

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.



STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

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GOVERNMENT GAZETTE

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DEPARTEMENT VAN DIE EERSTE MINISTER

DEPARTMENT OF THE PRIME MINISTER

No. 406.

17 Maart 1976.

No. 406.

17 March 1976.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

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

■ No. 1 van 1976: Wysigingswet op Verdediging, 1976.

No. 1 of 1976: Defence Amendment Act, 1976.

DEFENCE AMENDMENT ACT, 1976.

Act No. 1, 1976

ACT

To amend the Defence Act, 1957, so as to further provide for the employment of the South African Defence Force on service for the defence of the Republic and for the combating of terrorism; and to provide for indemnities in respect of certain acts for the purposes of or in connection with the combating of terrorism; to amend the Moratorium Act, 1963, so as to extend the meaning of "service"; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 2 March 1976.)

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

1. Section 1 of the Defence Act, 1957 (hereinafter referred to as the principal Act), is hereby amended—
 - (a) by the substitution, in subsection (1), for paragraph (c) of the definition of "service in defence of the Republic" of the following paragraph:
 - "(c) for the prevention or suppression of any armed conflict outside the Republic which, in the opinion of the State President, is or may be a threat to the security of the Republic."; and
 - (b) by the insertion in that subsection after the definition of "service in the merchant fleet" of the following definition:
 - "terrorism" means terroristic activities in the Republic or directed against the Republic or any authority in or inhabitants of the Republic;".
- Amendment of section 1 of Act 44 of 1957, as amended by section 1 of Act 12 of 1961, section 1 of Act 42 of 1961, section 1 of Act 77 of 1963, section 20 of Act 39 of 1966, section 1 of Act 85 of 1967, section 1 of Act 26 of 1973 and section 1 of Act 8 of 1974.
2. Section 3 of the principal Act is hereby amended by the insertion in subsection (2) after paragraph (a) of the following paragraph:
 - "(aA) on service for the prevention or suppression of terrorism;".
- Amendment of section 3 of Act 44 of 1957, as amended by section 2 of Act 77 of 1963 and section 3 of Act 85 of 1967.
3. The following heading is hereby substituted for the heading to Chapter X of the principal Act:
 - "PROVISIONS APPLICABLE IN TIME OF WAR OR IN CONNECTION WITH THE COMBATING OF TERRORISM OR IN CONNECTION WITH AN ARMED CONFLICT OUTSIDE THE REPUBLIC OR IN CONNECTION WITH INTERNAL DISORDER OR OTHER EMERGENCY".
- Substitution of heading to Chapter X of Act 44 of 1957.

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4. The following section is hereby substituted for section 92 of the principal Act:

"Mobilization of Citizen Force, Reserve and commandos for the combating of terrorism, internal disorder or other emergency.

92. (1) The State President may by proclamation in the *Gazette* or in such other manner as he may deem expedient call out the whole or any portion of the Citizen Force, the whole or any portion of the Reserve and the whole or any portion of any commando for service in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in the Republic or in the preservation of life, health or property or the maintenance of essential services.

(2) Where in the opinion of the Minister the urgency of the circumstances requires that the whole or any portion of the said Force or the Reserve or a commando be called out for mobilization for the aforesaid service before action can be taken in terms of subsection (1), he may, in anticipation of such action, by order under his hand or in such other manner as he may deem expedient, call out for mobilization for such service the whole or that portion of the said Force or the Reserve or that commando, and any action by the Minister under this subsection shall have the same force and effect as any corresponding action by the State President under subsection (1), and shall remain in force until the whole or any portion of the said Force or the Reserve or a commando is called out under the lastmentioned subsection, but not in any case for longer than four days.

(3) Where the urgency of the circumstances in a magisterial district of the Republic requires the immediate employment of members of the South African Defence Force in the service mentioned in subsection (1) before action can be taken in terms of subsection (1) or (2), all or some of the members of the Citizen Force or the commandos who are resident in the magisterial district concerned, may, in anticipation of such action, in such manner as may be deemed expedient, be called out for the said service, and any action under this subsection shall have the same force and effect as any corresponding action by the State President under subsection (1) but shall not remain in force in any case for longer than twenty-four hours."

Substitution of section 92 of Act 44 of 1957, as amended by section 13 of Act 12 of 1961, section 15 of Act 77 of 1963 and section 7 of Act 83 of 1974.

5. Section 92*ter* of the principal Act is hereby amended by the substitution for paragraph (b) of the proviso to subsection (1) of the following paragraph:

"(b) no service under this subsection in the prevention or suppression of terrorism, or in the prevention or suppression of internal disorder in the Republic, or in the preservation of life, health or property or the maintenance of essential services, shall extend for a period of more than seven days beyond the termination of the time which would have been occupied by the service, duty or training which the member is performing or undergoing."

Amendment of section 92*ter* of Act 44 of 1957, as inserted by section 14 of Act 12 of 1961 and substituted by section 8 of Act 83 of 1974.

6. The following section is hereby substituted for section 95 of the principal Act:

"Compulsory service outside the Republic.

95. (1) A member of the South African Defence Force may in time of war be required to perform service against an enemy at any place outside the Republic.

(2) For the purposes of subsection (1) service for the prevention or suppression of terrorism or of any

Substitution of section 95 of Act 44 of 1957.

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armed conflict contemplated in paragraph (c) of the definition of 'service in defence of the Republic' in section 1, shall be deemed to be service in time of war against an enemy: Provided that the employment, for a period exceeding one month, beyond the borders of the Republic of members of the South African Defence Force for the prevention or suppression of any armed conflict outside the Republic, shall be deemed to be mobilization in terms of section 91 and shall be subject to the provisions of section 91 (2)."

7. Section 96 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

Amendment of section 96 of Act 44 of 1957, as amended by section 18 of Act 77 of 1963

"(2) Notwithstanding anything to the contrary contained in this Act, and notwithstanding the expiration of the period of any appointment, engagement or compulsory service, no member of the South African Defence Force employed on service in defence of the Republic or in the prevention or suppression of terrorism or in the prevention or suppression of internal disorder in the Republic or in the preservation of life, health or property or in the maintenance of essential services, shall be entitled to obtain his release or discharge from that Force during the continuance of such service."

8. The following sections are hereby inserted in the principal Act after section 103bis:

Insertion of sections 103ter and 103quat in Act 44 of 1957.

"Indemnity in connection with the combating of terrorism." 103ter. (1) In this section— 'act' includes any default, when advising, commanding, ordering, directing or doing any act, to comply, in connection therewith, with any provision of any law;

'member of the South African Defence Force', in relation to any act, includes any person who at the time of the doing of that act was a member of the South African Defence Force;

'operational area', in relation to any act, means any place or area where, at the time of the doing of that act, members of the South African Defence Force were employed on service in the prevention or suppression of terrorism.

(2) No proceedings, whether civil or criminal, shall be instituted or continued in any court of law against the State, the State President, the Minister, a member of the South African Defence Force or any other person in the service of the State by reason of any act advised, commanded, ordered, directed or done in good faith by the State President, the Minister, or a member of the South African Defence Force for the purposes of or in connection with the prevention or suppression of terrorism in any operational area.

(3) A certificate signed by the Minister stating that an act specified therein was advised, commanded, ordered, directed or done for the purposes of or in connection with the prevention or suppression of terrorism in an operational area, shall on its mere

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production by any person in any proceedings in a court of law be conclusive proof that that act was advised, commanded, ordered, directed or done for those purposes or in that connection by the State President, the Minister or a member of the South African Defence Force: Provided that if the act concerned is that of the Minister, such certificate shall be signed by the Prime Minister.

(4) If any proceedings have at any time been instituted in a court of law against the State, the State President, the Minister, a member of the South African Defence Force or any other person in the service of the State and the State President is of the opinion—

(a) that the proceedings were instituted by reason of an act advised, commanded, ordered, directed or done in good faith by the State President, the Minister or a member of the South African Defence Force for the purposes of or in connection with the prevention or suppression of terrorism in an operational area; and

(b) that it is in the national interest that the proceedings shall not be continued,

he shall authorize the Minister of Justice to issue a certificate directing that the proceedings shall not be continued.

(5) The State President shall not authorize the Minister of Justice as contemplated in subsection (4) except after having considered a report by the Minister setting forth the circumstances under which the act in question took place as well as the factors indicating that that act was advised, commanded, ordered, directed or done in good faith and for the purposes of or in connection with the prevention or suppression of terrorism in an operational area.

(6) (a) Whenever the court in which any proceedings have been instituted, is of the opinion that by virtue of subsection (2) the proceedings may not be continued, the court shall make a finding to that effect.

(b) Whenever the court has made such a finding, or where a certificate issued by the Minister of Justice under subsection (4) directing that such proceedings shall not be continued is lodged at that court, the proceedings shall lapse and be deemed to be void.

(c) The court shall not make any order, including an order as to costs, in or in respect of any proceedings which have lapsed in terms of paragraph (b): Provided that, if the court has made a finding contemplated in paragraph (a) in respect of civil proceedings, the court may make an order as to the costs in connection with the question whether subsection (2) applies in respect of those proceedings.

(7) (a) Subject to the provisions of paragraph (b), no court shall have power to review, set aside or declare to be void or otherwise question the validity of any certificate issued under subsection (3) or (4), and the State President, the

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Minister or the Prime Minister or the Minister of Justice shall not be obliged to furnish any reasons for the authorization for the issue or for the issue thereof.

(b) A certificate referred to in paragraph (a) which purports to be signed by the Minister or the Prime Minister or which purports to have been issued by the Minister of Justice, shall be presumed to have been so signed or issued, as the case may be, unless the contrary is proved.

Compensation. 103quat. (1) Any person who—

(a) suffered damage as a result of an act or omission in respect of which, in terms of section 103ter, no proceedings may be instituted or any proceedings have lapsed; or

(b) in connection with any civil proceedings which have lapsed as aforesaid, incurred any costs in respect of which the court may in terms of that section not make an order;

may apply to the Minister in writing for compensation, setting out fully the grounds on which the application is based, the extent and nature of the damage or costs and the compensation desired.

(2) (a) The Minister, acting in consultation with the Minister of Finance, may grant any application made under subsection (1) and pay an amount by way of compensation to the person who made the application.

(b) If the application is not granted under paragraph (a) or is so granted but no amount is paid under that paragraph by way of compensation or is so granted and the applicant considers the compensation inadequate, the Minister shall refer the application to a board established under subsection (3).

(3) The Minister shall, as often as he may deem it expedient, establish a board, to be known as a compensation board, which shall consider any application referred to it under subsection (2) and make a recommendation to the Minister as to the granting or refusal of such application or any part thereof and the amount of the compensation to be paid in so far as it recommends that the application is to be granted.

(4) (a) A compensation board shall consist of a chairman, who shall be a person who holds or held office as a judge of the Supreme Court of South Africa or as a magistrate, and such number of other members (if any), not exceeding four, as the Minister may determine.

(b) The members of a compensation board shall be appointed by the Minister.

(c) A member of a compensation board shall hold office under such conditions, including conditions relating to his period of office and remuneration, as the Minister may subject to the provisions of paragraph (d) determine at the time of his appointment.

(d) A member of a compensation board who is not in the full-time service of the State may be paid such remuneration or allowances as the Minister may determine in consultation with the Minister of Finance.

