

(9) Officers who have retired from the Defence Force and while still in service held permanent commissions, may retain the use of their rank after they have so retired and are no longer in service, but must append the appellation "Rtd" whenever it is used.

(10) Commissioned officers from other countries who are attached to the Defence Force by means of temporary appointment in terms of this Act are entitled to all privileges bestowed on commissioned officers in the Defence Force by virtue of their rank. 5

#### **Pay, salaries and entitlements**

55. (1) 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 agreed upon in the Military Bargaining Council. 10

(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. 15

#### **Protection of members on active service**

56. (1) For the purposes of this section "member" includes an employee deployed with the Defence Force.

(2) (a) Where a member of the Defence Force has been captured or has gone missing and the member's commanding officer is satisfied that the member's capture or absence arose from the performance of his or her duties while rendering services in terms of this Act, such member must be regarded to be still serving in the Defence Force for all purposes until the day on which he or she again reports for duty or on which his or her death is confirmed or on which a competent court issues an order whereby the death of such person is presumed. 20 25

(b) The pay, salary and entitlements accruing to a member during his or her captivity or other absence contemplated in paragraph (a) must be paid to a beneficiary designated by the member concerned.

(c) The Chief of the Defence Force must take the necessary steps to ensure that in respect of every member of the Defence Force there is at all times a record of the particulars of the beneficiary designated by such member for purposes of paragraph (b). 30

(d) A member of the Defence Force may at any time designate another person in the place of the person designated for purposes of paragraph (b) but must ensure that any change in designation is notified to the Chief of the Defence Force in writing. 35

(e) Any change in designation becomes valid for purposes of paragraph (b) when it is received by or on behalf of the Chief of the Defence Force.

(3) Subject to the Moratorium Act, 1963 (Act No. 25 of 1963), and any other law relating to the protection of citizens or non-citizens who are in active service on behalf of the Republic, no appropriations, including seizures or attachments, may be made under or by virtue of any writ of execution, garnishee or sequestration order issued against a member of the Defence Force who is employed on active service in time of war or during a state of national defence or in fulfilment of the Republic's international obligations, except appropriations under or by virtue of a maintenance order issued against the said member. 40 45

(4) (a) A member of the Defence Force who, through no misconduct on his or her part, sustains a wound or injury or contracts an illness while on military service or undergoing training is, under such conditions and for such period as may be prescribed, entitled to be provided with medical, dental and psychological or other necessary treatment for such wound, injury or illness, notwithstanding that the duration of such treatment may extend beyond that member's service contract. 50

(b) A member receiving the treatment referred to in paragraph (a) must receive his or her pay and entitlements on their becoming due and such period of treatment must for all purposes be regarded as duty.

(5) An appropriate death and disability benefit insurance scheme must be negotiated and provided by the Defence Secretariat on behalf of members who must belong to it. 55

(6) The premiums in respect of such scheme must be recovered directly from the pay or entitlements payable to such members.

### Compensation in case of injury or disability

57. (1) For the purposes of this section "member" includes an employee deployed with the Defence Force.

(2) Any member or former member of the Defence Force who has suffered any damage or loss as a result of an act or omission arising from any training or service under this Act, whether or not legal proceedings have been or are to be instituted, may in writing apply to the Compensation Board established by subsection (3) for compensation, setting out fully the grounds on which the application is based, the extent and nature of the damage or loss and the compensation desired. 5

(3) A Compensation Board (hereinafter called the Board) is hereby established, and the Board members must be appointed by the Minister, after consultation with the Minister of Finance and the Minister of Labour, and they must receive the emoluments prescribed. 10

(4) The functions of the Board are to consider any application referred to it and to make recommendations to the Minister, or an officer acting on his or her behalf, as to— 15

- (a) the granting or refusal of the application or any part thereof;
- (b) the amount of compensation to be paid if the application is granted; and
- (c) the conditions, if any, under which the compensation is granted.

(5) (a) The Board consists of—

(i) a chairperson; and 20

(ii) such number of other members, not exceeding four, as the Minister may determine.

(b) The members of the Board hold office for three years at a time or for such period as the Minister determines.

(c) The Minister may appoint alternate members to fill in for members who are absent from any meeting of the Board. 25

(d) At any meeting an alternate member has all the rights and obligations of the member whose place he or she takes.

(e) The quorum for a meeting of the Board consists of the chairperson, or the acting chairperson, and two other members, and any decision of the majority present at any properly constituted meeting is the decision of the Board. 30

(f) Where the Board consists of more than two members, the chairperson, or the acting chairperson, has a casting vote in addition to his or her deliberative vote in the event of an equality of votes on any matter.

(6) The Board must adhere to any procedure prescribed. 35

(7) Any application to the Board must be accompanied by such documents as may be necessary to support the application.

(8) The Board may cause such investigation to be made in connection with the application and in such manner as it may deem necessary in order to enable it to furnish its recommendation. 40

(9) For purposes of the investigation referred to in subsection (8), the Board may summon witnesses, cause an oath or affirmation to be administered to them, examine them and call for the production of books, documents and objects.

(10) A summons for the attendance of a witness or for the production of any book, document or object before the Board must be signed and issued by the chairperson of the Board in the prescribed form and must be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrates' court. 45

(11) Any person who has been summoned to attend any sitting of the Board as a witness or who has given evidence before the Board is entitled to claim expenses incurred as if the summons were one requiring the attendance of such witness at a civil trial in a magistrates' court at the place where the sitting takes place. 50

(12) In connection with the giving of any evidence or the production of any book or document before the Board, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or a document at a civil trial in a magistrates' court applies. 55

(13) Any person who—

- (a) fails to comply with a summons in terms of subsection (10);
- (b) fails to produce documents, books or objects required by a summons; or
- (c) makes a false statement, knowing it to be false, in any application for compensation under this section or to the Board in connection with any such application, is guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a) or (b), to a fine or to imprisonment for a 60

period not exceeding six months, and in the case of an offence referred to in paragraph (c), to any punishment that may lawfully be imposed for perjury.

(14) (a) The recommendations of the Board in terms of subsection (4) must be referred to the Minister or officer contemplated in that subsection, as the case may be, for a decision on the application. 5

(b) The Minister or officer concerned must notify the applicant in writing of his or her decision, and cause effect to be given to the said decision.

(15) The Board may after a reasonable time has elapsed and on the grounds of any new facts presented to it, review any previous recommendation for a greater or lesser amount to be paid in compensation to a member who was duly compensated. 10

(16) The Department must maintain a secretariat to support the Board, keep appropriate records and handle queries referred to it in connection with any relevant matter pertaining to injury or psychological damage and compensation of members or former members of the Defence Force.

(17) The expenses of the Board and the compensation payments made as a result of the Board's recommendations must be defrayed from money appropriated for those purposes. 15

(18) Any compensation payment in terms of this section is free from taxation on payment to the member or former member concerned.

(19) A member of the Board who is not in the full-time employ of the State must be paid such remuneration and allowances in respect of his or her services as the Minister may determine with the concurrence of the Minister of Finance. 20

(20) The Board must—

(a) make a recommendation contemplated in subsection (4) within 12 months of receiving an application contemplated in subsection (2); and 25

(b) furnish a report to the Minister on its activities annually, which report must be tabled together with the annual report and financial statements contemplated in section 65 of the Public Finance Management Act, 1999 (Act No. 1 of 1999).

#### **Obligation to serve in time of war, state of national defence or state of emergency 30**

58. (1) Subject to this Act, every person who is contracted to serve in the Defence Force is obliged to serve and remain in service during a time of war, a state of national defence or a state of emergency.

