

REPUBLIC OF SOUTH AFRICA

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# MILITARY VETERANS' AFFAIRS BILL

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*(As amended by the Portfolio Committee on Defence (Notional Assembly))*

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(MINISTER OF DEFENCE)

[B 13B—99]

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REPUBLIEK VAN SUID-AFRIKA

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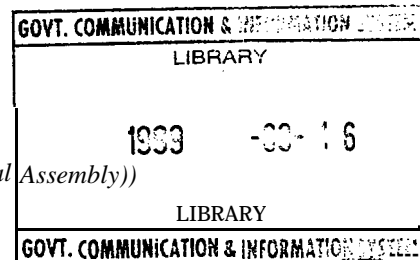
*(Soos gewysig deur die Portefeuljekomitee oor Verdediging (Nasionale Vergadering))*

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(MINISTER VAN VERDEDIGING)

[W 13B—99]

ISBN O 621290149



# BILL

To provide for the development of national standards regarding military veterans and their dependants, including their entitlements; for the president to be Patron-in-Chief of all military veterans; for relevant Cabinet Committees to perform certain functions for the purposes of this Act; for responsibilities of the Minister of Defence; for the establishment of an Advisory Board for Military Veterans' Affairs; for an Office for Military Veterans' Affairs; for the development, promotion and implementation of policy: and for matters incidental thereto.

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

## PART I

### DEFINITIONS, PRINCIPLES AND AUTHORITY OF PRESIDENT, CABINET COMMITTEES AND MINISTER

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#### Definitions

1. In this Act, unless the context indicates otherwise, any word or expression to which a meaning has been assigned in the Defence Act has the meaning so assigned to it and—
- (i) 'Advisory Board' means the Advisory Board for Military Veterans' Affairs, established by section 5: (i) 10
  - (ii) "approved development Programme" means—
    - (a) in relation to a development programme which for the implementation thereof in terms of legislation or administration only involves the Department of Defence or recognised military veterans' organisations, a development programme approved by the Minister; 15
    - (b) in relation to any other development programme, any such development programme which has been approved by one or both of the Cabinet Committees: (iv)
  - (iii) 'Cabinet Committees' means the Cabinet Committees referred to in section 4(2); (vi) 20
  - (iv) "Defence Act" means the Defence Act, 1957 (Act No. 44 of 1957); (xii)
  - (v) "defendant... in relation to a military veteran, means a person—
    - (a) who is the spouse, widower, widow or child of the military veteran; or
    - (b) who is otherwise legally or factually dependent on the military veteran for support and maintenance; and 25
    - (c) who complies with the requirements and conditions which may be prescribed; (ii)
  - (vi) "development programmed", in relation to affairs relating to, and particularly, the entitlements of, military veterans envisaged in paragraph (c)(iv) of section 30 15, means any such programme which has, in terms of paragraph (c)(vi) of the said section been formulated by the Office in accordance with the provisions of this Act and the prescribed format and requirements; (x)
  - (vii) "entitlement", in relation to a military veteran and his or her dependants, includes any pension, grant, allowance, subsidy, compensation, accommodation or retirement assistance, loan, insurance benefit, burial benefit, social 35

- assistance or other benefit which any such person is entitled to in law and any prescribed entitlement: (xiv)
- (viii) "military veteran." means any person who—
- (a) either voluntarily or under conscription or call-up served as a member of—
- (i) the Union Defence Forces or any military force of a country allied to the former Union Government during the Great War of 1914 to 1918, World War II being the war which commenced on 6 September 1939, or the hostilities in Korea from 1950 to 1953; or
- (ii) the South African Defence Force or any defence force of a territory which prior to the commencement of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), enjoyed the status of an independent State in terms of a law of the Republic of South Africa: or
- (iii) the South African National Defence Force, and has not been dishonorably discharged, is retired, or no longer serves in the South African National Defence Force and is a citizen of the Republic, and irrespective of whether any such service envisaged in subparagraph (i), (ii) or (iii) has been rendered in a permanent or in a part-time component or part-time capacity; or
- (b) is a "war veteran" as defined in section 1 of the Social Assistance Act, 1992 (Act No. 59 of 1992); or
- (c) served as a member of any non-statutory force as defined in section 1 of the Demobilisation Act, 1996 (Act No. 99 of 1996); or
- (d) belongs to any other prescribed category of military veterans;
- (ix) "Minister" means the Minister of Defence;
- (x) "Office" means the Office for Military Veterans' Affairs, established by section 14(1);
- (xi) "prescribed" means prescribed by regulation;
- (xii) "recognised military veterans' organisations" means organisations or associations established in respect of military veterans in the private sector and recognised by the Minister as lawfully representative of interests of military veterans;
- (xiii) "regulation" means any regulation made under section 16;
- (xiv) "this Act" includes the regulations.

