authorisation up to the moment that the amendment, substitution or termination of the authorisation takes effect; or
 - (c) any right, privilege, obligation or liability acquired, accrued or incurred as a result of the authorisation or the employment of the Defence Force, up to the applicable moment contemplated in paragraph (b). 10
- (7) (a) If authorisation by the Minister in terms of subsection (1)(a) cannot be obtained in time to avert imminent danger to life, health or property, the Secretary for Defence, with the concurrence of the Chief of the Defence Force, may, in accordance with a standing arrangement delegated by the Minister in this regard, authorise the employment of the Defence Force for purposes of that subsection. 15
- (b) The Secretary for Defence must inform the Minister as soon as possible of such authorisation and provide the Minister with the information referred to in subsection (2).
- (c) The Minister may cancel the authorisation if he or she disagrees, in which case subsection (6) applies with the necessary changes. 20
- (d) If the Minister agrees with the authorisation, subsections (2), (3), (5) and (6) apply with the necessary changes.

Employment in co-operation with South African Police Service

- 18. (1) The Defence Force may be employed in co-operation with the South African Police Service in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and in the maintenance of public order, within the Republic. 25
- (2) If the employment of the Defence Force in co-operation with the South African Police Service is authorised as contemplated in subsection (1), the Minister must give notice of such employment by notice in the *Gazette* within 24 hours of the commencement of such employment and, upon such employment being discontinued, within 24 hours of such discontinuation give notice of the discontinuation by notice in the *Gazette*. 30
- (3) Service in co-operation with the South African Police Service—
 - (a) may only be performed in such area or at such place as the President may order at the request of the Minister and the Minister of Safety and Security; 35
 - (b) must be discontinued in such area or at such place as the President may order at the request of the Minister and the Minister of Safety and Security or when the President deems it expedient for any other reason; and
 - (c) must be performed in accordance with— 40
 - (i) a code of conduct and operational procedures approved by the Minister;
 - (ii) such guidelines regarding—
 - (aa) co-operation between the Defence Force and the South African Police Service; and
 - (bb) co-ordination of command over and control of members of the Defence Force and the South African Police Service, 45
- (4) Nothing in this section may be construed as giving a member of the South African Police Service any power to exercise command or control over any member of the South African Defence Force and, conversely, as giving a member of the South African Defence Force any power to exercise command and control over any member of the South African Police Service. 50

CHAPTER 4

LAW-ENFORCEMENT POWERS OF DEFENCE FORCE AT SEA

Definitions

- 19.** In this Chapter a word or expression has the meaning ascribed to it in any appropriate convention and, unless the context indicates otherwise— 5
- (a) “**innocent passage**” means the right of innocent passage contemplated in section 2 of the Marine Traffic Act, 1981 (Act No. 2 of 1981);
 - (b) “**military aircraft**” means an aircraft of the armed forces of a State having the military marks of that State, commanded by a member of the armed forces and the crew of which is subject to regular armed forces discipline; 10
 - (c) “**UNCLOS**” means the United Nations Convention on the Law of the Sea adopted at Montego Bay on 10 December 1982;
 - (d) “**warship**” means a ship belonging to the armed forces of a State bearing the external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list or its equivalent, and the crew of which is under regular armed forces discipline. 15

Criminal and civil law enforcement by Defence Force

- 20.** (1) If requested by a competent Minister, the Chief of the Defence Force, with the concurrence of the Minister of Defence, may authorise the use of any military aircraft of the Defence Force or any warship of the Defence Force or any member of the Defence Force for purposes of enforcing any provision of South African law at sea. 20
- (2) An officer on board an aircraft or a warship contemplated in subsection (1) may enforce South African law in—
- (a) the internal waters of the Republic; 25
 - (b) the territorial waters of the Republic, but any measures taken must be carried out in accordance with paragraphs 3, 4 and 5 of article 27, and paragraphs 2 and 3 of article 28, of UNCLOS; and
 - (c) subject to subsection (3), outside the territorial waters of the Republic.
- (3) No enforcement outside the territorial waters of the Republic may take place— 30
- (a) in the territorial waters of a foreign state, unless it takes place on board a South African ship or in pursuance of an agreement on co-operation in law enforcement with that state; and
 - (b) against foreign ships or those on board them, except in circumstances permitted by international law. 35
- (4) An officer of the Defence Force acting in accordance with subsection (2)—
- (a) who exercises any power referred to in this section inside or outside the Republic, must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977);
 - (b) may exercise all other powers referred to in this Chapter; and 40
 - (c) may exercise all or any of the powers conferred on any enforcement authority in terms of the relevant legislation the provisions of which are being enforced by the said officer.
- (5) This section does not affect powers contemplated in sections 23, 24, 25 and 26, or any other matters which are within the original and exclusive jurisdiction of the Defence Force. 45

Interests to be considered

- 21.** (1) (a) If the Master of a foreign ship in relation to which and on board of which enforcement measures are being taken in accordance with section 20(2)(b) so requests, directly or through any military aircraft or warship authorised in terms of section 20(1), the Department of Foreign Affairs must notify a diplomatic agent or consular officer of the flag state of such ship before any enforcement measures are taken. 50

(b) The Department of Foreign Affairs or the Defence Force, as the case may be, must, if reasonably possible, facilitate contact between such diplomatic agent or consular officer and the crew of the ship in question.

(c) In a case of emergency or if there is danger that such ship might escape, the notification contemplated in paragraph (a) may be communicated while the enforcement measures are being taken. 5

(2) In considering whether or in what manner an arrest should be made, due regard must be had to the interests of safe navigation.

Piracy

22. (1) For purposes of this Act, piracy is— 10

(a) any illegal act of violence or detention, or any act of depredation, committed for private ends by the crew, including the Master, or the passengers of a private ship or a private aircraft, and directed—

(i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft; 15

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;

(b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a ship or aircraft contemplated in paragraph (a); and 20

(c) any act of inciting or of intentionally facilitating an act contemplated in paragraph (a) or (b).

(2) Any act of piracy committed by the crew of a warship or military aircraft, government ship or government aircraft who has mutinied and taken control of such ship or aircraft, must for purposes of this section be regarded as having been committed by the crew of a private ship or aircraft. 25

(3) Any person who commits an act of piracy is guilty of an offence, which may be tried in any court in the Republic designated by the National Director of Public Prosecutions and, upon conviction, is liable to a fine or to imprisonment for any period, including life imprisonment. 30

Seizure of pirate ship or aircraft

23. (1) An officer of the Defence Force may seize a ship or aircraft and the property on board, and arrest any person on board, in accordance with articles 105 and 107 of UNCLOS.

(2) Any officer of the Defence Force who exercises any power referred to in this section inside or outside the Republic, must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 35

(3) Any ship, aircraft or property seized, or any person arrested, in terms of this section, must as soon as possible be brought to the Republic or to any other authority determined by the Minister of Foreign Affairs, with the concurrence of the Ministers of Defence and of Justice, to be dealt with in accordance with applicable law. 40

Right of visit on high seas by warships of Defence Force

24. (1) Any South African warship may exercise the right of flag verification as provided for in paragraph 2 of article 110 of UNCLOS in the circumstances mentioned in paragraph 1 of that article. 45

(2) If the suspicion referred to in section 110 of UNCLOS is proved to be well-founded, the ship may be seized and any person who is reasonably suspected of having committed an offence justiciable by a criminal court of the Republic, may be arrested, whereupon such seized ship and any arrested person must be dealt with in accordance with section 23(3). 50

Hot pursuit of ships

25. (1) Any warship or military aircraft of the Defence Force may, on behalf of the Republic or on the behalf of a foreign state, exercise the right of hot pursuit of any ship in accordance with article 111 of UNCLOS.

(2) The seizure of a ship and the arrest of any person on board such ship may be effected by any officer of any ship or aircraft which acts in accordance with this section.

(3) An officer of the Defence Force who exercises any power referred to in this section inside or outside the Republic, must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

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Warships or military aircraft of Defence Force to render assistance

26. (1) Subject to subsection (2), a warship or military aircraft of the Defence Force must—

- (a) render assistance to any person found at sea in danger of being lost;
- (b) proceed with all possible speed to the rescue of persons in distress at sea, if informed of their need for assistance, in so far as such action may be reasonably expected of such warship or aircraft; or
- (c) after a collision at sea, render assistance to the other ship, its crew and passengers and where the collision involves the warship, if possible, inform the other ship of its name, its flag state and the port at which it will call.

(2) A warship or military aircraft may only render assistance or proceed to the rescue as contemplated in subsection (1), if—

- (a) it can be effected without serious danger to the warship or military aircraft, its crew and its passengers; and
- (b) in times of armed conflict, it can be effected without serious prejudice to an operation in which the warship or military aircraft is engaged at the time.

Co-operation with foreign states

27. (1) Subject to subsection (2), any officer of the Defence Force serving on a warship or military aircraft of the Defence Force or any other ship or aircraft on government service specially authorised, may, in respect of any violation of the law of a foreign state—

- (a) seize any vessel;
- (b) arrest any person on board such vessel;
- (c) seize any property on board such vessel;
- (d) conduct a hot pursuit operation in relation to such vessel;
- (e) escort such vessel to a foreign port;
- (f) surrender such vessel, person or property to the authorities of the foreign state contemplated in paragraph (e); and
- (g) assist in any of the actions contemplated in paragraphs (a) to (e).

(2) An action contemplated in subsection (1) may only be taken—

- (a) in pursuance of a reciprocal agreement on co-operation in law enforcement at sea between the Republic and the relevant foreign state;
- (b) if the law-enforcement measure taken, is consistent with the agreement; and
- (c) if the relevant foreign state may take the law-enforcement measures contemplated in subsection (1)(a) to (e) under international law.

(3) Subsections (1) and (2) apply with the necessary changes to enforcement in respect of violations of South African or foreign law by officers of the—

- (a) Defence Force on board a foreign warship, military aircraft or other authorised foreign vessel or aircraft; and
- (b) armed forces of a foreign state on board a warship or military aircraft of the Defence Force or on board any other authorised South African vessel.

(4) An officer contemplated in subsection (3)(b) must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), when taking enforcement measures in respect of the violation of any South African law.

CHAPTER 5

50

MILITARY POLICE

Appointment of military police officials

28. (1) The Chief of the Defence Force or any person designated by him or her may appoint any member of the Defence Force as a military police official and issue each such member with a prescribed identification card.

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(2) A member so appointed must carry the identification card on his or her person when on duty.

Functions of military police officials

29. (1) For purposes of enforcing this Act or any other law, including the common law, in so far as it applies to the Department, any member, employee or property of the Department, or to any person, area, land, premises or property under the protection or control of the Department, a military police official may at any time and in any place perform any police function, which includes— 5

- (a) the prevention and combating of crime;
- (b) the investigation of any offence or alleged offence; and 10
- (c) the maintenance of law and order.

(2) A military police official, when performing any function contemplated in subsection (1)—

- (a) has the same powers and duties as may be conferred on or are imposed by law upon a member of the South African Police Service; 15
- (b) is liable in respect of acts committed or omitted to the same extent as he or she would have been, had he or she been a member of the South African Police Service; and
- (c) has the benefit of all indemnities to which a member of the South African Police Service would in similar circumstances be entitled. 20

(3) For purposes of this section, every statutory provision which confers any power or imposes any duty upon a member of the South African Police Service—

- (a) holding a specified rank or office must be construed as a reference to the military rank of office equivalent to such rank or office; and
- (b) who is the National Commissioner of the South African Police Force must be construed as reference to the Chief of the Defence Force and, in the case of a provincial commissioner, to an officer designated by the Chief of the Defence Force for such purposes. 25

(4) Nothing in this section may be construed as giving a member of the South African Police Service any power to exercise command or control over any military police official and, conversely, as giving a military police official any power to exercise command or control over any member of the South African Police Service. 30

(5) Section 217 of the Criminal Procedure Act, 1977 (Act No. 57 of 1977), applies with the necessary changes to a confession made to a military police official in the performance of any function contemplated in this section. 35

(6) Any civilian arrested by a military police official must be handed over to the South African Police Service without delay.