(2) Where a contract of a member of the Defence Force has been terminated, has lapsed or has expired before the outbreak of war or the declaration of the state of national defence or the declaration of the state of emergency, such contract may be renewed by the Minister so that the member may render service in a time of war, during a state of national defence or during a state of emergency, but no such contract may be extended at any one time for a continuous period exceeding three months. 35

(3) Where a member's contract terminates, lapses or expires during service in a time of war, during a state of national defence or during a state of emergency, such contract may be extended by the Minister to enable the said member to remain in service for a period of three months. 40

(4) Nothing in this section may be construed as prohibiting an application for exemption or deferment of service by a member of the Defence Force in terms of this Act. 45

#### **Termination of service of members of Regular Force**

59. (1) The service of a member of the Regular Force is terminated—

(a) upon the expiration of three months after the date on which such member lodged his or her resignation or upon the expiration of such shorter period as may be approved by the Chief of the Defence Force; 50

(b) on the termination of any fixed term contract concluded between the member and the Department or on the expiration of any extended period of such contract;

(c) if he or she has reached the prescribed age of retirement or, where applicable, if he or she exercises his or her right to retire on pension in accordance with the provisions of the applicable pension laws; 55

- (d) if he or she is sentenced to a term of imprisonment by a competent civilian court without the option of a fine or if a sentence involving discharge or dismissal is imposed upon him or her under the Code; or
  - (e) if the Surgeon-General or any person authorised thereto by him or her issues a certificate to the effect that due to medical or psychological reasons, such member is permanently unfit to serve in the Defence Force. 5
- (2) The service of a member of the Regular Force may be terminated in accordance with any applicable regulations—
- (a) as a result of the abolition of such member's post or any reduction or adjustment in the post structure of the Department of Defence; 10
  - (b) if for reasons other than the member's own unfitness or incapacity, such discharge is likely to promote efficiency or increased cost-effectiveness in the Department of Defence;
  - (c) on account of unfitness for his or her duties or inability to carry them out efficiently, irrespective of whether such unfitness or inability is caused by such member's ill-health not amounting to a condition referred to in subsection (1)(e); 15
  - (d) if, after serving a period of probation in terms of this Act, his or her appointment is not confirmed; or
  - (e) if his or her continued employment constitutes a security risk to the State or if the required security clearance for his or her appointment in a post is refused or withdrawn. 20
- (3) A member of the Regular Force who absents himself or herself from official duty without the permission of his or her commanding officer for a period exceeding 30 days must be regarded as having been dismissed if he or she is an officer, or discharged if he or she is of another rank, on account of misconduct with effect from the day immediately following his or her last day of attendance at his or her place of duty or the last day of his or her official leave, but the Chief of the Defence Force may on good cause shown, authorise the reinstatement of such member on such conditions as he or she may determine. 30
- (4) The name of a member whose service has been terminated in terms of subsection (1)(a) or (b) or subsection (2)(a) or (b), and who has not voluntarily joined the Reserve Force, must be retained on the personnel list.
- (5) A member who is entitled to be discharged in terms of subsection (1)(a), (b) or (c) may not, without the prior consent of the Chief of the Defence Force, be permitted to obtain his or her discharge— 35
- (a) while he or she is employed in defence of the Republic; or
  - (b) while disciplinary proceedings are still pending against him or her.
- (6) A member contemplated in subsection (1)(a) or (d) who has undergone or who was undergoing education or training at State expense remains liable for the repayment of such money as is repayable in terms of a contractual agreement pertaining to such education or training. 40

### Legal representation for members

60. (1) For the purposes of this section "member" includes an employee deployed with the Defence Force. 45
- (2) A member of the Defence Force against whom a civil claim or any other action arising from his or her acts or omissions has been instituted is entitled to legal representation at the expense of the State unless it appears that he or she—
- (a) was not acting in the execution of his or her official duties or did not *bona fide* believe that he or she was so acting; 50
  - (b) exercised his or her powers in bad faith or exceeded such powers;
  - (c) without prior consultation with the State Attorney, made an admission of guilt which was detrimental to the State;
  - (d) acted negligently, recklessly or wilfully; or
  - (e) failed to comply with or disregarded standing minimum instructions of which he or she was aware or could reasonably be expected to have been aware. 55
- (3) Despite the ineligibility of a member for legal representation by reason of any of the grounds listed in subsection (2)(a) to (e), the State Attorney may on the request of the Department, provide legal representation to such member if the State has a material interest in the outcome of the case. 60

(4) The legal representation contemplated in subsection (2) may only be provided if the member agrees that any costs and expenses incurred by the State Attorney may be recovered from the said member.

#### **Procedures for redress of grievances**

61. (1) Any person to whom this Act applies and who is aggrieved by any act or omission of any other person to whom this Act applies, may lodge his or her grievance in writing. 5

(2) The Minister must prescribe procedures, which must, among other things, specify the expeditious processing of grievances and the chain of command through which individuals and groups within the Department may address individual and collective grievances. 10

(3) The Minister may perform any act in connection with any grievance which relates to or arises from the employment or the conditions of service of a former member while he or she was a member, if the Minister would, at the relevant time, have been competent in terms of this Act or any other law to perform any such act in respect of the then serving member. 15

(4) No act contemplated in subsection (3) may be performed after the expiration of a period of two years after the date on which the former member ceased to be a member.

#### **Religious observance in Defence Force**

62. The Minister may, subject to section 31 of the Constitution, determine the rules and related policies for religious observance in the Defence Force in consultation with the Chief of the Defence Force. 20

### **CHAPTER 10**

#### **TRAINING**

#### **Defence training institutions** 25

63. (1) The Minister may establish defence training institutions for purposes of providing instruction and other training for members and employees of the Department.

(2) Any institution established before the commencement of this Act for purposes of providing military instruction and other training, whether under a law hereby repealed or otherwise, must be regarded as being a defence training institution established under this section. 30

(3) The Minister must ensure that the training of members and employees of the Department promotes the objects of, and is in accordance with, the Constitution and the law, including customary international law and international agreements binding on the Republic. 35

(4) The training of members is an essential part of force preparation and may encompass instruction at any military or tertiary institution for higher education and learning in the world, as well as practical training which must include physical training, sport, structured recreational activities and military exercises.

(5) The provision and maintenance of training tools and equipment as well as the provision and maintenance of training facilities and opportunities for members of the Defence Force or other forces must be carried out under the direction of the Chief of the Defence Force or a person designated by him or her. 40

(6) The staff of any defence training institution must be members of the Department designated by the Chief of the Defence Force. 45

(7) The duration and description of the courses of instruction and training therein, the conditions of admission thereto, the conditions of future service required from persons who have undergone training and all matters relating to good administration and management, control and regulation of any such institution are as prescribed.

#### **Discipline** 50

64. (1) All members who are under instruction and training at any defence training institution in the Republic are subject to the Code.

(2) For purposes of subsection (1) and for purposes of jurisdiction, prosecution and punishment, a member of another force must be regarded as holding the equivalent of a rank in the Defence Force as determined by the Chief of the Defence Force.

#### Designation of areas for training

65. (1) Subject to subsections (2) and (3), and the National Environmental Management Act, 1998 (Act No. 107 of 1998), the Minister may, at the request of the Chief of the Defence Force, as and when the exigencies of the training require, designate any area, whether on public or private property, as an area in which the Defence Force may conduct military exercises. 5

(2) (a) Before acting in terms of subsection (1), the Minister must publish a notice in the *Gazette* and a notice in at least two official languages in newspapers circulating in the area in question and must also post suitable public notices, to the effect that such area is to be designated as a training area under subsection (1) and inviting all interested parties to furnish him or her with representations with regard thereto by not later than a date specified in the notice. 10 15

(b) Any such representations must be considered by the Minister before acting in terms of subsection (1).

(3) (a) Before the Minister may designate any private property under subsection (1), the Minister must obtain the approval of the lawful occupier of the property in question.

(b) If the approval is being withheld unreasonably or cannot be obtained after a reasonable attempt, the Minister may designate the area as a training area. 20

(4) The Minister must—

- (a) issue a certificate at the completion of the military exercises to the effect that the area in question has been cleared of all live ammunition and other objects which could cause injury; and 25
- (b) prescribe the conditions under which compensation may be claimed by or paid to an occupier for any damage or loss sustained as a direct consequence of military exercises so conducted.

### CHAPTER 11

#### EXEMPTIONS FROM, AND DEFERMENT OF, TRAINING AND SERVICE 30

##### Exemption boards

66. (1) The Minister must establish such number of exemption boards as may be necessary.

(2) The functions of a board are to hear applications by members of the Regular Force or the Reserve Force for their exemption from or the deferment of the whole or any part of their training or service, as the case may be. 35

(3) (a) A board must consist of no more than five members appointed by the Minister of whom at least one must be—

- (i) a person from outside the Department who is a fit and proper person for appointment as Chairperson; 40
- (ii) a member of the Regular Force of the rank of warrant officer or higher who is sufficiently experienced in operational and personnel matters of the Defence Force; and
- (iii) a member of the Reserve Force of the rank of warrant officer or higher who is sufficiently experienced in operational and personnel matters of the Defence Force. 45

(b) The Minister may appoint alternate members to take the place of members who are absent from any meeting of a board, and at any such meeting an alternate member has the same rights and obligations as the member replaced by him or her.

(c) If the Chairperson, or his or her alternate, is absent from a meeting of the board, the members present must elect one of their number to preside at that meeting and that member may during that meeting perform all the functions of the Chairperson. 50

(d) A quorum at a meeting of a board is constituted by the Chairperson, one member contemplated in paragraph (a)(ii) and one member contemplated in paragraph (a)(iii).

(e) The decision of the majority of the members of a board present at a meeting is the decision of the board, and in the event of an equality of votes concerning any matter, the member presiding has a casting vote in addition to his or her deliberative vote. 55

(4) The Minister may make such rules as may be necessary for regulating the procedure and the conduct of the business of a board.

