

*(English text signed by the President.)
(Assented to 12 February 2003.)*

ACT

To provide for the defence of the Republic and for matters connected therewith.

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

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CHAPTER 14

INTRODUCTORY PROVISIONS

Definitions

- 1. (1) In this Act, unless the context indicates otherwise—
 - (i) "auxiliary service" means any service established under section 16(1); 5
 - (ii) "Chief of the Defence Force" means the Chief of the South African National Defence Force contemplated in section 13(1);
 - (iii) "citizen" means a South African citizen as contemplated in the South African Citizenship Act, 1995 (Act No. 88 of 1995);
 - (iv) "Code" means the Military Discipline Code referred to in section 104(1) of the Defence Act, 1957 (Act No. 44 of 1957); 10
 - (v) "conscientious objection" means an objection, against the rendering of military service or against participating in a military operation, on grounds of conscience based on compelling religious, ethical or moral beliefs;
 - (vi) "court", in relation to a visiting force, means a body which or person who, by virtue of the laws of the country to which such visiting force belongs, is 15

to try any person for an offence under such military law or to review the

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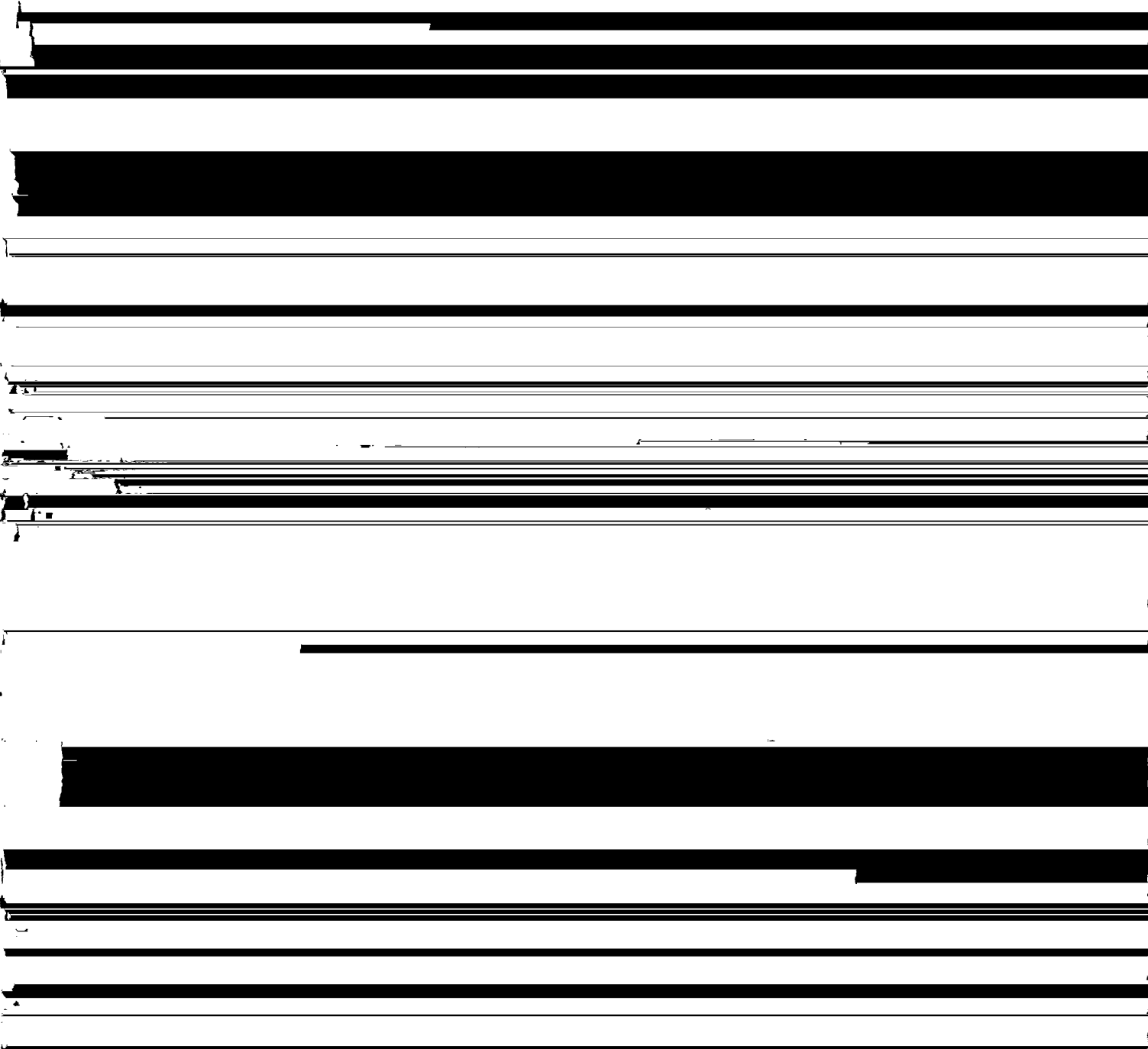
- (xx) "registered address", in relation to a person, means the address of that person as notified from time to time to the proper authority in terms of this Act;
- (xxi) "Regular Force" means the Regular Force contemplated in section 11(a);

- (xxii) "regulation" means a regulation made under section 82;
- (xxiii) "Reserve Force" means the Reserve Force contemplated in section 11(b);

- (xxiv) "secondary strike" means a strike, or conduct in contemplation or

- service in support of a strike or in solidarity with a strike undertaken by persons other than such members against any employer;
- (xxv) "Secretary for Defence" means the Secretary for Defence appointed in terms of section 7(1);
- (xxvi) "Service" means any Service referred to in section 12(1);

(c) The Defence Force must perform its functions in accordance with the
Constitution and international law regulating the use of force.



- (e) No member of the Defence Force may obey a manifestly illegal order.
- (f) Neither the Defence Force nor its members may, in the performance of their functions, prejudice a political party interest that is legitimate in terms of the Constitution, or, in a partisan fashion, further any interest of a political party. 5
- (g) The Defence Force must respect the fundamental rights and dignity of its members and of all persons.