### Construction of Act

2. The provisions of this Act must not be construed as entitling any person who is defined as a military veteran in this Act, or his or her dependants, to any entitlement provided for in any other existing law merely on the grounds of such definition.

### Fundamental principles

3. For the purposes of this Act the following fundamental principles are recognised by the State as governing affairs relating to military veterans, namely that—
- (a) sacrifices made by military veterans in the service of or for their country or their role in the democratisation of South Africa are honoured;
- (b) compensation to which military veterans may be entitled for disablement constitutes reparation and is, despite any provision to the contrary contained in any law, not a welfare benefit;
- (c) in the event of a military veteran or category of military veterans being considered for possible aid by the State, which is non-contributory, subject to budgetary and infrastructure constraints, such military veterans must have been income- and means-tested and must, in the case of female veterans, have reached the age of 55 years and, in the case of male veterans, have reached the age of 60 years;

- (d) special consideration must be given that must benefit and relieve military veterans who suffer from any physical or mental disability arising from military service rendered by them:
- (e) disparities, inequalities or unfair discrimination as regards the entitlements of military veterans and their dependants, must be identified and, where possible, remedied; 5
- (f) all governmental entities involved with military veterans, affairs must co-operate with the Office to ensure the achievement of the objects of this Act, and, within their available resources, to take reasonable legislative and other measures to achieve the progressive realisation thereof; and 10
- (g) the State, or any State Department or State Agency, may not undertake, be committed, or obliged to provide State aid or any other assistance to any military veteran other than through the existing legislative and administrative channels.

Authority of President, Cabinet Committees and Minister 15

- 4. (1) The President is the Patron-in-Chief of all military veterans, subject to the provisions of the Constitution.
- (2) The president may designate Cabinet Committees to—
  - (a) exercise oversight over the implementation of this Act:
  - (b) consider proposals emanating from the Minister, after consultation with the other Ministers concerned with military veterans' affairs, with regard to policy, funding and budgetary implications in connection with such affairs; and 20
  - (c) promote the implementation of approved development programmed.
- (3) The Minister may take any necessary step to achieve the objects of this Act. 25

## PART II

### ADVISORY BOARD ON MILITARY VETERANS' AFFAIRS

#### Establishment of Advisory Board on Military Veterans' Affairs

- 5. An Advisory Board on Military Veterans' Affairs is established to attend to the interests of military veterans. 30

#### Composition of Advisory Board

- 6. The Advisory Board consists of—
  - (a) the Chairperson and members appointed in terms of section 7(1); and
  - (b) the Director of the Office,

#### Appointment of members of Advisory Board 35

- 7. (1) The Minister, after consultation with the Chief of the South African National Defence Force, must appoint—
  - (a) the Chairperson; and
  - (b) not fewer than two and not more than four members to serve on the Advisory Board. 40
- (2) The members referred to in subsection (1) must be appointed from persons nominated by recognised military veterans' organisations in accordance with the prescribed procedure.

## Remuneration and allowances of members of Advisory Board

8. (1) The members of the Advisory Board who are not in the full-time employment of the State, must be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

(2) The terms of employment, including the remuneration of a member of the Advisory Board, may not be adversely altered during the term of office. 5

## Term of office

9. (1) The Chairperson serves in a full-time capacity.

(2) The other members of the Advisory Board serve in a part-time capacity.

(3) The Chairperson and other members of the Advisory Board will serve for a period not exceeding five years but are eligible for reappointment at the end of their term of office. 10

## Removal from office

10. (1) The Minister may remove a member of the Advisory Board from office only on the grounds of misconduct, incapacity or incompetence. 15

(2) A decision to remove a member of the Advisory Board from office must be based on a finding of an independent tribunal appointed by the Minister.