(5) A member of a board who is not in the full-time employ of the Defence Force or the Public Service must be paid such remuneration and allowances in respect of his or her services as the Minister may determine, with the concurrence of the Minister of Finance. 5

(6) A board which has granted or denied the application for exemption from or deferment of training and service may, if it is satisfied that the facts upon which such decision is founded have changed, and after having afforded all interested parties an opportunity of being heard, withdraw or amend its decision with effect from a date determined by the board. 10

(7) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), no person may disclose any information obtained in the exercise of his or her powers or the carrying out of his or her duties relating to the deliberations or evidence brought before a board in terms of this Act without prior authority from the Minister. 15

### **Application for exemption**

67. (1) The following persons may apply to a board for exemption from, or deferment of, training or service:

- (a) A person who has been selected for service or training under this Act;
- (b) any person who, after having been selected, has commenced his or her training or service; or 20
- (c) any interested person, including an employer of a member of the Reserve Force, acting on behalf of a person contemplated in paragraph (a) or (b) with the written consent of such person.

(2) Any application made by or in respect of a person contemplated in subsection (1)(a) must be addressed to and lodged with the Chairperson of the board and any application made by or in respect of a person contemplated in subsection (1)(b) must be addressed to the Chairperson of the board and lodged with the commanding officer of the unit in which the said person is serving. 25

(3) (a) Every person who has made an application in terms of this section or on whose behalf such application has been made, must at his or her own expense attend at the time and place determined by the board and submit himself or herself to any examination relating to any matter connected with the application. 30

(b) A person attending as contemplated in paragraph (a), must be paid such reasonable expenses as may be prescribed. 35

### **Powers and duties of board**

68. (1) A board must carry out such investigations as may be necessary in connection with any application and representations.

(2) A board may sit at any place that is under the control of the Defence Force, for purposes of hearing evidence or for deliberating. 40

(3) (a) For purposes of ascertaining any matter relating to the subject of an investigation, a board has the power to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(b) A summons for the attendance of a witness or for the production of any book, document or object before a board must be signed and issued by the Chairperson of the board in the prescribed form and must be served in the same manner as a summons for the attendance of a witness at a civil trial in a magistrates' court. 45

(c) If required to do so by the Chairperson of the board a witness must, before giving evidence, take an oath or make an affirmation administered by the Chairperson of the board or such official of the board as the Chairperson may designate. 50

(d) Any person who has been summoned to attend any sitting of a board as a witness or who has given evidence before a board is entitled to claim expenses incurred from public funds in accordance with the tariff applicable to a witness in a civil trial in a magistrates' court. 55

(e)

In connection with the giving of any evidence or the production of any book or document before a board, the law relating to privilege as applicable to a witness giving evidence or summonsed to produce a book or a document in a court, applies.

(4) A board may, with due regard to the evidence adduced before it— 5

(a) grant the application on any justifiable ground, including that it should be granted—

(i) in order to prevent the interruption of the course of full-time educational studies of the person concerned;

(ii) by reason of the nature and extent of such person's domestic obligations or, in the case of a member of the Reserve Force, any circumstance connected with any trade, profession or business in which he or she is engaged; 10

(iii) on the grounds that such person is being compulsorily detained in any institution due to his or her having been sentenced to imprisonment or his or her incapacity to function effectively in society; 15

(iv) on the grounds that undue hardship pertaining to the personal circumstances of the member would otherwise be caused;

(v) on the grounds that it is in the public interest that the application be granted; or 20

(vi) on the grounds that the person concerned is a conscientious objector;

(b) grant the application under such conditions as it may deem fit;

(c) grant the whole or part of the application subject to such modifications as it may deem necessary; or

(d) refuse the application. 25

(5) A board must give reasons for its decision.

(6) No deferment may be granted which has the effect of forcing the applicant to commence service or training after reaching the age of 50 years.

#### Offences by witnesses summoned or subpoenaed by board

69. (1) A person is guilty of an offence if, after having been summoned to attend and give evidence or to produce any book, document or object before a board, he or she, without sufficient cause, fails to— 30

(a) attend at the time and place specified in the summons;

(b) remain in attendance until the conclusion of the enquiry or until he or she is excused by the Chairperson of the board from further attendance; or 35

(c) produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce.

(2) A person is guilty of an offence if he or she, after having been summoned to attend and give evidence before a board, attends but—

(a) refuses to be sworn or to make an affirmation as a witness after he or she has been required by the Chairperson of the board to do so; or 40

(b) after having been sworn or having made an affirmation, fails to answer fully and satisfactorily any question lawfully put to him or her.

(3) Any person convicted of an offence in terms of subsection (1) or (2), is liable to a fine or to imprisonment for a period not exceeding three months. 45

(4) Any person who after having been sworn or having made an affirmation, gives false evidence before a board on any matter, knowing such evidence to be false or not knowing or believing it to be true, is guilty of an offence and liable on conviction to any penalty which may be imposed on a person convicted of perjury.

#### Appeal to Minister 50

70. (1) Any person contemplated in section 67(1)(a), (b) or (c) aggrieved by a decision of a board may appeal against the decision to the Minister.

(2) The noting of an appeal in terms of subsection (1) does not suspend the obligation of the person to undergo the training in question or to perform the service in question. 55

#### Manner of appeal

71. (1) An appeal—



- (a) must be lodged in the prescribed form within 30 days from the date on which the appellant is notified of the decision of the board;
  - (b) must be delivered or sent to the Minister at his or her address, fax number or electronic mail address and a copy of the appeal must be delivered or sent to the Chairperson of the board at his or her address, fax number or electronic mail address; 5
  - (c) must identify the subject of the appeal and state the reasons for the appeal and may include any other relevant information known to the appellant; and
  - (d) must specify the postal address or fax number of the appellant.
- (2) (a) If an appeal is lodged after the expiry of the period referred to in subsection 10  
(1)(a), the Minister may, upon good cause shown, allow the late lodging of the appeal.  
(b) If the Minister disallows the late lodging of an appeal, he or she must give notice of that decision to the person that lodged the appeal.
- (3) As soon as reasonably possible, but in any event within three working days after receipt of a copy of the appeal in accordance with subsection (1), the Chairperson of the 15  
board must submit the reasons for the decision in question to the Minister.

#### **Decision on appeal, and notice**

72. (1) The decision on an appeal must be made with due regard to the—
- (a) particulars stated in the appeal in terms of section 71(1)(c);
  - (b) reasons submitted by the Chairperson of the board in terms of section 71(3). 20
- (2) The Minister may confirm the decision appealed against, may refer the matter back to the board or may set that decision aside, and give such decision as should in his or her view have been given.
- (3) The Minister must consider and decide the appeal as soon as reasonably possible, but in any event within 30 days after the appeal is received by him or her. 25
- (4) The Minister must, immediately after making the decision on an appeal, give written notice of the decision to the appellant.
- (5) The notice in terms of subsection (4) must—
- (a) state the reasons for the decision and must include any provision of this Act relied upon; and
  - (b) inform the appellant of his or her right to take the matter on review to the High Court. 30
- (6) If the Minister fails to give notice as contemplated in subsection (4), he or she must be regarded as having allowed the appeal.

### **CHAPTER 12**

35

#### **CEREMONIAL DECORATIONS, MEDALS, AWARDS, FLAGS AND ACCOUTREMENTS**

##### **Institution of decorations and medals**

73. The President may institute warrants for decorations and medals which are to be conferred in respect of conduct in peace or conduct during a state of national defence, 40  
including war.

##### **Rules and regulations**

74. The Minister, with the approval of the President, must make such rules and regulations as may be necessary in the case of every decoration or medal, for— 45
- (a) the award thereof;
  - (b) the granting, wearing, forfeiture and restoration thereof; and
  - (c) such other matters concerning such decorations and medals as he or she may deem expedient.

##### **Award of decorations and medals**

75. Persons may be awarded decorations and medals depending on the content of the 50  
warrant pertaining to such decoration or medal.

### **Wearing of decorations and medals**

76. The wearing in public of decorations and medals in the prescribed manner by the following categories of persons and on the following apparel, is allowed:

- (a) Serving members of the Defence Force, on the appropriate uniform as prescribed; 5
- (b) former members of the Defence Force who have been awarded military decorations and medals, on appropriate civilian dress as prescribed;
- (c) civilians who are the next of kin of deceased former members of the Defence Force, on appropriate civilian dress as prescribed; and
- (d) other civilian recipients, on appropriate dress. 10

### **Order of precedence**

77. (1) South African decorations and medals precede other decorations and medals presented to a member of the Defence Force.

(2) The President must issue an official order of precedence for the wearing of decorations and medals. 15

(3) Medals presented by any institution other than a state or a head of state may not be worn by members of the Defence Force together with their other medals.