(7) A military police official who exercises any power referred to in this Chapter must be regarded as being a peace officer as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977). 40

CHAPTER 6

DEFENCE INTELLIGENCE

Definitions

30. In this Chapter, unless the context indicates otherwise— “defence intelligence” includes— 45

- (a) “counterintelligence”;
- (b) “departmental intelligence”;
- (c) “domestic military intelligence”;
- (d) “foreign military intelligence”; and
- (e) “national security intelligence”, 50

as defined in the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994); “Intelligence Division” means the Intelligence Division of Defence contemplated in section 31;

“Review Board” means the Personnel Security Review Board established in terms of section 38(1). 55

Intelligence Division of Defence

31. The Intelligence Division in existence immediately before the commencement of this Act continues as the Intelligence Division of Defence in the way in which it was organised.

Application of strategic and operational intelligence 5

32. The Intelligence Division must, subject to the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994), gather, correlate, evaluate and use—

- (a) strategic intelligence for purposes of—
 - (i) ensuring national security;
 - (ii) assisting in the formulation of defence policy; 10
 - (iii) assisting in the determination of defence strategy;
 - (iv) assisting in the execution of defence and foreign policy;
 - (v) ensuring the security of defence assets of whatever description; and
 - (vi) assisting in the co-ordination of foreign military assistance; and
- (b) operational intelligence for purposes of— 15
 - (i) assisting in the execution of operations in line with defence strategy;
 - (ii) assisting in the preparation of forces in order to get them ready for combat;
 - (iii) providing support for combat forces; and
 - (iv) ensuring the security of the forces. 20

Co-operation with other intelligence services

33. The Intelligence Division must co-operate with any other intelligence service or body created by or under any other law.

Counterintelligence by Intelligence Division

34. The Intelligence Division must, in accordance with any policy, procedure or norm determined by the Minister and in consultation with the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994), conduct and institute counterintelligence measures and activities within— 25

- (a) the Ministry of Defence;
- (b) the Department; and 30
- (c) the Armaments Development and Production Corporation of South Africa, Limited, established in terms of section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968).

Determination of security classification of members and employees

35. (1) The Minister may prescribe— 35

- (a) different grades of security clearance to be issued by the Intelligence Division for various categories of members and employees, and employees of the Armaments Development and Production Corporation of South Africa, Limited;
- (b) the requirements which must be met before any such grade of security clearance may be issued; and 40
- (c) any circumstance, act, conduct or behaviour which disqualifies any such member or employee from being accorded a specific grade of security clearance.

(2) A member or employee contemplated in subsection (1)(a) may not be enrolled, appointed or promoted, receive a commission or be retained as a member or employee, unless such member or employee has been issued with the appropriate or provisional grade of security clearance by the Intelligence Division. 45

(3) No member or employee contemplated in subsection (1)(a) may claim an automatic right by virtue of enrolment, appointment, promotion, receipt of commission or retention to obtain, retain or be issued with a security clearance or any grade of security clearance. 50

(4) The Intelligence Division must on the instruction of the Secretary for Defence determine whether any security clearance or a specific grade of security clearance should be issued to any member or employee contemplated in subsection (1)(a).

(5) The grade of security clearance issued to a member or employee in terms of subsection (4)—

- (a) must be specified in a certificate, issued by the Secretary for Defence on the recommendation of the Chief of the Defence Intelligence Division or an officer authorised by him or her, which certificate is *prima facie* proof of the grade of security clearance so issued;
- (b) remains in force until the next determination is made under subsection (4) or until the clearance lapses or is downgraded or withdrawn in terms of this Act; and
- (c) is subject to periodic revision by the Intelligence Division at such times or intervals as the Secretary for Defence may determine.

Discharge of members or employees not issued with security clearances 15

36. Any member or employee who is deemed unfit for further membership or employment in the Department by reason of not having been issued with a security clearance in terms of section 35(4), may be discharged from the Department by the Minister.

Notification of security clearance or refusal thereof 20

37. (1) The Secretary for Defence must give written notice to every member or employee in respect of whom a determination has been made in terms of section 35(4).

(2) (a) Subject to paragraph (b), the Secretary for Defence must furnish every member or employee whose security clearance or particular grade of security clearance has been refused, downgraded or withdrawn with the grounds and reasons for such refusal, downgrading or withdrawal.

(b) No person may reveal any counter-intelligence measure taken, any source of information or the identity of any person involved in the collection or giving of information with regard to a security screening, investigation and evaluation, or alluded to it in a manner which will enable a person to identify it.

(3) No security clearance or specific grade of security clearance may be refused, downgraded or withdrawn without the member or employee who will be affected thereby being afforded reasonable opportunity to present information regarding such matter.

(4) (a) Within 14 days after having received the grounds and reasons contemplated in subsection (2)(a), the member or employee concerned may lodge a written objection against the refusal, downgrading or withdrawal, as the case may be, with the Secretary for Defence and furnish the Secretary for Defence with such written representations, statements and documents as the member or employee deems necessary for a review by the Review Board.

(b) The Secretary for Defence may on application in writing by a member or employee extend the period referred to in paragraph (a) by a further period of 14 days.

(c) The Secretary for Defence must upon receipt of any objection contemplated in paragraph (a) forthwith furnish the Review Board with—

- (i) the objection and all supporting documents and any representations;
- (ii) the grounds and reasons referred to in subsection (2)(a); and
- (iii) any other document, information or particulars which were considered in making the decision in question.

Personnel Security Review Board

38. (1) The Minister must establish a Personnel Security Review Board consisting of—

- (a) a serving or retired military law officer of the Defence Force who is a suitable person to serve on the Review Board by reason of his or her qualifications or experience;

- (b) a serving or retired officer of the Defence Force who is charged with or sufficiently experienced in personnel matters of the Defence Force; and
- (c) such other members as the Minister may determine.
- (2) The Minister—
 - (a) must appoint one of the members of the Review Board as Chairperson; 5
 - (b) may, subject to subsection (1), likewise appoint an alternate member for any member of the Review Board.
- (3) A member of the Review Board and an alternate—
 - (a) are appointed for such period, but not exceeding three years, as the Minister may determine; 10
 - (b) who is not in the full-time service of the State, must be appointed at such remuneration and on such other conditions of service as the Minister, in consultation with the Minister of Finance, may determine;
 - (c) may, at the expiry of his or her term of office be appointed again.

Review by Review Board 15

- 39.** (1) The Review Board must review any objection referred to it in terms of section 37(4)(c) and may direct the Secretary for Defence to investigate any aspect under review and to submit the Secretary’s findings and recommendations to the Review Board.
- (2) The Review Board may—
 - (a) confirm the determination in question; or 20
 - (b) set aside such determination and substitute any determination which could have been made by the Secretary for Defence.
- (3) Section 37(2) and (3) applies with the necessary changes to any determination made by the Review Board in terms of this section.
- (4) The Secretary for Defence must amend or cancel the certificate referred to in section 35(5)(a) so as to reflect the determination made by the Review Board in terms of subsection (2). 25

Inspector-General of Department to monitor Intelligence Division

- 40.** The Inspector-General of the Department must monitor the personnel structures of, adherence to the law and procedures by, and activities of, the Intelligence Division. 30

CHAPTER 7

COUNCIL OF DEFENCE AND OTHER COUNCILS

Establishment and composition of Council of Defence

- 41.** (1) A Council of Defence is hereby established which consists of—
 - (a) the Minister; 35
 - (b) the Deputy Minister of Defence, if one is appointed;
 - (c) the Secretary for Defence;
 - (d) the Chief of the Defence Force; and
 - (e) any other person co-opted by the Minister.
- (2) The Council of Defence conducts its business in accordance with such rules and procedures as the Minister may determine. 40

Functions of Council of Defence

- 42.** (1) The Council of Defence may be consulted regarding any matter which might affect the functions which the Minister performs in respect of the Department and matters connected therewith. 45
- (2) Any recommendation which has been approved by the Defence Staff Council for submission to the Minister, must be submitted to the Council of Defence for consideration before being referred to the Minister for decision.
- (3) The proceedings and decisions taken at meetings of the Council of Defence must be recorded and retained as prescribed. 50

Establishment and composition of Defence Staff Council

- 43.** (1) A Defence Staff Council is hereby established which consists of—

- (a) the Secretary for Defence;
 - (b) the Chief of the Defence Force;
 - (c) all Chiefs of Divisions as determined by the Secretary for Defence and the Chief of the Defence Force by joint decision; and
 - (d) any other person who may be co-opted by joint decision of the Secretary for Defence and the Chief of the Defence Force. 5
- (2) The Defence Staff Council must conduct its business in accordance with such rules and procedures as the Minister may determine.

Functions of Defence Staff Council

44. The Defence Staff Council must advise the Secretary for Defence and Chief of the Defence Force on any matter within their respective competencies. 10

Other councils that may be established

45. (1) The Secretary for Defence, the Chief of the Defence Force and any Chief of a Division serving at the Department's Head Office, may establish such other councils as may be necessary. 15
- (2) Any council established under subsection (1) must be constituted by the Defence Staff Council and perform such functions as the Defence Staff Council may determine.
- (3) All councils which were in existence immediately before the commencement of this Act must be regarded as having been established under this section.

Establishment of Reserve Force Council 20

46. (1) The Minister must establish a Reserve Force Council.
- (2) The Minister must appoint no fewer than nine and no more than 18 persons to the Reserve Force Council and must designate one of them as chairperson.
- (3) The Council must conduct its business in accordance with a constitution adopted by it and approved by the Minister. 25
- (4) The Council is a consultative and advisory body representing the Reserve Force in order to promote and maintain that Force as an integral part of the Defence Force and must be consulted on any legislative or administrative measures affecting the Reserve Force.
- (5) The Minister, Secretary for Defence and Chief of the Defence Force may commission the Council to execute any task or programme or to investigate any matter pertaining to the Reserve Force or its interests. 30
- (6) The Council does not have any powers of command.
- (7) The Minister may make such regulations regarding the Reserve Force Council as may be required. 35

CHAPTER 8

LIMITATIONS ON RIGHTS OF MEMBERS OF DEFENCE FORCE

Application

47. This Chapter applies to all members of the Defence Force and employees.

Limitations of rights 40

48. (1) Subject to the Constitution, the rights of members or employees may be restricted in the manner and to the extent set out in subsections (2) to (7).
- (2) To the extent necessary for purposes of military security and safety of members of the Defence Force and employees, such members and employees may from time to time be subjected to— 45
- (a) searches and inspections;
 - (b) screening of their communications with people in or outside the Department;
 - (c) security clearances which probe into their private lives and may include polygraph tests; and
 - (d) shared accommodation or privation in accordance with the exigencies of 50 military training and operations.

- (3) To the extent necessary for security and the protection of information, members of the Defence Force and employees may be subjected to restrictions in communicating any kind of information, and where appropriate, may be subjected to prohibition of communication of information.
- (4) To the extent necessary for military discipline, the right of members of the Regular Force, serving members of the Reserve Force and members of any auxiliary service to peaceful and unarmed assembly, demonstration, picketing and petition may be subjected to such restrictions as may be prescribed. 5
- (5) (a) Entry into, remaining in and movement in and around designated military areas may be restricted to authorised persons and subject to such conditions as may be prescribed. 10
- (b) Members of the Defence Force may, while in service, be required and ordered to serve, move or reside anywhere in the Republic and the rest of the world.
- (6) To the extent necessary for national security and for maintaining the Defence Force as a structured and disciplined military force, the rights of members of the Regular Force, serving members of the Reserve Force and members of any auxiliary force to join and participate in the activities of trade unions and other organisations may be subjected to such restrictions as may be prescribed. 15
- (7) To the extent necessary for national security, access to information in the Department may be restricted. 20
- (8) No member of the Regular Force—
- (a) may serve as a member of Parliament or any other legislative body;
 - (b) may be a member of the Reserve Force and *vice versa*; and
 - (c) may be a member of the South African Police Service and *vice versa*.

