

Government Gazette 15162

STATE PRESIDENT'S OFFICE

No. 1854.

6 October 1993

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

No. 135 of 1993: Correctional Services Second Amendment Act, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Correctional Services Act, 1959, so as to adjust a definition and to entrust to the Commissioner certain administrative functions previously entrusted to the Minister; to amend the Public Service Labour Relations Act, 1993, so as to make its provisions applicable to the Department of Correctional Services; and to provide for matters incidental thereto.

(English text signed by the Acting State President.)
(Assented to 24 September 1993.)

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

Amendment of section 1 of Act 8 of 1959, as amended by section 1 of Act 75 of 1965, section 46 of Act 70 of 1968, section 1 of Act 88 of 1977, section 1 of Act 58 of 1978, section 1 of Act 22 of 1980, Government Notice No. 2302 of 31 October 1980, section 1 of Act 43 of 1981, section 1 of Act 65 of 1982, section 1 of Act 104 of 1983, section 1 of Act 6 of 1985, section 1 of Act 92 of 1990, section 1 of Act 122 of 1991 and section 1 of Act 68 of 1993

1. Section 1 of the Correctional Services Act, 1959 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the definition of "strike" of the following definition:

"`strike' means strike as defined in section 1 of the Public

Service Labour Relations Act, 1993 (Act No. 102 of 1993);".

Insertion of section 3A in Act 8 of 1959

2. The following section is hereby inserted in the principal Act after section 3:

"Application of Act 102 of 1993 to Department

3A. (1) The provisions of the Public Service Labour Relations Act, 1993, shall apply to the Department.

(2) Whenever a provision of this Act is in conflict with a provision of the Public Service Labour Relations Act, 1993, the latter provision shall apply."

Amendment of section 5B of Act 8 of 1959, as substituted by section 7 of Act 122 of 1991

3. Section 5B of the principal Act is hereby amended by the substitution for subsection (7) of the following subsection:

"(7) A member of the National Advisory Council who is not in the full-time service of the State may receive such allowances as may be determined by the **Minister Commissioner** with the consent of the Minister of **Finance State Expenditure**."

Amendment of section 9B of Act 8 of 1959, as inserted by section 4 of Act 104 of 1983 and amended by section 2 of Act 92 of 1990 and section 10 of Act 122 of 1991

4. Section 9B of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every person who has served in a full-time capacity for a period as may be determined by the **Minister Commissioner** with the concurrence of the **Minister of Defence Chief of the South African Defence Force** in a post on the fixed establishment of the Department, and who has resigned or who resigns from the service of the Department on or after 1 January 1983, becomes at the commencement of this section or upon his resignation a member of the reserve force, and, subject to the provisions of this Act, remains a member thereof until he attains the age of 55 years."

Amendment of section 9F of Act 8 of 1959, as inserted by section 4 of Act 104 of 1983

5. Section 9F of the principal Act is hereby amended by the

substitution for subsection (1) of the following subsection:

"(1) A member of the reserve force shall be paid the salary and allowances determined by the **Minister** *Commissioner* on the recommendation of the Commission for Administration and after consultation with the Minister of **Finance** *State*

Expenditure: Provided that any other remuneration paid by the State to such a member shall not be affected by this provision."

Amendment of section 9G of Act 8 of 1959, as inserted by section 6 of Act 68 of 1993

6. Section 9G of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

"(a) the promotion of a commissioned officer of or above the rank of brigadier **and the transfer of a commissioned officer of or above the rank of Deputy Commissioner** shall be subject to the approval of the Minister;"

Amendment of section 12 of Act 8 of 1959, as amended by section 4 of Act 75 of 1965, section 10 of Act 62 of 1966, section 2 of Act 9 of 1971, section 3 of Act 58 of 1978, section 5 of Act 104 of 1983, section 4 of Act 92 of 1990 and section 1 of Act 80 of 1992

7. Section 12 of the principal Act is hereby amended by the substitution for paragraph (b) of subsection (8) of the following paragraph:

"(b) The Commissioner may **with the approval of the Minister** determine the conditions under which such a member may be permitted to resign or withdraw himself from the said service."

Substitution of section 13B of Act 8 of 1959, as inserted by section 5 of Act 92 of 1990

8. The following section is hereby substituted for section 13B of the principal Act:

"Dismissal of members of Department who strike

13B. If **the Commissioner is of the opinion that** a member of the Department **strikes** *takes part in a strike* or conspires with another person to **strike** *take part in a strike* or incites, instigates or commands another person to **strike** *take part in a strike*, **he the Commissioner may after affording such a member the opportunity to be heard** dismiss such member from the Department: **Provided**

that-

- (a) such member shall as soon as practicable after the date of such dismissal be notified in writing of the dismissal, the reasons for the dismissal being stated;
- (b) such member may, within 30 days after the receipt of the notice, make written representations to the Minister regarding the revocation of the dismissal;
- (c) the Minister may, after having considered the representations, reinstate such member in his employment as from the date of his dismissal *in accordance with the provisions of section 19 of the Public Service Labour Relations Act, 1993 (Act No. 102 of 1993).*

Amendment of section 19 of Act 8 of 1959, as amended by section 8 of Act 92 of 1990 and section 7 of Act 68 of 1993

9. Section 19 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

"(2) The Commissioner may **with the approval of the Minister** award to any person who is or was a member of the Department such monetary or other reward for exceptional ability or possessing special qualifications or rendering meritorious service, as is, in his opinion, a fitting reward therefor.