### **Display of insignia**

78. Units of the Defence Force may display on parade only prescribed flags, honours, awards and other insignia. 20

### **Antecedent honours and medals**

79. Any decoration or medal instituted or recognised prior to the commencement of this Act may, subject to anything to the contrary contained in such honours and the rules for the governance thereof, be awarded, and any authority, sanction, warrant or certification relating to any such decoration or medal may be continued, amended or cancelled by the President. 25

## **CHAPTER 13**

### **GENERAL ADMINISTRATION AND SUPPORT**

#### **General powers of Minister**

80. (1) The Minister may do or cause to be done all things which are necessary for the effective defence and protection of the Republic, its territory and its inhabitants. 30

(2) Without derogating from the generality of subsection (1), the Minister may—

- (a) manage, provide, acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes, either singly or in conjunction with other users; 35
- (b) after consultation with other interested government departments manage, provide, acquire, hire, construct and maintain airfields, air navigation systems, harbours and harbour facilities for the vehicles, aircraft and vessels of the Defence Force;
- (c) acquire and maintain arms, ammunition, vehicles, aircraft, vessels, uniforms, stores and other equipment; 40
- (d) sell, let or otherwise dispose of movable or immovable property of the Defence Force which is no longer needed for defence purposes;
- (e) authorise the sale or loan of equipment belonging to the Department to the defence forces of allied countries; 45
- (f) establish military training institutions for purposes of providing training and instruction to members and employees of the Department;
- (g) issue directives for the training of any member or employee of the Department;
- (h) subject to an agreement with the owner and such conditions, including compensation, as may be stipulated by the National Treasury, authorise such 50

use of private vehicles, vessels or aircraft as is necessary for the training of the members of the Reserve Force or the rendering of services by them;

- (i) establish military museums, monuments, heritage sites and war graves or cemeteries.

(3) (a) If it is in the public interest, or in the case of an emergency, the Minister, after consultation with the Minister of Finance, may authorise— 5

- (i) the conveyance of any person who is not an officer or employee of the State acting in the execution of his or her duty as such, or any goods belonging to such person, by means of any vehicle, aircraft or vessel belonging to the Department; or 10
- (ii) the use of any vehicle, aircraft, vessel, equipment, facility or any other property belonging to the Department, by any person who is not an officer or employee of the State acting in the execution of his or her duty as such.

(b) Any authorisation contemplated in paragraph (a) may be made subject to such conditions as the Minister may determine. 15

### Delegation of powers and assignment of duties by Minister

81. The Minister may in writing delegate any power conferred upon him or her or assign any duty imposed upon him or her by or under this Act to the Secretary for Defence or the Chief of the Defence Force, except the power to make regulations and, in the case of the Chief of the Defence Force, the power to employ the Defence Force as contemplated in section 18(1). 20

### Regulations

82. (1) The Minister may, by notice in the *Gazette*, make regulations regarding—

- (a) the conditions of service of members of the Defence Force generally, excluding pay, salaries and entitlements, as well as the maximum age to which members may serve, related job descriptions and personnel management codes and job evaluation; 25
- (b) the temporary employment of persons, in a military or a civilian capacity;
- (c) discipline in the Defence Force;
- (d) the occupation of official quarters; 30
- (e) the conditions under which overtime duty, subsistence, travelling, climatic and other allowances may be paid;
- (f) the occupational health and safety of members of the Defence Force and civilian employees of the Department;
- (g) defence intelligence, including— 35
  - (i) assigning security classifications to information of the Department;
  - (ii) assigning security classifications to areas and facilities of the Department;
  - (iii) restrictions based on security classifications with regard to access to such information, areas or facilities; 40
  - (iv) assigning security gradings to posts in the Department; and
  - (v) the declassification of information, areas or facilities of the Department;
- (h) training, including—
  - (i) the level of training of the members of the Defence Force;
  - (ii) the attendance of military training programmes by civilians older than 18 years; 45
  - (iii) the establishment of training camps and units;
  - (iv) the accreditation of military training institutions with academic and other non-military institutions;
  - (v) the conclusion of agreements between the State as employer and members of the Department covering all aspects of training and education; and 50
  - (vi) the use and compensation of specialised staff at or in respect of military training institutions not otherwise provided for by law;
- (i) the establishment of standards of any physical measurement as well as the medical and psychological condition determined by an appropriate examination or measurement and compulsory immunisation of the members of the Defence Force; 55

- (j) the establishment of standards of health and the compulsory immunisation of employees of the Department;
  - (k) the provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependants and, if applicable, the establishment, management and control of one or more funds for such purposes; 5
  - (l) leave of absence of members of the Defence Force;
  - (m) compulsory insurance of members and employees, and members of any auxiliary service, in respect of bodily injury, disablement or death occurring in the course of military service, as well as the deductions of the prescribed premiums for such insurance from the pay, salary or remuneration of the members and employees concerned; 10
  - (n) labour relations between members of the Defence Force or any auxiliary service and the State as their employer, including the resolution of disputes and the establishment of mechanisms necessary for the regulation of the said labour relations and the administration and management of such matters; 15
  - (o) the establishment, management and control of funds and trading and non-trading institutions, the aims of which are to the benefit of serving and former members of the Defence Force and their accompanying guests as stipulated;
  - (p) the seniority and precedence of headquarters, the constituent forces, formations, units and personnel musters and of members of the Defence Force; 20
  - (q) all matters pertaining to military ceremony including the design, award, use, care and custody of colours, standards and flags designated for military use;
  - (r) honorary appointments and ranks in the Defence Force and the terms and conditions upon which the appointments may be made; 25
  - (s) beneficial affiliation of units and formations of the Defence Force with similar units and formations of foreign defence forces;
  - (t) the exemption of a member who, while in the service at a specific place and on good cause shown, requests not to be ordered to serve elsewhere in the Republic or the rest of the world; 30
  - (u) the governance and management of military detention and correctional facilities established under the Act and the enforcement of discipline in such facilities;
  - (v) the prohibition, restriction and regulation of any traffic in any military area, base, unit or on any premises under the control of the Department; 35
  - (w) the minimum standards for the registration and certification of roadworthiness of vehicles and vehicular equipment for use in the Defence Force and the licensing of the drivers of such vehicles and the operators of such equipment;
  - (x) the minimum standards for the registration and certification of airworthiness of aircraft for use in the Defence Force and the certification of the competency of the crew of such aircraft; 40
  - (y) the minimum standards for the registration and certification of the seaworthiness of vessels for use in the Defence Force and the certification of the competency of the crew of such vessels; 45
  - (z) the issue, care and disposal of arms, accoutrements, ammunition, supplies, animals, transport, clothing and equipment of the Department;
  - (zA) military museums, monuments, heritage sites and cemeteries;
  - (zB) any auxiliary services provided for in this Act including matters relating to terms and conditions of service of members, their education, training, discipline and conduct; 50
  - (zC) the support that the Department may give to recognised community organisations and institutions in respect of development programmes;
  - (zD) any matter which this Act requires or permits to be prescribed or which it is necessary or expedient to prescribe in order to ensure the good governance of the Department. 55
- (2) Any regulation made in terms of subsection (1)—
- (a) which may result in financial expenditure for the State may only be made subject to sections 63 and 64 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), and with the approval of the Minister of Finance; and 60
  - (b) relating to the terms and conditions of service of members of the Defence Force may be made with retrospective effect for a period not exceeding 12 months, except where such regulations provide for—

- (i) any reduction in the rights and privileges of members; or
- (ii) the imposition of penalties.

(3) Any regulation made under subsection (1) may provide that a contravention of or failure to comply with a regulation is an offence and that any person found guilty of the offence is liable to a fine or to imprisonment for a period not exceeding five years.

5

#### Protection of defence assets

83. (1) The Minister may, by notice in the *Gazette*, designate a mark to be applied to animals, equipment or articles to denote the ownership of the Department or any visiting force in such animals, equipment or articles.

(2) No animal, equipment or article belonging to the Department or to any visiting force which bears a mark contemplated in subsection (1) may be seized or attached by or under any writ of execution which may be issued against any employee of the Department or any visiting force.

10

(3) The entity known as the Department of Defence Archive Repository which existed immediately prior to the commencement of this Act continues to exist under this Act under the same conditions, and the provisions of the National Archives of South Africa Act, 1996 (Act No. 43 of 1996), apply with the necessary changes, but—

15

(a) the Archive Repository must be maintained under the proper management and care of the Department;

(b) no record may be transferred to the National Archives;

20

(c) subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)—

(i) no record may be available for public access until a period of 20 years has elapsed since the end of the year in which the record came into existence, which period may be extended by the Minister in the interests of national security;

25

(ii) access to records which have been in existence for less than 20 years can only be obtained subject to such conditions as may be determined by the Secretary for Defence.

