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**REPUBLIC OF SOUTH AFRICA**

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**DEFENCE AMENDMENT ACT**

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**IRIPHABHULIKI YASENINGIZIMU AFRIKA**

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**UMTHETHO OCHIBIYELA  
EZOKUVIKELA**

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**No 22, 2010**

**GENERAL EXPLANATORY NOTE:**

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

                        Words underlined with a solid line indicate insertions in existing enactments.

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# ACT

To amend the Defence Act, 2002, so as to state who comprises the Military Command of the South African National Defence Force and to further regulate the appointment of its members; to require members of the Reserve Force contemplated in section 53(1) to enter into a contract of service with the Defence Force; to require members of the Reserve Force to comply with a call-up order to report for duty; and to establish the Defence Force Service Commission which is to make recommendations to the Minister of Defence and Military Veterans concerning conditions of service of members of the Defence Force; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 1 of Act 42 of 2002**

**1.** Section 1 of the Defence Act, 2002 (Act No. 42 of 2002) (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion in subsection (1) after the definition of “**Code**” of the following definition:

“**conditions of service**” includes conditions relating to—

- (a) recruitment procedures and advertising and selection criteria;
- (b) appointment and appointment processes;
- (c) job classification and grading;
- (d) salaries, allowances and service benefits;
- (e) job assignments;
- (f) working environment and facilities;
- (g) education, training and development;
- (h) performance evaluation systems;
- (i) promotion;
- (j) transfers;
- (k) demotion;
- (l) disciplinary measures other than dismissals;
- (m) grievance and grievance procedures;
- (n) dismissal;

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- (o) scarce skills;
  - (p) pay progression;
  - (q) deployment benefits;
  - (r) tools of trade;
  - (s) accommodation; and
  - (t) any other matter pertaining to conditions of service;; and
- (b) by the insertion in subsection (1) after the definition of “**superior officer**” of the following definition:
- “**the Commission**” means the Defence Force Service Commission established by section 62A;”.

#### Insertion of section 4A in Act 42 of 2002

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

##### “**Military Command of Defence Force**

- 4A.** The Military Command of the Defence Force referred to in section 202(1) of the Constitution consists of—
- (a) the Chief of the Defence Force;
  - (b) the Chief of the South African Army;
  - (c) the Chief of the South African Air Force;
  - (d) the Chief of the South African Navy;
  - (e) the Surgeon-General of the South African Military Health Service;
  - (f) the Chief of Joint Operations of the Defence Force;
  - (g) the Chief of Defence Intelligence;
  - (h) the Chief of Human Resources; and
  - (i) the Chief of Logistics.”.

#### Amendment of section 13 of Act 42 of 2002

3. Section 13 of the principal Act is hereby amended—
- (a) by the substitution for the heading of the following heading:
 

“**Chief of Defence Force, and appointment of other members of Military Command**”; and
  - (b) by the insertion after subsection (1) of the following subsection:
 

“(1A) The President must appoint members of the Military Command of the Defence Force referred to in section 4A.”.

#### Amendment of section 53 of Act 42 of 2002

4. Section 53 of the principal Act is hereby amended—
- (a) by the addition to subsection (1) of the following paragraph, the existing subsection becoming subsection (1)(a):
    - “(b) (i) The members of the Defence Force contemplated in paragraph (a) must, within 18 months after the commencement of the Defence Amendment Act, 2010, enter into a contract of service with the Defence Force as contemplated in subsection (1A)(a).
    - (ii) Should any such members fail to conclude a contract contemplated in subparagraph (i), the Minister must give the member notice of his or her intention to terminate the membership of the member and afford such member a reasonable opportunity to conclude the contract.
    - (iii) The Minister must terminate the membership of the member if such member fails to conclude the contract following the notice contemplated in subparagraph (ii).”;

