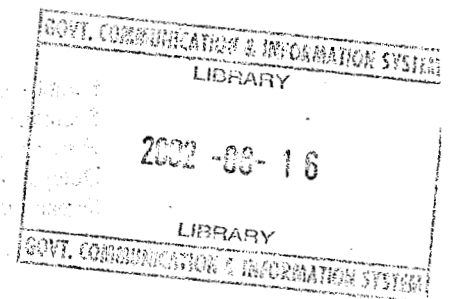


REPUBLIC OF SOUTH AFRICA

DEFENCE BILL

(As presented by the Portfolio Committee on Defence (National Assembly))
(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

INTRODUCTORY PROVISIONS

Definitions

1. (1) In this Act, unless the context indicates otherwise—
- (i) **“auxiliary service”** means any service established under section 16(1); 5
 - (ii) **“Chief of the Defence Force”** means the Chief of the South African National Defence Force contemplated in section 13(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); 10
 - (v) **“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;
 - (vi) **“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 20
 - (vii) **“Defence Force”** means the South African National Defence Force contemplated in section 11, and includes any portion of that Force;
 - (viii) **“Defence Secretariat”** means the secretariat established by section 6(1);
 - (ix) **“Department”** means the Department of Defence;
 - (x) **“Division”** means any division of the Defence Secretariat or the Defence Force, established by the Minister by or under the Public Service Act, 1994 (Proclamation No. 103 of 1994); 25
 - (xi) **“employee”** means a person appointed to the Department in terms of the Public Service Act, 1994 (Proclamation No. 103 of 1994), or any person regarded as having been appointed to the Defence Secretariat in terms of section 6(4); 30
 - (xii) **“enrol”** means to accept and record the attestation of any person as a member of the Regular Force or the Reserve Force;
 - (xiii) **“force”** means a military force;
 - (xiv) **“member”**— 35
 - (a) in relation to the Defence Force, means any officer and any other rank; and
 - (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 40
 - (iii) a civilian who entered into employment in connection with such visiting force outside the Republic;
 - (xv) **“Minister”** means the Minister of Defence;
 - (xvi) **“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; 45
 - (xvii) **“other force”** means a military force of a country or state other than the Republic;
 - (xviii) **“other rank”**, in relation to the Defence Force, means any member thereof other than an officer; 50
 - (xix) **“prescribed”** means prescribed by regulation;
 - (xx) **“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;
 - (xxi) **“Regular Force”** means the Regular Force contemplated in section 11(a); 55
 - (xxii) **“regulation”** means a regulation made under section 82;
 - (xxiii) **“Reserve Force”** means the Reserve Force contemplated in section 11(b);
 - (xxiv) **“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;
- (xxv) **"Secretary for Defence"** means the Secretary for Defence appointed in terms of section 7(1);
- (xxvi) **"Service"** means any Service referred to in section 12(1); 5
- (xxvii) **"state of emergency"** means a state of emergency contemplated in section 37 of the Constitution;
- (xxviii) **"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
- (xxix) **"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
- (xxx) **"this Act"** includes the regulations;
- (xxxi) **"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
- (xxxii) **"training"** includes education and development in the defence environment;
- (xxxiii) **"visiting force"** means a military force of any country present in the Republic with the consent of the President and, in sections 97, 98, 99 and 100, 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 fundamental rights and dignity of its members and of all persons.

Application of Act

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 55

- (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

Secretary for Defence and Chief of Defence Force exercise powers under direction of Minister

4. Subject to sections 202(2) and 204 of the Constitution, the powers vested in the Secretary for Defence and the Chief of the Defence Force by or under this Act must be exercised subject to and in accordance with any directions of the Minister. 10

CHAPTER 2

DEPARTMENT OF DEFENCE

Composition of Department of Defence

5. The Department of Defence consists of—
- (a) the Defence Secretariat; 15
 - (b) the South African National Defence Force; and
 - (c) any auxiliary service.

Defence Secretariat

Establishment of Defence Secretariat

6. (1) The civilian secretariat for defence contemplated in section 204 of the Constitution is hereby established as the Defence Secretariat. 20

(2) 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.

(3) Despite subsection (2), 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. 25

(4) 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 (2) or having been placed at the disposal of the Secretary for Defence as contemplated in subsection (3), as the case may be. 30

(5) 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.

Secretary for Defence 35

7. (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.

(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. 40

(3) The Secretary for Defence must be a citizen and may not be a member of the Defence Force.

(4) The Secretary for Defence who immediately before the commencement of this Act served as the Secretary for Defence— 45

- (a) must be regarded as having been 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.

Functions of Secretary for Defence

8. The Secretary for Defence—

- (a) is the Head of the Department as contemplated in the Public Service Act, 1994 (Proclamation No. 103 of 1994), and the accounting officer for the Department as contemplated in section 36 of the Public Finance Management Act, 1999 (Act No. 1 of 1999); 5
- (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 civil control by— 10
 - (i) Parliament over the Department;
 - (ii) parliamentary committees having oversight over the Department; and
 - (iii) the Minister over the Department; 15
- (e) must provide the Chief of the Defence Force with comprehensive instructions requiring the Chief of the Defence Force to issue orders and directives and to give commands to any specified member regarding the exercise of any power delegated or the performance of any duty assigned to that member by the Secretary for Defence as head and accounting officer of the Department of Defence; 20
- (f) 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
- (g) is responsible for the discipline of, administrative control over and management of employees, including their effective utilisation and training. 25

Delegation of powers and assignment of duties by Secretary for Defence

9. (1) The Secretary for Defence may, subject to such conditions as he or she may impose, in writing delegate any power and assign any duty conferred upon him or her in terms of this Act to—
- (a) any employee or member contemplated in section 6(3); 30
 - (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 or assignment under subsection (1) does not prevent the Secretary for Defence from exercising the power in question himself or herself. 35

Departmental investigations by Secretary for Defence

10. The Secretary for Defence may in respect of any matter concerning his or her capacity as head or accounting officer of the Department—
- (a) instruct any employee or member contemplated in section 6(3) to carry out an inspection or investigation within the Defence Secretariat; 40
 - (b) if such matter affects or concerns the Defence Force, instruct the Chief of the Defence Force to convene a board of inquiry or to have such matter investigated by the Military Police;
 - (c) otherwise deal with it or have it dealt with in accordance with the law; or
 - (d) institute such investigation as may be provided for in law. 45

South African National Defence Force

Composition of South African National Defence Force

11. 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— 50
- (a) Regular Force, the members of which serve full-time until—
 - (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 55

- (b) Reserve Force, the members of which serve on a part-time basis for such periods as they have been contracted for, unless their service is terminated in accordance with the law.

Services of Defence Force, and structural components

12. (1) The Defence Force consists of the following Services: 5
- (a) The South African Army;
 - (b) the South African Air Force;
 - (c) the South African Navy; and
 - (d) the South African Military Health Service.
- (2) Despite subsection (1), the— 10
- (a) Minister may establish a structural component consisting of members of—
 - (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. 15

Chief of Defence Force

13. (1) The President appoints the Chief of the South African National Defence Force. 20
- (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 department are entitled.
- (3) The Chief of the Defence Force must be a citizen and must be a member of the Regular Force. 25
- (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 been 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. 30

Functions of Chief of Defence Force

14. Without derogating from any function of the Secretary for Defence contemplated in section 8, the Chief of the Defence Force— 35
- (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; 40
 - (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; 45
 - (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; 50
 - (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 18(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; 55

- (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;
- (l) must manage the Defence Force as a disciplined military force; and 5
- (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.

Delegation of powers by Chief of Defence Force 10

15. (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—

- (a) to any member of the Defence Force;
- (b) to any person employed in terms of the Public Service Act, 1994 15 (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. 20

Auxiliary services

Establishment of auxiliary service, and terms and conditions of service

16. (1) The Minister may establish, and designate for the purpose of support to the Defence Force, such auxiliary service as may be necessary.

(2) The members of an auxiliary service serve for such period as the Minister may determine. 25

(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 30 are as prescribed.