#### Exemptions applicable to Defence Force

30

84. (1) Despite anything to the contrary contained in any other law—

(a) the Defence Force is exempted from any registration, licensing or related fee for taxation regarding the possession or movement of equipment, vehicles, aircraft or vessels which are used by the Department if such equipment, vehicles, aircraft or vessels are clearly marked and identifiable;

35

(b) members of the Defence Force are exempted from any provisions relating to the licensing of drivers of any vehicle or operators of any equipment or machinery used by the Department if the Department ensures that the said drivers or operators are adequately trained and tested in accordance with prescribed minimum standards;

40

(c) members of the Defence Force are exempted from any provisions relating to the licensing of pilots, aircrew and aerospace-related persons of any aircraft or air vessel used by the Department if the Department ensures that such pilots, aircrew and aerospace-related persons are adequately trained and tested in accordance with prescribed standards to ensure their competency and certification;

45

(d) officers or sailors of any vessel used by the Department are exempted from any provisions relating to their competency and certification if the Department ensures that such officers or sailors are adequately trained and tested in accordance with prescribed standards to ensure their competency and certification;

50

(e) clubs, messes and trading institutions are exempted from the payment of any licence fees, taxes and duties other than customs and excise duties or value-added tax if such clubs, messes and trading institutions are established and managed for the exclusive use or benefit of members or employees of the Department, their families, their guests, military veterans and members of any visiting forces, as prescribed;

55

(f) unless determined otherwise by the Chief of the Defence Force due to the nature of the duties involved, a member of the Defence Force is exempted

from payment of tolls when passing through a toll-gate or any similar facility if he or she so passes in the course of performing his or her functions and if he or she is—

- (i) driving a military vehicle or operating any other military means of transport; or 5
- (ii) proves his or her membership of the Defence Force by exhibiting his or her military identification and the relevant authorisation documents.

(2) The Secretary for Defence may determine that subsection (1)(f) does not apply to any particular member or group of members of the Department, in which case such toll is payable and such payment must be regarded as being authorised expenditure. 10

### Exclusion of liability

85. (1) Neither the State nor a member or employee is liable (except in the case of any wilful act or omission on the part of a member or employee) to any person who makes unauthorised use of any vehicle, aircraft or vessel under the control of the Department, or to any dependant of such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of such vehicle, aircraft or vessel. 15

(2) Neither the State nor a member or employee is liable (except in the case of any wilful act or omission on the part of any such person) to any person—

- (a) referred to in section 80(3) who makes use of any vehicle, aircraft or vessel which is under the control of the Department and appropriated for use by members or employees; 20
- (b) who makes use of any other property of the Department; or
- (c) to whom services are rendered by the Department, or to any dependant of such person, for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the use of any such vehicle, aircraft or vessel, such other property or such services. 25

(3) If the State has paid any compensation in respect of a claim by any person for any loss or damage contemplated in subsection (2), the State may, without having obtained any formal cession of the right of action, recover from the person responsible for the loss or damage, the amount paid by way of compensation or any lesser amount determined by the Minister with the concurrence of the Minister of Finance. 30

### Right of recourse in respect of expenditure for injuries of members

86. Whenever the Department— 35

- (a) has incurred expenditure or has paid any amount in respect of medical, dental or hospital treatment of the bodily injuries of a member of the Defence Force or the supply of articles or the rendering of service in connection with that treatment; or
- (b) has made any payments in respect of any salary, pay, allowances or any compensation to the member during his or her incapacity, and the expenditure has been incurred or the payments have been made in circumstances where the member or his or her estate would otherwise have a claim against another person as a result of the bodily injury to or incapacity of the member, the Department shall, without obtaining a formal cession of action, have the same right of recourse against that other person for restitution of the payments made as that member or his or her estate had against such person. 40 45

### Indemnity in respect of trespass and nuisance

87. No action shall be brought against the State in respect of—

- (a) trespass or nuisance, by reason only of the flight of aircraft or air vessels used by the Department, or being operated on behalf of the Department, over any property at a height which, having regard to the weather and all the circumstances of the case, is reasonable; or 50
- (b) any reasonable nuisance caused by any activity connected with ship building or repairs to shipping conducted by the South African Navy in any of its dockyards. 55

### Permission to enter upon private land for national border control

88. (1) Any member of the Defence Force may enter upon private land within a strip not exceeding 10 kilometres in width along any border of the Republic for the purposes of national border control, with the approval of the lawful occupier of the land.

(2) If the approval is being withheld unreasonably or cannot be obtained after a reasonable attempt, the Minister may give written permission for such entry. 5

(3) (a) No member may enter upon any land unless the occupier has given his or her approval or unless the occupier has been given a copy of the Minister's permission to enter such land.

(b) If the occupier in question cannot be traced a copy of the permission must be affixed at a prominent place on the land before the border control may be undertaken. 10

(4) The Minister must prescribe the conditions under which compensation may be claimed by or paid to such occupier for any damage or loss sustained as a result of any entry in terms of this section.

## CHAPTER 14

15

### STATE OF NATIONAL DEFENCE

#### Declaration of state of national defence

89. The President may, by proclamation in the *Gazette*, declare a state of national defence contemplated in section 203 of the Constitution if, among other things, the sovereignty or territory of the Republic— 20

(a) is threatened by war, including biological or chemical warfare, or invasion, armed attack or armed conflict; or

(b) is being or has been invaded or is under armed or cyber attack or subject to a state of armed conflict.

#### Mobilisation during state of national defence

25

90. After the declaration of a state of national defence the President may, by proclamation in the *Gazette*, authorise the mobilisation of persons for service in the Defence Force if it is necessary to supplement the number of serving members.

#### State of national defence regulations

91. (1) The President may during a state of national defence, and for as long as the proclamation declaring a state of national defence remains in force, by proclamation in the *Gazette*, make such regulations as are necessary or expedient to deal with any circumstances which have arisen or are likely to arise as a result of the state of national defence, and make adequate provision for terminating the state of national defence. 30

(2) The regulations contemplated in subsection (1) may include matters regarding— 35

(a) persons eligible for mobilisation, including the minimum age of persons (which may not be below 18 years), and the maximum age of persons to be mobilised;

(b) persons exempted from mobilisation;

(c) the terms and conditions of service and training; 40

(d) the terms and conditions of release and discharge from service;

(e) the method of notification of persons to be mobilised;

(f) exemptions and deferments from service, and the appointment of exemption boards;

(g) the security of national key points and other places that may be designated; 45

(h) censorship of information;

(i) the evacuation or concentration of persons, including curfew laws;

(j) the control and use of transport systems, air traffic and use of the territorial waters of the Republic;

(k) the offences and penalties applicable for contravention of the regulations; 50

(l) places of custody or detention; and

(m) the demobilisation of persons on completion of service and when the declaration of the state of national defence is revoked.

## CHAPTER 15

CO-OPERATION WITH OTHER FORCES AND FORCES VISITING  
REPUBLIC

## Agreements

92. Any agreement between the Government of the Republic and any other state or international institution or organisation regarding the use or provision of military forces must provide for the legal status of— 5

- (a) members of the Defence Force placed at the disposal of the military authorities of such state, institution or organisation; and
- (b) foreign military personnel and their mission while the personnel are deployed in the Republic. 10

## Service by members in fulfilment of international obligation

93. Service in fulfilment of an international obligation which entails participation by any member of the Defence Force in a military force under the control or with the approval of an international body— 15

- (a) is subject to such member's rights and conditions of service under this Act, and must be rendered by every member for such additional emoluments and benefits, including medical, travelling and subsistence, transport, leave, maintenance, assurance, insurance, tax, disability and death benefits as may be determined by agreement with the international body; 20
- (b) may not be rendered by any such member in a rank lower than that which he or she holds in the Defence Force;
- (c) must be rendered in compliance with the customary international law and treaties or other international agreements binding on the Republic; and
- (d) may not have the effect of detracting from the powers and duties of the President, the Minister, the Chief of the Defence Force or the Secretary for Defence in relation to such member. 25

## Attachment of personnel

94. (1) The Minister may—

- (a) temporarily attach to the Defence Force any member of a force of any country or international body who is placed at the disposal of the Minister for that purpose by the military authorities of that country or international body, as the case may be; and 30
- (b) subject to the conditions applicable to his or her service, place any member of the Defence Force at the disposal of the military authorities of any country or international body for purposes of being attached temporarily by those authorities to the forces of that country or, in accordance with sections 93 and 95, the international body, as the case may be. 35

(2) (a) Subject to paragraph (b), a member of a force of any other country or international body who is attached temporarily to the Defence Force is subject to the law applying to that portion of the Defence Force to which he or she is attached and must be treated, and has the same power of command and punishment over members of the Defence Force, as if he or she were a member of that Force of a rank equivalent to that held by him or her as a member of the force of the country or international body from which he or she came. 40 45

(b) The President may, by proclamation in the *Gazette*, direct that in relation to members of a force of any country or international body specified in the proclamation, the laws relating to the Defence Force apply with such exceptions and subject to such adaptations and modifications as may be so specified.