(3) The Minister may suspend a member of the Advisory Board from office pending the finding of the tribunal referred to in subsection (2).

## Resignation 20

11. (1) The Chairperson of the Advisory Board may resign by giving written notice of three months to the Minister but the Minister may, after consultation with the Chief of the National Defence Force, accept a shorter notice period.

(2) Other members of the Advisory Board may resign by giving written notice of three months to the Chairperson but the Chairperson may accept a shorter notice period. 25

## Meetings of Advisory Board

12. (1) The first meeting of the Advisory Board must be held on such a date, time and place as the Chairperson may determine.

(2) All subsequent meetings must be held on such dates, times and places as the Chairperson may determine in consultation with the Advisory Board. 30

(3) The Advisory Board must determine the rules of procedure for the conduct of its business at its meetings.

(4) A decision of the majority of the members of the Advisory Board present and forming a quorum at a meeting is binding on the Advisory Board.

(5) The quorum for any meeting of the Advisory Board must be fifty percent of the total members of the Advisory Board plus one. 35

(6) In the event of an equality of votes the Chairperson has a casting vote in addition to the deliberative vote.

(7) A member who has a personal or financial interest in any matter before the Advisory Board must disclose that interest and withdraw from the proceedings of the Advisory Board when that matter is considered. 40

## Powers and duties of Advisory Board

13. (1) The Advisory Board is responsible to the Minister and must—

(a) perform duties and exercise powers granted to, or imposed on, it in terms of this Act; 45

(b) on its own initiative or at the request of the Minister, or of the Office, make recommendations to the Minister and furnish advice on all matters pertaining to military veterans and their dependants.

(2) The Advisory Board must, within 90 days after 31 March in every year, submit a report to the Minister on its activities and the activities of the Office, and the Minister must table it in Parliament. 50

## PART 111

OFFICE FOR **MILITARY** VETERANS' AFFAIRSEstablishment of Office for **Military** Veterans' Affairs

**14. (1)** An Office for Military Veterans' Affairs is established in the Department of Defence and it must perform duties and exercise powers granted to, or imposed on, it in 5 terms of this Act.

(2) The Secretary for Defence is the accounting officer of the Office.

## Powers and duties of Office for Military Veterans' Affairs

**15. The Office—**

- (u) must be managed by a Director of Military Veterans. Affairs who must— 10
  - (i) be appointed by the Secretary for Defence in consultation with the Minister: and
  - (ii) perform the duties as secretary of the Advisory Board:
- (b) must provide the required services and infrastructure to the Advisory Board and must act on the recommendation and advice of the Advisory Board: 15
- (c) must investigate any—
  - (i) submission, inquiry or complaint received from any individual military veteran or his or her dependant; or
  - (ii) such submission, inquiry or complaint relating to military veterans, entitlements or those of their dependants submitted to the Office by the 20 Minister or the Advisory Board:
- (d) must provide-
  - (i) the Minister, the Advisory Board or any such individual with a full report and recommendations: and
  - (ii) such individual with appropriate advice or assistance as maybe required: 25
- (e) must—
  - (i) review, develop and co-ordinate policy regarding military veterans' affairs:
  - (ii) report to the Minister on the monitoring of the execution of approved military veterans' policies by State departments and provincial executive 30 authorities, and the rendering of inputs for required corrective action:
  - (iii) research, define, investigate, evaluate and promote military veterans' affairs on an integrated basis:
  - (iv) identify legislative or administrative disparities, inequalities or unfair discrimination regarding the entitlements and the needs of military 35 veterans and their dependants in order to rectify such disparities, inequalities or unfair discrimination:
  - (v) review existing legislation with a view to making new policy and promoting a consolidation of such legislation in order to provide for an integrated regulation of affairs of military veterans and their dependants; 40
  - (vi) formulate development programmes and submit proposals and recommendations to the relevant State departments and provincial executive authorities in connection with the development of military veterans' affairs:
- (f) must consult the Department of Defence, and other State departments and 45 provincial executive authorities, and all other persons, organisations or institutions who or which are concerned with military veterans' affairs, to achieve the objects of this Act;
- (g) must, as soon as practicable after the date of commencement of this Act,