(3) The Commissioner may **with the approval of the Minister** award a monetary or other reward to a person who performs an act which promotes the interests of the Department or of a member of the Department and which justifies such award."

Amendment of section 55 of Act 8 of 1959, as amended by section 49 of Act 70 of 1968, section 13 of Act 58 of 1978, section 4 of Act 65 of 1982, section 32 of Act 97 of 1986 and section 22 of Act 92 of 1990

10. Section 55 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) (a) After the expiration of the period aforesaid, **the Minister or, if authorized thereto by the Minister either specially in a particular case or generally** the Commissioner may appoint a board of enquiry to investigate the charge in question.

(b) A board of enquiry shall consist of one or more persons who -

- (ii) **in the case of a board appointed by the Minister** shall be commissioned officers of the rank equal to or higher than that of the officer charged, or magistrates
- (ii) **in the case of a board appointed by the Commissioner, shall be such commissioned officers."**

Substitution of section 68 of Act 8 of 1959, as substituted by section 21 of Act 68 of 1993

11. The following section is hereby substituted for section 68 of the principal Act:

"Special remission of sentence by Commissioner

68. Notwithstanding any provision to the contrary the **Minister Commissioner** may **on the recommendation of the Commissioner** grant to a prisoner who has rendered highly meritorious service a special remission of sentence not exceeding two years either unconditionally or on such conditions as he may determine."

Substitution of section 69 of Act 8 of 1959, as substituted by section 21 of Act 68 of 1993

12. The following section is hereby substituted for section 69 of the principal Act:

"Placement on parole on medical grounds

69. A prisoner serving any sentence in a prison-

- (a) who suffers from a dangerous, infectious or contagious disease; or
- (b) whose **release or** placement on parole is expedient on the grounds of his physical condition or, in the case of a woman, her advanced pregnancy,

may at any time, on the recommendation of the medical officer, be **released unconditionally or** placed on parole by the **Minister Commissioner: Provided that a prisoner sentenced to imprisonment for life shall not be placed on parole without the consent of the Minister."**

Amendment of section 74 of Act 8 of 1959, as substituted by section 25 of Act 92 of 1990

13. Section 74 of the principal Act is hereby amended by the

substitution for subsection (1) of the following subsection:

"(1) Notwithstanding anything contained in the Child Care Act, 1983 (Act No. 74 of 1983), or any other law, the **Minister Director-General** as defined in the said Act may in consultation with the **Minister Commissioner**, by order in writing transfer to a prison designated by the **Minister Commissioner** any person receiving training in a reform school governed by that Act, if, in his opinion, such person is a type of person who is not amenable to training in a reform school."

Substitution of section 74A of Act 8 of 1959, as inserted by section 26 of Act 92 of 1990

14. The following section is hereby substituted for section 74A of the principal Act:

"Transfer of convicted juveniles from prison to reform school

74A. The **Minister Commissioner** may, in consultation with the **Minister Director-General** as defined in the Child Care Act, 1983 (Act No. 74 of 1983), by order in writing transfer any person under the age of 21 years who is undergoing in any prison a sentence of imprisonment, to a reform school governed by the Child Care Act, 1983, and from the date of that order that person shall be deemed to have been sent to that reform school under section 290 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977)."

Substitution of certain expressions in Act 8 of 1959

15. The principal Act is hereby amended by the substitution wherever it appears in sections 4(2), 4A(3), 4B(1), 5C, 6(2), 9B(3), 13A, 16(1), 26(1), 32A(1) and (2), 34(2), 35(2), 36(6)(b), 49(3), 61(c) and (d), 75(3) and (4), 88(3) and (4)(b) and 94(1)(w) for the word "Minister" of the word "Commissioner".

Savings

16. The continued validity after the date of commencement of this section of anything done or permitted by the Minister prior to such commencement in terms of a provision amended by this Act, shall not be affected solely by reason of the fact that the Minister is by virtue of such amendment divested of, and the Commissioner is by virtue of such amendment invested or charged with, the power or duty to do or to permit any such thing, and as from such date of commencement any such thing shall be deemed to have been done or permitted by the Commissioner.

Amendment of Act 102 of 1993

17. The Public Service Labour Relations Act, 1993, is hereby amended-

(a) by the substitution in section 1 for paragraph (a) of the definition of "employee" of the following paragraph:

"(a) a person employed in terms of an Act other than the Public Service Act or the *Correctional Services Act, 1959 (Act No. 8 of 1959)*; and "; and

(b) by the substitution in section 19 for paragraph (c) of subsection (11) of the following paragraph:

"(c) Upon the expiry of the period of three working days referred to in paragraph (a), the head of department shall take into account any written explanations so made, and may thereafter immediately terminate the services of any such employees at his sole discretion and notwithstanding the provisions of section 16(1) and (4) of the Public Service Act and *section 12 of the Correctional Services Act, 1959 (Act No. 8 of 1959)*."

Short title and commencement

18. (1) This Act shall be called the Correctional Services Second Amendment Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.

(2) Different dates may be fixed in terms of subsection (1) in respect of different provisions of this Act.