- (b) by the insertion after subsection (1) of the following subsection:  
 “(1A) (a) Any member of the Reserve Force is liable to render service in terms of a contract entered into between the Defence Force and such member.  
 (b) The content and format of the contract contemplated in paragraph (a) must be prescribed.  
 (c) The period for which a member of the Reserve Force must render the service contemplated in paragraph (a) and the calculation thereof must be prescribed.”;
- (c) by the insertion after subsection (3) of the following subsection:  
 “(3A) (a) A Reserve Force member must comply with a call-up order issued by that member’s commanding officer in terms of which such member must report for service as contemplated in this Act or the Constitution.  
 (b) The content and format of such call-up order must be prescribed.”;
- and
- (d) by the insertion after subsection (4) of the following subsection:  
 “(4A) Where a Reserve Force member’s period of service terminates, lapses or expires during any form of employment contemplated in section 18(1), the Minister may, with the concurrence of such member, extend such service for a period not exceeding three months or until the conclusion of the operation, whichever is the shorter.”.

#### **Amendment of section 55 of Act 42 of 2002**

5. Section 55 of the principal Act is hereby amended by the addition of the following subsection after subsection (2):  
 “(3) In the event that the processes contemplated in subsections (1) and (2) do not materialise, the Minister may, taking into account any recommendation by the Commission, and with the approval of the Minister of Finance, determine pay, salaries and entitlements of the members of the Defence Force.”.

#### **Insertion of sections 62A, 62B, 62C, 62D, 62E, 62F, 62G, 62H, 62I, 62J, 62K and 62L in Act 42 of 2002**

6. The following sections are hereby inserted in the principal Act after section 62:

##### **“Establishment and composition of Defence Force Service Commission**

- 62A.** (1) There is hereby established a Defence Force Service Commission.  
 (2) The Commission consists of no fewer than eight and no more than ten members appointed by the Minister.  
 (3) The Minister must designate one member as Chairperson and another as Deputy Chairperson of the Commission.  
 (4) If the Chairperson is absent or for any reason unable to act as Chairperson, the Deputy Chairperson must act as the Chairperson of the Commission.

##### **Functions of Commission**

- 62B.** (1) The Commission must—  
 (a) on an annual basis, make recommendations to the Minister on improvements of salaries and service benefits of members;  
 (b) make recommendations to the Minister on policies in respect of conditions of service;

- (c) promote measures and set standards to ensure the effective and efficient implementation of policies on conditions of service within the Defence Force, and make recommendations to the Minister in this regard; and
- (d) for the purposes of making recommendations contemplated in paragraphs (a), (b) and (c)—
- (i) enquire into or conduct research on conditions of service;
  - (ii) review policies;
  - (iii) evaluate and monitor the implementation of such policies;
  - (iv) consult with the Secretary for Defence, the Chief of the Defence Force, members of the Defence Force, Reserve Force Council and any other interested person or body on conditions of service and any other matter relating to the purview of its functions;
  - (v) consider any representations made to the Commission;
  - (vi) consult with National Treasury;
  - (vii) confer with the Department responsible for public service and administration, the Public Service Commission and any other relevant stakeholder within the public service;
  - (viii) consider, among others—
    - (aa) the rank structure of the Defence Force;
    - (bb) the affordability of different levels of remuneration of the Defence Force;
    - (cc) current principles and levels of remuneration in the public service generally; and
    - (dd) inflationary increases.
- (2) The Commission must perform its functions impartially, without bias, fear or prejudice.
- (3) The Commission may, in consultation with the Minister, call upon any member of the Defence Force or employee of the Department to assist it in the execution of its functions, and such person is obliged to provide the necessary assistance.
- (4) The Minister determines the conditions of service for members of the Defence Force, in consultation with the Minister of Finance, after having received a recommendation from the Commission.

### **Appointment of members of Commission and conditions of service**

- 62C.** (1) For the purposes of appointing the members of the Commission, the Minister must by notice in two national newspapers and in the *Gazette* invite interested persons to submit, within the period and in the manner mentioned in the notice, the names of persons fit to be appointed as members of the Commission.
- (2) The Minister must appoint five members of a nomination committee to make recommendations to the Minister for the appointment of the members of the Commission.
- (3) (a) In establishing a nomination committee, the Minister must ensure that the committee is broadly representative of the South African population and that both males and females are represented.
- (b) The members of the nomination committee must have sufficient knowledge and experience that would enable them to exercise a sound and objective discretion in making recommendations to the Minister.
- (4) The nomination committee must, in making a recommendation to the Minister, consider—
- (a) the proven skills, knowledge and experience of a candidate in matters relevant to the functioning of the Commission; and
  - (b) generally, whether the persons nominated represent a sufficient spread of qualifications, expertise and experience to ensure the efficient and effective functioning of the Commission.
- (5) The nomination committee must submit to the Minister a list of suitable candidates at least one and a half times the number of members of the Commission to be appointed.