CHAPTER 9 25

EMPLOYMENT IN DEFENCE FORCE

Application

49. Unless the contrary appears from the context this Chapter applies to members of the Regular Force and to members of the Reserve Force.

Regular Force 30

50. (1) The Regular Force consists of persons not younger than 18 years of age and not older than 65 years, whether in a permanent or temporary capacity, and is organised in the manner prescribed.
- (2) The terms and conditions of service in the Regular Force as well as the conditions and procedures regarding enrolment, appointment, promotion and transfer, but not remuneration, are as prescribed. 35
- (3) (a) The relevant provisions of any applicable law relating to the granting of pensions and related benefits, as well as any rules and regulations made by or under those laws, apply to members of the Regular Force.
- (b) The conditions contemplated in subsection (2) may provide for the payment of gratuities upon discharge to specified categories of members. 40
- (c) Different conditions of service may be prescribed under subsection (2) for members of the Regular Force.
- (d) Any member enrolled in the Regular Force must serve therein until he or she has been officially discharged therefrom. 45
- (4) (a) No person may enrol in the Regular Force unless he or she is a citizen.
- (b) If a need for a specific service or capacity exists which cannot be filled by any other means, the Minister may authorise the contracting of a non-citizen in a temporary capacity for a period not exceeding three years, renewable for periods not exceeding three years at a time. 50
- (5) (a) A member of the Regular Force must place the whole of his or her time at the disposal of the State, and may not perform remunerated work or engage himself or herself to perform work outside his or her employment unless prior authority has been obtained from the Secretary for Defence.
- (b) The Secretary for Defence may only give such authorisation if he or she is satisfied that there will be no prejudice to the Department. 55

(6) Should a Regular Force member be granted permission to embark on a separate career while employed in the Defence Force, the interests of the State take precedence when conflict arises between the Defence Force career on the one hand and the other career on the other hand and the member concerned must resign or temporarily vacate his or her position in his or her other career if so directed by the Secretary for Defence. 5

- (7) No member of the Regular Force may—
- (a) further or prejudice the political interest of any political party in the performance of his or her functions;
 - (b) be politically partisan, or express any party-political allegiance, in the performance of his or her functions; or 10
 - (c) hold any position other than that of ordinary member in any political party.

Reserve Force

51. (1) The members of the Defence Force who immediately before the commencement of this Act were serving voluntarily in a component known as the Citizen Force or the Commandos must be regarded as having been enrolled as members of the Reserve Force in terms of this section and all rights, privileges, duties, capacities and legal position not excluded by this Act that applied to them immediately before the commencement of this Act, apply to them for the remainder of the predetermined period of the said voluntary service. 15

(2) The terms and conditions of service as well as conditions for and procedures regarding enrolment, appointment, promotion, transfer and termination of service, but excluding remuneration, in the Reserve Force must be prescribed. 20

(3) All benefits and allowances accruing to a member of the Reserve Force, including a travel allowance scheme, must be prescribed.

(4) Any member of the Reserve Force may, on a voluntary basis, render service with or without remuneration in addition to service stipulated in his or her contract of service under such terms and conditions as may be prescribed. 25

- (5) A member of the Reserve Force, while in service, may not—
- (a) further or prejudice the political interest of any political party in the performance of his or her functions; 30
 - (b) be politically partisan, or express any party-political allegiance, in the performance of his or her functions; and
 - (c) perform any function pertaining to any political position he or she may hold.

(6) The Reserve Force is organised, and its members are trained and render service at headquarters, or in services, formations, units, personnel musterings or military training institutions. 35

(7) Any member of the Reserve Force who wishes to undergo special training which cannot be fitted in within the bounds of normal Reserve Force service, may, if he or she meets the requirements for such training, enter into a specific contract with the Defence Force to undergo such training. 40

(8) Every member of the Reserve Force must be provided with the basic prescribed uniform, distinctive marks, badges and accoutrements at State expense and must maintain these during his or her period of service.

Commissioned officers in Defence Force

52. (1) (a) Subject to subsection (2), the President may confer a permanent commission on any member of the Defence Force. 45

(b) A member upon whom a commission has been conferred must be issued with a Deed of Commission bearing the President’s signature or a replica thereof.

(2) In order to qualify for a permanent commissioned appointment in the Defence Force, a person must— 50

- (a) declare allegiance to the Republic;
- (b) be a citizen;
- (c) relinquish any other citizenship he or she may have;
- (d) have served successfully on probation as an officer with a temporary commission for at least one year; 55
- (e) successfully complete specific prescribed training;
- (f) never have been convicted and imprisoned without the option of a fine for a criminal offence, except one for which he or she has been granted amnesty in

- terms of the Promotion of National Unity and Reconciliation Act, 1995 (Act No. 34 of 1995);
- (g) be a fit and proper person to serve and have a trustworthy and exemplary character; and
 - (h) comply with the prescribed security grading requirements. 5
- (3) (a) Only the President may cancel a permanent commission, but such a commission may not be cancelled without the holder thereof being notified in writing of any complaint or charge made against him or her and of any action proposed to be taken in respect thereof, nor without his or her being called upon to show cause in relation thereto. 10
- (b) Where the holder of a permanent commission cannot be traced after a diligent search that is appropriate in the circumstances, the commission may be cancelled without such notification.
- (4) The Minister may confer a temporary commission in the Defence Force on any person who is a member or who is eligible to become a member of the Defence Force, if such person complies with the requirements for such appointment and if there is an appropriate post in which such person can serve. 15
- (5) All persons given a temporary commission hold their commissions at the pleasure of the Minister.
- (6) (a) An officer may by notice in writing request to be relieved of his or her commission and any such request takes effect three months after the date upon which it is approved or on such earlier date as may be approved by the Minister. 20
- (b) A former officer is not, in consequence of the withdrawal of his or her commission, exempt from—
- (i) any service or training for which he or she may be liable in terms of this Act unless exempted by the Exemption Board; and 25
 - (ii) the repayment of any monies stipulated in a contract pertaining to any education or training he or she may have undergone or be in the process of undergoing at State expense.
- (7) The commission of any officer terminates and must be regarded as having been cancelled— 30
- (a) on the date on which a sentence of cashiering imposed on him or her is confirmed;
 - (b) if any sentence of imprisonment without the option of a fine is imposed on him or her by a competent civilian court, and in the event of an appeal, upon the confirmation of such sentence. 35
- (8) (a) The appointment in the Defence Force of any person whose commission has been cancelled in terms of subsection (7) must be regarded as having been terminated simultaneously with such cancellation.
- (b) The appointment in the Defence Force of any person whose commission has been cancelled in terms of subsection (3), terminates on such cancellation if such appointment was made by virtue of the commission conferred, and may be terminated subject to any terms and conditions governing such appointment, but nothing contained in this section may be construed as relieving or exempting such person from liability to render service in terms of this Act. 40 45
- (9) Officers who have retired from the Defence Force and while still in service held permanent commissions, may retain the use of their rank after they have so retired and are no longer in service, but must append the appellation “Rtd” whenever it is used.
- (10) Commissioned officers from other countries who are attached to the Defence Force by means of temporary appointment in terms of this Act are entitled to all privileges bestowed on commissioned officers in the Defence Force by virtue of their rank. 50

Pay, salaries and entitlements

53. Members of the Regular Force and Reserve Force must receive such pay, salaries and entitlements including allowances, disbursements and other benefits in respect of their service, training or duty in terms of this Act as may from time to time be agreed upon in the Military Bargaining Council.

Protection of members on active service

54. (1) (a) Where a member of the Defence Force has been captured or has gone missing and the member's commanding officer is satisfied that the member's capture or absence arose from the performance of his or her duties while rendering services in terms of this Act, such member must be regarded to be still serving in the Defence Force for all purposes until the day on which he or she again reports for duty or on which his or her death is confirmed or on which a competent court issues an order whereby the death of such person is presumed. 5

(b) The pay, salary and entitlements accruing to a member during his or her captivity or other absence contemplated in paragraph (a) must be paid to a beneficiary designated by the member concerned. 10

(c) The Chief of the Defence Force must take the necessary steps to ensure that in respect of every member of the Defence Force there is at all times a record of the particulars of the beneficiary designated by such member for purposes of paragraph (b).

(d) A member of the Defence Force may at any time designate another person in the place of the person designated for purposes of paragraph (b) but must ensure that any change in designation is notified to the Chief of the Defence Force in writing. 15

(e) Any change in designation becomes valid for purposes of paragraph (b) when it is received by or on behalf of the Chief of the Defence Force.

(2) Subject to the Moratorium Act, 1963 (Act No. 25 of 1963), and any other law relating to the protection of citizens or non-citizens who are in active service on behalf of the Republic, no appropriations, including seizures or attachments, may be made under or by virtue of any writ of execution, garnishee or sequestration order issued against a member of the Defence Force who is employed on active service in time of war or during a state of national defence or in fulfilment of the Republic's international obligations, except appropriations under or by virtue of a maintenance order issued against the said member. 20 25

(3) (a) A member of the Defence Force who, through no misconduct on his or her part, receives a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for such period as may be prescribed, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond that member's service contract. 30

(b) A member receiving the treatment referred to in paragraph (a) must receive his or her pay and entitlements on their becoming due, and such period of treatment must for all purposes be regarded as duty. 35

(4) An appropriate death and disability benefit insurance scheme must be negotiated and provided by the Defence Secretariat on behalf of members, who must belong to it.

(5) The premiums in respect of such scheme must be recovered directly from the pay or entitlements payable to such members. 40

Compensation in case of injury or disability

55. (1) Any member or former member of the Defence Force who has suffered any damage or loss as a result of an act or omission arising from any training or service under this Act, whether or not legal proceedings have been or are to be instituted, may in writing apply to the Compensation Board established by subsection (2) for compensation, setting out fully the grounds on which the application is based, the extent and nature of the damage or loss and the compensation desired. 45

(2) A Compensation Board (in this Chapter referred to as the Board) is hereby established whose members must be appointed by the Minister, after consultation with the Minister of Finance and the Minister of Labour, and must receive the emoluments prescribed. 50

(3) The functions of the Board are to consider any application referred to it and to make recommendations to the Minister, or an officer acting on his or her behalf, as to—

- (a) the granting or refusal of the application or any part thereof;
- (b) the amount of compensation to be paid if the application is granted; and 55
- (c) the conditions, if any, under which the compensation is granted.

