
GOVERNMENT NOTICE

DEPARTMENT OF DEFENCE AND MILITARY VETERAN

No. R. 572

30 June 2010

DEFENCE ACT, 2002

INDIVIDUAL GRIEVANCES REGULATIONS

I, Lindiwe Nonceba Sisulu, the Minister of Defence and Military Veterans, under section 82(1)(zD), read with section 61(2), of the Defence Act, 2002 (Act No. 42 of 2002), hereby make the regulations in the Schedule.

L.N. Sisulu

Minister of Defence and Military Veterans

SCHEDULE

Definitions

1. In these Regulations, any word or expression to which a meaning has been assigned in the Act has the meaning so assigned and, unless the context otherwise indicates—

“Formation” means the intermediate level of command between a Service or Divisional Chief and his or her Unit or Ships, which may include Formations, Air Command, Fleet Command or any similar structure;

“Formation Officer Commanding” means the person in command of a Formation who has been designated under regulation 4;

“grievance” includes, but is not limited to, a written expression of dissatisfaction by a member or employee regarding any act or omission of a person to whom the Act applies relating to his or her promotion, placement, course nomination, assessment or service benefits, excluding dissatisfaction relating to—

matters pending before, or a decision of, a military court or disciplinary hearing, a civilian court or an institution with quasi judicial powers;

professional conduct of registered medical practitioners as rendered by the South African Military Health Service to members, employees or their dependants;

matters falling under the jurisdiction of the state institutions contemplated in Chapter 9 of the Constitution of the Republic of South Africa, 1996; and

matters that have been dealt with as grievances in terms of these Regulations;

“Grievance Board” means the Grievance Board established in terms of regulation 16(1);

“Grievance Committee” means a Grievance Committee established in terms of regulation 14(1);

“secretariat” means the secretariat of the Grievance Board;

“the Act” means the Defence Act, 2002 (Act No. 42 of 2002);

“Unit Officer Commanding” means an officer who has been appointed to command any unit or ship in the Defence Force and includes a Director in a Service or Division.

Purpose and application

2. (1) The purpose of these Regulations is to give effect to section 61(2) of the Act as far as it applies to individual grievances.

(2) These Regulations apply to all members and employees who lodge individual grievances after the commencement of these Regulations, subject to regulation 19.

Chain of command

3. A member or employee must address an individual grievance through his or her chain of command, which may include the following:

- (a) The Unit Officer Commanding;
- (b) the Formation Officer Commanding;
- (c) the Chief of the relevant Service or Division; and
- (d) the Grievance Board.

Designation of Formation Officer Commanding

4. The Chief of a Service or Division may designate an officer commanding of a Formation to deal with an individual grievance lodged by a member or employee who serves or is employed under his or her command.

Time frames

5. For the purposes of the expeditious processing of grievances—

- (a) a Unit Officer Commanding must finalise a grievance and inform the aggrieved person of the decision and the reasons for the decision within 30 working days after it was received, or within the extended period consented to by the secretariat, after consultation with the aggrieved person;
- (b) a Formation Officer Commanding must finalise a grievance and inform the aggrieved person of the decision and the reasons for the decision within 15 working days after it was received, or within the extended period consented to by the secretariat, after consultation with the aggrieved person;
- (c) a Chief of a Service or Division must cause a grievance to be finalised and ensure that the aggrieved person is informed of the decision and the reasons for the decision within 30 working days, or 15 working days if a Formation Officer Commanding had been approached first, or within the extended period consented to by the secretariat, after consultation with the aggrieved person; and
- (d) the Grievance Board must take a decision with regard to a grievance and inform the aggrieved person of the decision and the reasons for the decision within 30 working days after it was received, or the extended time contemplated in regulation 16(5)(b).

Lodging of grievance

6. (1) An aggrieved member or employee must lodge a grievance with his or her Unit Officer Commanding within 90 working days after the occurrence of the act or omission concerned.

(2) If a grievance is against the relevant Unit Officer Commanding, Formation Officer Commanding or Chief of a Service or Division, it must be lodged with the next higher authority in the chain of command contemplated in regulation 3.

(3) If a grievance cannot be lodged within 90 working days, the member or employee must first apply in writing to the Grievance Board for condonation provided for in regulation 16(5)(a), and attach a copy of the condonation to the grievance when it is lodged.