(6) If a suitable person or the required number of suitable persons is not recommended, the Minister must call for further nominations in the manner set out in subsection (1).

(7) (a) The Minister must appoint members of the Commission from the list of candidates submitted in terms of subsection (5).

(b) The Minister must, within 30 days after appointing the members, by notice in the *Gazette* publish the names of the members so appointed and the date of commencement of their terms of office.

(8) Any vacancy occurring in the Commission must be filled in the manner provided for in subsections (1) to (7).

(9) (a) A member of the Commission—

- (i) holds office for a period not exceeding five years;
- (ii) may, at the discretion of the Minister and in the interest of continuity, be reappointed, but may not serve more than two terms consecutively;
- (iii) is appointed according to the terms and conditions determined by the Minister; and
- (iv) may be appointed either on a full-time or a part-time basis.

(b) A member of the Commission who is not in the full-time employ of the State must be paid from the budget of the Department such remuneration and allowances in respect of his or her services as the Minister may determine, acting in consultation with the Minister of Finance.

#### **Disqualification from membership and removal from office**

**62D.** (1) No person may be appointed as a member of the Commission if he or she—

- (a) is a member of the Defence Force;
- (b) is an unrehabilitated insolvent; or
- (c) has been convicted of any offence for which that person has been sentenced to imprisonment without the option of a fine for a period of not less than 12 months, unless a period of at least five years has expired after the date on which the sentence was served.

(2) For the purposes of subsection (1)(c), no person is deemed to have been sentenced until an appeal against the conviction or sentence has been disposed of or until the period has expired within which an appeal may be lodged, as the case may be.

(3) The Minister may remove a member of the Commission from office on account of—

- (a) misconduct;
- (b) inability to perform the duties of that member's office effectively and efficiently; or
- (c) absence from three consecutive meetings of the Commission without the prior permission of the chairperson, except on good cause shown.

#### **Vacation of office**

**62E.** A member of the Commission must vacate office if he or she—

- (a) becomes subject to any disqualification referred to in section 62D;
- (b) becomes of unsound mind;
- (c) resigns by giving at least 30 days' written notice to the Minister; or
- (d) for whatever reason, becomes unfit or unable to remain a member of the Commission.

### Meetings of Commission

**62F.** (1) The Commission must meet at least twice a year at a time and place determined by the Chairperson of the Commission.

(2) Six members of the Commission form a quorum for a meeting of the Commission.

(3) The decision of a majority of the members of the Commission present at a meeting of the Commission constitutes a decision of the Commission and, in the event of an equality of votes on any matter, the person presiding at the meeting concerned has a casting vote in addition to his or her deliberative vote.

(4) The Commission must determine its own procedures to be followed at its meetings.

### Committees of Commission

**62G.** (1) The Commission may from time to time appoint one or more committees to perform any duties and exercise any powers assigned or delegated to it by the Commission, and may at any time dissolve or reconstitute such a committee.

(2) A committee consists of so many members of the Commission as the Commission may deem necessary.

(3) The Commission must designate one of the members of a committee as chairperson of that committee.

(4) A committee must perform its duties and exercise its powers subject to this Act and such directives as may be issued by the Commission.

(5) A decision of a committee taken in the performance of a duty or exercise of a power assigned or delegated to it is a decision of the Commission, subject to ratification by the Commission.

### Reporting

**62H.** (1) The Commission—

(a) is accountable to the Minister; and

(b) must within two months after the end of each financial year submit a report on its activities and findings to the Minister.

(2) The Minister must, as soon as practicable after receipt of a report contemplated in subsection (1), cause a copy of the report to be lodged with the Cabinet and tabled in Parliament.

(3) A report contemplated in subsection (1) must not contain confidential information that would be detrimental to national security.

(4) The Commission must, by notice in the *Gazette*, annually publish its findings and recommendations in respect of its work.