(4) (a) The Board consists of—

- (i) a chairperson; and
- (ii) such number of other members, not exceeding four, as the Minister may determine. 60

- (b) The members of the Board hold office for three years at a time or at the pleasure of the Minister.
- (c) The Minister may appoint alternate members to fill in for members who are absent from any meeting of the Board.
- (d) At any meeting an alternative member has all the rights and obligations of the member whose place he or she takes. 5
- (e) The quorum at a meeting of the Board is three members, of whom one must be the chairperson or the acting chairperson, and any decision of the majority present at any properly constituted meeting is the decision of the Board.
- (f) Where the Board consists of more than two members, the chairperson or the acting chairperson has a casting vote in addition to his or her deliberative vote in the event of an equality of votes on any matter. 10
- (5) The Board must adhere to any procedure prescribed.
- (6) Any application to the Board must be accompanied by such documents as may be necessary to support the application. 15
- (7) The Board may cause such investigation to be made in connection with the application and in such manner as it may deem necessary in order to enable it to furnish its recommendation.
- (8) For purposes of the investigation referred to in subsection (7), the Board may summon witnesses, cause an oath or affirmation to be administered to them, examine them and call for the production of books, documents and objects. 20
- (9) A summons for the attendance of a witness or for the production of any book, document or object before the Board must be signed and issued by the chairperson of the Board in the prescribed form and must be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrates' court. 25
- (10) Any person who has been summoned to attend any sitting of the Board as a witness or who has given evidence before the Board is entitled to claim expenses incurred as if the summons were one requiring the attendance of such witness at a civil trial in a magistrates' court at the place where the sitting takes place.
- (11) In connection with the giving of any evidence or the production of any book or document before the Board, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or a document at a civil trial in a magistrates' court, applies. 30
- (12) Any person who—
- (a) fails to comply with a summons in terms of subsection (9); 35
 - (b) fails to produce documents, books or objects required by a summons; or
 - (c) makes a false statement, knowing it to be false, in any application for compensation under this section or to the Board in connection with any such application,
- is guilty of an offence and liable on conviction, in the case of an offence referred to in paragraphs (a) or (b), to a fine or to imprisonment for a period not exceeding six months, and in the case of an offence referred to in paragraph (c), to any punishment that may lawfully be imposed for perjury. 40
- (13) (a) The recommendations of the Board in terms of subsection (3) must be referred to the Minister or officer contemplated in that subsection, as the case may be, for a decision on the application. 45
- (b) The Minister or officer concerned must notify the applicant in writing of his or her decision, and cause effect to be given to the said decision.
- (14) The Board may after a reasonable time has elapsed or on the grounds of any new facts presented to it, review any previous recommendation for a greater or lesser amount to be paid in compensation to a member who was duly compensated. 50
- (15) The Department must maintain a secretariat to support the Board, keep appropriate records and handle queries referred to it in connection with any relevant matter pertaining to injury or psychological damage and compensation of members or former members of the Defence Force. 55
- (16) The expenses of the Board and the compensation payments made as a result of the Board's recommendations must be defrayed from money appropriated by Parliament for those purposes.
- (17) Any compensation payment in terms of this section is free from taxation on payment to the member or former member concerned. 60
- (18) A member of the Board who is not in the full-time employ of the State must be paid such remuneration and allowances in respect of his or her services as the Minister may determine with the concurrence of the Minister of Finance.

(19) The Board must furnish a report to Parliament on its activities annually.

Obligation to serve in time of war, state of national defence or state of emergency

56. (1) Subject to this Act, every person who is contracted to serve in the Defence Force is obliged to serve and remain in service during a time of war, a state of national defence or a state of emergency. 5

(2) Where a contract of a member of the Defence Force has been terminated, has lapsed or has expired before the outbreak of war or the declaration of a state of national defence or the declaration of a state of emergency, such contract may be renewed by the Minister so that the member may render service in a time of war, during a state of national defence or during a state of emergency, but no such contract may be extended at any one time for a continuous period exceeding three months. 10

(3) Where a member's contract terminates, lapses or expires during service in a time of war, during a state of national defence or during a state of emergency, such contract may be extended by the Minister to enable the said member to remain in service for a period of three months. 15

(4) Nothing in this section may be construed as prohibiting an application for exemption or deferment of service by a member of the Defence Force in terms of this Act.

Termination of service of members of Regular Force

57. (1) The service of a member of the Regular Force is terminated— 20

(a) upon the expiration of three months after the date on which such member lodged his or her resignation or upon the expiration of such shorter period as may be approved by the Chief of the Defence Force;

(b) on the termination of any fixed-term contract concluded between the member and the Department or on the expiration of any extended period of such contract; 25

(c) if he or she has reached the prescribed age of retirement or, where applicable, if he or she exercises his or her right to retire on pension in accordance with the provisions of the applicable pension laws;

(d) if he or she is sentenced to a term of imprisonment by a competent civilian court without the option of a fine or if a sentence involving discharge or dismissal is imposed upon him or her under the Code; or 30

(e) if the Surgeon-General or any person authorised thereto by him or her issues a certificate to the effect that due to medical or psychological reasons, such member is permanently unfit to serve in the Defence Force. 35

(2) The service of a member of the Regular Force may be terminated—

(a) as a result of the abolition of such member's post or any reduction or adjustment in the post structure of the Department of Defence;

(b) if for reasons other than the member's own unfitness or incapacity, such discharge is likely to promote efficiency or economy in the Department of Defence; 40

(c) on account of unfitness for his or her duties or inability to carry them out efficiently, irrespective of whether such unfitness or inability is caused by such member's ill-health not amounting to a condition referred to in subsection (1)(e); 45

(d) if, after serving a period of probation in terms of this Act, his or her appointment is not confirmed; or

(e) if his or her continued employment constitutes a security risk to the State or if the required security clearance for his or her appointment in a post is refused or withdrawn. 50

(3) A member of the Regular Force who absents himself or herself from official duty without the permission of his or her commanding officer for a period exceeding 30 days must be regarded as having been dismissed if he or she is an officer, or discharged if he or she is of another rank, on account of misconduct with effect from the day immediately following his or her last day of attendance at his or her place of duty or the last day of his or her official leave, but the Chief of the Defence Force may on good cause shown, authorise the reinstatement of such member on such conditions as he or she may determine. 55

(4) The name of a member whose service has been terminated in terms of subsection (1)(a) or (b) or subsection (2)(a) or (b), and who has not voluntarily joined the Reserve Force, must be retained on the personnel list.

(5) A member who is entitled to be discharged in terms of subsection (1)(a), (b) or (c) may not, without the prior consent of the Chief of the Defence Force, be permitted to obtain his or her discharge— 5

(a) while he or she is employed in defence of the Republic; or

(b) while disciplinary proceedings are still pending against him or her.

(6) A member contemplated in subsection (1)(a) or (d) who has undergone or who was undergoing education or training at State expense remains liable for the repayment of such money as is repayable in terms of a contractual agreement pertaining to such education or training. 10

Legal representation for members

58. (1) A member of the Defence Force against whom a civil claim or any other action arising from his or her acts or omissions has been instituted is entitled to legal representation at the expense of the State unless he or she— 15

(a) was not acting in the execution of his or her official duties or did not *bona fide* believe that he or she was so acting;

(b) exercised his or her powers in bad faith or exceeded such powers;

(c) without prior consultation with the State Attorney, made an admission of guilt which was detrimental to the State; 20

(d) acted recklessly or wilfully; or

(e) failed to comply with or disregarded standing minimum instructions of which he or she was aware or could reasonably be expected to have been aware.

(2) Despite the ineligibility of a member for legal representation by reason of any of the grounds listed in subsection (1)(a) to (e), the State Attorney may on the request of the member, provide legal representation to him or her if the Department has a material interest in the outcome of the case. 25

(3) The legal representation contemplated in subsection (2) may only be provided if the member agrees that any costs and expenses incurred by the State Attorney may be recovered from the said member. 30

Procedures for redress of grievances

59. (1) Any person to whom this Act applies and who is aggrieved by any act or omission of any other person to whom this Act applies, may lodge his or her grievance in writing. 35

(2) The Minister must prescribe procedures, which must, among other things, specify the expeditious processing of grievances and the chain of command through which individuals and groups within the Department may address individual and collective grievances.

(3) The Minister may perform any act in connection with any grievance which relates to or arises from the employment or the conditions of service of a former member whilst he or she was a member, if the Minister would, at the relevant time, have been competent in terms of this Act or any other law to perform any such act in respect of the then serving member. 40

(4) No act contemplated in subsection (3) may be performed after the expiration of a period of two years after the date on which the former member ceased to be a member. 45

Religious observance in Defence Force

60. The Minister may, subject to section 31 of the Constitution, determine the rules and related policies for religious observance in the Defence Force in consultation with the Chief of the Defence Force. 50

CHAPTER 10**TRAINING****Defence training institutions**

61. (1) The Minister may establish defence training institutions for purposes of providing instruction and other training for members and employees of the Department. 5

(2) Any institution established before the commencement of this Act for purposes of providing military instruction and other training, whether under a law hereby repealed or otherwise, must be regarded as being a defence training institution established under this section.

(3) The Minister must ensure that the training of members and employees of the Department promotes the objects of, and is in accordance with, the Constitution and the law, including customary international law and international agreements binding on the Republic. 10

(4) The training of members is an essential part of force preparation and may encompass instruction at any military or tertiary institution for higher education and learning in the world, as well as practical training which must include physical training, sport, structured recreational activities and military exercises. 15

(5) The provision and maintenance of training tools and equipment as well as the provision and maintenance of training facilities and opportunities for members of the Defence Force or other forces must be carried out under the direction of the Chief of the Defence Force or a person designated by him or her. 20

(6) The staff of any defence training institution must be members of the Department designated by the Chief of the Defence Force.

(7) The duration and description of the courses of instruction and training therein, the conditions of admission thereto, the conditions of future service required from persons who have undergone training and all matters relating to good administration and management, control and regulation of any such institution are as prescribed. 25

Discipline

62. (1) All members who are under instruction and training at any defence training institution in the Republic are subject to the Code. 30

(2) For purposes of subsection (1) and for purposes of jurisdiction, prosecution and punishment, a member of another force must be regarded as holding the equivalent of a rank in the Defence Force as determined by the Chief of the Defence Force.

Designation of areas for training

63. (1) The Minister may, at the request of the Chief of the Defence Force, as and when the exigencies of the training require, designate any area, whether on public or private property, wherein the whole or any portion of the Defence Force may conduct military exercises. 35

(2) The Minister may prescribe the conditions under which compensation may be claimed by and paid to the owner or lessee of the designated area for any damage or loss sustained as a direct consequence of military exercises so conducted. 40

(3) Before acting in terms of subsection (1), the Minister must publish a notice in the *Gazette* and a notice in at least two official languages in newspapers circulating in the designated area and must also post suitable public notices, to the effect that such area, which must be described in the notice, is to be designated as a training area under subsection (1) and inviting all interested parties to furnish him or her with representations in regard thereto not later than by a date specified in the notice. 45

(4) Any such representations must be considered by the Minister before acting in terms of subsection (1).

CHAPTER 11**EXEMPTIONS FROM, AND DEFERMENT OF, TRAINING AND SERVICE****Exemption Board**

64. (1) The Minister must establish such number of exemption boards as may be necessary. 5

(2) The functions of a board are to hear applications by members of the Regular Force or the Reserve Force for their exemption from or the deferment of the whole or any part of their training or service, as the case may be.

(3) (a) A board must consist of no more than three members appointed by the Minister of whom at least one must be— 10

(i) a person from outside the Department of Defence who is a fit and proper person for appointment as Chairperson; and

(ii) a member of the Regular Force of the rank of warrant officer or higher who is sufficiently experienced in operational and personnel matters of the Defence Force. 15

(b) The Minister may appoint alternate members to take the place of members who are absent from any meeting of a board, and at any such meeting an alternate member has the same rights and obligations as the member replaced by him or her.

(c) A quorum at a meeting of a board is constituted by the Chairperson, or the acting chairperson, and member contemplated in paragraph (a)(ii). 20

(d) Where a board consists of two members, the Chairperson, or the acting chairperson, has a casting vote in addition to his or her deliberative vote.

(4) The Minister may make such rules as may be necessary for regulating the procedure and the conduct of the business of a board.