Application of Act 10

3. (1) Unless the context indicates otherwise, this Act applies to—
(1) all members of the Defence Force and any auxiliary service, and all

(5) Members of the Defence Force serving in posts in the Defence Secretariat

well as those of superior officers.

Secretary for Defence

7 (1) The President must, subject to the laws concerning the

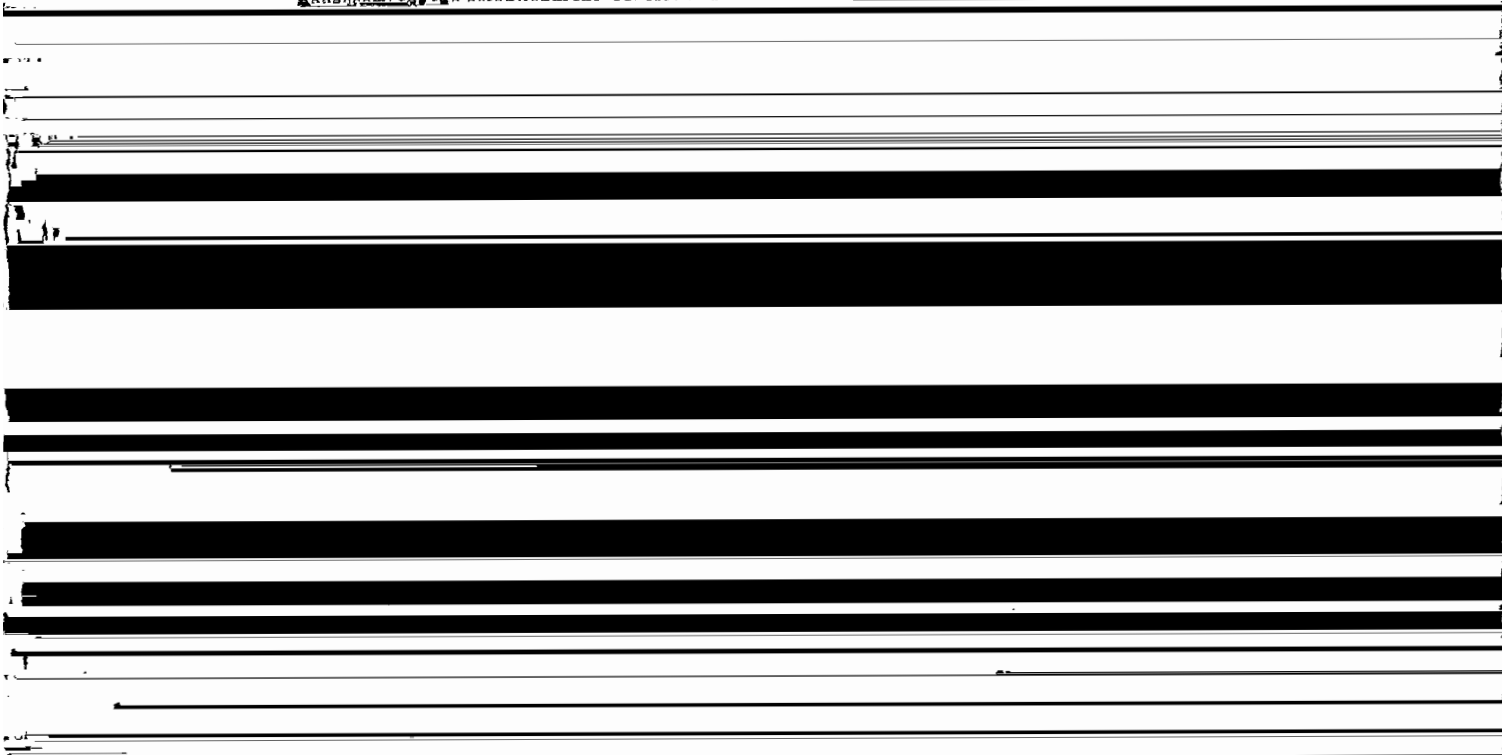
(b) continues to serve in that capacity under the terms and conditions of service of his or her existing appointment for the remainder of the period of service in

terms of such appointment.

Functions of Chief of Defence Force

in section 8, the Chief of the Defence Force—

(3) The organisation of and conditions of service in any auxiliary service, including enrolment prerequisites, enrolment, engagement, attestation, discharge, ranks, musterings, leave, duties, discipline, attire and any other matters convenient or necessary for the establishment, maintenance, conduct and administration of such service

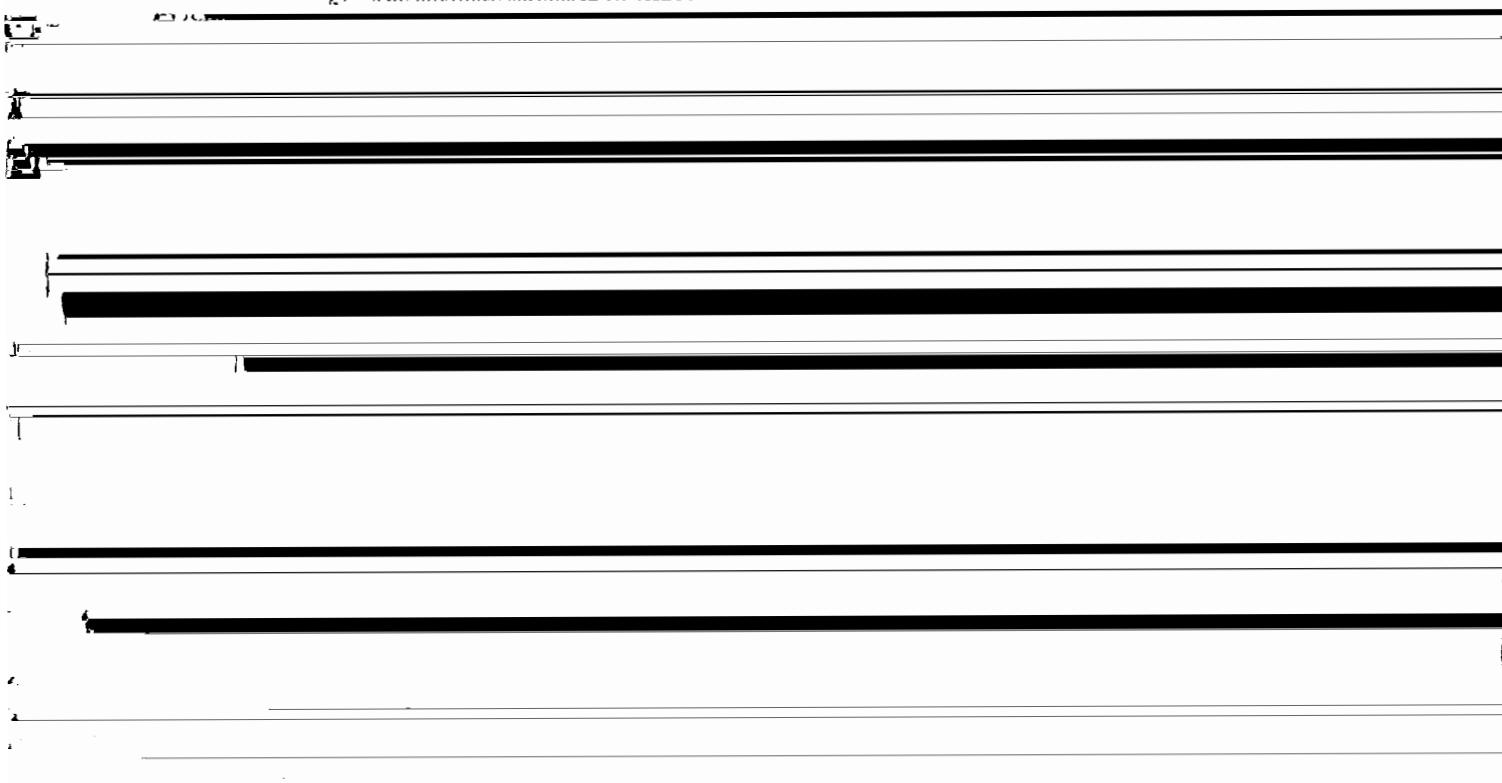


are as prescribed.

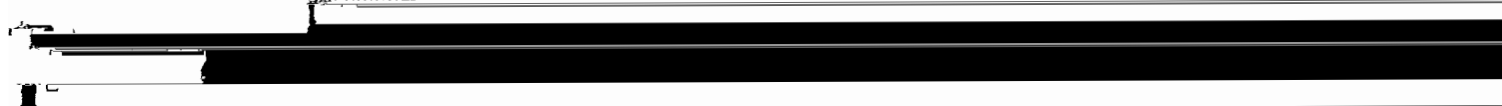
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Existing auxiliary services

17 Any auxiliary service in existence immediately before the commencement of this Act



Act continues as an auxiliary service continued by section 16 of the Defence Act, 2002



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(7) (a) If authorisation by the Minister in terms of subsection (1)(a) cannot be

Defence, with the concurrence of the Chief of the Defence Force, may, in accordance with a standing arrangement delegated by the Minister in this regard, authorise the

employment of the National Defence Force for any

(2) The powers and duties referred to in subsection (1) may only be exercised or performed for the purposes of the—

- (a) successful execution of that employment;
- (b) prevention of crime;
- (c) maintenance of law and order; or
- (d) preservation of the internal security of the Republic.

of crime.

CHAPTER 4

LAW ENFORCEMENT POWERS OF DEFENCE FORCE AT SEA

Definitions

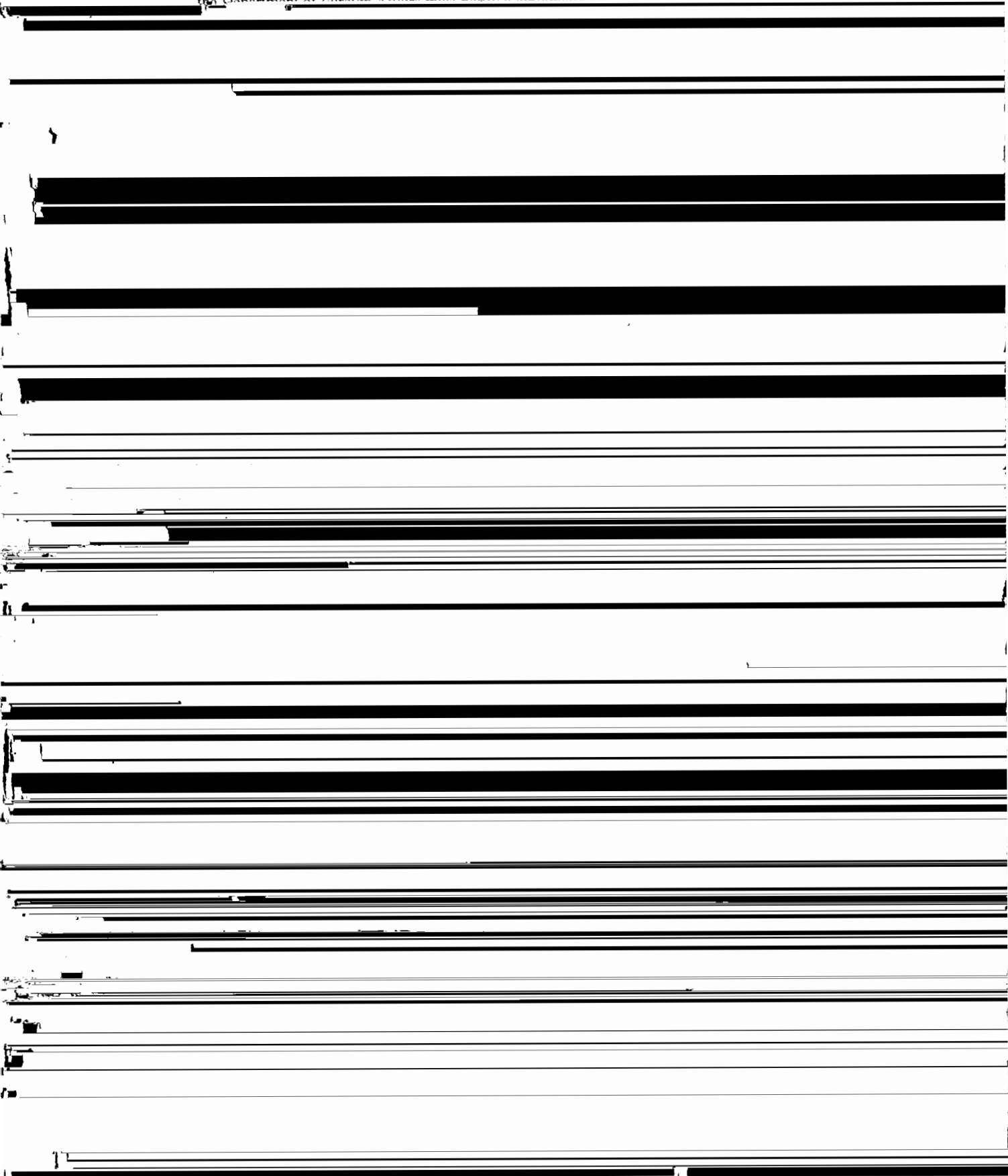
21. In this Chapter a word or expression has the meaning ascribed to it in any appropriate convention and, unless the context indicates otherwise— 5