- conduct a survey of State-controlled and privately administered schemes or programmed dealing with any aspect of the affairs of military veterans:
- (h) must collect data and information regarding all existing entitlements of military veterans and their defendants, and establish a data base on military veterans and military veterans' affairs, which must be updated regularly: 5
  - (i) must include, in any such data base, information collected and compiled as provided for in paragraph (h), and data regarding persons qualifying as military veterans or defendants;
  - (j) must compile data of ascertained disparities, inequalities or unfair discrimination regarding the entitlements and needs of military veterans and their defendants which require rectification on a group or individual basis, whether by legislative provision or otherwise; 10
  - (k) must, as soon as practicable after the date mentioned in paragraph (g), compile a priority list of the prescribed development programmed, proposals or recommendations, to be dealt with in the interest of military veterans and their defendants; 15
  - (l) must submit development programmed to the Minister—
    - (i) for submission to Cabinet Committees for their approval: or
    - (ii) for his or her approval,
 and must publish all approved development programmed in the *Gazette* for public notification, whereupon such programmed become binding on all persons and bodies to which they refer and must be implemented according to their terms; 20
  - (m) may forward proposals or recommendations in connection with any aspect of affairs relating to military veterans and their defendants to the Minister or the Advisory Board, or any other person or body, for purposes of obtaining advice, guidance, direction or endorsement; 25
  - (n) may make inputs, through the Department of Defence, in respect of policy and budgets of State and provincial administrations relating to military veterans' affairs: 30
  - (o) may negotiate with State departments, provincial executive authorities and non-governmental organisations to act as agents for the Department of Defence to carry out duties regarding military veterans; and
  - (p) may exercise any power and perform any duty as may be prescribed.

## PART IV

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## MISCELLANEOUS

## Regulations

16. (1) The Minister may, subject to the provisions of this Act, make regulations relating to—

- (a) any matter required or permitted to be prescribed by or in terms of any provision of this Act: 40
  - (b) appeals or reviews, in cases where no express provision is made therefor in any other law, including the composition of a body or bodies to conduct such appeals or reviews, and administrative procedures and infrastructure regarding the conduct of such appeals or reviews; 45
  - (c) the remuneration, allowances and other terms and conditions of employment and service benefits of any member of the Advisory Board in respect of services rendered, whether on a part-time or a full-time basis, in consultation with the Minister of Finance after having considered recommendations by the Secretary for Defence in that regard; 50
  - (d) generally, any other matter which is necessary to be prescribed for the better achievement of the objects of this Act, the generality of this provision not being limited by the particular provisions of any other paragraph of this subsection.
- (2) Different regulations may be made regarding different persons or bodies or different categories of persons or bodies, if such differential treatment does not amount to unfair discrimination. 55

#### Regulations made under **any law**

17. The Minister and the Advisory Board must be consulted when a regulation relating to a matter exclusively affecting the rights or entitlements of military veterans or their dependants is made under any law.

#### Funding

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18. The costs and expenses connected with the administration and implementation of this Act must be defrayed from moneys appropriated by Parliament to the Department of Defence for that purpose.

#### Short title and commencement

19. This Act is called the Military Veterans. Affairs Act, 1999, and comes into 10 operation on a date determined by the President by proclamation in the *Gazette*.