(5) A member of a board who is not in the full-time employ of the Defence Force or the Public Service must be paid such remuneration and allowances in respect of his or her services as the Minister may determine, with the concurrence of the Minister of Finance. 25

(6) (a) Subject to paragraph (b), a decision of a board in pursuance of any power conferred on it or duty imposed upon it by or under this Act is final, but nothing in this Act may be construed as precluding the applicant from making appropriate representations to a High Court to review the decision and seeking appropriate redress and relief. 30

(b) A board which has granted or denied the application for exemption from or deferment of training and service may, if it is satisfied that the facts upon which such decision is founded have changed, and after having afforded all interested parties an opportunity of being heard, withdraw or amend its decision with effect from a date determined by the board. 35

(7) Without prior authority from the Minister, no person may disclose any information obtained in the exercise of his or her powers or the carrying out of his or her duties relating to the deliberations or evidence brought before a board in terms of this Act. 40

Application for exemption

65. (1) The following persons may apply to a board for exemption from, or deferment of, training or service, namely—

(a) a person who has been selected for service or training under this Act; 45
(b) any person who, after having been selected, has commenced his or her training or service; or

(c) any interested person, including an employer of a member of the Reserve Force, acting on behalf of a person contemplated in paragraph (a) or (b) with the written consent of such person.

(2) Any application made by or in respect of a person contemplated in subsection (1)(a) must be addressed to and lodged with the Chairperson of the board and any application made by or in respect of a person contemplated in subsection (1)(b) must be addressed to the Chairperson of the board and lodged with the commanding officer of the unit in which the said person is serving. 50

(3) Every person who has made an application in terms of this section or on whose behalf such application has been made, must at his or her own expense attend at the time 55

and place determined by the board and submit himself or herself to any examination relating to any matter connected with the application.

Powers and duties of board

66. (1) A board must carry out such investigations as may be necessary in connection with any application and representations. 5

(2) A board may sit at any place that is under the control of the Defence Force, for purposes of hearing evidence or for deliberating.

(3) (a) For purposes of ascertaining any matter relating to the subject of an investigation, a board has the power to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects. 10

(b) A summons for the attendance of a witness or for the production of any book, document or object before a board must be signed and issued by the Chairperson of the board in the prescribed form and must be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrates' court. 15

(c) If required to do so by the Chairperson of the board a witness must, before giving evidence, take an oath or make an affirmation administered by the Chairperson of the board or such official of the board as the Chairperson may designate.

(d) Any person who has been summoned to attend any sitting of a board as a witness or who has given evidence before a board is entitled to claim expenses incurred from public funds in accordance with the tariff applicable to a witness in a civil trial in a magistrates' court. 20

(e) In connection with the giving of any evidence or the production of any book or document before a board, the law relating to privilege as applicable to a witness giving evidence or summonsed to produce a book or a document in a court, applies. 25

(4) A board may, with due regard to the evidence adduced before it—

(a) grant the application on any justifiable ground, including that it should be granted—

(i) in order to prevent the interruption of the course of full-time educational studies of the person concerned; 30

(ii) by reason of the nature and extent of such person's domestic obligations or, in the case of a member of the Reserve Force, any circumstance connected with any trade, profession or business in which he or she is engaged;

(iii) on the grounds that such person is being compulsorily detained in any institution due to his or her having been sentenced to imprisonment or his or her incapacity to function effectively in society; 35

(iv) on the grounds that undue hardship pertaining to the personal circumstances of the member would otherwise be caused;

(v) on the grounds that it is in the public interest that the application be granted; or 40

(vi) on the grounds that the person concerned is a conscientious objector;

(b) grant the application under such conditions it may deem fit;

(c) grant the whole or part of the application subject to such modifications as it may deem necessary; or 45

(d) refuse the application.

(5) A board must give reasons for its decision.

(6) No deferment may be granted which has the effect of forcing the applicant to commence service or training after reaching the age of fifty years.

Offences by witnesses summoned or subpoenaed by board 50

67. (1) A person is guilty of an offence if, after having been summoned to attend and give evidence or to produce any book, document or object before a board, he or she, without sufficient cause, fails to—

(a) attend at the time and place specified in the summons;

(b) remain in attendance until the conclusion of the enquiry or until he or she is excused by the Chairperson of the board from further attendance; or 55

(c) produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce.

- (2) A person is guilty of an offence if he or she, after having been summoned to attend and give evidence before a board, attends but—
- (a) refuses to be sworn or to make affirmation as a witness after he or she has been required by the Chairperson of the board to do so; or
 - (b) after having being sworn or made affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her. 5
- (3) Any person convicted of an offence in terms of paragraph (a) or (b), is liable to a fine or to imprisonment for a period not exceeding five years.
- (4) Any person who after having been sworn or having made an affirmation, gives false evidence before a board on any matter, knowing such evidence to be false or knowing or not believing it to be true, is guilty of an offence and liable on conviction to any penalty which may be imposed on a person convicted of perjury. 10

CHAPTER 12

CEREMONIAL DECORATIONS, MEDALS, AWARDS, FLAGS AND ACCOUTREMENTS 15

Institution of decorations and medals

68. The President may institute warrants for decorations and medals which are to be conferred in respect of conduct in peace or conduct during a state of national defence, including war.

Rules and regulations 20

- 69.** The Minister, with the approval of the President, must make such rules and regulations as may be necessary in the case of every decoration or medal, for—
- (a) the award thereof;
 - (b) the granting, wearing, forfeiture and restoration thereof; and
 - (c) such other matters concerning such decorations and medals as he or she may deem expedient. 25

Award of decoration and medals

70. Persons may be awarded decorations and medals depending on the content of the warrant pertaining to such decoration or medal.

Wearing of decorations and medals 30

- 71.** The wearing in public of decorations and medals in the prescribed manner by the following categories of persons and on the following apparel, is allowed, namely—
- (a) serving members of the Defence Force on the appropriate uniform as prescribed;
 - (b) former members of the Defence Force who have been awarded military decorations and medals on appropriate civilian dress as prescribed; 35
 - (c) civilians who are the next of kin of deceased former members of the Defence Force on appropriate civilian dress as prescribed; and
 - (d) other civilian recipients, on appropriate civilian dress.

Order of precedence 40

- 72.** (1) South African decorations and medals precede other decorations and medals presented to a member of the Defence Force.
- (2) The President must issue an official order of precedence for the wearing of decorations and medals.
- (3) Medals presented by any institution other than a state or a head of state may not be worn by members of the Defence Force together with their other medals. 45

Display of insignia

73. Units of the Defence Force may display on parade only prescribed flags, honours, awards and other insignia.

Antecedent honours and medals

74. Any decoration or medal instituted or recognised prior to the commencement of this Act may, subject to anything to the contrary contained in such honours and the rules for the governance thereof, be awarded, and any authority, sanction, warrant or certification relating to any such decoration or medal may be continued, amended or cancelled by the President. 5

CHAPTER 13**GENERAL ADMINISTRATION AND SUPPORT****Powers of Minister**

75. (1) The Minister may do or cause to be done all things which are necessary for the effective defence and protection of the Republic, its territory and its inhabitants. 10
- (2) Without derogating from the generality of subsection (1), the Minister may—
- (a) manage, provide, acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes either singly or in conjunction with other users; 15
 - (b) after consultation with other interested government departments, manage, provide, acquire, hire, construct and maintain airfields, air navigation systems, harbours and harbour facilities for the vehicles, aircraft and vessels of the Defence Force; 20
 - (c) acquire and maintain arms, ammunition, vehicles, aircraft, vessels, uniforms, stores and other equipment; 20
 - (d) sell, let or otherwise dispose of movable or immovable property of the Defence Force which is no longer needed for defence purposes; 25
 - (e) authorise the sale or loan of equipment belonging to the Department to the defence forces of allied countries; 25
 - (f) establish military training institutions for purposes of providing training and instruction to members and employees of the Department; 25
 - (g) issue directives for the training of any member or employee of the Department; 25
 - (h) subject to an agreement with the owner and such conditions, including compensation, as may be stipulated by the National Treasury, authorise such use of private vehicles, vessels or aircraft as is necessary for the training of the members of the Reserve Force or the rendering of services by them; 30
 - (i) establish military museums, monuments, heritage sites and war graves or cemeteries. 35
- (3) (a) If it is in the public interest, or in the case of an emergency, the Minister, after consultation with the Minister of Finance, may authorise—
- (i) the conveyance of any person who is not an officer or employee of the State acting in the execution of his or her duty as such, or any goods belonging to such person, by means of any vehicle, aircraft or vessel belonging to the Department; or 40
 - (ii) the use of any vehicle, aircraft, vessel, equipment, facility or any other property belonging to the Department, by any person who is not an officer or employee of the State acting in the execution of his or her duty as such. 45
- (b) Any authorisation contemplated in paragraph (a) may be made subject to such conditions as the Minister may determine. 45

Delegation of powers and assignment of duties by Minister

76. The Minister may, in writing, delegate any power conferred on him or her or assign any duty imposed upon him or her by or under this Act to the Secretary for Defence or Chief of the Defence Force, except the power to make regulations and, in the case of the Chief of the Defence Force, the power to employ the Defence Force as contemplated in section 17(1). 50

Regulations

77. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) the conditions of service of members of the Defence Force generally, including the scales and associated ranges of salaries, wages or allowances of all the various classes, ranks and grades, as well as the maximum age to which members may serve, related job descriptions and personnel management codes and job evaluation; 5
- (b) the temporary employment of persons, both in a military or a civilian capacity;
- (c) discipline in the Defence Force;
- (d) the occupation of official quarters;
- (e) the conditions under which overtime duty, subsistence, travelling, climatic and other allowances may be paid; 10
- (f) the setting aside or recovery of any wrongly granted remuneration, allowance or reward;
- (g) the occupational health and safety of members of the Defence Force and civilian employees of the Department;
- (h) defence intelligence, including— 15
 - (i) assigning security classifications to information of the Department;
 - (ii) assigning security classifications to areas and facilities of the Department;
 - (iii) restrictions based on security classifications with regard to access to such information, areas or facilities; 20
 - (iv) assigning security gradings to posts in the Department; and
 - (v) the declassification of information, areas or facilities of the Department;
- (i) training, including—
 - (i) the level of training of the members of the Defence Force;
 - (ii) the attendance of military training programmes by civilians older than 25
 - eighteen years;
 - (iii) the establishment of training camps and units;
 - (iv) the accreditation of military training institutions with academic and other non-military institutions;
 - (v) the conclusion of agreements between the State as employer and 30
 - members of the Department covering all aspects of training and education; and
 - (vi) the use and compensation of specialised staff at or in respect of military training institutions not otherwise provided for by law;
- (j) the establishment of standards of any physical measurement as well as the 35
 - medical and psychological condition determined by an appropriate examination or measurement and compulsory immunisation of the members of the Defence Force;
- (k) the establishment of standards of health and the compulsory immunisation of 40
 - employees of the Department;
- (l) the provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependants and, if applicable, the establishment, management and control of one or more funds for such purposes;
- (m) leave of absence of members of the Defence Force;
- (n) compulsory insurance of members and employees of the Department in 45
 - respect of bodily injury, disablement or death occurring in the course of military service, as well the deductions of the prescribed premiums for such insurance from the pay, salary or remuneration of the members and employees concerned;
- (o) labour relations between members of the Defence Force or any auxiliary 50
 - service and the State as their employer, including the resolution of disputes and the establishment of mechanisms necessary for the regulation of the said labour relations and the administration and management of such matters;
- (p) the establishment, management and control of funds and trading and 55
 - non-trading institutions, the aims of which are to the benefit of serving and former members of the Defence Force and their accompanying guests as stipulated;
- (q) the seniority and precedence of headquarters, the constituent forces, 60
 - formations, units and personnel musters and of members of the Defence Force;
- (r) all matters pertaining to military ceremony including the design, award, use, care and custody of colours, standards and flags designated for military use;

- (s) honorary appointments and ranks in the Defence Force and the terms and conditions on which the appointments may be made;
 - (t) beneficial affiliation of units and formations of the Defence Force with similar units and formations of foreign defence forces;
 - (u) the exemption of a member who, while in the service at a specific place and on good cause shown, requests not to be ordered to serve elsewhere in the Republic or the rest of the world; 5
 - (v) the governance and management of military detention and correctional facilities established under the Act and the enforcement of discipline in such facilities; 10
 - (w) the prohibition, restriction and regulation of any traffic in any military area, base, unit or on any premises under the control of the Department;
 - (x) the registration and certification of roadworthiness of vehicles and vehicular equipment for use in the Defence Force and the licensing of the drivers of such vehicles and the operators of such equipment; 15
 - (y) the registration and certification of airworthiness of aircraft for use in the Defence Force and the certification of the competency of the crew of such aircraft;
 - (z) the registration and certification of the seaworthiness of vessels for use in the Defence Force and the certification of the competency of the crew of such vessels; 20
 - (zA) the issue, care and disposal of arms, accoutrements, ammunition, supplies, animals, transport, clothing and equipment of the Department;
 - (zB) military museums, monuments, heritage sites, war graves and cemeteries;
 - (zC) any auxiliary services provided for in this Act, including matters relating to terms and conditions of service of members, their education, training, discipline and conduct; 25
 - (zD) any matter which this Act requires or permits to be prescribed or which it is necessary or expedient to prescribe in order to ensure the good governance of the Defence Force. 30
- (2) Any regulation made in terms of subsection (1) relating to the terms and conditions of service of members of the Defence Force may be made with retrospective effect for a period not exceeding 12 months, except where such regulations provide for—
- (a) any reduction in the rights and privileges of members; or 35
 - (b) the imposition of penalties.