(4) The secretariat may, upon request of a person in the chain of command in possession of a grievance, redirect the grievance to an authority that has the power to resolve it.

Contents of grievance

7. (1) A member or employee must in his or her grievance—

- (a) describe the act or omission that he or she is aggrieved about, and give all the relevant facts known to him or her, including the date on which it occurred;
- (b) include copies of all relevant documents in his or her possession, and particulars of other relevant documents;
- (c) include sworn statements of any witnesses with knowledge of the act or omission concerned;
- (d) state the redress sought; and
- (e) provide his or her force or salary number, rank, name, unit, contact details and signature.

(2) A grievance may deal with one subject only, and may not contain language or comments that are insubordinate, disrespectful or unlawful, unless used as direct quotations to reflect the circumstances of the grievance.

Rights of member or employee

8. A member or employee may not be victimised or prejudiced, directly or indirectly, as a result of the lodging of his or her grievance.

Unit Officer Commanding

9. (1) A Unit Officer Commanding must consider a grievance after receipt, and if it—

- (a) does not comply with the requirements of a grievance; or
- (b) was not lodged within 90 working days after the act or omission concerned and no condonation has been obtained,

in writing inform the member or employee concerned that the grievance cannot be accepted.

(2) Subject to subregulation (1), the Unit Officer Commanding must—

- (a) accept, and in writing acknowledge receipt of, each grievance lodged;
- (b) investigate each grievance in order to make a decision within the 30 working days contemplated in regulation 5(a);
- (c) obtain the written consent of the secretariat if an extension of time is required;
- (d) notify the member or employee in writing, before the expiry of the 30 working days or the extended time, of the decision taken and the reasons for the decision; and
- (e) record in a register each grievance received and the decision taken on it.

Referral to Formation Officer Commanding

10. (1) A member or employee may, within five working days of receipt of the notification contemplated in regulation 9(1) or (2)(d), in writing refer the grievance to the relevant Formation Officer Commanding if—

- (a) he or she is not satisfied with the decision of the Unit Officer Commanding;
- (b) the decision was that the grievance falls outside the powers of the Unit Officer Commanding; or
- (c) a decision could not be taken in time, and the secretariat refused consent for an extension of time, as contemplated in regulation 9(2)(c).

(2) A member or employee must within 24 hours inform the Unit Officer Commanding in writing of a referral under subregulation (1).

Formation Officer Commanding

11. (1) A Formation Officer Commanding must consider a grievance against a Unit Officer Commanding after receipt, and if it—

- (a) does not comply with the requirements of a grievance; or
- (b) if it was not lodged within 90 working days after the occurrence of the act or omission concerned and no condonation has been obtained,

in writing inform the member or employee concerned that the grievance cannot be accepted.

(2) If a grievance is not referred to a Formation Officer Commanding in accordance with the procedure contemplated in regulation 10(1) he or she must in writing inform the member or employee concerned that the grievance cannot be accepted.

(3) Subject to subregulations (1) and (2), the Formation Officer Commanding must—

- (a) accept, and in writing acknowledge receipt of, each grievance received;
- (b) investigate each grievance in order to take a decision within the 15 working days contemplated in regulation 5(b);
- (c) obtain the written consent of the secretariat if an extension of time is required;
- (d) notify the member or employee in writing, before the expiry of the 15 working days or the extended time, of the decision taken and the reasons for the decision; and
- (e) record in a register each grievance received and the decision taken on it.

Referral to Service or Division

12. (1) A member or employee may, within five working days of receipt or a notification contemplated in regulation 9(1) or (2) or 11(1), (2) or 3(d), in writing refer the grievance to the relevant Service or Division if—

- (a) he or she is not satisfied with the decision of the Unit or Formation Officer Commanding;
- (b) the decision was that the grievance falls outside the powers of the Unit or Formation Officer Commanding; or
- (c) a decision could not be taken in time and the secretariat refused consent for an extension of time as contemplated in regulation 9(2)(c) or 11(3)(c).

(2) The member or employee must within 24 hours inform the Unit or Formation Officer Commanding in writing of a referral under subregulation (1).

Designated grievance office

13. (1) The Chief of a Service or Division must designate a grievance office at his or her Service or Division to deal with the administration of all grievances received.