(3) Sections 93 and 95 apply with the necessary changes to any member of the Defence Force placed at the disposal of the military authorities of another country by the Minister— 50

- (a) for the purpose of being attached temporarily by those authorities to a force of that country in terms of subsection (1)(b); and



- (b) in accordance with an international agreement, regardless of whether or not such member, in consequence of the Minister's decision, becomes attached temporarily to the defence force or any other organ of state of that other country.

#### **Command over members serving under control of international body**

5

95. Whenever the service contemplated in section 93 entails members of the Defence Force and any military force under the control of an international body—

- (a) serving together, every member of that military force must be treated, and has powers of command over those members of the Defence Force, as if he or she were a member of the Defence Force of the relative rank; and 10
- (b) acting in combination, every officer of that military force appointed to command the combined forces or any portion thereof, must be treated, and has powers of command and punishment over those members of the Defence Force, as if he or she were an officer of the Defence Force of the relative rank.

#### **Command over members serving together with other military force**

15

96. (1) Whenever members of the Defence Force and any military force of another country are—

- (a) serving together, every member of that military force must be treated, and has powers of command over those members of the Defence Force, as if he or she were a member of the Defence Force of the relative rank; and 20
- (b) acting in combination, every officer of that military force appointed to command the combined forces or any part thereof must be treated, and has powers of command and of punishment over those members of the Defence Force, as if he or she were an officer of the Defence Force of the relative rank.

(2) For purposes of this section, the Defence Force and any other force must be regarded as serving together or acting in combination whenever the President has by proclamation in the *Gazette* declared that they are so serving or acting, and the relative rank of members of the Defence Force and of such other force is as designated by such proclamation. 25

(3) Sections 93 and 95 apply with the necessary changes to any member of the Defence Force who serves or acts as contemplated in subsection (1). 30

#### **Visiting forces**

##### **Discipline and internal administration of visiting forces**

97. (1) (a) Subject to paragraph (b), a military court or other authority of a visiting force may in matters concerning discipline and the internal administration of that force, which may include the administration of the property or the estate of a deceased member of that force, within the Republic exercise all such powers as are conferred upon such court or authority by the law of that country. 35

(b) No cruel, inhuman or degrading punishment contemplated in section 12(1)(e) of the Constitution may be meted out or administered by a military court or other authority in terms of paragraph (a) while in the Republic. 40

(2) The laws which are applicable in connection with the powers, immunities and privileges of, and proceedings before, a military court of the Republic are, in so far as they can be applied, applicable also with reference to a military court of a country exercising jurisdiction by virtue of this Act. 45

(3) For purposes of any legal proceedings in the Republic, where any sentence has been passed by a military court of a visiting force upon any of its members—

- (a) that court must be regarded as having been properly constituted;
- (b) any proceedings before such court must be regarded as having been regularly conducted; 50
- (c) the sentence must be regarded as being within the jurisdiction of the court and in accordance with the law of the applicable country;
- (d) the sentence must, if executed according to the tenor of the law of that country, be regarded as having been lawfully executed; and

- (e) any member detained in pursuance of any such sentence or pending the determination of the charge brought against him or her, must be regarded as being in legal custody.
- (4) For purposes of any legal proceedings in the Republic, a certificate under the hand of the officer in command of a visiting force to the effect that— 5
- (a) a member of that force is being detained for the cause set out in the certificate, constitutes evidence of the cause of his or her detention, but not of his or her being such a member; and
  - (b) the persons specified in the certificate sat as a military court of the country to which that force belongs, constitutes evidence of that fact. 10
- (5) No proceedings in respect of pay, terms of service or discharge of a member of a visiting force may be entertained by any court of the Republic.
- (6) For purposes of enabling the military courts and military authorities of a visiting force to exercise the powers conferred upon them by this section more effectively, the Minister may, if so requested by the officer in command of the visiting force or the applicable government, by general or special orders to the Defence Force direct the arrest of any member of the visiting force alleged to be guilty of an offence against the law of that country and the handing over of the person so arrested to the appropriate authorities of the visiting force. 15

#### **Application of laws in relation to visiting forces**

20

98. A law which—
- (a) provides for the exemption from registration, licensing or any other authorisation of any vessel, vehicle, aircraft, machine or apparatus under the control of the Defence Force;
  - (b) confers a privilege or immunity on any person by virtue of a connection with the Defence Force; 25
  - (c) exempts any property or business from the operation of any law or from any tax, rate, licence, imposition, toll or charge by virtue of a connection with the Defence Force;
  - (d) imposes upon any person obligations in relation to the Defence Force; or 30
  - (e) penalises any act or omission by any person in relation to the Defence Force, applies with the necessary changes to a visiting force.

#### **Deserters from visiting forces**

99. (1) Subject to subsection (2); the Code applies to— 35
- (a) any deserter or absentee without leave of a visiting force; and
  - (b) any member of a reserve or auxiliary force of a visiting force who, having failed to obey a notice calling upon that member to appear at any place for service, is by the law of that country liable to the same punishment as a deserter or an absentee without leave.
- (2) (a) No member of a visiting force may be apprehended or dealt with under this section except in compliance with a request from— 40
- (i) the applicable government, if such member is alleged to be a deserter; or
  - (ii) the officer in command of that force, if such member is alleged to be an absentee without leave.
- (b) A member contemplated in paragraph (a) must be handed over to the authorities of that country at such a place in the Republic as may be agreed upon with the particular government or officer, as the case may be. 45
- (3) For purposes of any proceedings under this section a document purporting to be a certificate under the hand of—
- (a) the Minister of Foreign Affairs or the Minister to the effect that a request has been made under subsection (2)(a)(i), is admissible as evidence of the making of such a request; and 50
  - (b) the officer in command of the visiting force to the effect that a named and described person was at the date of the certificate an absentee without leave from that force, is admissible as evidence of the facts so certified. 55

## Inquests and removal of bodies of deceased members of visiting forces

100. (1) Unless the Minister directs otherwise, no inquest may be held as to the cause of death of any deceased person who at the time of his or her death was a member of a visiting force or of a civilian component of such a force.

(2) Whenever a magistrate holding an inquest is satisfied that a person who is subject to the jurisdiction of the military courts of a visiting force is being detained for the purposes of being charged, or has been charged before a court of that country, with an offence arising out of the death which is the subject of the inquest, he or she shall, unless the Minister directs otherwise, adjourn the inquest and furnish the Director-General: Home Affairs with such particulars necessary for the registration of the death as he or she may have ascertained at the inquest up to the time of its adjournment.

(3) (a) No inquest which has been adjourned in terms of subsection (2), may be resumed unless the Minister so directs.

(b) Where an inquest has resumed on the Minister's directions, the magistrate having jurisdiction must commence the proceedings afresh but may not furnish the Director-General: Home Affairs with any particulars or further particulars for the registration of the death.

(4) Section 20(3) of the Births and Deaths Registration Act, 1992 (Act No. 51 of 1992), does not apply in respect of any case where the body of a deceased person who at the time of his or her death was a member of a visiting force or of a civilian component of such a force, is to be buried or cremated at any place outside the Republic except as regards the burial or cremation of the body of a deceased person in relation to whose death an inquest has been held or resumed in pursuance of instructions given by the Minister under subsection (1) or (3).

## CHAPTER 16

### BOARDS OF INQUIRY

#### Convening boards of inquiry

101. (1) The Minister, the Secretary for Defence or the Chief of the Defence Force may, at any time or place, convene a board of inquiry to inquire into any matter concerning the Department, any employee thereof or any member of the Defence Force or any auxiliary service, any public property or the property or affairs of any institution or any regimental or sports funds of the said Force, and to report thereon or to make a recommendation.

(2) Despite subsection (1), a Chief of a Service or Division may at any time and place convene a board of inquiry to inquire into any matter concerning that Service or Division, as the case may be, or any member or employee, any public property, the property or affairs of any institution or any regimental or sports fund of the said Service or Division, and to report or to make a recommendation thereon.

(3) (a) A Chief of a Service or Division may, subject to such conditions as he or she may impose, in writing delegate any power conferred upon him or her in terms of subsection (2) to any member or employee in his or her Service or Division, as the case may be.

(b) A delegation in terms of paragraph (a) does not prevent the Chief concerned from exercising the power in question himself or herself.

(4) A board of inquiry must be convened by means of a written convening order and must consist of so many persons who are in the employ of the Department of Defence as the person convening the board may determine, but where a board is convened by a military officer it must consist of at least one officer and as many warrant officers, non-commissioned officers or civilians who are in the employ of the Department of Defence as the officer convening the board may determine.

(5) Any reference to the president of a board of inquiry must, when a board consists of one person, be construed as a reference to such person.

(6) The convening order must—

- (a) designate a person serving on the board as president;
- (b) set forth the number, rank or identity number, as the case may be, and the full names of every member and any secretary to the board;

- (c) set forth clearly and specifically the terms of reference of the board of inquiry;  
and
- (d) indicate when the board is required to report on the findings and recommendations with regard to the matter referred to it for investigation.