## MEMORANDUM ON THE OBJECTS OF THE MILITARY VETERANS' AFFAIRS BILL, 1999

### 1. BACKGROUND

- 1.1 The Military Veterans' Affairs Bill, 1999, makes provision for national policy formulation regarding military veterans in the Republic and for the execution thereof. The object of the Bill is to—
  - \* give proper recognition to military veterans;
  - \* identify, and where possible to remedy disparities regarding their entitlements; and
  - \* regulate their entitlements in a uniform and integrated manner, and thereby to counter what may be perceived as a prevailing apathy to and neglect of such veterans.
- 1.2 The World Veterans' Federation calls for greater attention to be given to the welfare of war veterans. South Africa is a member of this Federation which represents more than 75 countries.
- 1.3 Proper care for the welfare of military veterans includes medical attention to the disabled or injured, compensation by way of pensions or grants, assistance in re-establishment in civilian life by training or funding, and vocational and rehabilitation support. At present there are an estimated 40000 such veterans, war widows and dependants in the Republic whose needs are being catered for by not less than five different State departments and nine provincial governments. However, veterans of the former non-statutory armed forces, and veterans of the former TBVC territories and part-time force members and conscripts of the former South African Defence Force who took part in conflicts during the apartheid era, are at present largely excluded from aid by the State.
- 1.4. The fact that different State departments presently administer military veterans' affairs in four different Acts, has resulted in fragmentation and disparity in the granting of benefits. At present the Department of Defence already plays a major role through its Service Corps in the training of ex-military personnel, and is also involved in their care and rehabilitation, and it is therefore logical that the Department of Defence should be involved in the formulation, execution and monitoring of policy and the integration of functions relating to military veterans. Such an integrated arrangement would also be in accordance with the basic principles of similar arrangements that have been established in countries such as America, Canada, Australia and Taiwan.
- 1.5 Furthermore, in such an integrated arrangement, which involves duly appointed representatives from the military veterans themselves, provision could be made in an informed, scientific and integrated manner for the drafting of development programmed and amending legislation relating to the affairs of military veterans, and their dependants, for submission to the Government. Such programmed could deal with matters such as reparation, health and welfare, housing, occupational, labour, military heritage and cultural matters.
- 1.6 It must be emphasised that the Bill itself does not provide for entitlements for military veterans. It does, however, entrust functions to the structures created in the Bill to determine national policy in respect of all persons who may reasonably be regarded as "military veterans" in the Republic. Those structures will then in particular have to research the situations of military veterans who do not at present qualify for statutory entitlements and to investigate existing statutory provisions applicable to such veterans.

- 1.7 Policy formulation and recommendations in regard to military veterans will be done in consultation with the relevant State departments and in particular the Department of Welfare and Population Development as an input to the proposed policy on the National Social Security System.

## 2. **CLAUSE BY CLAUSE ANALYSIS**

### 2.1 Clauses 1-4

- (a) Clause 1 sets out the definitions;
- (b) Clause 2 determines the construction of the Bill;
- (c) Clause 3 sets out the fundamental principles which should govern military veterans' affairs; and
- (d) Clause 4 declares the President as Patron-in-Chief of all military veterans and vests the Minister and Cabinet committees with certain responsibilities.

### 2.2 Clauses 5-13

Clause 5 establishes an Advisory Board for Military Veterans' Affairs. Clauses 6 to 12 deal with incidental administrative matters and Clause 13 determines the powers and duties of the Advisory Board.

### 2.3 Clauses 14-15

Clause 14 establishes an Office for Military Veterans' Affairs as a directorate in the Department of Defence. Clause 15 sets out the powers and duties of the Office.

### 2.4 Clauses 16-18

Clause 16 empowers the Minister to make regulations. Clause 17 requires consultation with the Minister and the Advisory Board when regulations affecting military veterans are made. Clause 18 provides for the funding.

### 2.5 Clause 19

Clause 19 contains the short title and commencement of the Bill.

## 3. **PERSONS AND BODIES CONSULTED**

- 3.1 A first draft of the Bill in a more elaborate and expanded format was prepared in the Department of Defence and was approved by the Cabinet in August 1996. This draft followed on suggestions by the Military Veterans' Working Group who were officially commissioned to visit Taiwan and Australia in 1996 to study the noteworthy structures created by law in those countries to cater for the interests of military veterans. The Working Group consisted of members of both previous non-statutory forces and SANDF military veterans.

- 3.2 The present version of the Bill was later drafted after renewed exhaustive consultations on matters of content and detail within the Department of Defence and with all other interested stakeholders as regards military veterans, and consideration of much advice received during a special Inter-Departmental Workshop during 1998, attended by a wide range of mandated senior officials representing interested State departments and provincial administrations. Full consultations were also conducted with existing officially recognised military veterans' organisations and associations.

## 4. **CONCLUSION**

It is respectfully submitted that the present Bill represents the most cost-effective and efficient method for the achievement of the objectives of the Bill.

5. PARLIAMENTARY PROCEDURE

The Department of Defence and the State Law Advisers are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution.