

Wes-Kaapse Provinsiale Parlement  
Western Cape Provincial Parliament  
IPalamente yePhondo leNtshona Koloni

RAADSWERKSAAMHEDE  
PLENARY  
ICANDELO LEENKQUBO ZENDLU

ROETEVORM • ROUTE FORM • IFOMU YAMABAKALA OMSEBENZI

Van  
From J Glass  
Isuka

Datum  
Date 14 July 2017  
Umhla

Lêernommer  
File number WCPP12/8/3  
Inom yefayile

Uitbreiding  
Extension 1677  
Umnxeba

Onderwerp  
Subject Atc42-2017 4 July 2017 Announcements Publication of Bills for 21 working day period  
Umba

NAME	DESIGNATION	CODE	INITIAL	DATE
J Nkabinde	Manager: Plenary Support	5/6		14/7/17
T A Nage	Acting Dep. Sec./ CPO	5/6/7	On leave	
J Glass	Clerk of the Papers	9/10		14/7/17

CODE LIST

- |   |                                       |    |                        |
|---|---------------------------------------|----|------------------------|
| 1 | For your information                  | 6  | Approval and signature |
| 2 | For your information and signature    | 7  | Further instructions   |
| 3 | For your recommendation and signature | 8  | See comments           |
| 4 | Approval                              | 9  | Further attention      |
| 5 | Approval and forwarding               | 10 | For implementation     |

COMMENTS

# PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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## ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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FRIDAY, 14 JULY 2017

### ANNOUNCEMENTS

The Speaker:

#### 1. Provincial Notices

- (a) Provincial Notice 139 of 2017, published in the *Provincial Gazette Extraordinary* 7793, dated 14 July 2017: Publication of the Western Cape Provincial Road Traffic Administration Amendment Bill [B 3–2017] for comment before or on 14 August 2017.
- (b) Provincial Notice 140 of 2017, published in the *Provincial Gazette Extraordinary* 7794, dated 14 July 2017: Publication of the Western Cape Local Government Laws Rationalisation Bill [B 4–2017] for comment before or on 14 August 2017.
- (c) Provincial Notice 141 of 2017, published in the *Provincial Gazette Extraordinary* 7795, dated 14 July 2017: Publication of the Western Cape Housing Development Amendment Bill [B 2–2017] for comment before or on 14 August 2017.

#### 2. Referral of bill to committee in terms of Rule 220:

**Standing Committee on Community Development**

Draft Defence Amendment Bill, 2017 (NCOP) (proposed section 75 Bill).

# PARLEMENT VAN DIE PROVINSIE VAN DIE WES-KAAP

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## AANKONDIGINGS, TERTAFELLEGGINGS EN KOMITEEVERSLAE

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VRYDAG, 14 JULIE 2017

### AANKONDIGINGS

Die Speaker:

#### 1. Provinsiale Kennisgewings

- (a) Provinsiale Kennisgewing 139 van 2017, gepubliseer in die *Buitengewone Provinsiale Koerant* 7793, gedateer 14 Julie 2017: Publikasie van Wes-Kaapse Provinsiale Wysigingswetsontwerp op Padverkeersadministrasie [W 3-2017] vir kommentaar voor of op 14 Augustus 2017.
- (b) Provinsiale Kennisgewing 140 van 2017, gepubliseer in die *Buitengewone Provinsiale Koerant* 7794, gedateer 14 Julie 2017: Publikasie van Wetsontwerp op Rasionalisasie van Wes-Kaapse Plaaslikeregeringswette [W 4-2017] vir kommentaar voor of op 14 Augustus 2017.
- (c). Provinsiale Kennisgewing 141 van 2017, gepubliseer in die *Buitengewone Provinsiale Koerant* 7795, gedateer 14 Julie 2017: Publikasie van Wes-Kaapse Behuisings-ontwikkelingswysigingswetsontwerp [W 2-2017] vir kommentaar voor of op 14 Augustus 2017.

#### 2. Verwysing van wetsontwerp na komitee ooreenkomstig Reël 220:

##### **Staaende Komitee oor Gemeenskapsontwikkeling**

Konsepverdedigingswysigingswetsontwerp ("Draft Defence Amendment Bill"), 2017 (NRVP) (voorgestelde artikel 75-wetsontwerp).

Nomb 42 - 2017] ISESHONI YESINE, IPALAMENTE YESIHLANU

# IPALAMENTE YEPHONDO LENTSHONA KOLONI

## IZAZISO, IMICIMBI EZA KWANDLALWA NEENGXELO ZEKOMITI

LWESIHLANU, 14 JULAYI 2017

### IZAZISO

USomlomo:

#### 1. IZaziso zePhondo

- (a) ISaziso sePhondo 139 sika-2017, esipapashwe kwiGazethi yePhondo eyoNgezelelweyo 7793, ebhalwe owe-14 Julayi 2017: Upapasho loMthetho oSayilwayo woLawulo lweziThuthi eziNdleleni waseNtshona Koloni [B 3-2017] ukuba kuphawulwe phambi kowe-14 Agasti 2017.
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#### 2. Uthunyelo lomthetho osayilwayo kwikomiti ngokwemigaqo yoMthetho 220:

##### IKomiti eSisigxina kwezoPhuhlisp loLuntu

IQulunqo loMthetho oSayilwayo woLungiso kwezoKhuseleko, ("Draft Defence Amendment Bill"), 2017 (NCOP) (icandelo elicetywayo 75 loMthetho oSayilwayo).

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VRYDAG, 14 JULIE 2017

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Nomb 42 - 2017] ISESHONI YESINE, IPALAMENTE YESIHLANU

# IPALAMENTE YEPHONDO LENTSHONA KOLONI

## IZAZISO, IMICIMBI EZA KWANDLALWA NEENGXELO ZEKOMITI

LWESIHLANU, 14 JULAYI 2017

### IZAZISO

USomlomo:

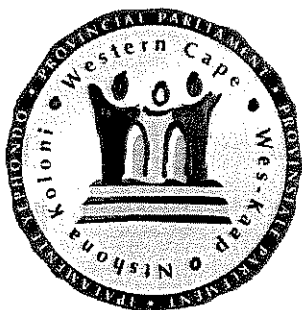
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IKomiti eSisigxina kwezoPhuhlisp loLuntu

IQulungo loMthetho oSayilwayo woLungiso kwezoKhuseleko, ("Draft Defence Amendment Bill"), 2017 (NCOP) (icandelo elicetywayo 75 loMthetho oSayilwayo).



Wes-Kaapse Provinsiale Parlement  
Western Cape Provincial Parliament  
IPalamente yePhondo leNtshona Koloni

KOMITEES  
COMMITTEES  
LIKOMITI

ROETEVORM • ROUTE FORM • IFOMU YAMABAKALA OMSEBENZI

Van  
From  
Isuka  
Ncediswa Mayambela

Datum  
Date  
Umhla  
05 July 2017

Lêernommer  
File number  
Inom yefayile  
11/1/3

Uitbreiding  
Extension  
Umnxeba  
1826

Onderwerp  
Subject  
Umba  
Defence Amendment Bill, 2017

NAME	DESIGNATION	CODE	INITIAL	DATE
Mario Sassman	Manager: Committees	2	<i>MS</i>	5 July 2017
André le Roux	Legal Adviser	6	<i>AR</i>	11/7/2017
Tshepiso Nage	Chief Parliamentary Officer	6		
Piet Pretorius	Deputy Speaker	6	<i>PP</i>	11/7/17
Sharna Fernandez	Speaker	5 & 6	<i>SF</i>	12/7/2017
Jasmin Glass	Clerk of the Papers	9	<i>JG</i>	12/7/2017
Ncediswa Mayambela	NCOP Liaison Officer	9		

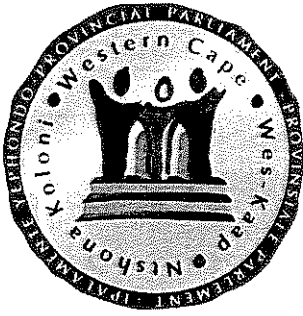
CODE LIST

- |   |                                    |   |                      |
|---|------------------------------------|---|----------------------|
| 1 | For your information               | 6 | Further instructions |
| 2 | For your information and signature | 7 | See comments         |
| 3 | Approval                           | 8 | Further attention    |
| 4 | Approval and forwarding            | 9 | For implementation   |
| 5 | Approval and signature             |   |                      |

Legal Adviser  
Adv. André le Roux  
07 JUL 2017  
*[Signature]*

OFFICE OF THE SPEAKER  
*[Signature]*  
12 JUL 2017  
RECEIVED





Wes-Kaapse Provinsiale Parlement  
Western Cape Provincial Parliament  
IPalamente yePhondo leNtshona Koloni

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Datum  
Date  
Umhla  
05 July 2017  
Verwysing  
Reference  
Isalothiso  
11/1/3

Ms S Fernandez  
Speaker  
6<sup>th</sup> Floor  
7 Wale Street  
CAPE TOWN

Dear Speaker

**RE: Defence Amendment Bill, 2017**

The below-mentioned Bill was received from the NCOP and in accordance with Standing Rule 220, it is referred to your Office for referral to the appropriate committee/s:

Bill	Proposed Standing Committee/s	Speaker's referral to the appropriate Committee	Speaker's signature
Defence Amendment Bill, 2017 Proposed (Sec 75)	SC on Community Safety		

Kind regards,

**Mario Sassman**  
Manager: Committees



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

NATIONAL COUNCIL OF PROVINCES  
THE CHAIRPERSON

PO Box 15 Cape Town 8000 Republic of South Africa  
Tel: 27 (21) 403 2321/3126 Fax: 27 (21) 461 9460  
www.parliament.gov.za

22 June 2017

**Ms. S Fernandez, MPL**  
**Speaker**  
**Western Cape Provincial Parliament**

Dear Hon Speaker

**DEFENCE AMENDMENT BILL, 2017**

I am writing to draw the following information to your attention:

The Minister of Defence and Military Veterans has referred the attached draft Bill and Explanatory Memorandum to the National Council of Provinces, before the Bill's formal introduction into Parliament, in terms of Joint Rule 159.

Joint Rule 159(2) provides for a draft Bill and the Explanatory Memorandum to be referred to the legislatures in order for them to acquaint themselves and to develop positions with regard to the proposed legislation.

Once the Bill is introduced into Parliament, it will follow the legislative process as outlined in the Constitution and the Rules. Kindly note that the Department has proposed that the Bill be dealt with in accordance with the procedures prescribed in section 75 of the Constitution since the Bill contains no provision to which the procedures set out in section 74 or 76 apply. Should the Joint Tagging Mechanism retain this classification, provincial mandates will not be required.

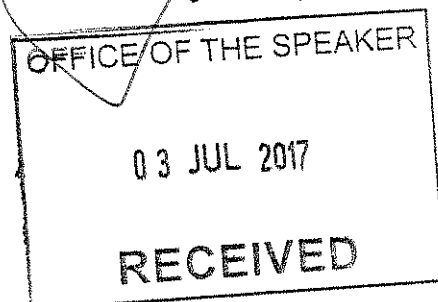
Yours sincerely,

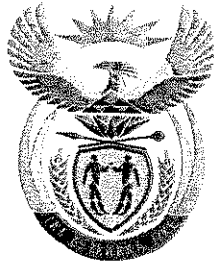
*Mr Satterman*

*For your attention and  
processing please*

*TR Modise*

**TR MODISE, MP**  
**CHAIRPERSON: NATIONAL COUNCIL OF PROVINCES**





**MINISTRY OF DEFENCE AND MILITARY VETERANS**  
**Republic of South Africa**

Private Bag x427, Pretoria, 0001, Tel: (012) 355 5726, Fax: (012) 3556139 PO Box 47,  
Cape Town, 8000, Tel: (021) 787 6070, Fax: (021) 465 5870, Enq P Nkabinde,  
Cell: 0760521275 E-mail: peterkakabini@gmail.com

Honourable T R Modise, MP  
Chairperson of the National Council of Provinces  
Private Bag X15  
Parliament, Cape Town  
8001

Fax: 021 461 9460

Dear Honourable Chairperson,

**INTRODUCTION OF THE DEFENCE AMENDMENT BILL, 2017, IN THE  
NATIONAL ASSEMBLY**

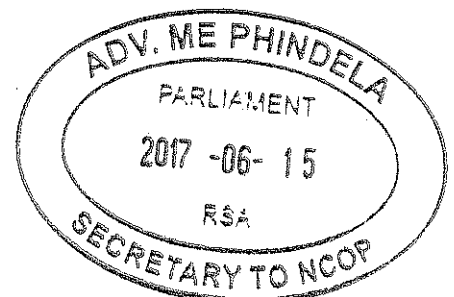
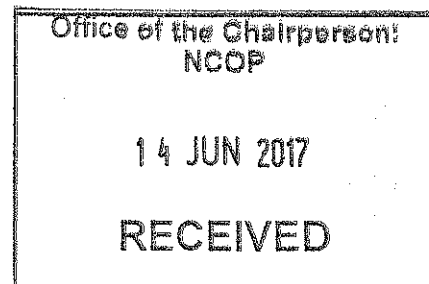
Copies of the above Bill and explanatory memorandum thereto are hereby submitted to you in accordance with Joint Rule 159 of the Joint Rules of Parliament.

Yours sincerely,

**Ms NN MAPISA-NQAKULA, MP**

**MINISTER OF DEFENCE AND MILITARY VETERANS**

DATE: 14 JUNE, 2017



REPUBLIC OF SOUTH AFRICA

DEFENCE AMENDMENT BILL, 2017

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*As introduced in the National Assembly (proposed section 75) (explanatory summary of the Bill published in Government gazette No. 387 of 28 April 2017) (The English text is the official text of the Bill)*

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(MINISTER OF DEFENCE AND MILITARY VETERANS)

[B – 2017]

GENERAL EXPLANATORY NOTE:

11

Words in bold type in square brackets indicate deletions from existing enactments.

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

## BILL

To amend the Defence Act, 2002, so as to include the Chief of Staff in the Military Command of the Defence Force; to clarify the process regarding the implementation by the Chief of the Defence Force of the delegation of powers and assignment of duties to members by the Secretary for Defence as head and accounting officer of the Department; to provide for the employment of the Defence Force outside the Republic; to simplify matters regarding identification cards issued to military police officials; to make a technical correction to the reference to the Armaments Corporation of South Africa, Limited in section 18; to provide for the security vetting of contractors and service providers of the Department; to regulate the minutes of meetings of the Council of Defence; to clarify that a person does not need the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force; to regulate anew the termination of service of members of the Regular Force; to amend the requirements for legal representation of members; to regulate the display of military decorations, medals and insignia; to regulate the use of military uniforms, distinctive marks and crests; to amend certain powers of the Minister to make regulations; to provide for the prohibition of access to

military property or areas, and to provide for matters incidental thereto.

BE IT ENACTED BY the Parliament of the Republic of South Africa, as follows:—

Amendment of section 4A of Act 42 of 2002 as inserted by section 2 of Act 22 of 2010

1. Section 4A of the Defence Act, 2002 (Act No. 42 of 2002) (hereinafter referred to as the principal Act), is hereby amended by the addition of the following paragraph:

"(j) the Chief of Staff."

Amendment of section 8 of Act 42 of 2002

2. Section 8 of the principal Act is hereby amended by the substitution for paragraph (e) of the following paragraph:

"(e) must provide the Chief of the Defence Force with **[comprehensive instructions requiring]** specific guidelines in order to enable the Chief of the Defence Force to issue orders and directives and to give commands to any specified member regarding the exercise of any power delegated or the performance of any duty assigned to that member by the Secretary for Defence as head and accounting officer of the Department **[of Defence]**;"

### Amendment of section 18 of Act 42 of 2002

3. Section 18 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

"(1) In addition to the employment of the Defence Force by the President as contemplated in section 201 (2) of the Constitution, the President or the Minister may authorise the employment of the Defence Force for service inside the Republic or **[in international waters]** outside the Republic in accordance with international law, in order to."

### Amendment of section 30 of Act 42 of 2002

4. Section 30 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The Chief of the Defence Force or any person designated by him or her may appoint any member of the Defence Force as a military police official and issue all such members with **[a prescribed]** an identification card."

### Amendment of section 36 of Act 42 of 2002

5. Section 36 of the principal Act is hereby amended by—  
(a) the substitution for paragraph (c) of the following paragraph:

"(c) the [Armaments Development and Production Corporation of South Africa, Limited, established in terms of section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968).] Armaments Corporation of South Africa, Limited referred to in section 2 of the Armaments Corporation of South Africa, Limited Act, 2003 (Act No. 51 of 2003); and.";

(b) the addition of the following paragraph after paragraph (c):

"(d) contractors and service providers of the Department."

#### **Amendment of section 44 of Act 42 of 2002**

6. Section 44 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Minutes must be kept of the proceedings and decisions taken at every meeting of the Council of Defence and must at least—  
(a) note the matters arising from the previous meeting of the Council;  
(b) record all the decisions of the meeting;  
(c) be allocated a security classification; and  
(d) be signed by the Minister and retained in accordance with the National Archives and Record Service of South Africa Act, 1996 (Act No. 43 of 1996)."



**Amendment of section 53 of Act 42 of 2002 as amended by section 4(a) of Act 22 of 2010**

7. Section 53 of the principal Act is hereby amended by—
- (a) the insertion after subsection (1A) of the following subsection:
- "(1B) No person requires the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force."; and
- (b) the substitution for subsection (8) of the following subsection:
- "(8) Every member of the Reserve Force must be provided with the basic **[prescribed]** required uniform, distinctive marks, badges and accoutrements at State expense and must maintain these during his or her period of service."

**Amendment of section 59 of Act 42 of 2002**

8. Section 59 of the principal Act is hereby amended by—
- (a) the substitution for subsections (1), (2) and (3) of the following subsections, respectively:
- "(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]** the member lodged his or her resignation or upon the expiration of **[such]** any shorter period **[as may be]** approved by the Chief of the Defence Force;

- (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] the member has reached the prescribed age of retirement or, where applicable, if [he or she] the member exercises his or her right to retire on pension in accordance with the provisions of the applicable pension laws;
- (d) if [he or she] the member is sentenced to a term of imprisonment by a competent civilian criminal court or a military 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]** the member is permanently unfit to serve in the Defence Force;
- (f) if the member is transferred to another state department or a body or institution established by or under any law and which obtains its funds directly, entirely or in part, from the National Revenue Fund contemplated in section 213 of the Constitution or a Provincial Revenue Fund contemplated in section 226 of the Constitution;
- (g) if the member accepts a nomination for election as a member of Parliament, a Provincial legislature or a municipal council;
- (h) if the member becomes a member of Parliament, a Provincial

Legislature or a municipal council; or

(i) if the President permanently appoints the member under any law to a position to which the Act does not apply.

(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] the post of that member or any reduction or adjustment in the post structure of the Department [of Defence];
- (b) if for reasons other than the [member's own] unfitness or incapacity of the member, 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 or incapability to carry [them] out his or her duties efficiently, [irrespective of whether such unfitness or inability is caused by such member's ill-health not amounting to a condition referred to] for a reason other than that contemplated in subsection (1)(e);
- (d) if, after serving a period of probation in terms of this Act, his or her appointment is not confirmed;
- (e) if [his or her] the continued employment of that member 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;

- (f) if the member, while serving, has been convicted by a competent civilian criminal court or a military court of an offence which, in view of its gravity and the nature of the sentence imposed, renders the continued employment of that member in the Regular Force undesirable;
- (g) if, before or since the member has been appointed, he or she has been convicted by a competent civilian criminal court or a military court on more than one occasion of offences which, considered individually, would not justify or did not lead to the dismissal of the member on account of misconduct, but considered collectively renders the continued employment of that member in the Regular Force undesirable;
- (h) if, due to recurrent convictions of that member by military courts, the member is considered not to be amenable to military discipline;
- (i) if the member has been convicted on five or more occasions on charges of contravening section 14(a) of the Code during a period of 24 months of continuous service;
- (j) if any condition of the conditional appointment of the member is not fulfilled;
- (k) by reason of any material misrepresentation of his or her position with regard to a condition for the appointment of the member to any rank or post in the Defence Force;
- (l) if at any time during the formative or specialised training of the member in the corps or mustering in which he or she has been

appointed, it becomes apparent that the member is unsuitable for such training and is not regarded as suitable to be remustered for employment in any other corps or mustering in the Defence Force;

(m) if the member, after he or she has been lawfully instructed to submit himself or herself to a compulsory immunisation of the members of the Defence Force, refuses to do so;

(n) if the member is charged but has not yet been convicted in a competent civilian criminal court or a military court and the continued employment of the member in the Regular Force is rendered undesirable because of—

(i) the gravity of the charges or allegations against him or her;

(ii) the publicity that the charges or allegations is given in the public and social media;

(iii) the prejudice or potential prejudice for the reputation of the Defence Force as a result of such publicity;

(iv) the impact of the charges or allegations i on the confidence or respect of the public in the Defence Force;  
and

(v) the constitutional imperative for the Defence Force to be structured and managed as a disciplined military force;  
and

(o) if, for just cause, the relationship of trust or respect between the member and the Defence Force has deteriorated to such an

extent that it renders his or her continued employment in the Regular Force untenable or undesirable.

(3) The service of 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 continuous period exceeding [30] 10 calendar 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,]** terminated 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 that member on the conditions that he or she may determine.";

(b) the substitution for subsection (6) of the following subsection:

"(6) A member contemplated in subsection (1)(a), **[or]** (d), (f), or (g) 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]** in respect of that education or training.";

(c) the addition of the following subsection after subsection (6):

"(7) (a) The officer commanding of a member may apply to the Chief of the Defence Force for the termination of the services of that member on any of the grounds in subsection (2).

(b) The application contemplated in paragraph (a) must—

- (i) be in writing;
- (ii) contain the prescribed information; and
- (iii) comply with the prescribed procedure and directives.

(c) The Chief of the Defence Force must, after ascertaining that the prescribed procedure has been complied with, consider the application and may—

- (i) decide to terminate the services of the member;
- (ii) decide not to terminate the services of the member; or
- (iii) refer the application back to the officer commanding for further investigation in the prescribed manner before he or she makes a final decision.

(d) The Chief of the Defence Force must inform the officer commanding and the member in writing within seven days, of his or her final decision and must provide reasons for the decision.

(e) A termination of services in terms of subsection (2) becomes effective on the last day of the month following the month in which the member was notified in terms of paragraph (d).

(f) The Minister may prescribe any procedure, act, incidental matter or form that—

- (i) complies with the *audi alterem partem* rule;
- (ii) is not already provided for or required in terms of any other law;
- and
- (iii) is necessary or required in respect of a termination of service under this section."

### Amendment of section 60 of Act 42 of 2002

9. Section 60 of the principal Act is hereby amended by the substitution in subsection (2) for paragraph (d) of the following paragraph:

"(d) acted **[negligently]** in a grossly negligent manner, recklessly or wilfully,".

### Amendment of section 74 of Act 42 of 2002

10. Section 74 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

"The Minister must, with the approval of the President, **[must]** make **[such]** the necessary rules **[and regulations as may be necessary in the case]** in respect of every decoration or medal, for,".

### Substitution of section 76 of Act 42 of 2002

11. Section 76 of the principal Act is hereby substituted for the following section:

#### "Display of decorations and medals

76. The Chief of the Defence Force must determine the manner in, and the apparel on, which decorations and medals may be displayed in public by the following categories of persons:



- (a) Serving members of the Defence Force;
- (b) former members of the Defence Force;
- (c) civilians who are the next of kin of deceased former members of the Defence Force; and
- (d) other civilian recipients of decorations and medals."

#### **Substitution of section 78 of Act 42 of 2002**

12. Section 78 of the principal Act is hereby substituted for the following section:

#### **"Display of insignia**

78. The Chief of the Defence Force must determine the flags, honours, awards and other insignia that units of the Defence Force may display on parade."

#### **Amendment of section 82 of Act 42 of 2002**

13. Section 82 of the principal Act is hereby amended by—

- (a) the deletion of paragraph (j) of subsection (1); and
- (b) the substitution for paragraphs (j) and (k) of subsection (1) of the following paragraphs, respectively:

"(j) the establishment of—

(i) health and fitness standards for—

- (aa) the enlistment and induction of commissioned and non-commissioned members;
  - (bb) the retention, separation and retirement of members;
  - (cc) aviation, including but not limited to South African Air Force pilots and crew;
  - (dd) South African Navy divers and submariners, parabats, and special forces, as well as any other occupation speciality that requires a health or fitness standard; and
  - (ee) compulsory immunisation of members;
  - (ii) physical profiles; and
  - (iii) medical, psychological and other associated health profession assessments;
- (k) **[the]** provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependants, including military health establishments and other health establishments, and, if applicable, the establishment, management and control of one or more funds for such purposes;" and
- (c) the insertion in subsection (1), after paragraph (m) of the following paragraph:
- "(mA) the addition of voluntary extra insurance cover and additional premiums by members and employees to their existing compulsory insurance referred to in paragraph (m)."

## Substitution of heading to section 83 of Act 42 of 2002

14. The following heading is hereby substituted for the heading to section 83 of the principal Act:

**"Protection of moveable defence assets and records".**

## Insertion of section 83A in Act 42 of 2002

15. The following section is hereby inserted in the principal Act, after section 83:

### **"Prohibition of access to military property or areas**

**83A.** (1) The Minister may prescribe measures to regulate access to any military camp, barracks, dockyard, installation, premises, areas or property, or to any airbase or any land or area of water which is used either temporarily or permanently by the Defence Force or which is under the control of the Defence Force, including a privately owned building, premises or area or any part thereof which is also being used or is occupied by the Defence Force.

(2) Any person who fails to comply with any prohibition, restriction or condition prescribed under subsection (1) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 15 years.

(3) For the purposes of this section, or any measure prescribed under it, any land or premises on or in which armaments are developed, manufactured, serviced, repaired or maintained, must be regarded as land or premises used by, or under the control of, the Defence Force."

**Amendment of section 104 of Act 42 of 2002 as amended by Act 22 of 2010**

16. Section 104 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Any person who, without the written authority of the Chief of the Defence Force, possesses or wears **[prescribed]** any uniform[s] or part thereof, distinctive mark[s] or crest[s] that has been determined by the Chief of the Defence Force as official attire in the Defence Force, or performs any prohibited act while wearing such uniform or with such uniform, distinctive mark[s] or crest[s], is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years."

**Short title and commencement**

17. This Act is called the Defence Amendment Act, 2017, and comes into effect on a date fixed by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE DEFENCE AMENDMENT BILL, 2017**

### **1. BACKGROUND**

1.1 The DOD commenced with the process of reviewing the Defence Act, 2002, during 2009.

1.2 The Defence Review, 2015, was completed and approved by Cabinet during 2014 and Parliament during 2015. The amendments to the draft Bill do not emanate from the recommendations contained in the Defence Review, 2015, but are matters that have been identified as necessary to be addressed at this stage. The DOD is currently in the process of unpacking the Defence Review, 2015, and its effect on DOD structures, administration, and possible future legislative amendments to defence legislation may follow eventually.

### **2. OBJECTIVES OF BILL**

The draft Bill intends to align the Defence Act, 2002, with current Departmental organisational requirements that will enhance the efficiency of the Department of Defence.

### **3. OVERVIEW OF BILL**

3.1. Clause 1 proposes that the Chief of Staff be included in the Military Command of the Defence Force by the insertion of section 4A. It is practice that the

Chief of Staff is part of the military command structure. It is necessary to formalise this appointment and position.

3.2 Clause 2 proposes clarification of the process in section 8(e) regarding the implementation by the Chief of the Defence Force of the delegation of powers and assignment of duties to members by the Secretary for Defence as head and accounting officer of the Department. The Secretary for Defence cannot directly delegate any of his functions to members of the South African National Defence Force (SANDF), without the consent of the Chief of the South African National Defence Force, as it would be contrary to the command and control principles of the SANDF. In order to enable a member of the SANDF to carry out any delegated function of the Secretary for Defence, the Secretary for Defence must give specific guidelines to the Chief of the South African National Defence Force in order to enable the Chief of the South African National Defence Force to instruct the member to carry out the delegation.

3.3 Clause 3 proposes that provision be made for the employment of the Defence Force outside the Republic in accordance with international law. The current wording of Section 18(1) refers to "international waters", which has a very specific meaning in international law. The amendment seeks to expand the international deployment of the SANDF by not only restricting it to international waters. This approach is consistent with international law.

3.4 Clause 4 proposes to simplify matters regarding identification cards issued to military police officials. The current wording of Section 30(1) requires that

regulations be promulgated by the Minister with regard to identification cards used by Military Police officials. This requirement for the issuing of identification cards can be dealt with by means of internal policies instead of regulations.

3.5 Clause 5(a) proposes a technical correction to the reference to the Armaments Development and Production Act, 1968 (Act No. 57 of 1968), in section 36(c), to align the wording and reference to the current legislation.

3.6 Clause 5 (b) proposes provision for the security vetting of contractors and service providers of the Department. Defence Intelligence must be empowered to screen and vet the security profile of contractors and service providers to the DOD.

3.7 Clause 6 proposes improved regulation of the minutes of meetings of the Council of Defence. The amendment of section 44 aids in regulating the minutes of proceedings of the COD, as the highest command body in the DOD. These amendments relate to noting the matters arising from previous meetings, recording of all decisions and allocation of security classifications to decisions.

3.8 Clause 7 proposes to clarify that a person does not need the consent of an employer in order to enrol as, or to remain, a member of the Reserve Force. This amendment of section 53 enables the Reserve Force component of the DOD to attract incumbents to join the Reserve Force, without the employer having to consent to such enrolment. The understanding here is that joining the Reserve Force is not equated to providing service within the Reserve Force, as there are specific call-up duty requirements provided for in the Reserve Force Regulations. In terms of

Regulation 28(1)(d) of the Regulations for the Reserve Force, 2009, members of the SA Police Service, Correctional Services and State Security Services are not allowed to serve in the Reserve Force.

3.9 Clause 8 proposes to regulate anew the termination of service of members of the Regular Force by expanding and creating legislative provisions under which the service of members is terminated by operation of law, and the circumstances under which members' services may be administratively terminated. The provisions of the current section 59 of the Defence Act, 2002, were retained in the Bill, while provisions from the General Regulations for the SANDF and the Reserve were also incorporated into the draft Bill. The amended provisions in section 59 of the Bill, are particularly aimed at empowering the Commanders who are first and foremost directly involved in disciplinary matters of members. This amendment is directly related to managing the constitutional imperative of the SANDF, as contained in section 200(1) of the Constitution of the Republic of South Africa, 1996, which requires that the SANDF be structured and managed as a disciplined military force. In order to ensure a just and fair termination process, the procedures to be followed will be prescribed by regulations that comply with the *audi alterem partem* rule.