(7) Where any matter to be investigated by a board of inquiry is of a secret or confidential nature, the convening order must state that fact and that the terms of reference will be communicated to the president personally in writing. 5

(8) The person convening a board of inquiry may appoint a person as secretary to the board, and such secretary must perform the duties, including the leading of the evidence heard by the board, that the president of the board may require him or her to perform. 10

(9) Every board of inquiry may be conducted in private and each president of a board of inquiry must determine—

- (a) the time and place of every meeting of the board;
- (b) the witnesses to be called by the board; and
- (c) the order in which witnesses are to be called. 15

(10) (a) The report of a board of inquiry must be dated and signed by every member of the board and submitted without delay, together with the record of proceedings, to the officer who convened the board.

(b) Where any member of the board of inquiry disagrees with the report, or any finding, conclusion or view expressed by any other member or members on any matter, he or she may as part of the report furnish his or her own report or express his or her own finding, conclusion or view in relation to that matter. 20

#### **Attendance of persons at board of enquiry, and witnesses**

102. (1) The president of any board of inquiry may summon any person in the Republic to attend such board of inquiry and to give evidence thereat. 25

(2) The president of any board of inquiry may administer the prescribed oath or affirmation to witnesses, interpreters and stenographers at such inquiry.

(3) (a) Any person giving evidence before a board of inquiry may be compelled to answer any question or to produce any article if the president of the board of inquiry so orders. 30

(b) No incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a question in terms of paragraph (a) is admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law, except in criminal proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 104(21). 35

(4) Subject to subsection (5), the evidence of every witness called by a board of inquiry must be given orally and on oath or affirmation and must be recorded by or under the supervision of the president.

(5) A board of enquiry may admit a sworn statement by a witness as evidence where, with due regard to the exigencies of the service— 40

- (a) by reason of his or her illness, the witness cannot attend;
- (b) undue expense would be incurred by the attendance of the witness; or
- (c) the evidence of the witness is of a purely formal nature.

(6) Where the evidence is of such a nature that it is likely that the findings or recommendations would seriously affect the professional reputation of a person who is subject to the Code or a person who is in the employ of the Department, or that any disciplinary or other legal steps might be taken against such a person— 45

- (a) the witness concerned must, despite subsection (5), be called to give evidence orally if the person who is likely to be affected, so requests; 50
- (b) the person who is likely to be affected may be present at every meeting of the board where such evidence is led, to cross-examine any witness giving such evidence, to give evidence himself or herself, even if otherwise called as a witness by the board, and to call witnesses.

(7) The president of the board must timeously notify a person contemplated in subsection (6) of the time and place of every such meeting and advise that person of the rights conferred upon him or her by that subsection. 55

(8) Any person contemplated in subsection (6) may at any stage of the proceedings determined by the board, address the board on the evidence referred to in that subsection and may— 60

- (a) in the exercise of his or her rights under that subsection be represented by a legal representative of his or her own choice at his or her own expense; or
- (b) if the person so requests, be assigned military defence counsel at State expense.

(9) Before the record of proceedings is submitted to the person who convened the board, the relevant findings and recommendations of a board of inquiry must be communicated to each person who is adversely affected by such findings and recommendations and that person has the right to make written representations to the person who convened the board of inquiry within 14 days of receipt of the relevant findings and recommendations.

(10) Subsections (6) and (7) do not apply in relation to any board of inquiry convened under section 103.

#### **Board of inquiry in relation to absence without leave**

**103.** (1) When any member of the Defence Force has been absent without leave for more than 30 days and is still absent, a board of inquiry must be convened by the commanding officer of the absent member to inquire into such absence.

(2) If a routine inspection reveals any deficiency in the kit, arms and equipment or any public property issued to the person contemplated in subsection (1), the board of enquiry may also inquire into such deficiency.

(3) If the board of inquiry finds that such member has been so absent for more than 30 days and is still so absent, it must record such finding, including the date of the commencement of the absence without leave, and also its finding on any deficiencies of the kit, arms and equipment and any public property issued to him or her and the estimated value thereof.

### **CHAPTER 17**

#### **OFFENCES AND PENALTIES**

##### **Offences and penalties**

**104.** (1) Any employer who unfairly discriminates against any of his or her employees on the grounds that the employee wishes to be or is a voluntary member of the Reserve Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

(2) Any person who marks, defaces or conceals any mark on any equipment, article or animal where such mark denotes the ownership of the Republic or of any visiting force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(3) Any person who, without the necessary authority, disposes of any article or animal in the possession of the Department, or who through negligence loses any such article or animal, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 15 years.

(4) Any person who obstructs, damages, removes, destroys or commits any other act on or against any property used for protecting or safeguarding the Republic, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.

(5) Any person who, without authority, possesses or wears prescribed uniforms distinctive marks or crests, or performs any prohibited act while wearing such uniform or with such uniform, distinctive marks or crests, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(6) Any person who, without authority, uses or is responsible for the use of any name, title or any other symbol of the Department, where such use is calculated or likely to lead people to infer that it has been authorised under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(7) Subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000), any person who, without authority, discloses or publishes any information, or is responsible for such disclosure or publication, whether by print, the electronic media, verbally or by gesture, where such information has been classified in terms of this Act,

is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years.

(8) Any person who, without authority, gains access to the computer systems or computer data bases of the Department, or who, without authority, changes, alters, corrupts, copies or withdraws data from any such systems or data bases, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years. 5

(9) Any person who falsely represents himself or herself to be a member or an employee of the Defence Force or Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 10

(10) Any person who obstructs or interferes with the Defence Force in the execution of its duties in terms of this Act or the Constitution, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.

(11) Any person who induces or attempts to induce any member of the Defence Force to neglect, or to act in conflict with, his or her duty to the Defence Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 15

(12) Any person who is liable to render service in the Defence Force by virtue of a military service contract with the Defence Force, and refuses to render such service, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year. 20

(13) Any person who recruits or attempts to recruit any member of the Regular Force for membership of any trade union other than a military trade union which is duly authorised to act as such, or incites or attempts to incite a member of the Defence Force to participate in strikes, demonstrations or protests prohibited in terms of the regulations, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 25

(14) Any member of the Defence Force or of any auxiliary service who participates in any strike or secondary strike action, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 30

(15) Any member or employee of the Department who, in a wilful or negligent manner, contravenes or fails to comply with any regulation made under this Act, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

(16) Any person who, without authority, discloses the identity of a covert source of the Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years. 35

(17) Any person who undermines or stifles, or seeks to undermine or stifle, any procedure for the redress of grievances, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 40

(18) Any member of the Defence Force who neglects to inform a prescribed officer of his or her change of address and such other particulars as may be prescribed, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding six months.

(19) (a) A person is guilty of an offence if he or she, without proper authority— 45

- (i) enters, overflies or otherwise collects or gains access to classified information from specific classified facilities, installations or instruments of the Department;
- (ii) is in possession of, makes copies of, sketches, photographs, makes print-outs of, electronically or in any other manner records or obtains digital data from classified facilities, installations or instruments of the Department; or 50
- (iii) hands over or discloses to any person or loses or obtains from any member or employee of the Department, copies, sketches, photographs, print-outs, electronic or non-electronic recordings of the digital data referred to in subparagraph (ii).

(b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or imprisonment for a period not exceeding 25 years. 55

(20) (a) A person is guilty of an offence if he or she in respect of public property or State money under the control of the Department—

- (i) sells, barter or otherwise disposes of or lends or pledges any such property without authority; 60
- (ii) agrees to pay or connives at the payment of any exorbitant price for any such property purchased for use, or any service hired, by the Department;
- (iii) without good cause abandons, damages or destroys any such property;

- (iv) being responsible for stores, stocks or money in the Department, so negligently perform his or her duties as to cause a deficiency in such stores, stocks or money;
  - (v) without authority takes or removes any article from its designated place;
  - (vi) uses any article or money for any purpose other than in the public interest;
  - (vii) through gross negligence or intentionally omits to take action to prevent damage or destruction or loss of any such property or money; 5
  - (viii) intentionally or through gross negligence commits any act which causes or is likely to cause damage to or destruction or loss of any such property or money;
  - (ix) intentionally or through gross negligence fails to take effective steps to prevent unauthorised, irregular, fruitless or wasteful expenditure as contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999); or 10
  - (x) intentionally or through gross negligence and without good cause under-collects revenue due to the Department.
- (b) Any person convicted of an offence contemplated in paragraph (a) is liable on conviction to a fine or to imprisonment for a period not exceeding 10 years. 15
- (21) (a) A person is guilty of an offence if he or she—
- (i) having been duly summoned or warned to attend as a witness before a board of inquiry, fails to attend or to remain in attendance until authorised to leave;
  - (ii) being present at a board of inquiry after having been duly summoned or warned to attend as a witness, fails or refuses to be sworn or to affirm; or 20
  - (iii) uses threatening or insulting language at a board of inquiry or wilfully causes a disturbance or interruption thereat or wilfully commits any other act likely to bring the board of inquiry into contempt, ridicule or disrepute.
- (b) Any person convicted of an offence contemplated in paragraph (a) is liable to a fine or imprisonment for a period not exceeding three months. 25
- (22) Any person who at any board of inquiry deliberately misleads the board, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year.