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- (5) (a) A compensation board shall meet at such time and place and shall adhere to such procedure as the chairman may determine.
- (b) Where a compensation board consists of more than two members, the majority shall constitute a quorum for any meeting and any decision of the majority present at any meeting shall be the decision of the compensation board.
- (c) Where a compensation board consists of two or more members, the chairman shall in the event of an equality of votes on any matter have a casting vote in addition to his deliberative vote.
- (6) (a) A compensation board may furnish its recommendation in connection with any application after consideration of the documents submitted to it in terms of subsection (2), or, at its discretion, make such investigation in connection with that application in such manner as it may deem necessary in order to enable it to furnish a recommendation.
- (b) For the purposes of such an investigation a compensation board may, in so far as it deems necessary—
- (i) receive or hear written or oral statements, evidence or arguments;
 - (ii) through its chairman administer an oath or solemn affirmation to any person;
 - (iii) by notice in writing signed by or under the authority of its chairman, require any person to appear before the compensation board, at a time and place stated in the notice, to give evidence or to produce any book or other document or thing in his possession or custody or under his control and indicated in the notice.
- (7) The Minister shall in writing notify a compensation board's recommendation in connection with an application for compensation to the person who made the application, and shall give effect to such recommendation.
- (8) Any amount payable by the Minister in terms of this section shall be paid out of the Consolidated Revenue Fund.
- (9) (a) The Minister or a compensation board shall not be obliged to furnish any person with any information in connection with or any reasons for a decision or recommendation for the purposes of this section.
- (b) No person shall be entitled to attend the proceedings of a compensation board or to appear or be represented before a compensation board, except with the leave or at the request of such compensation board or in compliance with a notice under subsection (6) (b) (iii).
- (10) Any person who—
- (a) fails to comply with a notice under subsection (6) (b) (iii); or
 - (b) refuses to supply or produce to a compensation board, after having been required by such compensation board to do so, any information at his disposal or any book, other document or thing in his possession or custody or under his control; or
 - (c) makes a false statement, knowing it to be false, in any application for compensation under subsection (1) or to a compensation board in connection with any such application,

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shall be guilty of an offence and liable on conviction, in the case of an offence referred to in paragraph (a) or (b), to a fine not exceeding two hundred rand or imprisonment for a period not exceeding three months, and, in the case of an offence referred to in paragraph (c), to any punishment that may in law be imposed for perjury.”

9. Section 145 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) to a member of the Permanent Force who is suffering from disablement caused or aggravated during service in the prevention or suppression of terrorism rendered by such member at any time after 10 April 1973, irrespective of the date on which such disablement arose or the aggravation thereof became manifest, provided such disablement is not due to the member’s own misconduct or was not caused or so aggravated while he was absent without leave;”

Amendment of section 145 of Act 44 of 1957, as substituted by section 8 of Act 8 of 1974 and amended by section 13 of Act 83 of 1974.

10. Section 1 of the Moratorium Act, 1963, is hereby amended by the substitution for the definition of “service” of the following definition:

“‘service’ means the continuous service in the Citizen Force which is rendered during the periods referred to in section 22 (3), or the continuous service in a commando which is rendered during the periods referred to in section 44 (3) of the Defence Act, 1957, by a citizen who has been allotted to the Citizen Force or the commandos in terms of Chapter VIII of that Act, and includes any service on which such citizen is employed in terms of Chapter X of that Act during the said periods of continuous service, and if such citizen contracts any illness or sustains any injury as a result of such service, he shall be deemed to be rendering service during any period during which he is undergoing treatment in hospital for any such illness or injury if such treatment is commenced during the said periods of continuous service.”

Amendment of section 1 of Act 25 of 1963, as amended by section 1 of Act 4 of 1969 and section 3 of Act 26 of 1973.

11. (1) This Act shall be called the Defence Amendment Act, 1976.

(2) Sections 2, 6 and 10 shall be deemed to have come into operation on 9 August 1975.

Short title and commencement.