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THE PRESIDENCY

No. 1347

19 June 1991

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

No. 87 of 1991: Police Second Amendment Act, 1991.



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GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- _____ Words underlined with a solid line indicate insertions in existing enactments.

ACT

To amend the Police Act, 1958, so as to define or further define certain expressions and to delete a definition; to rectify or delete certain outdated references; to regulate differently the prosecution of a member of the South African Police who is accused of misconduct; and to extend the powers of the Minister of Law and Order to make regulations; and to provide for incidental matters.

(English text signed by the State President.)
(Assented to 5 June 1991.)

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

Amendment of section 1 of Act 7 of 1958, as amended by section 1 of Act 53 of 1961, section 1 of Act 64 of 1964, section 1 of Act 74 of 1967, section 1 of Act 94 of 1972, section 1 of Act 34 of 1973, section 1 of Act 64 of 1979, section 1 of Act 68 of 1984, section 1 of Act 36 of 1989, section 1 of Act 75 of 1989, section 1 of Act 76 of 1989, section 1 of Act 110 of 1990 and section 1 of the Police Amendment Act, 1991 5

1. Section 1 of the Police Act, 1958 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion in subsection (1) before the definition of "division" of the following definitions:
 - "defence officer" means an officer designated as such to defend a member in respect of his trial on a charge of misconduct;
 - "disciplinary officer" means an officer appointed as such in terms of section 10C(1);" 15
- (b) by the substitution in subsection (1) for paragraph (b) of the definition of "member of the Force" of the following paragraph:
 - "(b) for the purpose of sections 4(3), 9, 10, 10A, 10B, 10C, 10D, 10E, 10F, 11, 12, 14, 15, 16, 17, 17B, 18, 20, 21, 22, 25, 26, 26A, 27, 27B, 28, 31, 32bis, 33 (excluding paragraphs (eA) and (v) of subsection (1), and subsection (2) thereof), 34D, 34E and 35, a member of a municipal police unit;" 20
- (c) by the insertion in subsection (1) before the definition of "region" of the following definition:
 - "prosecuting officer" means an officer designated as such in terms of section 10A(1);" and 25
- (d) by the insertion in subsection (1) after the definition of "Treasury" of the following definition:
 - "trial officer" means an officer or a senior member designated as such in terms of section 10B;" 30

Amendment of section 6A of Act 7 of 1958, as inserted by section 4 of Act 36 of 1989**2. Section 6A of the principal Act is hereby amended—****(a) by the substitution for subsection (1) of the following subsection:**

“(1) The services of a member of the Force may, in terms of the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), be placed at the disposal of any other department of State, or any authority established by or under any law, or of the police force of **[the territory of South West Africa or]** any state the territory of which previously formed part of the Republic or any self-governing territory as defined in section 38 of the **[National States] Self-governing Territories** Constitution Act, 1971 (Act No. 21 of 1971).”; and

(b) by the substitution for subsection (3) of the following subsection:

“(3) Notwithstanding the provisions of the Public Service Act, 1984, the services of a member of the Force may be placed at the disposal of any other department of State or any authority established by or under any law, or of the police force of **[the territory of South West Africa or]** any state the territory of which previously formed part of the Republic or any self-governing territory as defined in section 38 of the **[National States] Self-governing Territories** Constitution Act, (Act No. 21 of 1971), or a foreign state.”.

Substitution of section 9 of Act 7 of 1958, as amended by section 1 of Act 43 of 1958, section 4 of Act 53 of 1961, section 7 of Act 64 of 1964, section 3 of Act 94 of 1972, section 4 of Act 34 of 1973, section 1 of Act 90 of 1977, section 4 of Act 64 of 1979, section 3 of Act 68 of 1984, section 2 of Act 8 of 1988 and section 4 of Act 110 of 1990

3. The following section is hereby substituted for section 9 of the principal Act:**“Contravention of Act by members of the Force**

9. (1) Any member of the Force who contravenes any provision of this Act or fails to comply with an order issued in terms of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment, imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.

(2) No prosecution for an offence referred to in subsection (1) of this section shall be instituted without the written authority of the attorney-general.”.

Substitution of section 10 of Act 7 of 1958, as substituted by section 5 of Act 110 of 1990

4. The following section is hereby substituted for section 10 of the principal Act:**“Misconduct**

10. Any member of the Force shall be guilty of misconduct if he—

(a) contravenes any provision of this Act or fails to comply with an order issued in terms of this Act; or

(b) commits any offence which is not included in paragraph (a).”.

Substitution of section 10A of Act 7 of 1958, as inserted by section 5 of Act 68 of 1984

5. The following section is hereby substituted for section 10A of the principal Act:

“Prosecuting officer

10A. (1) The Commissioner shall designate a prosecuting officer, who—

(a) shall have the power to charge any member of the Force in accordance with this Act with misconduct; and

(b) may perform all functions relating to the exercise of such power.