Existing auxiliary services

17. Any auxiliary service in existence immediately before the commencement of this Act continues as an auxiliary service contemplated in section 16 under its existing name and in the way in which it was organised. 35

CHAPTER 3

EMPLOYMENT AND USE OF DEFENCE FORCE

Employment of Defence Force

18. (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— 40

- (a) preserve life, health or property in emergency or humanitarian relief operations;
- (b) ensure the provision of essential services; 45
- (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— 50

- (a) reasons for such employment;

- (b) place where the Defence Force is being employed;
- (c) number of people involved;
- (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. 5

(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). 10

(5) Parliament may by resolution within seven days after receiving information contemplated in subsection (2) from the President or the Minister—

- (a) confirm any such authorisation of employment;
- (b) order the amendment of such authorisation; 15
- (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; 20
- (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 for the employment of the Defence Force, up to the applicable moment contemplated in paragraph (b). 25

(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 National Defence Force for purposes of that subsection. 30

(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. 35

(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

19. (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 maintenance and preservation of law and order within the Republic. 40

(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*. 45

(3) Service in co-operation with the South African Police Service— 50

- (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;
- (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 55
- (c) must be performed in accordance with—
 - (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 60

- (bb) co-ordination of command over and control of members of the Defence Force and the South African Police Service, as the Chief of the Defence Force and the National Commissioner of the South African Police Service may determine.

Powers and duties of members while being employed

5

20. (1) Whenever the Defence Force or any portion or member thereof has been employed for a service contemplated in section 201(2) of the Constitution or section 18(1)(a), (b), (c) or (d), a member of the Defence Force who is utilised for the execution of services under such employment has the same powers and duties as those conferred or imposed upon a member of the South African Police Service by virtue of— 10

- (a) section 13(3), (6), (7), (8) and (9) of the South African Police Act, 1995 (Act No. 68 of 1995);
- (b) section 9 of the Regulation of Gatherings Act, 1993 (Act No. 205 of 1993);
- (c) sections 21, 22, 23, 24, 25, 27, 29, 30, 32, 33, 34, 35, 36, 39, 40, 41, 44, 47, 48, 49 and 52 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); 15
- (d) sections 9 and 41 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969);
- (e) section 11(b), (g) and (i) of the Road Traffic Act, 1989 (Act No. 29 of 1989); and
- (f) section 31(b), (g), (h), (i) and (l) of the National Road Traffic Act, 1996 (Act No. 93 of 1996). 20

(2) The powers and duties referred to in subsection (1) may only be exercised or performed for the purposes of the—

- (a) successful execution of that employment;
- (b) prevention of crime; 25
- (c) maintenance of law and order; or
- (d) preservation of the internal security of the Republic.

(3) The powers and duties referred to in subsection (1) does not include investigation of crime.

(4) A member of the Defence Force who arrests or detains any person or seizes any article or object must as soon as possible hand that person, article or object over to a police official or any other appropriate functionary designated by a relevant law. 30

(5) A member of the Defence Force shall in respect of acts done or omitted to be done by him or her by virtue of this section be liable to the same extent as he or she would have been liable in like circumstances if he or she were a member of the South African Police Service, and shall have the benefit of all the indemnities to which a member of that Service would in like circumstances be entitled. 35

(6) A member of the Defence Force who exercises any power by virtue of this section 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

(7) For the 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 specific rank or office, must be construed as a reference to the military rank or office equivalent to such rank; and
- (b) who is the National Commissioner of the South African Police Service, must be construed as a 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. 45

(8) 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 Defence Force and, conversely, as giving a member of the Defence Force any power to exercise command or control over any member of the South African Police Service. 50

(9) A member of the Defence Force who is utilised for the execution of an employment envisaged in section 18(1)(d) also has the power to—

- (a) request anyone in the Republic who is reasonably suspected of being an illegal foreigner contemplated in the Immigration Act, 2002 [Act No. 13 of 2002], to identify himself or herself as a citizen or resident, or to produce a permit to be in the Republic; 55
- (b) apprehend, question or, subject to subsection (4), arrest or detain without a need for a warrant an illegal foreigner in order to be dealt with in terms of that Act; and 60

- (c) subject to subsection (4), seize or retain, without a need for a warrant, any firearm or other dangerous weapon in possession or under the control of an illegal foreigner.

(10) No provision of this Act relating to the powers and duties of a member of the Defence Force may be construed as removing, detracting from or diminishing any power or duty expressly conferred, enforced or imposed by any other law or the common law upon such a member of the Defence Force. 5

(11) Members of the Defence Force employed in terms of subsection (1) must receive appropriate training prior to such employment and must be equipped accordingly.