3.10 Clause 9 proposes an amendment to the requirements for legal representation for members in order to align section 60 of the Defence Act, 2002, with the Treasury Regulations, March 2005 (TR 12.2)(state cover), regarding legal representation of SANDF members provided by the state in respect of acts committed in an official capacity.



3.11 Clauses 10, 11 and 12 propose an amendment regarding the manner in which the display of military decorations, medals and insignia and the use of military uniforms, distinctive marks and crests, are regulated. The Defence Act, 2002, (sections 74, 76 and 78) provides that in dealing with the display of military decorations, medals and insignia and the use of military uniforms, distinctive marks and crests, regulations must be promulgated. It is impractical to deal with these matters in regulations. The making of rules or determinations in this regard to these matters would suffice and therefore the amendment provides for the making of rules as opposed to the promulgation of regulations in respect of these matters.

3.12 Clause 13 proposes to amend certain powers of the Minister to make regulations under section 82(1). The amendment in the Bill will empower the Minister to prescribe regulations on the establishment of the health and fitness standards and the provision for medical, dental and hospital treatment of retired members of the Regular Force and their dependents, including military health establishments and other health establishments. The medical terminology relating to these matters in the Defence Act, 2002, is outdated and not in line with current medical terminology. An amendment is also included in this clause that deals with the voluntary extra insurance cover and additional premiums payable by members and employees for the Group Life Insurance Scheme.

3.13 Clause 14 proposes the amendment of a heading. The current heading of section 83 (Protection of defence assets) is amended to read "Protection of moveable defence assets and records".

3.14 Clause 15 proposes provision for regulating the prohibition of access to military areas. The Defence Act, 1957 (Act No. 44 of 1957), contained a provision that related to prohibiting access to military premises. A similar provision was not included in the Defence Act, 2002. The inclusion of such a provision is crucial for security purposes. The amendment in the Bill (insertion of section 83A) empowers the Minister to prescribe measures to regulate access to military areas. The amendment further creates an offence should there be failure to comply with the prohibition, restriction or condition that has been prescribed by Regulation.

3.15 Clause 16 proposes that the criminal enforcement of the unlawful possession or wearing of military uniforms, distinctive marks or crests be regulated anew by the amendment of section 104.

#### **4. PARTIES CONSULTED**

Stakeholders within the Department of Defence (Reserve Force Council, Human Resource Staff Council and the Plenary Defence Staff Council) have been consulted regarding the proposed amendments. The Bill was finalised with the JCPS Cluster Sub-Committee (the Development Committee) and JCPS Cluster (DGs).

#### **5. FINANCIAL IMPLICATIONS**

To be accommodated within the existing budget.

## 6. PARLIAMENTARY PROCEDURE

6.1 The Department of Defence and the Office of the Chief State Law Adviser 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.

6.2 The tagging of the Bill requires firstly, considering all the provisions of the Bill as opposed to a single provision in the Bill and, thereafter, employing the term "substantially" when considering the impact of these provisions on the provinces. When considering if the Bill substantially affects the provinces this must be done in accordance with an assessment of all the relevant provisions of the Bill and thereafter a consideration of whether or not the impact of these provisions is not so small as to be regarded as trivial.

6.3 Other key points to consider as stated in the *Tongoane* case are as follows:

- The tagging of Bills before Parliament must be informed by the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affects them. Paying less attention to the provisions of a Bill once its substance, or purpose and effect, has been identified undermines the role that provinces should play in the enactment of national legislation affecting them.
- To apply the "pith and substance" test to the tagging question, therefore undermines the constitutional role of the provinces in legislation in which they

should have a meaningful say, and disregards the breadth of the legislative provisions that section 76(3) of the Constitution requires to be enacted in accordance with the section 76 procedure.

6.4 The matters dealt with in this Bill do not fall within the ambit of Part A of Schedule 4 of the Constitution, which lists the functional areas of concurrent national and provincial legislative competence.

6.5.1 Also, informed by the substantial measure test and the test for tagging, as confirmed in the **Tongoane case**, we considered every provision of the Bill, focusing on the need to ensure that provinces fully and effectively exercise their appropriate role in the process of considering national legislation that substantially affect them. In its current format, the Bill would probably not have a substantial impact on the provinces.

6.5.2 It is, therefore, our view that this Bill must be introduced in terms of the procedure contemplated by section 75 of the Constitution.

6.6 The Department of Defence and the Office of the Chief State Law Adviser are further of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

