

OFFICE OF THE PRESIDENT

No. 1535.
6 October 1995

NO. 72 OF 1995: DEFENCE AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

** ** WORDS BETWEEN ASTERISKS INDICATE OMISSIONS FROM
EXISTING ENACTMENTS.

<< >> WORDS BETWEEN POINTED BRACKETS INDICATE INSERTIONS IN
EXISTING ENACTMENTS.

ACT

To amend the Defence Act, 1957, so as to insert four definitions and to amend two; to provide for the establishment of a Defence Secretariat; to provide for the appointment of a Secretary for Defence as head of the said Defence Secretariat; to determine the powers, duties and functions of the said Secretary for Defence; to further determine the powers, duties and functions of the Chief of the South African National Defence Force in the exercise of his military executive command of the South African National Defence Force; to repeal a certain obsolete provision; to amend the text; and to make further provision regarding the exemption of members of the South African National Defence Force from payment of tolls; to amend the Defence Amendment Act, 1967, so as to repeal a certain obsolete provision; and to provide for matters in connection therewith.

(Afrikaans text signed by the President.)
(Assented to 28 September 1995.)

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

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, section 1 of Act 8 of 1974, section 1 of Act 1 of 1976, section 1 of Act 35 of 1977, section 1 of Act 103 of 1982, section 1 of Act 87 of 1984, section I of Act 132 of 1992 and section 1 of Act 134 of 1993

1. Section I of the Defence Act, 1957 (hereinafter referred to as the principal Act), is hereby amended(a) by the substitution in subsection (1) for the expression "an order" in the definition of "call-up" of the expression "a command";

(b) by the insertion in subsection (1) after the definition of "call-up" of the following definition:

" <<'Chief of the Defence Force' means the Chief of the South African National Defence Force appointed in terms of section 225 of the Constitution;>>";

(c) by the insertion in subsection (1) after the definition of "court" of the following definition:

" <<'Department of Defence' means the Department of Defence referred to in the Public Service Act, 1994 (Proclamation No. 103, 1994);>>"

- (d) by the insertion in subsection (1) after the definition of "officer" of the following definition:

" <<'order' means a written order by an appropriate officer and may be a unit, formation or force order;>>"

- (e) by the insertion in subsection (1) after the definition of "regulation" of the following definition:

"<<'Secretary' means the Secretary for Defence appointed under section 7B(1)">>; and

by the substitution in subsection (1) for the definition of "Treasury" of the following definition:

" 'Treasury' **means** <<includes>> any officer of the Department of **Finance** <<State Expenditure>> who has been authorized by the Minister of Finance to perform any function assigned to the Treasury in this Act;"

Insertion of sections 7A, 7B, 7C and 7D in Act 44 of 1957

2. The following sections are hereby inserted in the principal Act after section 7:

"Establishment of Defence Secretariat

<<7A. (1) (a) There is hereby established in the Department of Defence a Defence Secretariat.

(b) The officers and employees within the meaning of the Public Service Act, 1994 (Proclamation No. 103, 1994), which are necessary for the performance of the work connected to the functions of the Secretary shall be appointed to posts in the Defence Secretariat in consultation with the Minister.

(2) Notwithstanding the provisions of subsection (1), members of the South African National Defence Force may with their consent be placed at the disposal of the Secretary to serve in posts in the Defence Secretariat.

(3) The persons serving in the Defence Secretariat at the commencement of the Defence Amendment Act, 1995, shall, as from the date on which they so commenced serving, be deemed to have been duly appointed to posts in or seconded or transferred to the Defence Secretariat or placed at the disposal of the Secretary, as the case may be.

(4) The Minister shall be accountable to the President and to Parliament for the Defence Secretariat.>>

Appointment of Secretary for Defence

<<7B. (1) The Minister may, subject to the laws governing the public service, appoint a person to the post of Secretary for Defence in the fixed establishment of the Department of Defence who, as an officer within the meaning of the Public Service Act, 1994 (Proclamation No. 103, 1994), shall serve in that post for the period and in accordance with the terms and conditions of service otherwise applicable to heads of department.