CHAPTER 4

10

LAW ENFORCEMENT POWERS OF DEFENCE FORCE AT SEA

Definitions

21. In this Chapter a word or expression has the meaning ascribed to it in any appropriate convention and, unless the context indicates otherwise—

- (a) “**innocent passage**” means the right of innocent passage contemplated in section 2 of the Marine Traffic Act, 1981 (Act No. 2 of 1981); 15
- (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;
- (c) “**UNCLOS**” means the United Nations Convention on the Law of the Sea adopted at Montego Bay on 10 December 1982; 20
- (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. 25

Criminal and civil law enforcement by Defence Force

22. (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 the purpose of enforcing any provision of South African law at sea. 30

(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;
 - (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 35
 - (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—
- (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 40
 - (b) against foreign ships or those on board them, except in circumstances permitted by international law.
- (4) An officer of the Defence Force acting in accordance with subsection (2)— 45
- (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), and may exercise such power in the same manner as a peace officer exercising such powers within the Republic; 50
 - (b) may exercise all other powers referred to in this Chapter; and
 - (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 25, 26, 27 and 28, or any other matters which are within the original and exclusive jurisdiction of the Defence Force. 55

Interests to be considered

23. (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 22(2)(b) so requests, directly or through any military aircraft or warship authorised in terms of section 22(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. 5

(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. 10

(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

15

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

- (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; 20
 - (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 subsection (1); and 25
- (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 which 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. 30

(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 Director of Public Prosecutions and, upon conviction, is liable to a fine or to imprisonment for any period, including life imprisonment. 35

Seizure of pirate ship or aircraft

25. (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. 40

(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).

(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. 45

Right of visit on high seas by warships of Defence Force

26. (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. 50

(2) If the suspicion referred to in article 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 shall be dealt with in accordance with section 25(3). 55

Hot pursuit of ships

27. (1) Any warship or military aircraft of the Defence Force may exercise on behalf of the Republic or on the behalf of a foreign state, 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. 5

(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).

Warships or military aircraft of Defence Force to render assistance

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28. (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 15
- (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— 20

- (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. 25

Co-operation with foreign states

29. (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— 30

- (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; 35
- (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; 40
- (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— 45

- (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. 50

(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

MILITARY POLICE

Appointment of military police officials

30. (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 all such members with a prescribed identification card. 5

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

Functions of military police officials

31. (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— 10

- (a) the prevention and combating of crime; 15
- (b) the investigation of any offence or alleged offence; and
- (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; 20
- (b) is liable in respect of acts done 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 like circumstances be entitled. 25

(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 30
- (b) who is the National Commissioner of the South African Police Force, must be construed as a 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.

(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. 35

(5) Section 217 of the Criminal Procedure Act, 1977 (Act No. 51 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. 40

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

(b) Any person subject to the provisions of the Code and the Military Discipline Supplementary Measures Act, 1999 (Act No. 16 of 1999), must be dealt with in accordance with those provisions. 45

(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).

CHAPTER 6

50

DEFENCE INTELLIGENCE

Definitions

32. In this Chapter, unless the context indicates otherwise—

- (a) "defence intelligence" includes—

- (i) "counterintelligence";
- (ii) "departmental intelligence";
- (iii) "domestic military intelligence";
- (iv) "foreign military intelligence"; and
- (v) "national security intelligence", as defined in the National Strategic Intelligence Act, 1994 (Act No. 39 of 1994);- 5
- (b) "**Intelligence Division**" means the Intelligence Division of the Defence Force contemplated in section 33;
- (c) "**Review Board**" means the Personnel Security Review Board established in terms of section 40(1). 10

Intelligence Division of Defence Force

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

Application of strategic and operational intelligence 15

34. 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; 20
 - (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— 25
 - (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. 30

Co-operation with other intelligence services

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

Counterintelligence by Intelligence Division

36. 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—

- (a) the Ministry of Defence;
- (b) the Department; and 40
- (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

- 37. (1) The Minister may prescribe— 45
 - (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 50

- (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. 5

(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. 10

(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)— 15

- (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 shall be *prima facie* proof of the grade of security clearance so issued; 20
- (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. 25

Discharge of members or employees not issued with security clearances

38. 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 37(4), may be discharged from the Department by the Minister. 30

Notification of security clearance or refusal thereof

39. (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 37(4).

(2) (a) Subject to paragraph (b), the Secretary for Defence must, in writing, 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. 35

(b) No person may reveal any counterintelligence 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 allude to it in a manner which will enable a person to identify it. 40

(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. 45

(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. 50

(b) The Secretary for Defence may on application to it 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 to the Review Board— 55

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

- (iv) any additional reasons which it deems necessary to furnish to the Review Board.