### Offensive behaviour

105. (1) Any member of the Defence Force or employee of the Department whose verbal or physical conduct denigrates, humiliates or shows hostility or aversion to any other person on the grounds of that person's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth, is guilty of an offence and liable on conviction to imprisonment not exceeding five years. 30 35
- (2) Where a member or employee of the Department is convicted of any offence and the commission of the offence is accompanied by any offensive behaviour contemplated in subsection (1), such behaviour must be regarded as being an aggravating factor in passing sentence on the accused.

## CHAPTER 18

40

### GENERAL

#### Repeal of laws, and savings

106. (1) Subject to subsections (2), (3) and (4), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule.
- (2) Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by subsection (1), must be regarded as having been issued, made or done under the corresponding provisions of this Act, and must in so far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law be construed as if it related to the corresponding force, reserve, service or training established or provided for under this Act. 45 50
- (3) Any person who at the commencement of this Act is a member of any force, reserve or service established under any such repealed law, must be regarded as having been duly enrolled as a member of the corresponding force, reserve or service established under this Act and as having been assigned to the unit, corps or duties in which he or she is serving at such commencement, and any training undergone or service performed by any such person in any such force, reserve or service prior to such 55

commencement, must be regarded as having been undergone or performed in the corresponding force, reserve or service established under this Act.

(4) For purposes of this section, any force, reserve or service established or training or service provided for under any such repealed law, is deemed to correspond to the force, reserve or service established or training or service provided for under this Act, to which in name, designation or description it most closely corresponds. 5

(5) A reference in any law to a provision of the Defence Act, 1957 (Act No. 44 of 1957), must be construed as a reference to the corresponding provision of this Act.

#### **Short title and commencement**

**107.** This Act is called the Defence Act, 2002, and takes effect on a date to be determined by the President by proclamation in the *Gazette*. 10



## SCHEDULE

## Laws repealed

## (Section 106)

No. and year of Act	Short title	Extent of repeal	
No. 44 of 1957	Defence Act, 1957	The whole, save for sections 104, 105, 106, 108, 109, 111 and 112 and the First Schedule	5
No. 12 of 1961	Defence Amendment Act, 1961	The whole	10
No. 42 of 1961	Defence Further Amendment Act, 1961	The whole	
No. 83 of 1962	Defence Amendment Act, 1962	The whole	15
No. 77 of 1963	Defence Amendment Act, 1963	The whole	
No. 81 of 1964	Defence Amendment Act, 1964	The whole	
No. 85 of 1967	Defence Amendment Act, 1967	The whole	20
No. 3 of 1969	Defence Amendment Act, 1969	The whole	
No. 28 of 1970	Defence Amendment Act, 1970	The whole	25
No. 80 of 1971	General Law Amendment Act, 1971	Section 20	
No. 66 of 1972	Defence Amendment Act, 1972	The whole	
No. 26 of 1973	Defence Amendment Act, 1973	Sections 1 and 2	30
No. 8 of 1974	Defence Amendment Act, 1974	The whole	
No. 83 of 1974	Defence Further Amendment Act, 1974	The whole	35
No. 94 of 1974	Second General Law Amendment Act, 1974	Section 34	
No. 57 of 1975	General Law Amendment Act, 1975	Sections 23 to 26	
No. 1 of 1976	Defence Amendment Act, 1976	Sections 1 to 9	40
No. 35 of 1977	Defence Amendment Act, 1977	The whole	
No. 68 of 1977	Second Defence Amendment Act, 1977	The whole	45
No. 34 of 1978 (Transkei)	Defence Act, 1978	The whole	

No. and year of Act	Short title	Extent of repeal	
No. 49 of 1978	Defence Amendment Act, 1978	The whole	
No. 42 of 1979	Defence Amendment Act, 1979	The whole	5
No. 77 of 1980	Defence Amendment Act, 1980	The whole	
No. 15 of 1982 (Venda)	Defence Act, 1982	The whole	
No. 103 of 1982	Defence Amendment Act, 1982	The whole	10
No. 7 of 1983 (Venda)	Defence Amendment Act, 1983	The whole	
No. 34 of 1983	Defence Amendment Act, 1983	The whole	
No. 87 of 1984	Defence Amendment Act, 1984	The whole	15
No. 6 of 1985 (Venda)	Defence Amendment Act, 1985	The whole	
No. 17 of 1986 (Ciskei)	Defence Act, 1986	The whole	
No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Sections 27 and 28	20
No. 45 of 1987	Defence Amendment Act, 1987	The whole	
No. 13 of 1991 (Bophuthatswana)	National Defence Act, 1991	The whole	25
No. 51 of 1991	Transfer of Powers and Duties of the State President Act, 1991	Sections 3 and 4	
No. 58 of 1992 (Bophuthatswana)	National Defence Amendment Act, 1992	The whole	30
No. 132 of 1992	Defence Amendment Act, 1992	The whole	
No. 32 of 1993	Defence Amendment Act, 1993	The whole	35
No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 12	
No. 134 of 1993	Defence Second Amendment Act, 1993	The whole	40
No. 72 of 1995	Defence Amendment Act, 1995	The whole	
No. 88 of 1996	Abolition of Restrictions on the Jurisdiction of Courts Act, 1996	Sections 15 to 19	45
No. 4 of 1997	Defence Amendment Act, 1997	The whole	
No. 105 of 1997	Criminal Law Amendment Act, 1997	Sections 2 to 24	

## MEMORANDUM ON THE OBJECTS OF THE DEFENCE BILL

1. In terms of section 199(1) of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996) ("the Constitution"), the security services of the Republic consist of a single defence force, single police force and any intelligence services established in terms of the Constitution. Security services are dealt with in Chapter 11 of the Constitution and sections 200 to 204 specifically deal with defence. In terms of item 24(1) of Schedule 6 to the Constitution the provisions of sections 82, 224 to 228 and 236(8) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) ("the previous Constitution"), continue in force as if the previous Constitution had not been repealed, subject to the amendments of those sections as set out in Annexure D to the said Schedule 6, any further amendment or any repeal of those sections by an Act of Parliament passed in terms of section 75 of the Constitution and consistency with the Constitution. Section 224 of the previous Constitution establishes the National Defence Force as the only defence force for the Republic and regulates the composition of the Force and its establishment. Section 236(8) of the previous Constitution provides that the National Defence Force referred to in 224 is governed by the Defence Act, 1957 (Act No. 44 of 1957), subject to the Constitution and any Act of Parliament.

2. One of the governing principles of security services as set out in section 198(b) of the Constitution is that "(T)he resolve to live in peace and harmony precludes any South African citizen from participating in armed conflict, nationally and internationally, except as provided for in terms of the Constitution or national legislation". In terms of section 199(4) of the Constitution the security forces must be structured and regulated by national legislation and in terms of section 204 of the Constitution a civilian secretariat for defence must be established by national legislation.

3. The object of the Bill is to repeal the Defence Act, 1957 (except for the provisions in respect of military discipline, which will be dealt with in separate legislation), and to provide for the defence of the Republic in a way which will take into account and give effect to all the values enshrined in the Constitution in respect of security services. It is proposed that the Department of Defence should consist of the Defence Secretariat and the South African National Defence Force and auxiliary services. The Defence Force is to consist of the Regular and Reserve Forces. It is also proposed that the Secretary for Defence should head the Department and act as the accounting officer as required by finance legislation.

4. The Bill gives effect to the prescripts contained in the White Paper on Defence that membership of the Force must be voluntary. However, the Bill stipulates that persons contracted for services will be obliged to remain in service during a time of war, a state of national defence or a state of emergency. During such time or states persons may be mobilised for compulsory military service by proclamation issued by the President. Adequate provision is made for exemption from or deferment of such compulsory military service.

5. The following are some of the other issues that the Bill seeks to regulate or make provision for:

- (a) Employment and use of the Defence Force;
- (b) law-enforcement powers of the Defence Force at sea;
- (c) military police and defence intelligence;
- (d) Council of Defence and other councils; and
- (e) co-operation with other forces and forces visiting the Republic.

## 6. CONSULTATION

Prior to the Bill being presented to Cabinet for approval, it was distributed to all departments of State for comment. In particular, discussions were held with representatives of the Department of Safety and Security and the Intelligence Services.

## 7. FINANCIAL IMPLICATIONS FOR STATE

There are no significant financial implications for the State arising from the Bill that cannot be accommodated under the current budget of the Department of Defence.

## 8. PARLIAMENTARY PROCEDURE

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.