(2) The Secretary shall be a citizen of the Republic and may not be a member of the South African National Defence Force.

(3) The person serving as Secretary at the commencement of the Defence Amendment Act, 1995, shall be deemed to have been duly appointed under this section from 1 April 1995.>>

Powers, duties and functions of Secretary

<<7C. The Secretary shall (a) be the head of the Defence Secretariat and as such be responsible for the management of and administrative control over the staff of the Defence Secretariat;

- (b) be the principal adviser to the Minister with regard to defence policy matters as well as any matter which may be investigated by the Joint Standing Committee on Defence of Parliament under section 228(3)(d) of the Constitution and in respect of which that Committee may make recommendations;
- (c) advise the Minister on any particular matter referred by the Minister to the Secretary;
- (d) perform such duties and functions as may from time to time be assigned or referred to him by the Minister, in particular any function or duty necessary or expedient to enhance Parliamentary and Ministerial control over the South African National Defence Force;
- (e) act as the delegate of the Minister in respect of any matter within the competence of the Minister which he delegates to the Secretary;
upon his appointment as accounting officer of the Department of Defence, act as such;
- (g) upon having been so appointed as accounting officer, provide the Chief of the Defence Force for the duration of such appointment, with comprehensive instructions for the issuing by that Chief of orders and directives and the giving of commands with regard to the functioning of the Secretary as such accounting officer in respect of the South African National Defence Force; and
- (h) monitor compliance with directions issued by the President or the Minister, as the case may be, under section 225 of the Constitution, to the Chief of the Defence Force and report thereon to the President or the Minister, as the case may be.>>

Access by Secretary to information

<<7D. (1) The Secretary and such members of the staff of the Defence Secretariat who are in possession of appropriate security clearances shall have access to such information in possession or under the control of the South African National Defence Force to enable the Secretary to perform his functions.

(2) Any information referred to in subsection (1) shall retain any security classification afforded to it and the Secretary and the members so referred to shall treat it accordingly.>>".

3. The following section is hereby substituted for section 8 of the principal Act:

"Powers, duties and functions of Chief of the Defence Force

8. <<(1)>> The <<Chief of the Defence Force(a) may exercise the powers and shall perform the duties and functions necessary to execute his military>> executive ****military**** command of the South African National Defence Force ****and the Reserve, or any portion thereof, shall, subject to the provisions of this Act, be vested in such officer or officers of the South African Defence Force as the Minister may determine**** <<referred to in section 225 of the Constitution;>> <<(b) shall execute his military executive command by issuing directives, force orders and general instructions and by giving commands.

(2) The Chief of the Defence Force shall be the principal adviser to the Minister on any military, operational and administrative matter within the competence of the Chief of the Defence Force.

(3) Without derogating from the generality of subsection (1) (a) or from any power, duty or function vested in or assigned to the Chief of the

Defence Force by virtue of any appointment which he may hold by or under any law, he shall have the powers and be charged with the duties and functions and be responsible to the President or the Minister, as the case may be, for (a) compliance with any direction by the President or the Minister, as the case may be, under section 225 of the Constitution;

- (b) the formulation of military policy and doctrines in accordance with directions referred to in paragraph (a);
- (c) the execution of approved programmes of the budget for the Department of Defence and, upon the Secretary being appointed as the accounting officer of the Department of Defence, the execution of such programmes of the South African National Defence Force for which that Chief is responsible;
- (d) upon the Secretary being appointed as accounting officer of the Department of Defence and, notwithstanding the provisions of section 7(3) (a) of the Public Service Act, 1994 (Proclamation No. 103, 1994), the issuing of orders and directives and the giving of commands in accordance with any instruction by the Secretary referred to in section 7C(g), and for ensuring that such orders, directives and commands are complied with;
- (e) the supplying of all information and inputs with regard to the South African National Defence Force to the Secretary to enable him to perform his functions properly;

the performance of all staff functions required for the effective command and control of the South African National Defence Force;
- (g) the use of the South African National Defence Force or any part or member thereof which or who, as the case may be, has been employed by the President for any service under the Constitution, for such service;
- (h) the training to the required level of all members of the South

African National Defence Force in law, including customary international law and law applicable to peace-keeping operations;

- (i) the maintenance of an adequate military response capability with respect to likely military threats; and
- (j) the maintenance of military discipline within the South African National Defence Force.>>".