- (a) **“innocent passage”** means the right of innocent passage contemplated in section 2 of the Marine Traffic Act, 1981 (Act No. 2 of 1981);
- (b) **“military aircraft”** means an aircraft of the armed forces of a State having the military marks of that State, commanded by a member of the armed forces and the crew of which is subject to regular armed forces discipline; 10
- (c) **“UNCLOS”** means the United Nations Convention on the Law of the Sea adopted at Montego Bay on 10 December 1982:

external marks distinguishing such ships of its nationality, under the command of an officer duly commissioned by the government of that State and whose name appears in the appropriate service list or its equivalent, and the crew of which is under regular armed forces discipline. 15

Interests to be considered

23. (1) (a) If the Master of a foreign ship in relation to which and on board of which enforcement measures are being taken in accordance with section 22(2)(b) so requests, directly or through any military aircraft or warship authorised in terms of section 22(1), the Department of Foreign Affairs must notify a diplomatic agent or consular officer of



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Right of visit on high seas by warships of Defence Force

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- (a) in pursuance of a reciprocal agreement on co-operation in law enforcement at sea between the Republic and the relevant foreign state;
- (b) if the law-enforcement measure taken is consistent with the agreement; and

contemplated in subsection (1) (a) to (e) under international law.

~~shall not exercise as civilian a military police official any power to exercise~~

~~Excluded from membership of the South African Police Service~~

(5) Section 217 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), applies with the necessary changes to a confession made to a military police official in the performance of any function contemplated in this section.

(6) (a) Any civilian arrested by a military police official must be handed over to the South African Police Service without delay.

Co-operation with other intelligence services

35. The Intelligence Division must co-operate with any other intelligence service or body created by or under any other law.

Counterintelligence by Intelligence Division

36. The Intelligence Division must, in accordance with any policy, procedure or norm determined by the Minister and in consultation with the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994), conduct and institute counterintelligence measures and activities within

- (b) the Department; and
- (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).

Determination of security classification of members and employees

37. (1) The Minister may prescribe—
(a) different grades of security clearance to be issued by the Intelligence Division

clearance in terms of section 37(4), may be discharged from the Department by the Minister.

Notification of security clearance or refusal thereof

- 39. (1) The Secretary for Defence must give written notice to every member or employee in respect of whom a determination has been made in terms of section 37(4). 5
- (2) (a) Subject to paragraph (b), the Secretary for Defence must, in writing, furnish

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Review by Review Board

41. (1) The Review Board must review any objection referred to it in terms of section 39(4)(c) and may direct the Secretary for Defence to investigate any aspect under review further and to submit its findings and recommendations to the Review Board.

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(2) The Review Board may—
(a) confirm the determination in question; or