Protection of defence assets

- 78.** (1) The Minister may, by notice in the *Gazette*, designate a mark to be applied to animals, equipment or articles to denote the ownership of the Department or any visiting force in such animals, equipment or articles. 40
- (2) No animal, equipment or article belonging to the Department or to any visiting force which bears a mark contemplated in subsection (1) may be seized or attached by or under any writ of execution which may be issued against any employee of the Department or any visiting force.
- (3) The entity known as the Department of Defence Archive Repository, which existed immediately prior to the commencement of this Act, continues to exist under this Act under the same conditions, and the provisions of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), apply with the necessary changes, but— 45
- (a) the Archive Repository must be maintained under the proper management and care of the Department; 50
 - (b) no record may be transferred to the National Archives;
 - (c) subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)—
 - (i) no record may be available for public access until a period of 20 years has elapsed since the end of the year in which the record came into existence, which period may be extended by the Minister in the interests of national security; 55
 - (ii) access to records which have been in existence for less than 20 years can only be obtained subject to such conditions as may be determined by the Secretary for Defence. 60

Exemptions applicable to Defence Force

- 79.** (1) Despite anything to the contrary contained in any other law—
- (a) the Defence Force is exempted from any registration, licensing or related fee for taxation regarding the possession or movement of equipment, vehicles, aircraft or vessels which are used by the Department if such equipment, vehicles or aircraft or vessels are clearly marked and identifiable; 5
 - (b) members of the Defence Force are exempted from any provisions relating to the licensing of drivers of any vehicle or operators of any equipment or machinery used by the Department if the Department ensures that the said drivers or operators are adequately trained and tested in accordance with prescribed minimum standards; 10
 - (c) members of the Defence Force are exempted from any provisions relating to the licensing of pilots, aircrew and aerospace-related persons of any aircraft or air vessel used by the Department if the Department ensures that such pilots, aircrew and aerospace-related persons are adequately trained and tested in accordance with prescribed standards to ensure their competency and certification; 15
 - (d) officers or sailors of any vessel used by the Department are exempted from any provisions relating to their competency and certification if the Department ensures that such officers or sailors are adequately trained and tested in accordance with prescribed standards to ensure their competency and certification; 20
 - (e) clubs, messes and trading institutions are exempted from the payment of any licence fees, taxes and duties other than customs and excise duties or value-added tax if such clubs, messes and trading institutions are established and managed for the exclusive use or benefit of members or employees of the Department, their families, their guests, military veterans and members of any visiting forces, as prescribed; 25
 - (f) unless determined otherwise by the Chief of the Defence Force due to the nature of the duties involved, a member of the Defence Force is exempted from payment of tolls when passing through a toll-gate or any similar facility if he or she so passes in the course of performing his or her functions and if he or she is— 30
 - (i) driving a military vehicle or operating any other military means of transport; or 35
 - (ii) proves his or her membership of the Defence Force by exhibiting his or her military identification and the relevant authorisation documents.
- (2) The Secretary for Defence may determine that subsection (1)(f) does not apply to any particular member or group of members of the Department, in which case, such toll is payable and such payment must be regarded as being authorised expenditure. 40

Exclusion of liability

- 80.** (1) Neither the State nor a member or employee is liable (except in the case of any wilful act or omission on the part of any such person) to any person who makes unauthorised use of any vehicle, aircraft or vessel under the control of the Department, or to any dependant of such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in way connected with the use of such vehicle, equipment, aircraft or vessel. 45
- (2) Neither the State nor a member or employee is liable (except in the case of any wilful act or omission on the part of any such person) to any person—
- (a) referred to in section 75(3) who makes use of any vehicle, aircraft or vessel which is under the control of the Department and appropriated for use by members or employees; 50
 - (b) who makes use of any other property of the Department; or
 - (c) to whom services are rendered by the Department,
- or to any dependant of such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of any such vehicle, aircraft or vessel, such other property or such services. 55
- (3) If the State has paid any compensation in respect of a claim by any person for any loss or damage contemplated in subsection (2), the State may, without having obtained 60

any formal cession of the right of action, recover from the person responsible for the loss or damage, the amount paid by way of compensation or any lesser amount determined by the Minister with the concurrence of the Minister of Finance.

Right of recourse in respect of expenditure for injuries of members

81. Whenever the Department— 5

(a) has incurred expenditure or has paid any amount in respect of medical, dental or hospital treatment of the bodily injuries of a member of the Defence Force or the supply of articles or the rendering of service in connection with that treatment; or

(b) has made any payments in respect of any salary, pay, allowances or any compensation to the member during his or her incapacity, 10

and the expenditure has been incurred or the payments have been made in circumstances where the member or his or her estate would otherwise have a claim against another person as a result of the bodily injury to or incapacity of the member, the Department shall, without obtaining a formal cession of action, have the same right of recourse against that other person for restitution of the payments made as that member or his or her estate had against such person. 15

Indemnity in respect of trespass and nuisance

82. No action shall be brought against the State in respect of—

(a) trespass or nuisance, by reason only of the flight of aircraft or air vessels used by the Department, or being operated on behalf of the Department, over any property at a height which, having regard to the weather and all the circumstances of the case, is reasonable; or 20

(b) any nuisance caused by any activity connected with ship building or repairs to shipping conducted by the South African Navy in any of its dockyards. 25

Permission to enter upon private land

83. The Minister may, in the defence of the Republic or for purposes of national border control, give written permission for private land within a strip not exceeding ten kilometres in width along any national border of the Republic to be entered upon, without the consent of any occupier thereof, by any member of the Defence Force. 30

CHAPTER 14

STATE OF NATIONAL DEFENCE

Declaration of state of national defence

84. The President may, by proclamation in the *Gazette*, declare a state of national defence contemplated in section 203 of the Constitution if the sovereignty or territory of the Republic is— 35

(a) threatened by war, invasion, armed attack or armed conflict; or

(b) being or has been invaded or is under armed attack or subject to a state of armed conflict.

Mobilisation during state of national defence 40

85. After the declaration of a state of national defence the President may, by proclamation in the *Gazette*, authorise the mobilisation of persons for service in the Defence Force if it is necessary to supplement the number of serving members.

State of national defence regulations

86. (1) The President may during a state of national defence, and for as long as the proclamation declaring a state of national defence remains in force, by proclamation in the *Gazette*, make such regulations as are necessary or expedient to deal with any circumstances which have arisen or are likely to arise as a result of the state of national defence and to make adequate provision for terminating the state of national defence. 45

- (2) The regulations contemplated in subsection (1) may include matters regarding—
- (a) persons eligible for mobilisation, including the minimum age of persons (which may not be below 18 years), and the maximum age of persons to be mobilised;
 - (b) persons exempted from mobilisation; 5
 - (c) the terms and conditions of service and training;
 - (d) the terms and conditions of release and discharge from service;
 - (e) the method of notification of persons to be mobilised;
 - (f) exemptions and deferments from service, and the appointment of exemption boards; 10
 - (g) the security of national key points and other places that may be designated;
 - (h) censorship of information;
 - (i) the evacuation or concentration of persons, including curfew laws;
 - (j) the control and use of transport systems, air traffic and use of the territorial waters of the Republic; 15
 - (k) the offences and penalties applicable for contravention of the regulations;
 - (l) places of custody or detention; and
 - (m) the demobilisation of persons on completion of service and when the declaration of the state of national defence is revoked.

CHAPTER 15 20

**CO-OPERATION WITH OTHER FORCES AND FORCES
VISITING REPUBLIC**

Agreements

87. Any agreement between the Government of the Republic and any other state or international institution or organisation regarding the use or provision of military forces must provide for the legal status of— 25

- (a) members of the Defence Force placed at the disposal of the military authorities of such state, institution or organisation; and
- (b) foreign military personnel and their mission while the personnel are deployed in the Republic. 30

Service by members in fulfilment of international obligation

88. Service in fulfilment of an international obligation which entails participation by any member of the Defence Force in a military force under the control of an international body—

- (a) is subject to such member's rights and conditions of service under this Act, and must be rendered by every member for such additional emoluments and benefits, including medical, travelling and subsistence, transport, leave, maintenance, assurance, insurance, tax, disability and death benefits as may be determined by agreement with the international body; 35
- (b) may not be rendered by any such member in a rank lower than that which he or she holds in the Defence Force; 40
- (c) must be rendered in compliance with the customary international law and treaties or other international agreements binding on the Republic; and
- (d) may not have the effect of detracting from the powers and duties of the President, the Minister, the Chief of the Defence Force or the Secretary for Defence in relation to such member. 45

Attachment of personnel

89. (1) The Minister may—

- (a) temporarily attach to the Defence Force any member of a force of any country or international body who is placed at the disposal of the Minister for that purpose by the military authorities of that country or international body, as the case may be; and 50
- (b) subject to the conditions applicable to his or her service, place any member of the Defence Force at the disposal of the military authorities of any country or international body for purposes of being attached temporarily by those 55

authorities to the forces of that country or, in accordance with sections 88 and 90, the international body, as the case may be.

(2) (a) Subject to paragraph (b), a member of a force of any other country or international body who is attached temporarily to the Defence Force is subject to the law applying to that portion of the Defence Force to which he or she is attached and must be treated and has the same power of command and punishment over members of the Defence Force as if he or she were a member of that Force of a rank equivalent to that held by him or her as a member of the force of the country or international body from which he or she came. 5

(b) The President may, by proclamation in the *Gazette*, direct that in relation to members of a force of any country or international body specified in the proclamation, the laws relating to the Defence Force apply with such exceptions and subject to such adaptations and modifications as may be so specified. 10

(3) Sections 88 and 90 apply with the necessary changes to any member of the Defence Force placed at the disposal of the military authorities of another country by the Minister for the purpose of being attached temporarily by those authorities to a force of that country in terms of subsection (1)(b) and in accordance with an international agreement, regardless of whether or not such member, in consequence of the Minister's decision, becomes attached temporarily to the defence force or any other organ of state of that other country or international body. 15 20

Command over members serving under control of international body

90. Whenever the service contemplated in section 88 entails members of the Defence Force and any military force under the control of an international body—

(a) serving together, every member of that military force must be treated and has powers of command over those members of the Defence Force, as if he or she were a member of the Defence Force of the relative rank; and 25

(b) acting in combination, every officer of that military force appointed to command the combined forces or any portion thereof, must be treated and has powers of command and punishment over those members of the Defence Force as if he or she were an officer of the Defence Force of the relative rank. 30

Command over members serving together with other military force

91. (1) Whenever members of the Defence Force and any military force of another country are—

(a) serving together, every member of that military force must be treated and has powers of command over those members of the Defence Force as if he or she were a member of the Defence Force of the relative rank; and 35

(b) acting in combination, every officer of that military force appointed to command the combined forces or any part thereof must be treated and has powers of command and of punishment over those members of the Defence Force as if he or she were an officer of the Defence Force of the relative rank. 40

(2) For purposes of this section, the Defence Force and any other force must be regarded as serving together or acting in combination whenever the President has by proclamation in the *Gazette* declared that they are so serving or acting, and the relative rank of members of the Defence Force and of such other force is as designated by such proclamation. 45

(3) Sections 88 and 90 apply with the necessary changes to any member of the Defence Force who serves or acts as contemplated in subsection (1).