Personnel Security Review Board

40. (1) The Minister must establish a Personnel Security Review Board consisting of— 5
- (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 10
 - (d) such other members as the Minister may determine.
- (2) The Minister—
- (a) must appoint one of the members of the Review Board as Chairperson; and
 - (b) may, subject to subsection (1), likewise appoint an alternate member for any member of the Review Board. 15
- (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;
 - (b) who are 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; 20
 - (c) may, at the expiry of his or her term of office, be appointed again.

Review by Review Board

41. (1) The Review Board must review any objection referred to it in terms of section 39(4)(c) and may direct the Secretary for Defence to investigate any aspect under review further and to submit its findings and recommendations to the Review Board. 25
- (2) The Review Board may—
- (a) confirm the determination in question; or
 - (b) set aside such determination and substitute any determination which could have been made by the Secretary for Defence. 30
- (3) Section 39(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 37(5)(a) so as to reflect the determination made by the Review Board in terms of subsection (2). 35

Inspector-General of Department to monitor Intelligence Division

42. 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.

CHAPTER 7

40

COUNCIL OF DEFENCE AND OTHER COUNCILS

Establishment and composition of Council of Defence

43. (1) A Council of Defence is hereby established, which consists of—
- (a) the Minister;
 - (b) the Deputy Minister of Defence, if one is appointed; 45
 - (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. 50

Functions of Council of Defence

44. (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.

(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. 5

(3) The proceedings and decisions taken at meetings of the Council of Defence must be recorded and retained as prescribed.

Establishment and composition of Defence Staff Council 10

45. (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 15
- (d) any other person who may be co-opted by joint decision of the Secretary for Defence and the Chief of the Defence Force.

(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 20

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

Other councils that may be established

47. (1) The Secretary for Defence, the Chief of the Defence Force and any Chief of a Division may establish such other councils as may be necessary. 25

(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 30

48. (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. 35

(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 legislation, policy 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. 40

(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. 45

CHAPTER 8

LIMITATIONS ON RIGHTS OF MEMBERS OF DEFENCE FORCE

Application

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

Limitations of rights

50. (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— 5

- (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
- (d) shared accommodation or privation in accordance with the exigencies of military training and operations. 10

(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. 15

(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) (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. 20

(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. 25

(7) To the extent necessary for national security, access to information in the Department may be restricted. 30

(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*. 35

CHAPTER 9

EMPLOYMENT IN DEFENCE FORCE

Application

51. Unless the contrary appears from the context, this Chapter applies to members of the Regular Force and to members of the Reserve Force. 40

Regular Force

52. (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. 45

(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 in terms of or under those laws, apply to members of the Regular Force. 50

(b) The conditions contemplated in subsection (2) may provide for the payment of gratuities upon discharge to specified categories of members.

(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. 55

- (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 reasonable means, the Minister may authorise the contracting of a non-citizen in a temporary capacity for a period not exceeding three years, renewable once for a period not exceeding three years. 5
- (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 10 that there will be no prejudice to the Department.
- (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 15 his or her position in his or her other career if so directed by the Secretary for Defence.
- (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 20 performance of his or her functions; or
 (c) hold any position other than that of ordinary member in any political party.

Reserve Force

53. (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 any 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. 25 30
- (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.
- (3) All benefits and allowances accruing to a member of the Reserve Force, including a travel allowance scheme, must be prescribed. 35
- (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.
- (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 40 performance of his or her functions;
 (b) be politically partisan, or express any party-political allegiance, in the performance of his or her functions;
 (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. 45
- (7) Any member of the Reserve Force who wishes to undergo 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 50 to undergo such training.
- (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

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

(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. 5

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

- (a) swear or declare allegiance to the Republic;
- (b) be a citizen;
- (c) relinquish any other citizenship he or she may have; 10
- (d) have served successfully on probation as an officer with a temporary commission for at least one year;
- (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); 15
- (g) be a fit and proper person to serve and must have a trustworthy and exemplary character; and
- (h) comply with the prescribed security grading requirements. 20

(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 him or her being called upon to show cause in relation thereto. 25

(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. 30

(5) All persons given a temporary commission hold their commissions for such period as the Minister determines.

(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. 35

(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 40
- (ii) the repayment of any money stipulated in a contract pertaining to any education or training he or she may have undergone or may be in the process of undergoing at State expense.

(7) The commission of any officer terminates and must be regarded as having been cancelled— 45

- (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. 50

(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. 55 60