

REPUBLIC OF SOUTH AFRICA

DEFENCE AMENDMENT BILL

*(As introduced in the National Assembly (proposed section 75); explanatory summary of
Bill published in Government Gazette No 30803 of 22 February 2008)
(The English text is the official text of the Bill)*

(MINISTER OF DEFENCE)

[B 6—2008]

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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.

BILL

To amend the Defence Act, 2002, so as to insert new definitions; to provide for the establishment of the Defence Inspectorate; to provide for the functions of the Inspector General; to empower the Minister to determine the pay, salaries and other benefits of the members of the Senior Management Service of the Defence Force; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 42 of 2002

1. Section 1 of the Defence Act, 2002 (hereinafter referred to as the principal Act), is hereby amended— 5

(a) by the insertion after the definition of “**auxiliary service**” of the following definition:

“**‘Board’** means the Personnel Pay Review Board contemplated in section 55A;” and

(b) by the insertion after the definition of “**Service**” of the following definition: 10

“**‘SMS Members’** means such Senior Management Service members of the Defence Force as may be prescribed;”.

Insertion of sections 10A, 10B and 10C in Act 42 of 2002

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

“**Defence Inspectorate** 15

10A. (1) The Defence Inspectorate is hereby established.

(2) The Defence Inspectorate is managed and controlled by the Inspector General.

Inspector General

10B. (1) The Minister must appoint a suitable person as the Inspector General on such terms and conditions as he or she may determine.

(2) The Inspector General holds office for a period determined by the Minister.

(3) The Inspector General must—

- (a) monitor compliance with departmental policies and instructions and, where appropriate, recommend remedial actions;
- (b) conduct research to determine the effects of command and management practices in the Department;
- (c) conduct inspections in the Department;
- (d) conduct internal audits in terms of and in accordance with applicable law;
- (e) conduct final closing-down structure audits; and
- (f) render anti-corruption and anti-fraud services, including forensic investigations, to the Department: Provided that evidence of corruption and fraud must be handed over to the Military Police for further investigation in terms of this Act.

(4) The Inspector General reports to the Secretary of Defence and the Chief of the Defence Force.

(5) The person who immediately before the commencement of this Act served as the Inspector General must—

- (a) be regarded as having been appointed in terms of subsection (1); and
- (b) continue 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.

Appointment of staff

10C. (1) The Minister must appoint the staff of the Defence Inspectorate.

(2) The conditions of service of such staff are determined in terms of section 55.

(3) The existing staff of the Defence Force performing functions of the Defence Inspectorate must be regarded as having been appointed in terms of subsection (1).”.

Substitution of section 55 of Act 42 of 2002

3. The following section is hereby substituted for section 55 of the principal Act:

“Pay, salaries and entitlements

55. (1) Members of the Regular Force and Reserve Force who are not SMS members 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.

(2) If no agreement contemplated in subsection (1) can be reached in the Military Bargaining Council, the Minister may, after consideration of any advisory report by the Military Arbitration Board **[and with the approval of the Minister of Finance]**, determine the pay, salaries and entitlements contemplated in that subsection.

(3) SMS 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 determined by the Minister.”.

Insertion of section 55A in Act 42 of 2002

4. The following section is hereby inserted in the principal Act after section 55:

“Personnel Pay Review Board

- 55A.** (1) The Minister may establish a Personnel Pay Review Board consisting of five members appointed by him or her on the basis of their knowledge and experience in matters relating to human resources and finances. 5
- (2) A member of the Board must serve in a part-time capacity.
- (3) The Minister must designate one member as the Chairperson and another as the Deputy Chairperson of the Board. 10
- (4) (a) The Board must, at the request of the Minister, investigate any matter relating to the pay, salaries and entitlements including allowances, disbursements and other benefits in the Defence Force in respect of service, training or duty in terms of this Act and make appropriate recommendations to the Minister on its findings. 15
- (b) The Board may perform such other functions as the Minister may authorise.
- (5) Members of the Board who are not in the employ of the State must receive such remuneration and allowances as the Minister may determine after consultation with the Minister of Finance. 20
- (6) Members of the Board who are employed by an organ of state must be reimbursed for out of pocket expenses.”.

Short title and commencement

5. This Act is called the Defence Amendment Act, 2008, and takes effect on a date to be determined by the President by proclamation in the *Gazette*. 25

MEMORANDUM ON THE OBJECTS OF THE DEFENCE AMENDMENT BILL, 2008

1. BACKGROUND

- 1.1 Section 55 of the Defence Act, 2002 (Act No. 42 of 2002) ("the Act"), provides that members of the South African National Defence Force (SANDF) must receive such pay, salaries and benefits as may be agreed upon in the Military Bargaining Council (MBC). This section does not distinguish between members in levels 1 to 12 and Senior Management Service (SMS) members of the SANDF. The practice in the public service in general is that SMS members' salaries and benefits are determined by the Minister for the Public Service and Administration outside the collective bargaining process. This has been the situation for the SANDF SMS members as well until section 55 of the Act came into operation in 2005.
- 1.2. In the Department of Defence (DOD) there is an Inspector-General (IG) heading the Defence Inspectorate and performing certain functions. To date there has been no statutory authority for the exercise of these functions by that office. It is necessary that these functions are clearly spelt out in law, in order to eliminate any possible conflict with the functions exercised by military police.

2. OBJECTS OF BILL

- 2.1 The Bill seeks to empower the Minister of Defence to determine, along the same lines as the Minister for the Public Service and Administration, the salaries for SMS members within the SANDF. It also seeks to bring the SANDF in line with the rest of the public service by distinguishing between levels 1-12 and SMS members.
- 2.2. The Bill further empowers the Minister of Defence to establish a Personnel Pay Review Board for the SANDF in order to advise him or her on the determination of salaries and benefits for the SANDF.
- 2.3 The Bill also amends section 10 of the Act so as to clearly provide for the appointment, mandate and functions of the IG of the DOD with regard to departmental inspections, internal audits, anti-fraud services and forensic investigations.

3. CONSULTATION

The above amendments have been sufficiently canvassed with all the stakeholders within the Department of Defence (Reserve Force Council, Human Resource Staff Council and Plenary Defence Staff Council) and were fully supported. The Department of Public Service and Administration was consulted with regard to the proposed amendment of section 55 of the Act.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. ORGANISATIONAL AND PERSONNEL IMPLICATIONS

None.

6. COMMUNICATION IMPLICATIONS

The proposals contained in the Bill were sufficiently canvassed with the affected internal stakeholders and it is envisaged that further communication will be dealt with in accordance with the departmental chains of command.

7. CONSTITUTIONAL IMPLICATIONS

The Bill carefully maintains the principle of “voluntarism” without compromising the ability of the SANDF to deliver on its constitutional mandate.

8. PARLIAMENTARY PROCEDURE

- 8.1 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.
- 8.2 The State Law Advisers are also of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.