Visiting forces

Discipline and internal administration of visiting forces

92. (1) (a) Subject to paragraph (b), a military court or other authority of a visiting force may in matters concerning discipline and the internal administration of that force, which may include the administration of the property or the estate of a deceased member of that force, within the Republic exercise all such powers as are conferred on such court or authority by the law of that country. 50

(b) No cruel, inhuman or degrading punishment may be meted out or administered in terms of paragraph (a). 55

- (2) The laws which are applicable in connection with the powers, immunities and privileges of, and proceedings before, a military court of the Republic are, in so far as they can be applied, applicable also with reference to a military court of a country exercising jurisdiction by virtue of this Act.
- (3) For purposes of any legal proceedings in the Republic, where any sentence has been passed by a military court of a visiting force upon any of its members— 5
- (a) that court must be regarded as having been properly constituted;
 - (b) any proceedings before such court must be regarded as having been regularly conducted;
 - (c) the sentence must be regarded as being within the jurisdiction of the court and in accordance with the law of the applicable country;
 - (d) the sentence must, if executed according to the tenor of the law of that country, be regarded as having been lawfully executed; and
 - (e) any member detained in pursuance of any such sentence or pending the determination of the charge brought against him or her, must be regarded as being in legal custody. 10
- (4) For purposes of any legal proceedings in the Republic, a certificate under the hand of the officer in command of a visiting force to the effect that—
- (a) a member of that force is being detained for the cause set out in the certificate, constitutes evidence of the cause of his or her detention, but not of his or her being such a member; and 20
 - (b) the persons specified in the certificate sat as a military court of the country to which that force belongs, constitutes evidence of that fact.
- (5) No proceedings in respect of pay, terms of service or discharge of a member of a visiting force may be entertained by any court of the Republic. 25
- (6) For purposes of enabling the military courts and military authorities of a visiting force to exercise the powers conferred upon them by this section more effectively, the Minister may, if so requested by the officer in command of the visiting force or the applicable government, by general or special orders to the Defence Force direct the arrest of any member of the visiting force alleged to be guilty of an offence against the law of that country and the handing over of the person so arrested to the appropriate authorities of the visiting force. 30

Application of laws in relation to visiting forces

- 93.** Any law applies with the necessary changes to a visiting force if it—
- (a) provides for the exemption from registration, licensing or any other authorisation of any vessel, vehicle, aircraft, machine or apparatus under the control of the Defence Force; 35
 - (b) confers a privilege or immunity on any person by virtue of a connection with the Defence Force;
 - (c) exempts any property or business from the operation of any law or from any tax, rate, licence, imposition, toll or charge, by virtue of such a connection; 40
 - (d) imposes upon any person obligations in relation to the Defence Force; or
 - (e) penalises any act or omission by any person in relation to the Defence Force.

Deserters from visiting forces

- 94.** (1) The Code, in relation to a visiting force, applies to— 45
- (a) any deserter or absentee without leave; and
 - (b) any member of a reserve or auxiliary force who, having failed to obey a notice calling upon that member to appear at any place for service, is by the law of that country liable to the same punishment as a deserter, or an absentee without leave. 50
- (2) (a) No member of a visiting force may be apprehended or dealt with under this section except in compliance with a request from—
- (i) the applicable government, if such member is alleged to be a deserter; or
 - (ii) the officer in command of that force, if such member is alleged to be an absentee without leave. 55
- (b) A member contemplated in paragraph (a) must be handed over to the authorities of that country at such a place in the Republic as may be agreed upon with the particular government or officer, as the case may be.

- (3) For purposes of any proceedings under this section a document purporting to be a certificate under the hand of—
- (a) the Minister of Foreign Affairs or the Minister to the effect that a request has been made under subsection (2)(a)(i), is admissible as evidence of the making of such a request; 5
 - (b) the officer in command of the visiting force to the effect that a named and described person was at the date of the certificate an absentee without leave from that force, is admissible as evidence of the facts so certified.

Inquests and removal of bodies of deceased members of visiting forces

95. (1) Unless the Minister directs otherwise, no inquest may be held as to the cause of death of any deceased person who at the time of his or her death was a member of a visiting force or of a civilian component of such a force. 10

(2) Whenever a magistrate holding an inquest is satisfied that a person who is subject to the jurisdiction of the military courts of a visiting force is being detained for the purposes of being charged, or has been charged before a court of that country, with an offence arising out of the death which is the subject of the inquest, he or she shall, unless the Minister directs otherwise, adjourn the inquest and furnish the Director-General: Home Affairs with such particulars necessary for the registration of the death as he or she may have ascertained at the inquest up to the time of its adjournment. 15

(3) (a) No inquest which has been adjourned in terms of subsection (2), may be resumed unless the Minister so directs. 20

(b) Where an inquest has resumed on the Minister's directions, the magistrate having jurisdiction must commence the proceedings afresh but may not furnish the Director-General: Home Affairs with any particulars or further particulars for the registration of the death. 25

(4) Section 20(3) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), does not apply in respect of any case where the body of a deceased person who at the time of his or her death was a member of a visiting force or of a civilian component of such a force, is to be buried or cremated at any place outside the Republic except as regards the burial or cremation of the body of a deceased person in relation to whose death an inquest has been held or resumed in pursuance of instructions given by the Minister under subsection (1) or (3). 30

CHAPTER 16

BOARDS OF INQUIRY

Convening boards of inquiry 35

96. (1) The Minister, the Secretary for Defence or the Chief of the Defence Force may, at any time or place, convene a board of inquiry to inquire into any matter concerning the Department, any employee thereof or any member of the Defence Force or any auxiliary service, any public property or the property or affairs of any institution or any regimental or sports funds of the said Force, and to report thereon or to make a recommendation. 40

(2) The Secretary for Defence or the Chief of the Defence Force may delegate his or her power to convene a board of inquiry to any—

- (a) head of a division; or
- (b) officer commanding a command or group or formation.

(3) A board of inquiry must be convened by means of a written convening order and must consist of as many persons who are in the employ of the Department of Defence as the person convening the board may determine, but where a board is convened by a military officer it must consist of at least one officer and as many warrant officers, non-commissioned officers or civilians who are in the employ of the Department of Defence as the officer convening the board may determine. 50

(4) Any reference to the president of a board of inquiry must, when a board consists of one person, be construed as a reference to such person.

(5) The convening order must—

- (a) designate a person serving on the board as president;
- (b) set forth the number, rank and full names of every member and any secretary to the board; 55

- (c) set forth clearly and specifically the terms of reference of the board of inquiry;
and
 - (d) indicate when the board is required to report on the findings and recommendations with regard to the matter referred to it for investigation.
- (6) Where any matter to be investigated by a board of inquiry is of a secret or confidential nature, the convening order may state that fact and that the terms of reference will be communicated to the president personally in writing. 5
- (7) The person convening a board of inquiry may appoint a person as secretary to the board and such secretary must perform the duties, including the leading of the evidence heard by the board, that the president of the board may require him or her to perform. 10
- (8) Every board of inquiry must be conducted in private and each president of a board of inquiry must determine—
- (a) the time and place of every meeting of the board;
 - (b) the witnesses to be called by the board; and
 - (c) the order in which witnesses are to be called. 15
- (9) (a) The report of a board of inquiry must be dated and signed by every member of the board and submitted without delay, together with the record of proceedings, to the officer who convened the board.
- (b) Where any member disagrees with the report, or any finding, conclusion or view expressed by any other member or members on any matter, he or she may as part of the report furnish his or her own report or express his or her own finding, conclusion or view in relation to that matter. 20

Attendance of persons at board of inquiry, and witnesses

97. (1) The president of any board of inquiry may summon any person in the Republic to attend such board of inquiry and to give evidence thereat. 25
- (2) The president of any board of inquiry may administer the prescribed oath or affirmation to witnesses, interpreters and stenographers at such inquiry.
- (3) (a) Any person giving evidence before a board of inquiry may be compelled to answer any question or to produce any article if the president of the board of inquiry so orders. 30
- (b) No incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a question in terms of paragraph (a) is admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law, except in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 99(20). 35
- (4) Subject to subsection (5), the evidence of every witness called by a board of inquiry must be given orally and on oath or affirmation and must be recorded by or under the supervision of the president.
- (5) A board of inquiry may admit a sworn statement by a witness as evidence where, with due regard to the exigencies of the service— 40
- (a) by reason of his or her illness, the witness cannot attend;
 - (b) undue expense would be incurred by the attendance of the witness; or
 - (c) the evidence of the witness is of a purely formal nature.
- (6) Where the evidence is of such a nature that it is likely that the findings or recommendations would seriously affect the professional reputation of a person who is subject to the Code or a person who is in the employ of the Department, or that any disciplinary or other legal steps might be taken against such a person— 45
- (a) the witness concerned must, despite subsection (5), be called to give evidence orally if the person who is likely to be affected, so requests; 50
 - (b) the person who is likely to be affected may be present at every meeting of the board where such evidence is led, to cross-examine any witness giving such evidence, to give evidence himself or herself, even if otherwise called as a witness by the board, and to call witnesses.
- (7) The president of the board must timeously notify a person contemplated in subsection (6) of the time and place of every such meeting and advise that person of the rights conferred upon him or her by that subsection. 55
- (8) Any person contemplated in subsection (6) may at any stage of the proceedings determined by the board, address the board on the evidence referred to in that subsection and may— 60

- (a) in the exercise of his or her rights under that subsection be represented by a legal representative of his or her own choice at his or her own expense; or
 - (b) the complexities of the case warrant it and the person so requests, be assigned military defence counsel at State expense.
- (9) Before the record of proceedings is submitted to the person who convened the board, the relevant findings and recommendations of a board of inquiry must be communicated to each person who is adversely affected by such findings and recommendations and that person has the right to make written representations to the person who convened the board of inquiry within 14 days of receipt of the relevant findings and recommendations.
- (10) Subsections (6) and (7) do not apply in relation to any board of inquiry convened under section 98.

Board of inquiry in relation to absence without leave

- 98.** (1) When any member of the Defence Force has been absent without leave for more than 30 days and is still absent, a board of inquiry must be convened by the commanding officer of the absent member to inquire into such absence.
- (2) If a routine inspection reveals any deficiency in the kit, arms and equipment or any public property issued to the person contemplated in subsection (1), the board of inquiry may also inquire into such deficiency.
- (3) If the board of inquiry finds that such member has been so absent for more than 30 days and is still so absent, it must record such finding, including the date of the commencement of the absence without leave, and also its finding on any deficiencies of the kit, arms and equipment and any public property issued to him or her and the estimated value thereof.