(2) The prosecuting officer shall exercise his power and perform his functions subject to the control and directions of the Commissioner, who may reverse any decision arrived at by a prosecuting officer and may himself in general or in any specific matter exercise any part of such power and perform any of such functions.

(3) The prosecuting officer may in writing designate any member of the Force as prosecutor, who may, as the representative of the prosecuting officer and subject to his control and directions, charge any member of the Force with misconduct and perform all functions relating to the exercise of such power.”

Insertion of sections 10B up to and including 10G in Act 7 of 1958

6. The following sections are hereby inserted in the principal Act after section 10A:

“Trial officers

10B. (1) Subject to the provisions of subsection (2), the Commissioner shall designate in general or in any specific matter a trial officer, who—

(a) shall have the power to try in accordance with this Act any member of the Force of a rank equal or lower than himself; and

(b) may perform all functions relating to the exercise of such power.

(2) The Commissioner shall designate in general or in any specific matter for a municipal police unit—

(a) an officer as trial officer, who shall have the power to try in accordance with this Act any member of a municipal police unit of a corresponding or lower rank than himself;

(b) a senior member as trial officer, who shall have the power to try in accordance with this Act any member of a municipal police unit of a rank equal or lower than himself,

and may perform all functions relating to the exercise of such power.

(3) A trial officer shall have the same powers as those vested in a magistrate in criminal proceedings in terms of sections 77, 78, 79, 159, 160, 168, 169, 170, 176 and 178 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and the said sections shall apply *mutatis mutandis* to a trial in accordance with this Act: Provided that a trial officer shall not have the power to direct that a member of the Force charged with misconduct be detained in a mental hospital or a prison pending the signification of the decision of the State President.”

Disciplinary officer

10C. (1) The Minister shall appoint an officer holding a degree in law as the disciplinary officer, who—

(a) shall have the power to decide any appeal referred to in sections 10F and 17(3), by a member of the Force, and any other appeal or review related to a disciplinary matter in terms of this Act; and

(b) may perform all functions relating to the exercise of such power.

(2) The disciplinary officer may, with the approval of the Minister, in writing delegate the power conferred upon him by subsection (1) to any officer.

(3) The disciplinary officer or his delegate referred to in subsection (2) shall exercise his power and perform his functions subject to the control and directions of the Minister, who may reverse any decision arrived at by the disciplinary officer or his delegate and may himself in general or in any specific matter exercise any part of such power and perform any of such functions.

Admission of guilt fine

10D. (1) When a member of the Force is accused of misconduct the prosecuting officer may, if he believes that a trial officer, on convicting the member concerned of misconduct, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, afford the member concerned by means of a written notice the opportunity to admit his guilt in respect of the misconduct in question and to pay the fine determined by the prosecuting officer in the said notice before the date specified in the said notice, without appearing before the trial officer.

(2) Any member of the Force who wishes to pay an admission of guilt fine in terms of subsection (1)—

- (a) may, in the manner prescribed by regulation, pay the fine before the date determined in the written notice; and
- (b) shall surrender the written notice at the time of the payment of the fine.

Procedure in case of alleged misconduct

10E. (1) When a member of the Force is accused of misconduct and—

- (a) an admission of guilt fine as referred to in section 10D is not determined; or
- (b) such an admission of guilt fine was determined, but not paid by the member concerned before the date specified in the notice, the prosecuting officer may, in the manner prescribed by regulation, charge the member concerned with misconduct.

(2) Where a member of the Force is charged with misconduct which constitutes an offence in respect of which he has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by a prosecuting officer or prosecutor, be admissible in evidence before the trial officer who tries the charge, and a certified copy of the charge and conviction in question shall, on its mere production by the prosecuting officer or prosecutor to the trial officer, be conclusive proof of the commission of such offence by such member.

(3) A member of the Force who is charged in terms of this section, shall forthwith be tried by a trial officer, who shall, after the member concerned or his legal adviser has been afforded an opportunity of addressing the trial officer, find the member concerned guilty or not guilty of the misconduct with which he has been charged.

(4) Subject to the provisions of section 12, the following sentences may be passed upon a member of the Force by a trial officer after a conviction in terms of subsection (3), namely—

- (a) a warning or reprimand; or
- (b) a fine not exceeding the amount determined by the Minister from time to time by notice in the *Gazette* and which may be recovered by way of deductions from the salary or allowances of the member concerned; or

- (c) reduction in salary to a lower notch on the scale applicable to his rank; or
- (d) reduction in rank; or
- (e) dismissal from the Force.

Appeals and reviews

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10F. (1) Any member of the Force who has been convicted and sentenced by a trial officer in terms of section 10E, may, subject to the provisions of the regulations, appeal to the disciplinary officer against the conviction and sentence, and thereupon the disciplinary officer may—

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- (a) confirm the conviction and sentence; or
- (b) make such finding or impose such sentence as, in his opinion, should have been made or imposed at the trial of such member; or
- (c) allow the appeal if he is of opinion that the conviction should be set aside on the ground of a wrong decision on any question of law or that on any other ground there was a failure of justice; or
- (d) make such other order as justice may require.

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(2) In the event of an appeal under subsection (1), the execution of the sentence imposed in respect of the conviction which is the subject of the appeal, shall be suspended pending the disciplinary officer's decision on the appeal.

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(3) Whenever any member of the Force has been convicted and sentenced by a trial officer, the disciplinary officer may, if he thinks fit, direct that the record of the proceedings of the trial be submitted to him for review, and may thereupon act in respect of the conviction and sentence as provided by subsection (1).

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Offences committed outside Republic

10G. If a member of the Force does or omits to do any act outside the Republic which, if done or omitted in the Republic, would have constituted misconduct in terms of this Act, it shall be deemed for the purposes of Chapter 2 of this Act that such act was done or omitted in the Republic."

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Substitution of section 11 of Act 7 of 1958, as substituted by section 6 of Act 110 of 1990

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7. The following section is hereby substituted for section 11 of the principal Act:

"Witnesses before trial officers or boards of enquiry

11. (1) (a) For the purposes of a trial by a **[commissioned] trial officer [or a senior member referred to in section 9(2)]** or an enquiry by a board of enquiry appointed in terms of this Act, the **trial officer [or senior member]** or board concerned may—
- (i) in the manner prescribed by regulation subpoena any person to appear as a witness at the time and place specified in the subpoena before the **trial officer [or senior member]** or board concerned in order to answer questions or to produce a document or thing under his control; and
 - (ii) call any person present at the trial or enquiry as a witness and administer an oath or affirmation to him or admonish him to tell the truth.
- (b) At such trial or enquiry the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to witnesses and evidence which are applicable in connection with criminal proceedings in a magistrate's court, except paragraph (a) of the

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proviso to section 217(1), shall *mutatis mutandis* apply, in so far as it is not in conflict with the provisions of this Act.

(c) A witness at such trial or enquiry who—

- (i) having been duly subpoenaed under paragraph (a)(i), fails to appear at the time and place specified in the subpoena or fails to remain in attendance at the trial or enquiry concerned until he has been lawfully excused from further attendance; 5
- (ii) refuses to take an oath or to make an affirmation administered to him under paragraph (a)(ii); 10
- (iii) refuses or fails to answer satisfactorily all questions which have lawfully been put to him; or
- (iv) refuses or fails to produce a document or thing which he has been lawfully required to produce, 15

shall, unless he proves sufficient cause for that failure or refusal, be guilty of an offence and liable on conviction to a fine not exceeding **[R100] R1 000** or imprisonment for a period not exceeding three months. 15

(2) Any such witness who—

- (a) at any such enquiry or trial, having taken an oath, having made an affirmation or having been admonished as contemplated in subsection (1)(a)(ii), makes any false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the crime of perjury; or 20
- (b) does anything in relation to any such enquiry or trial which if done in relation to a court of law would have constituted contempt of court, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the offence of contempt of court.”. 25 30

Amendment of section 12 of Act 7 of 1958, as substituted by section 6 of Act 36 of 1989

8. Section 12 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

“(2) If the prosecuting officer is of opinion that dismissal from the Force or reduction in rank will possibly be imposed as sentence upon a member of the Force on conviction after a trial referred to in section 10E, he shall request the disciplinary officer to designate in the manner prescribed by regulation a defence officer for the member concerned if the member is not represented and assisted by a legal adviser. 35 40

(3) No member of the Force may be sentenced by a trial officer to dismissal from the Force or reduction in rank if he did not have legal representation at his trial or was not afforded the opportunity to be represented and assisted by a defence officer.”.

Amendment of section 14 of Act 7 of 1958, as amended by section 5 of Act 74 of 1967 45

9. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A member of the Force may be suspended from his office pending his trial or after his conviction of misconduct or any offence whether under this Act or otherwise, or pending any enquiry at which **[a charge of misconduct against him or]** his fitness to remain in the Force or to retain his rank is being investigated, and shall be so suspended for any period during which he is under arrest or detention or is serving a term of imprisonment, but shall not by reason of such suspension cease to be a member of the Force.”. 50

Act No. 87, 1991

POLICE SECOND AMENDMENT ACT, 1991

Substitution of section 16 of Act 7 of 1958, as substituted by section 7 of Act 36 of 1989

10. The following section is hereby substituted for section 16 of the principal Act:

“Member of the Force may be charged and tried in terms of this Act as well as other laws 5

16. (1) The provisions of **[sections 9(2) and 10]** section 10E shall not indemnify any member of the Force from liability to prosecution in and conviction by a court of law in respect of an offence.