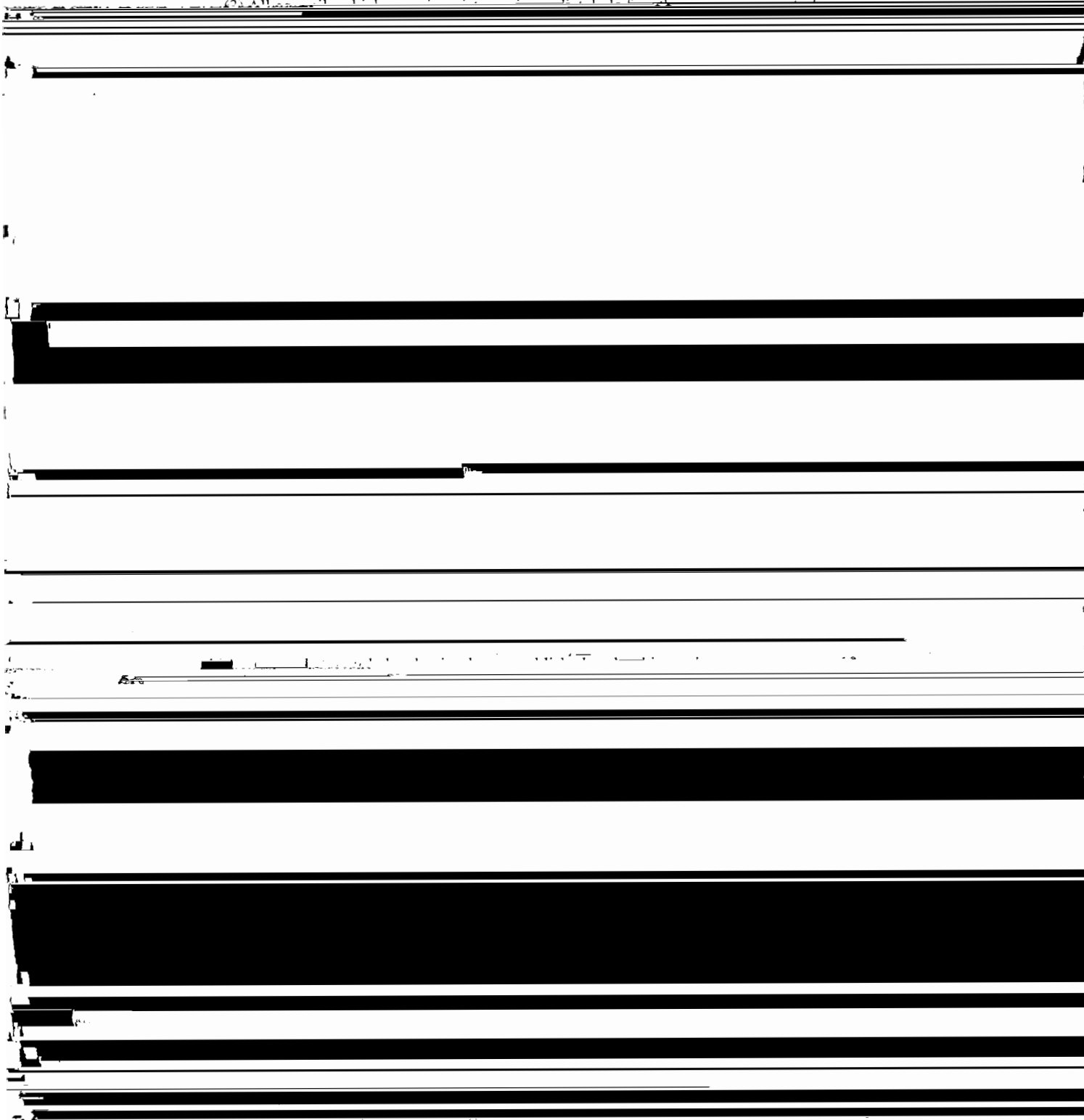
Functions of Defence Staff Council

46. The Defence Staff Council must advise the Secretary for Defence and the Chief of the Defence Force on any matter within their respective competencies.

Other councils that may be established

47. (1) The Secretary for Defence, the Chief of the Defence Force and any Chief of a Division may establish such other councils as may be necessary.

(2) Any council established under subsection (1) must be constituted by the Defence Staff Council and perform such functions as the Defence Staff Council may determine.



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(3) To the extent necessary for security and the protection of information, members of

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(4) If a need for a specific service is identified, the Minister may, in writing, authorise a non-citizen to perform that service in a temporary capacity for a period not exceeding three years, renewable once for a period not exceeding three years.

other reasonable means, the Minister may authorise the contracting of a non-citizen in a temporary capacity for a period not exceeding three years, renewable once for a period not exceeding three years.

(5) (a) A member of the Regular Force must place the whole of his or her time at the disposal of the State, and may not perform remunerated work or engage himself or herself to perform work outside his or her employment unless prior authority has been

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(9) Every member of the Defence Force shall be subject to the following provisions:

(a) on the date on which a sentence of cashiering imposed on him or her is confirmed;

(b) if the sentence is imposed on a person who is a member of the armed forces of the State, on the date on which the sentence is confirmed;

received by or on behalf of the Chief of the Defence Force.

(3) Subject to the Moratorium Act, 1963 (Act No. 25 of 1963), and any other law relating to the protection of citizens or non-citizens who are in active service on behalf

(e) The quorum for a meeting of the Board consists of the chairperson, or the acting chairperson, and two other members and any decision of the majority assent of any

properly constituted meeting is the decision of the Board.

(f) Where the Board consists of more than two members, the chairperson, or the acting

an equality of votes on any matter.

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

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

(8) The Board may cause such investigation to be made in connection with the application and in such manner as it may deem necessary in order to enable it to furnish its recommendation. 10

(9) For purposes of the investigation referred to in subsection (8), the Board may summon witnesses, cause an oath or affirmation to be administered to them, examine them and call for the production of books, documents and objects. 15

(10) A summons for the attendance of a witness or for the production of any book, document or object before the Board must be signed and issued by the chairperson of the

(20) The Board must—

- (a) make a recommendation contemplated in subsection (4) within 12 months of receiving an application contemplated in subsection (2); and
- (b) furnish a report to the Minister on its activities annually, which report must be tabled together with the annual report and financial statements contemplated in section 65 of the Public Finance Management Act, 1999 (Act No. 1 of 1999). 5

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

58. (1) Subject to this Act, every person who is contracted to serve in the Defence Force is obliged to serve and remain in service during a time of war, a state of national defence or a state of emergency. 10

lapsed or has expired before the outbreak of war or the declaration of the state of national defence or the declaration of the state of emergency, such contract may be renewed by

the Minister so that the member may render service in a time of war, during a state of 15

appointment is not confirmed; or
(e) if his or her continued employment constitutes a security risk to the State or if the required security clearance for his or her appointment in a post is refused or withdrawn.

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

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

Religious observance in Defence Force

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

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CHAPTER 10

TRAINING

Defence training institutions

63 (1) The Minister may establish defence training institutions for purposes of 15

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Designation of areas for training

65. (1) Subject to subsections (2) and (3), and the National Environmental

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

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

(d) Any person who has been summoned to attend any sitting of a board as a witness or who has given evidence before a board is entitled to claim expenses incurred from

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public funds in accordance with the tariff applicable to a witness in a court of law

magistrates' court.