CHAPTER 17

OFFENCES AND PENALTIES

Offences and penalties

- 99.** (1) Any employer who unfairly discriminates against any of his or her employees on the grounds that the employee wishes to be or is a voluntary member of the Reserve Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.
- (2) Any person who marks, defaces or conceals any mark on any equipment, article or animal where such mark denotes the ownership of the Republic or of any visiting force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.
- (3) Any person who, without the necessary authority, disposes of any article or animal in the possession of the Department, or who through negligence, loses any such article or animal, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 15 years.
- (4) Any person who obstructs, damages, removes, destroys or commits any other act on or against any property used for protecting or safeguarding the Republic, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.
- (5) Any person who, without authority, possesses, or wears prescribed uniforms, distinctive marks or crests, or performs any prohibited act while wearing such uniform, or with such uniform, distinctive marks or crests, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.
- (6) Any person who, without authority, uses or is responsible for the use of any name, title or any other symbol of the Department, where such use is calculated or likely to lead people to infer that it has been authorised under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.
- (7) Any person who, without authority, discloses or publishes any information, or is responsible for such disclosure or publication, whether by print, the electronic media, verbally or by gesture, where such information has been classified in terms of this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(8) Any person who, without authority, gains access to the computer systems or computer data bases of the Department, or who, without authority, changes, alters, corrupts, copies or withdraws data from any such systems or data bases, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 10 years. 5

(9) Any person who falsely represents himself or herself to be a member of the Defence Force or Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(10) Any person who obstructs or interferes with the Defence Force in the execution of its duties, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years. 10

(11) Any person who induces or attempts to induce any member of the Defence Force to neglect, or to act in conflict with, his or her duty to the Defence Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 15

(12) Any person who is liable to render service in the Defence Force by virtue of a military service contract with the Defence Force, and refuses to render such service, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

(13) Any person who recruits or attempts to recruit any member of the Regular Force for membership of any trade union other than a military trade union which is duly authorised to act as such, or incites or attempts to incite a member of the Defence Force to participate in strikes, demonstrations or protests, unless otherwise authorised in terms of regulations under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 20

(14) Any member of the Defence Force or of any auxiliary service who participates in any strike or secondary strike action, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 25

(15) Any member or employee of the Department who, in a wilful or negligent manner, contravenes or fails to comply with any regulation made under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year. 30

(16) Any person who, without authority, discloses the identity of a covert source of the Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years. 35

(17) Any person who undermines or stifles, or seeks to undermine or stifle, any procedure for the redress of grievances, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(18) Any member of the Defence Force who neglects to inform a prescribed officer of his or her address and such other change of particulars as may be prescribed, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months. 40

(19) (a) A person is guilty of an offence if he or she, without proper authority—

(i) enters, overflies, or otherwise collects or gains access to classified information from specific classified facilities, installations or instruments of the Department; 45

(ii) is in possession of, makes copies of, sketches, photographs, makes print-outs of, electronically or in any other manner records or obtains digital data from classified facilities, installations or instruments of the Department; or

(iii) hands over or discloses to any person or loses or obtains from any member or employee of the Department, copies, sketches, photographs, print-outs, electronic or non-electronic recordings of the digital data referred to in subparagraph (ii). 50

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or imprisonment for a period not exceeding 25 years. 55

(20) (a) A person is guilty of an offence if he or she—

(i) having been duly summoned or warned to attend as a witness before a board of inquiry, fails to attend or to remain in attendance until authorised to leave;

(ii) being present at a board of inquiry after having been duly summoned or warned to attend as a witness, fails or refuses to be sworn or to affirm; or 60

(iii) uses threatening or insulting language at a board of inquiry or wilfully causes a disturbance or interruption thereof or wilfully commits any other act likely to bring the board of inquiry into contempt, ridicule or disrepute.

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or imprisonment for a period not exceeding three months.

(21) Any person who at any board of inquiry wilfully gives false evidence, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year. 5

(22) (a) A person is guilty of an offence if he or she contravenes or fails to comply with any provision of this Act which is not elsewhere declared to be an offence.

(b) Any person convicted of an offence contemplated in paragraph (a) or an offence in terms of this Act for which no penalty has been laid down, is liable to a fine or imprisonment for a period not exceeding one year. 10

Offensive behaviour

100. (1) Any member of the Defence Force or employee of the Department whose verbal or physical conduct denigrates, humiliates or shows hostility or aversion to any other person on the grounds of that person's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth, is guilty of an offence and liable on conviction to imprisonment not exceeding five years. 15

(2) Where a member or employee of the Department is convicted of any offence and the commission of the offence is accompanied by any offensive behaviour contemplated in subsection (1), such behaviour must be regarded as being an aggravating factor in passing sentence on the accused. 20

CHAPTER 18

GENERAL

Repeal of laws, and savings

101. (1) Subject to subsections (2), (3) and (4), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule. 25

(2) Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by subsection (1), must be regarded as having been issued, made or done under the corresponding provisions of this Act, and must in so far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law be construed as if it related to the corresponding force, reserve, service or training established or provided for under this Act. 30

(3) Any person who at the commencement of this Act is a member of any force, reserve or service established under any such repealed law, must be regarded as having been duly enrolled as a member of the corresponding force, reserve or service established under this Act and as having been assigned to the unit, corps or duties in which he or she is serving at such commencement, and any training undergone or service performed by any such person in any such force, reserve or service prior to such commencement, must be regarded as having been undergone or performed in the corresponding force, reserve or service established under this Act. 40

(4) For purposes of this section, any force, reserve or service established or training or service provided for under any such repealed law, is deemed to correspond to the force, reserve or service established or training or service provided for under this Act, to which in name, designation or description it most closely corresponds. 45

(5) A reference in any law to a provision of the Defence Act, 1957 (Act No. 44 of 1957), must be construed as a reference to the corresponding provision of this Act.

Short title and commencement

102. This Act is called the Defence Act, 2001, and takes effect on a date to be determined by the President by proclamation in the *Gazette*. 50

SCHEDULE

Laws repealed

(Section 101)

No. and year of Act	Short title	Extent of repeal	
No. 44 of 1957	Defence Act, 1957	The whole, save for sections 104, 105, 106, 108, 109, 111 and 112 and the First Schedule	5
No. 12 of 1961	Defence Amendment Act, 1961	The whole	10
No. 42 of 1961	Defence Further Amendment Act, 1961	The whole	
No. 83 of 1962	Defence Amendment Act, 1962	The whole	15
No. 77 of 1963	Defence Amendment Act, 1963	The whole	
No. 81 of 1964	Defence Amendment Act, 1964	The whole	
No. 85 of 1967	Defence Amendment Act, 1967	The whole	20
No. 3 of 1969	Defence Amendment Act, 1969	The whole	
No. 28 of 1970	Defence Amendment Act, 1970	The whole	25
No. 80 of 1971	General Law Amendment Act, 1971	Section 20	
No. 66 of 1972	Defence Amendment Act, 1972	The whole	
No. 26 of 1973	Defence Amendment Act, 1973	Sections 1 and 2	30
No. 8 of 1974	Defence Amendment Act, 1974	The whole	
No. 83 of 1974	Defence Further Amendment Act, 1974	The whole	35
No. 94 of 1974	Second General Law Amendment Act, 1974	Section 34	
No. 57 of 1975	General Law Amendment Act, 1975	Sections 23 to 26	
No. 1 of 1976	Defence Amendment Act, 1976	Sections 1 to 9	40
No. 35 of 1977	Defence Amendment Act, 1977	The whole	
No. 68 of 1977	Second Defence Amendment Act, 1977	The whole	45
No. 34 of 1978 (Transkei)	Defence Act, 1978	The whole	
No. 49 of 1978	Defence Amendment Act, 1978	The whole	
No. 42 of 1979	Defence Amendment Act, 1979	The whole	50
No. 77 of 1980	Defence Amendment Act, 1980	The whole	
No. 15 of 1982 (Venda)	Defence Act, 1982	The whole	
No. 103 of 1982	Defence Amendment Act, 1982	The whole	55
No. 7 of 1983 (Venda)	Defence Amendment Act, 1983	The whole	

No. 34 of 1983	Defence Amendment Act, 1983	The whole	
No. 87 of 1984	Defence Amendment Act, 1984	The whole	
No. 6 of 1985 (Venda)	Defence Amendment Act, 1985	The whole	5
No. 17 of 1986 (Ciskei)	Defence Act, 1986	The whole	
No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Sections 27 and 28	10
No. 45 of 1987	Defence Amendment Act, 1987	The whole	
No. 13 of 1991 (Bophuthatswana)	National Defence Act, 1991	The whole	
No. 51 of 1991	Transfer of Powers and Duties of the State President Act, 1991	Sections 3 and 4	15
No. 58 of 1992 (Bophuthatswana)	National Defence Amendment Act, 1992	The whole	20
No. 132 of 1992	Defence Amendment Act, 1992	The whole	
No. 32 of 1993	Defence Amendment Act, 1993	The whole	
No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 12	25
No. 134 of 1993	Defence Second Amendment Act, 1993	The whole	
No. 72 of 1995	Defence Amendment Act, 1995	The whole	30
No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Sections 15 to 19	
No. 4 of 1997	Defence Amendment Act, 1997	The whole	35
No. 105 of 1997	Criminal Law Amendment Act, 1997	Sections 2 to 24	

MEMORANDUM ON THE OBJECTS OF THE DEFENCE BILL, 2001

1. In terms of section 199(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) (“the Constitution”), the security services of the Republic consist of a single defence force, single police force and any intelligence services established in terms of the Constitution. Security services are dealt with in Chapter 11 of the Constitution and sections 200 to 204 specifically deal with defence. In terms of item 24(1) of Schedule 6 to the Constitution the provisions of sections 82, 224 to 228 and 236(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (“the previous Constitution”), continue in force as if the previous Constitution had not been repealed, subject to the amendments of those sections as set out in Annexure D to the said Schedule 6, any further amendment or any repeal of those sections by an Act of Parliament passed in terms of section 75 of the Constitution and consistency with the Constitution. Section 224 of the previous Constitution establishes the National Defence Force as the only defence force for the Republic and regulates the composition of the Force at its establishment. Section 236(8) of the previous Constitution provides that the National Defence Force referred to in 224 is governed by the Defence Act, 1957 (Act No. 44 of 1957), subject to the Constitution and any Act of Parliament.

2. One of the governing principles of security services as set out in section 198(b) of the Constitution is that “(T)he resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally and internationally, except as provided for in terms of the Constitution or national legislation”. In terms of section 199(4) of the Constitution the security forces must be structured and regulated by national legislation and in terms of section 204 of the Constitution a civilian secretariat for defence must be established by national legislation.

3. The object of the Bill is to repeal the Defence Act, 1957 (except for the provisions in respect of military discipline, which will be dealt with in separate legislation), and to provide for the defence of the Republic in a way which will take into account and give effect to all the values enshrined in the Constitution in respect of security services. It is proposed that the Department of Defence should consist of the Defence Secretariat and the South African National Defence Force and auxiliary services. The Defence Force is to consist of the Regular and Reserve Forces. It is also proposed that the Secretary for Defence should head the Department and act as the accounting officer as required by finance legislation.

4. The Bill gives effect to the prescripts contained in the White Paper on Defence that membership of the Force must be voluntary. However, the Bill stipulates that persons contracted for services will be obliged to remain in service during a time of war, a state of national defence or a state of emergency. During such time or states persons may be mobilised for compulsory military service by proclamation issued by the President. Adequate provision is made for exemption from or deferment of such compulsory military service.

5. The following are some of the other issues that the Bill seeks to regulate or make provision for:

- (a) Employment and use the Defence Force;
- (b) law-enforcement powers of the Defence Force at sea;
- (c) military police and defence intelligence;
- (d) Council of Defence and other councils; and
- (e) co-operation with other forces and forces visiting the Republic.

6. CONSULTATION

Prior to the Bill being presented to Cabinet for approval, it was distributed to all departments of State for comment. In particular, discussions were held with representatives of the Department of Safety and Security and the Intelligence Services.

7. FINANCIAL IMPLICATIONS FOR STATE

There are no significant financial implications for the State arising from the Bill that cannot be accommodated under the current budget of the Department of Defence.

8. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Defence 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.