### Staff of Commission

**62I.** The Minister may, after consultation with the Commission, appoint or designate persons to give research, secretariat, logistical and technical support to the Commission or to perform other work incidental to the exercise or performance of the powers and duties of the Commission.

### Funding

**62J.** The costs and expenses connected with the administration of the affairs of the Commission must be defrayed from moneys appropriated by Parliament to the Department for that purpose.

### Intervention by Minister

**62K.** (1) The Minister may direct the Commission to take any action specified by the Minister if the Commission has failed to perform its functions in an effective and efficient manner.

(2) A directive contemplated in subsection (1) must state—

- (a) the reason for issuing the directive;
- (b) the steps which must be taken to remedy the situation; and
- (c) a reasonable period within which the steps contemplated in paragraph (b) must be taken.

(3) (a) If the Commission fails to comply with the directive contemplated in subsection (1), the Minister may—

- (i) after having given the Commission a reasonable opportunity to be heard; and
- (ii) after having afforded the Commission a hearing on any submissions received,

replace the members of the Commission or, where circumstances so require, appoint a person as an administrator to take over one or more functions of the Commission subject to such conditions as the Minister may determine.

(b) Any vacancy occurring as a result of the application of paragraph (a) must be filled in the manner provided for in section 62C.

(4) If the Minister appoints an administrator in terms of subsection (3)—

- (a) the administrator may do anything which the Commission might otherwise be empowered or required to do under or in terms of this Act; and
- (b) the Commission may not, while the administrator is responsible for a particular function, exercise any of its powers or perform any of its duties relating to that function.

(5) Once the Minister is satisfied that the Commission is able to perform its functions in an effective and efficient manner, the Minister must terminate the appointment of the administrator.

(6) (a) Notwithstanding subsection (3), the Minister may dissolve the Commission if the Minister loses confidence in the ability of the Commission to perform its functions effectively and efficiently.

(b) The Minister may dissolve the Commission only after having—

- (i) provided the Commission with reasons for losing confidence in its abilities;
- (ii) given the Commission a reasonable opportunity to respond to those reasons; and
- (iii) afforded the Commission a hearing on any submissions received.

(c) If the Minister dissolves the Commission, the Minister—

- (i) may appoint an administrator to take over the functions of the Commission and to do anything which the Commission might otherwise be empowered or required to do under or in terms of this Act, subject to such conditions as the Minister may determine; and
- (ii) must, as soon as it is feasible, but not later than three months after the dissolution of the Commission, appoint the members of the Commission in the manner provided for in section 62C.

### Regulations in respect of Commission

**62L.** The Minister may make regulations regarding—

- (a) the manner in which consultation with the Commission must be conducted and the procedures relating thereto;
- (b) any matter relating to the functioning of the Commission that it is necessary to prescribe in order to ensure the efficient and effective functioning of the Commission; and
- (c) any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of the provisions relating to the Commission.”.

**Amendment of section 104 of Act 42 of 2002**

7. Section 104 of the principal Act is hereby amended—

- (a) by the substitution for subsection (12) of the following subsection: 5  
 “(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 or, without a valid reason, fails 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.”;
- (b) by the deletion in subsection (21)(a) of the word “or” at the end of subparagraph (ii), and the insertion of the expression “; or” at the end of paragraph (iii); and 10
- (c) by the addition to subsection (21)(a) of the following subparagraph: 15  
 “(iv) having been duly notified of his or her call-up for service by way of a call-up order issued in terms of section 53(3A), fails to present himself or herself at the time and place specified in the call-up order.”.

**Transitional provision and saving**

8. (1) Any person who is a member of the body known as the interim National Defence Force Service Commission when this Act takes effect, is regarded as having been appointed in terms of section 62C and holds office until the Minister has appointed the members of the Commission in terms of that section. 20

(2) Anything done by the interim National Defence Force Service Commission prior to the commencement of this Act which could have been done by the Commission in terms of this Act, must be regarded as having been done by the Commission in terms of this Act.”. 25

**Short title and commencement**

9. This Act is called the Defence Amendment Act, 2010, and takes effect on a date fixed by the President by proclamation in the *Gazette*.