(2) No member of the Force who has been acquitted or convicted by a court of law on a charge relating to the commission of an offence shall be indemnified from being tried **[or charged]** in terms of section **[9(2) or 10]** 10E.”. 10

Substitution of section 17 of Act 7 of 1958, as amended by section 6 of Act 53 of 1961, section 10 of Act 64 of 1964, section 8 of Act 64 of 1979, section 4 of Act 8 of 1988 and section 7 of Act 110 of 1990 15

11. The following section is hereby substituted for section 17 of the principal Act:

“Dismissal, discharge or reduction in rank of members of the Force

17. (1) A member of the Force **[who is not a commissioned officer]** may be discharged or dismissed from the Force or be reduced in rank if after enquiry in the manner prescribed by the regulations, as to his fitness to remain in the Force or to retain his rank, the Commissioner or **[the divisional commissioner of the division in which such member is serving or]** any other commissioned officer designated by the Commissioner is of opinion that he is unfit to remain in the Force or to retain his rank, as the case may be. 20 25

[(1A)](2) Notwithstanding the provisions of subsection (1), the Commissioner may discharge any such member from the Force in the absence of any such enquiry— 30

(a) if the member undergoes imprisonment on account of a sentence of imprisonment without the option of a fine; or

(b) if the member has been sentenced to death; or

[(b)](c) within a period of 24 months, exclusive of any period of training, after the member's enrolment as a member of the Force, if it appears to the Commissioner that, on account of unfitness for his duties or incapacity to carry them out efficiently or on account of any conduct which is prejudicial to the good order, efficient administration, control or discipline of the Force, the member is unfit to remain in the Force. 35 40

[(2)](3) Any member mentioned in subsection (1) or **[(1A)](2)** may in the manner prescribed by the regulations appeal to the **[Minister]** disciplinary officer against an order discharging or dismissing him or reducing him in rank, and in such event the **[Minister]** disciplinary officer may confirm, alter or set aside such order or make such other order as to him seems just.”. 45

Repeal of section 17A of Act 7 of 1958

12. Section 17A of the principal Act is hereby repealed.

Amendment of section 33 of Act 7 of 1958, as amended by section 8 of Act 53 of 1961, section 19 of Act 64 of 1964, section 1 of Act 80 of 1970, section 5 of Act 94 of 1972, section 1 of Act 47 of 1981, section 46 of Act 97 of 1986, section 6 of Act 8 of 1988, section 3 of Act 75 of 1989 and section 3 of Act 76 of 1989 50

13. Section 33 of the principal Act is hereby amended—

- (a) by the insertion in subsection (1) after paragraph (c) of the following paragraph:
 “(cA) the correspondence between the ranks of members of the Force and members of municipal police units;”;
- (b) by the insertion in subsection (1) after paragraph (g) of the following paragraph:
 “(gA) the payment and control of admission of guilt fines in terms of this Act;”;
- (c) by the substitution for paragraph (h) of subsection (1) of the following paragraph:
 “(h) the practice and procedure at trials by [commissioned] trial officers under this Act and the attendance of witnesses thereat;”;
- (d) by the insertion in subsection (1) after paragraph (h) of the following paragraphs:
 “(hA) the legal representation of members of the Force;”;
 (hB) the exclusion of the public or any category of the public at trials by trial officers under this Act and the publication and release of information relating to such trials;
 (hC) the conditional or unconditional postponement or suspension of a sentence after conviction of misconduct in terms of this Act;”;
- (e) by the substitution for paragraph (j) of subsection (1) of the following paragraph:
 “(j) appeals, reviews and representations in regard to decisions and recommendations in terms of this Act;”;
- (f) by the deletion of paragraph (k) of subsection (1).

Amendment of section 34G of Act 7 of 1958, as inserted by section 20 of Act 36 of 1989

14. Section 34G of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may enter into agreements with the Minister or other person responsible for the Police Force of a foreign state, **[the territory of South West Africa]** any state the territory of which previously formed part of the Republic or a self-governing territory as defined in section 38 of the **[National States] Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971)**, in regard to co-operation and mutual aid between the Police Force of the Republic and that of such state or territory, the circumstances and conditions in terms of which members of the respective Police Forces may undertake cross-border operations or any other matter of mutual concern.”.

Short title and commencement

15. This Act shall be called the Police Second Amendment Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.