(e) In connection with the giving of any evidence or the production of any book or document before a board, the law relating to privilege as applicable to a witness giving evidence or summonsed to produce a book or a document in a court, applies. 10

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

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

(i) in order to prevent the interruption of the course of full-time educational studies of the person concerned; 15

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

(iii) on the grounds that such person is being compulsorily detained in any institution due to his or her having been sentenced to imprisonment or his or her incapacity to function effectively in society; 20

(4) on the grounds that under his or her circumstances

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Appeal to Minister

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

(2) The noting of an appeal in terms of subsection (1)

Rules and regulations

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

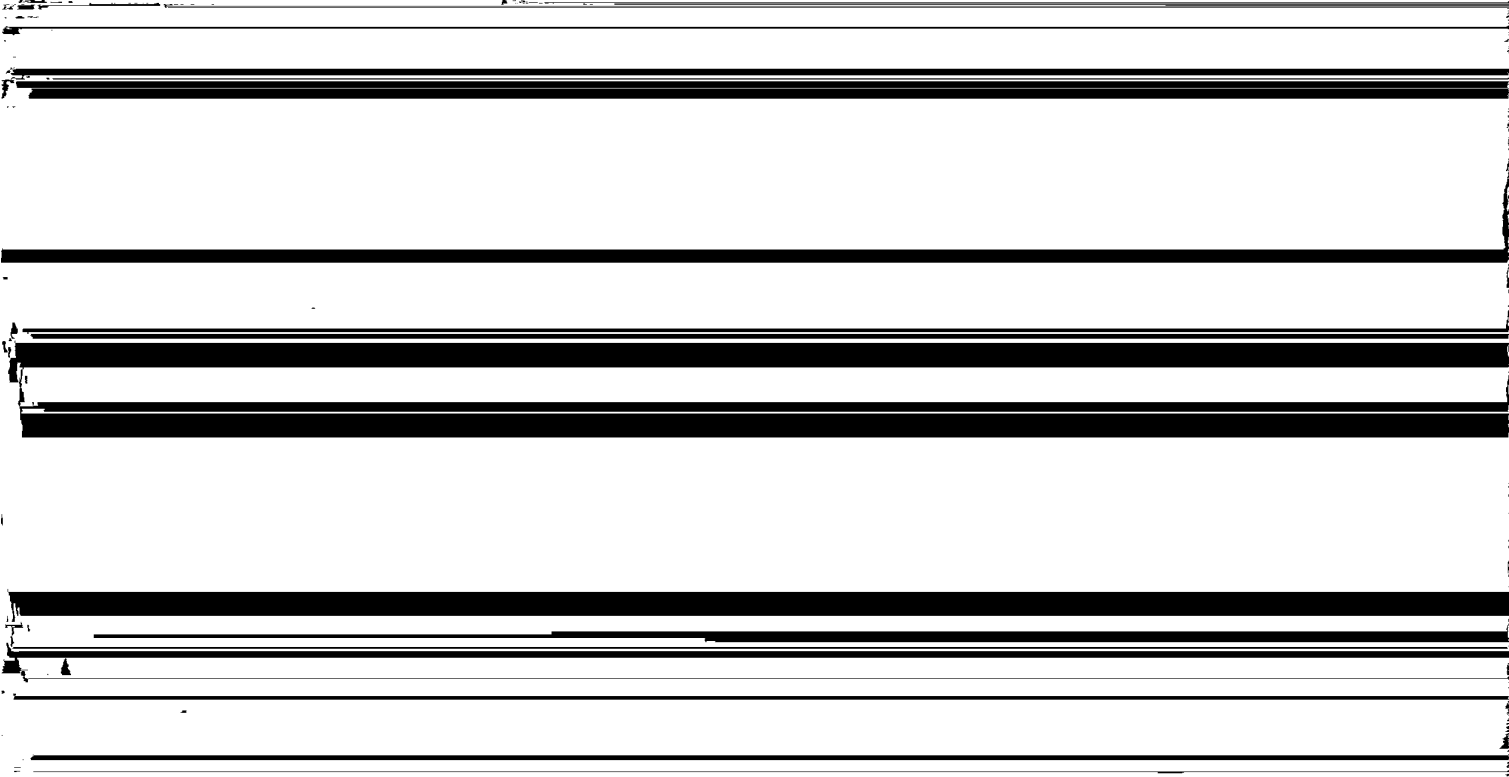
(b) the granting, wearing, forfeiture and restoration thereof; and

- (2) Without derogating from the generality of subsection (1), the Minister may—
- (a) manage, provide, acquire, hire, construct and maintain defence works, ranges, buildings, training areas and land required for defence purposes, either singly or in conjunction with other users;

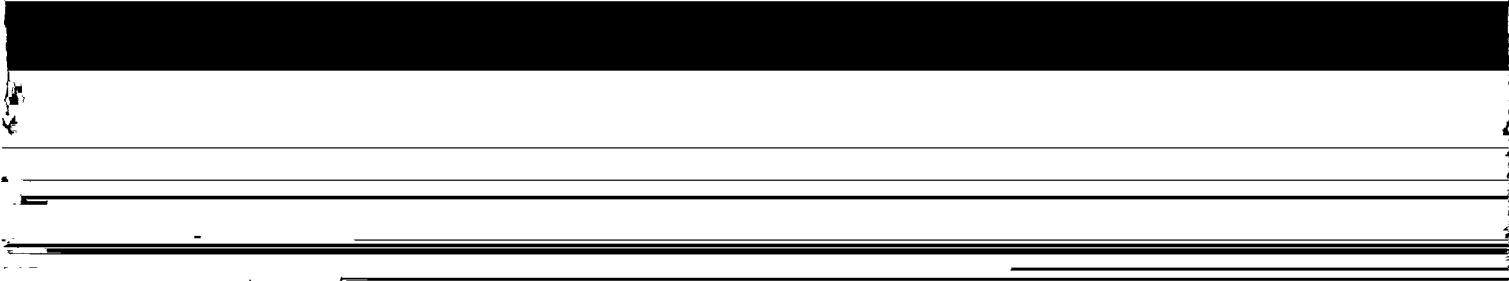
(b) after consultation with other interested government departments, manage

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- (b) the temporary employment of persons, in a military or a civilian capacity;
- (c) discipline in the Defence Force;
- (d) the occupation of official quarters:

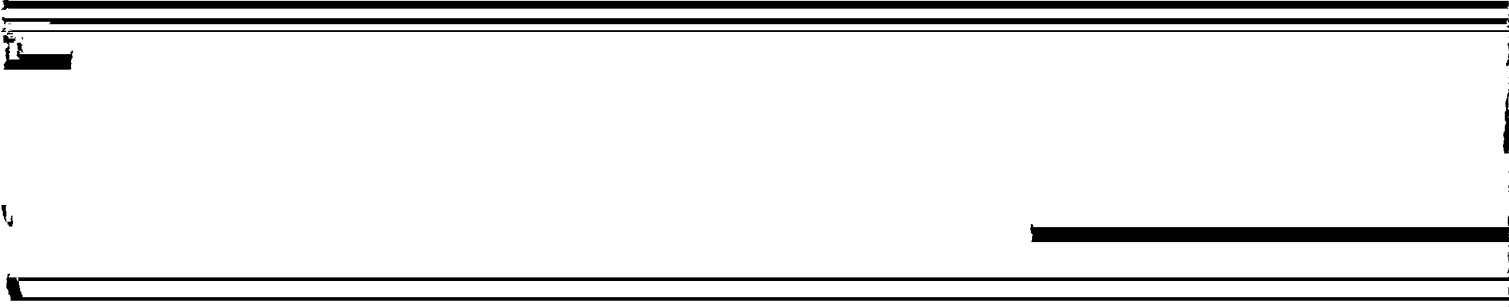


and other allowances may be paid: 5
 (f) the occupational health and safety of members of the Defence Force and



- civilian employees of the Department:
- (g) defence intelligence, including—
 - (i) assigning security classifications to information of the Department;
 - (ii) assigning security classifications to areas and facilities of the Department: 10
 - (iii) restrictions based on security classifications with regard to access to such information, areas or facilities:

Information security and defence intelligence in the Department and



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

Department or any visiting force.

(3) The entity known as the Department of Defence Archive Repository which existed immediately prior to the commencement of this Act continues to exist under this

Africa Act, 1996 (Act No. 43 of 1996), apply with the necessary changes, but—

- (a) the Archive Repository must be maintained under the proper management and care of the Department;
- (b) no record may be transferred to the National Archives;
- (c) subject to the Promotion of Access to Information Act, 2000 (Act No. 2 of 2000)—

Department, their families, their guests, military veterans and members of any

visiting forces, as prescribed:

nature of the duties involved, a member of the Defence Force is exempted
from payment of tolls when passing through a toll-gate or any similar facility 5
if he or she so passes in the course of performing his or her functions and if he
or she is—
(i) driving a military vehicle or operating any other military means of
transport; or
(ii) proves his or her membership of the Defence Force by exhibiting his or 10
her military identification and the relevant authorisation documents.

Indemnity in respect of trespass and nuisance

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

(a) trespass or nuisance, by reason only of the flight of aircraft or air vessels used

property at a height which, having regard to the weather and all the 5
circumstances of the case, is reasonable; or

(b) any reasonable nuisance caused by any activity connected with ship building
or repairs to shipping conducted by the South African Navy in any of its
dockyards.

Permission to enter upon private land for purposes of national border control

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

of national border control, with the approval of the lawful occupants of the land.

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Attachment of personnel

94. (1) The Minister may—

- (a) temporarily attach to the Defence Force any member of a force of any country or international body who is placed at the disposal of the Minister for that purpose by the military authorities of that country or international body, as the case may be; and
- (b) subject to the conditions applicable to his or her service, place any member of the Defence Force at the disposal of the military authorities of any country or

authorities to the forces of that country or, in accordance with sections 93 and 100, the international body, as the case may be

(2) (a) Subject to paragraph (b), a member of a force of any other country or

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

Application of laws in relation to visiting forces

88 1997/1998

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

(b) Where any member of the board of inquiry disagrees with the report, or any finding, conclusion or view expressed by any other member or members on any matter, he or she may as part of the report furnish his or her own report or express his or her own finding, conclusion or view in relation to that matter. 5

Attendance of persons at board of enquiry, and witnesses

102. (1) The president of any board of inquiry may summon any person in the Republic to attend such board of inquiry and to give evidence thereat. 10

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

(3) (a) Any person giving evidence before a board of inquiry may be compelled to answer any question or to produce any article if the president of the board of inquiry so orders. 15

(b) No incriminating answer or information obtained or incriminating evidence directly or indirectly derived from a question in terms of paragraph (a) is admissible as evidence against the person concerned in criminal proceedings in a court of law or before any body or institution established by or under any law, except in criminal

proceedings where the person is arraigned on a charge of perjury or a charge contemplated in section 104(21). 20

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

(5) A board of inquiry may admit a sworn statement by a witness as evidence if 25

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Board of inquiry in relation to absence without leave

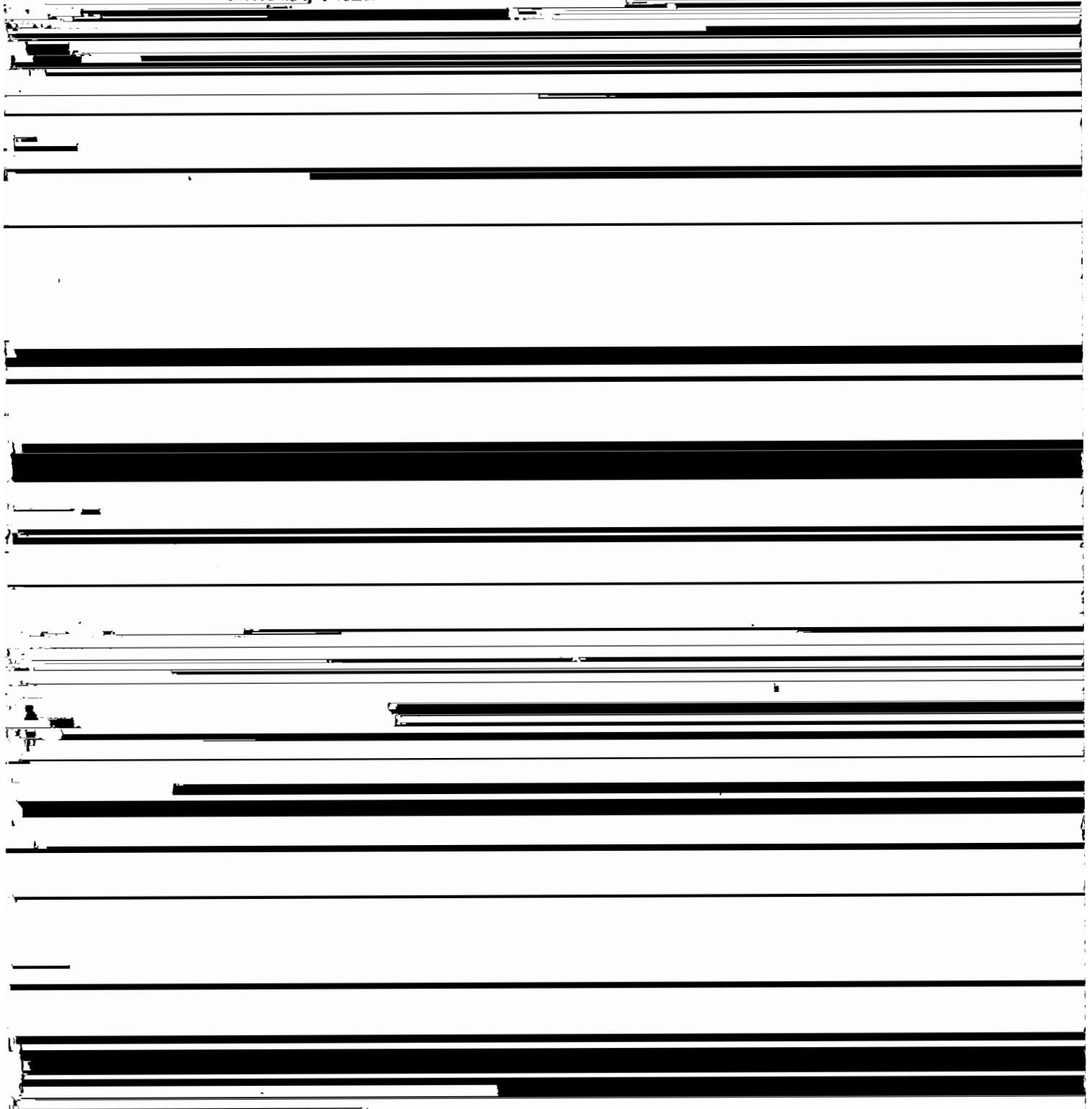
more than 20 days in still absent subject of investigation terminated that

corrupts, copies or withdraws data from any such systems or data bases, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding 25 years.

(9) Any person who falsely represents himself or herself to be a member or an employee of the Defence Force or Department, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 5

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

(11) Any person who induces or attempts to induce any member of the Defence Force to neglect, or to act in conflict with, his or her duty to the Defence Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding five years. 10



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

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

(i) sells, barter or otherwise disposes of or lends or pledges any such property without authority;

(ii) agrees to pay or connives at the payment of any exorbitant price for any such property purchased for use, or any service hired, by the Department:

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Offensive behaviour

105. (1) Any member of the Defence Force or employee of the Department whose verbal or physical conduct denigrates, humiliates or shows hostility or aversion to any other person on the grounds of that person's race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language or birth, is guilty of an offence and liable on conviction to imprisonment not exceeding five years. 5

(2) Where a member or employee of the Department is convicted of any offence and the commission of the offence is accompanied by any offensive behaviour contemplated in subsection (1), such behaviour must be regarded as being an aggravating factor in passing sentence on the accused. 10

CHAPTER 18

GENERAL

Repeal of laws, and savings

106. (1) Subject to subsections (2), (3) and (4), the laws mentioned in the Schedule are hereby repealed to the extent set out in the third column of that Schedule. 15

(2) Any regulation or notice issued or appointment made or anything done under the provisions of any law repealed by subsection (1), must be regarded as having been issued, made or done under the corresponding provisions of this Act, and must in so far as it relates to any force, reserve or service established or any training or service provided for under any such repealed law be construed as if it related to the 20

corresponding force, reserve, service or training established or provided for under this Act.

(3) Any person who at the commencement of this Act is a member of any force,

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SCHEDULE**Laws repealed****(Section 106)**

No. and year of Act	Short title	Extent of repeal	
No. 44 of 1957	Defence Act, 1957	The whole, save for sections 104, 105, 106, 108, 109, 111 and 112 and the First Schedule	5
No. 12 of 1961	Defence Amendment Act, 1961	The whole	10
No. 42 of 1961	Defence Further Amendment Act, 1961	The whole	

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No. and year of Act	Short title	Extent of repeal	
No. 49 of 1978	Defence Amendment Act, 1978	The whole	
No. 42 of 1979	Defence Amendment Act, 1979	The whole	5
No. 77 of 1980	Defence Amendment Act, 1980	The whole	
No. 15 of 1982 (Venda)	Defence Act, 1982	The whole	
No. 103 of 1982	Defence Amendment Act, 1982	The whole	10
No. 7 of 1983 (Venda)	Defence Amendment Act, 1983	The whole	
No. 34 of 1983	Defence Amendment Act, 1983	The whole	
No. 87 of 1984	Defence Amendment Act, 1984	The whole	15
No. 6 of 1985 (Venda)	Defence Amendment Act, 1985	The whole	
No. 17 of 1986 (Ciskei)	Defence Act, 1986	The whole	
No. 97 of 1986	Transfer of Powers and Duties of the State President Act, 1986	Sections 27 and 28	20
No. 45 of 1987	Defence Amendment Act, 1987	The whole	
No. 13 of 1991 (Bophuthatswana)	National Defence Act, 1991	The whole	25
No. 51 of 1991	Transfer of Powers and Duties	Sections 3 and 4	

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No. and year of Act	Short title	Extent of repeal
No. 4 of 1997	Defence Amendment Act, 1997	The whole
No. 105 of 1997	Criminal Law Amendment Act, 1997	Sections 2 to 24

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