(2) The officer in charge of the designated grievance office must consider a grievance against a Unit or Formation Officer Commanding after receipt, and if it—

- (a) does not comply with the requirements of a grievance; or
- (b) was not lodged within 90 working days after the act or omission concerned and no condonation has been obtained,

in writing inform the member or employee concerned that the grievance cannot be accepted.

(3) If a grievance is not referred to a Service or Division in accordance with the procedure contemplated in regulation 12(1), the officer in charge of the designated grievance office must in writing inform the member or employee concerned that the grievance cannot be accepted.

(4) Subject to subregulations (2) and (3) the officer in charge of the designated grievance office—

- (a) must accept, and in writing acknowledge receipt of, each grievance received;
- (b) may investigate and must present each grievance to the Grievance Committee;
- (c) must obtain the written consent of the secretariat if an extension of time is required;
- (d) must notify the member or employee in writing, before the expiry of the relevant time or the extended time, of the decision of the Grievance Committee and the reasons for the decision; and
- (e) must record in a register each grievance received and the decision taken on it.

Grievance Committees

14. (1) The Chief of a Service or Division must establish a Grievance Committee to deal with all grievances received by him or her.

(2) A Grievance Committee may—

- (a) deal with grievances on behalf of the Chief of the Service or Division;
- (b) co-opt any person to attend its proceedings and provide information or assistance; and
- (c) request any person to appear before it.

(3) A Grievance Committee must—

- (a) convene and conduct its meetings in accordance with its constitution;
- (b) consider each grievance; and
- (c) take a decision and provide the reasons for the decision to the officer in charge of the designated grievance office within the relevant time or the extended time contemplated in regulation 13(4)(c).

Referral to Grievance Board

15. (1) A member or employee may, within five working days of receipt of the notification contemplated in regulation 13(2), (3) or 4(d), refer a grievance to the Grievance Board if—

- (a) he or she is not satisfied with the decision of the Grievance Committee;
- (b) the decision was that the grievance falls outside the powers of the Grievance Committee; or
- (c) a decision could not be taken in time and the secretariat refused consent for an extension of time as contemplated in regulation 13(4)(c).

(2) A member or employee must provide a copy of his or her referral under subregulation (1) to the designated grievance office concerned.

Grievance Board

16. (1) The Chief of Human Resources of the Department must establish a Grievance Board to deal with all grievances received.

(2) The Grievance Board must consider a grievance against the Chief of a Service or Division after receipt, and if it—

- (a) does not comply with the requirements of a grievance; or
- (b) was not lodged within 90 working days after the act or omission concerned and no condonation has been obtained,

in writing inform the member or employee concerned that the grievance cannot be accepted.

(3) If a grievance is not referred to the Grievance Board in accordance with the procedure contemplated in regulation 15(1) the secretariat must in writing inform the member or employee concerned that the grievance cannot be accepted.

(4) The Grievance Board may—

- (a) through its chairperson—
 - (i) notify or summons any person to appear before it to testify or produce any document or object; and
 - (ii) administer the oath to, or get a solemn affirmation from, any person appearing before it; and
- (b) obtain any written or oral statements, evidence or arguments on any matter before it.

- (5) The Grievance Board must—
- (a) within 30 working days of receipt of an application for condonation in terms of regulation 6(3), take a decision and in writing inform the applicant of the decision;
 - (b) if the grievance cannot be finalised within the 30 working days contemplated in regulation 5(d), in writing—
 - (i) inform the member or employee that the grievance cannot be finalised;
 - (ii) furnish reasons for the delay; and
 - (iii) inform the member or employee of the extended time needed to finalise the grievance;
 - (c) subject to subregulations (2) and (3), take a decision on a grievance within 30 working days or the extended time, and notify the member or employee in writing of its decision and the reasons for the decision;
 - (d) issue the necessary instructions to the authorities concerned for the implementation of its decisions; and
 - (e) report annually to the Minister on its activities.

Exhaustion of internal remedies

17. A member or employee may only take further action to address a grievance once he or she has exhausted all his or her internal remedies in the Department.

Transitional provisions

18. Any grievance lodged not more than 12 months before the commencement of these Regulations, and which has not been finalised at such commencement, must be finalised in accordance with these Regulations.

Short title and commencement

19. These Regulations are called the Individual Grievances Regulations, 2010, and come into operation on 1 July 2010.