Amendment of section 83A of Act 44 of 1957, as inserted by section 7 of Act 3 of 1969 and amended by section 6 of Act 8 of 1974, section 6 of Act 8 of 1974, section 36 of Act 132 of 1992 and section 5 of Act 32 of 1993

4. Section 83A of the principal Act is hereby amended by the deletion of subsection (3).

Amendment of section 121 of Act 44 of 1957, as substituted, by section 10 of Act 83 of 1974

5. Section 121 of the principal Act is hereby amended by the substitution for the expression "order" in paragraph (b) of the expression "command".

Substitution of section 143 of Act 44 of 1957

6. The following section is hereby substituted for section 143 of the principal Act:

"Exemption from tolls and like payments

143. (1) **At** <<Subject to the provisions of subsection (3)-

(a) any member of the South African National Defence Force; or

(b) any member of the Reserve, who in the exercise of his powers or the performance of his duties or functions under or in terms of this Act passes through>> any wharf, landing place, bridge, pont, ferry [or], toll-bar **where the payment**, <<gate or point>> of **a** <<entry or exit at or in respect of which any>> toll, <<fee>> or due may **lawfully** be **demanded**, that toll or due shall not be payable by any **charged** in respect of any such member or any other person or means of transport or goods or animal which such member, in the said exercise or performance of his powers, duties or functions conveys or has with him, shall, upon such member->> <<(i) if he is a>> member of the South African <<National>> Defence Force **if he is proceeding to or from any place on the service of that Force, or**

in respect of any animal or vehicle when employed on any such service**, <<exhibiting both his military identification and applicable official authorization documents; or**

(ii) if he is a member of the Reserve

(aa) who is rendering service or undergoing training under this Act, exhibiting his military identification document; or

(bb) who has been called up, exhibiting his call-up and personal official identification documents; and

(iii) if he is driving a military vehicle or operating any other means of transport, exhibiting his military driver's licence or other military licence to operate such other means of transport and his trip authorization or, if he is

not driving or operating any such means of transport, exhibiting his official authorization to pass through that wharf, landing place, bridge, pont, ferry, toll-bar, gate or point, be exempt from such payment, and such member and any such other person, means of transport, goods or animal shall be allowed to pass through without any such payment having to be made in respect of any of them.>> (2) Any person ****duly authorized to collect tolls or dues at any such place aforesaid**** who ****willfully subjects a**** <<in conflict with subsection (1) demands such toll, fee or due or who willfully subjects any such>> member ****of the South African Defence Force****, <<other person, means of transport, goods>> or ****any animal or vehicle on service as aforesaid**** <<animal>> to unreasonable delay or ****detention**** <<detains any of them in respect of or at such wharf, landing place, bridge, pont, ferry, toll-bar, gate or point,>> shall be guilty of an offence.

<<(3) The Chief of the Defence Force may, if, with regard to the nature of any power, duty or function of any member or group of members of the South African National Defence Force, it is necessary, determine that the provisions of subsection (1) shall not apply to such member or group of members, in which case, such toll, fee or due shall be payable and such payment shall, with respect to the Department of Defence be deemed to be an authorized expenditure.>>"

Transitional provision

7. Any order, directive or command in connection with(a) the responsibility of accounting for all State moneys received and all payments made; and

(b) the acquisition, receipt, custody and disposal of all State property, in the South African National Defence Force by the accounting officer of the Department of Defence which is of force immediately prior to the appointment of the Secretary for Defence as accounting officer of that Department, shall after and

notwithstanding such appointment, remain of force and effect until it has been amended, replaced or revoked by or under law.

Repeal of section 69 of Act 85 of 1967

8. Section 69 of the Defence Amendment Act, 1967, is hereby repealed.

Short title

9. This Act shall be called the Defence Amendment Act, 1995.