Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

Government Gazette

REPUBLIC OF SOUTH AFRICA

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THE PRESIDENCY

No. 1015 5 December 2011

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

No. 18 of 2011: Military Veterans Act, 2011.



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(English text signed by the President)
(Assented to 2 December 2011)

ACT

To provide for principles recognised by the State as governing the affairs of military veterans and for policy objectives in this regard; the President to be Patron-in-Chief of all military veterans; benefits relating to military veterans; the establishment of the Advisory Council on Military Veterans and the Military Veterans Appeal Board; and certain functions of the Department of Military Veterans; and to provide for matters incidental thereto.

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

ARRANGEMENT OF SECTIONS

Sections

1. Definitions
2. Interpretation of Act
3. Fundamental principles recognised by State, and policy objectives
4. Patron-in-Chief
5. Benefits relating to military veterans
6. Certain powers and duties of Department
7. National military veterans' association
8. Functions of Association
9. Establishment of Advisory Council on Military Veterans
10. Powers and duties of Advisory Council
11. Composition of Advisory Council
12. Appointment of members of Advisory Council
13. Nomination procedure for Advisory Council members
14. Remuneration and allowances of members of Advisory Council
15. Term of office
16. Removal from office
17. Resignation
18. Meetings of Advisory Council
19. Establishment of Military Veterans Appeal Board
20. Powers and duties of Appeal Board
21 Composition and appointment of members of Appeal Board
22. Disqualification from membership of Appeal Board
23. Remuneration, removal from office and resignation of members of Appeal Board
24. Regulations
25. Regulations made under any law
26. Funding
27. Repeal of laws
28. Short title and commencement

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Definitions

1. In this Act, unless the context indicates otherwise—
"Advisory Council" means the Advisory Council on Military Veterans established by section 9;
"Appeal Board" means the Military Veterans Appeals Board established by section 19;
"association" means the national military veterans' association referred to in section (7);
"benefit" means any benefit contemplated in section 5;
"Department" means the department of state responsible for military veterans;
"dependant", in relation to a military veteran, means any person who is legally or factually dependent on that military veteran for support and maintenance;
"Director-General" means the Director-General of the Department;
"military veteran" means any South African citizen who—
(a) rendered military service to any of the military organisations, statutory and non-statutory, which were involved on all sides of South Africa's Liberation War from 1960 to 1994;
(b) served in the Union Defence Force before 1961; or
(c) became a member of the new South African National Defence Force after 1994,
and has completed his or her military training and no longer performs military service, and has not been dishonourably discharged from that military organisation or force: Provided that this definition does not exclude any person referred to in paragraph *(a)*, *(b)* or *(c)* who could not complete his or her military training due to an injury sustained during military training or a disease contracted or associated with military training;
"Minister" means the Minister responsible for military veterans;
"prescribed" means prescribed by regulation;
"this Act" includes any regulations made under this Act.

Interpretation of Act

2. This Act must not be interpreted as entitling any person who is defined as a military veteran in this Act, or his or her dependants, to any benefit provided for in this Act or any other law merely on the grounds of such definition.

Fundamental principles recognised by State, and policy objectives

3. (1) For the purposes of this Act, the following fundamental principles are recognised by the State as governing affairs relating to military veterans:
(a) Sacrifices made by military veterans in the service of or for their country or their role in the democratisation of South Africa are honoured;
(b) compensation to which military veterans may be entitled for disablement constitutes reparation and is, despite any provision to the contrary contained in any law, not a welfare benefit;
(c) in the event of a military veteran or category of military veterans being considered for possible non-contributory aid by the State, such military veteran or category of military veterans must be subjected to a means test to determine their eligibility;
(d) special consideration must be given to benefit and relieve military veterans who suffer from physical or mental disability arising from military service rendered by them;

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(e) disparities, inequalities or unfair discrimination as regards the benefits of military veterans and their dependants must be identified and, where possible, remedied;
(f) all organs of state or governmental entities involved with military veterans' affairs must cooperate with the Department to ensure the achievement of the objects of this Act and, within their available resources, take reasonable legislative and other measures to achieve the progressive realisation thereof; and
(g) no organ of state is committed or obliged to provide state aid or any other assistance to any military veteran other than through the existing legislative and administrative channels.

(2) Any policy regarding the affairs of military veterans must be aimed at—
(a) recognising and honouring military veterans in life and remembering them in death for their sacrifices on behalf of the nation;
(b) ensuring a smooth and seamless transition for military veterans from active military service to civilian life;
(c) restoring the capability of military veterans with disabilities to the greatest extent possible;
(d) improving the quality of life of military veterans and of their dependants;
(e) providing a comprehensive delivery system of benefits and services for military veterans;
(f) ensuring that military veterans as a resource enhance the national work force and contribute to the prosperity and development of the country; and
(g) contributing toward reconciliation and nation building.

Patron-in-Chief

4. The President as Commander-in-Chief of the South African National Defence Force is the Patron-in-Chief of all military veterans.

Benefits relating to military veterans

5. (1) The benefits relating to a military veteran are the following:
(a) Compensation to military veterans who sustained disabling injuries or severe psychological and neuro-psychiatric trauma or who suffer from a terminal disease resulting from their participation in military activities;
(b) dedicated counselling and treatment to military veterans who suffer from serious mental illness, post-traumatic stress disorder or related conditions;
(c) honouring and memorialising fallen military veterans;
(d) education, training and skills development;
(e) facilitation of employment placement;
(f) facilitation of or advice on business opportunities;
(g) subsidisation or provisioning of public transport;
(h) pension;
(i) access to health care;
(j) housing; and
(k) burial support.

(2) Subsection (1)(b), (d) and (h) also applies to a dependant of a military veteran.

(3) (a) The Minister has the responsibility, subject to available resources and any regulation that may be prescribed in this regard, to ensure that benefits are paid or provided to military veterans, either through the Department or through other organs of state.

(b) (i) All organs of state that are responsible for the payment or provisioning of benefits to military veterans are obliged to cooperate with the Minister and the Department in respect of the payment or provisioning of those benefits.

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(ii) The Director-General may, from funds appropriated by Parliament for the purpose, transfer funds to organs of state or other institutions that pay or provide benefits to military veterans.

Certain powers and duties of Department

6. Without derogating from its general powers and duties as a national department of state, the Department—

(a) must provide the required administrative services and infrastructure to the Advisory Council and the Appeal Board and may provide such services and infrastructure to the association;

(b) must collect and keep data and information regarding state-controlled and privately administered schemes or programmes dealing with any aspect of the affairs of military veterans;

(c) must collect data and information regarding all existing benefits of military veterans and their dependants, and establish a data base on military veterans and military veterans' affairs, which must be updated regularly;

(d) must include, in the data base contemplated in paragraph *(g)*, information collected and compiled as provided for in that paragraph, and data regarding persons qualifying as military veterans or dependants;

(e) must submit programmes which seek to promote the affairs of military veterans to the Minister—

(i) for submission to Cabinet Committees for their approval; or

(ii) for his or her approval,

and must publish all approved programmes in the *Gazette* for public notification, whereupon such programmes become binding on all persons and bodies to which they refer and must be implemented according to their terms;

(f) may negotiate with departments of state, provincial executive authorities and non-governmental organisations to act as agents for the Department to carry out duties regarding military veterans;

(g) may, through the Director-General, enter into a memorandum of understanding or conclude a service level agreement with any organ of state which is concerned with military veterans' affairs or which administers any law relating to benefits of a military veteran in order to achieve the objects of this Act; and

(h) may exercise any power and perform any duty that may be prescribed.

National military veterans' association

7. (1) *(a)* The Director-General must as soon as possible after the commencement of this Act establish a body which is to be an association representing military veterans' organisations nationally.

(b) The Minister must publish the date of establishment by notice in the *Gazette*.

(2) The Director-General must in conjunction with military veterans' organisations create mechanisms to ensure that the association serves as an umbrella structure representing military veterans' organisations.

(3) The mechanisms contemplated in subsection (2) must at least result in the association—

(a) representing military veterans' organisations in a fair manner;

(b) conducting its business in a fair, transparent and accountable manner;

(c) holding free, fair and regular elections; and

(d) at least once a year reporting to the Minister on its activities.

(4) *(a)* A military veterans' organisation is not obliged to join the association.

(b) A military veterans' organisation contemplated in paragraph *(a)* may engage the Minister or other persons or structures established or referred to in this Act, provided

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such organisation is recognised by the Minister as a non-governmental organisation or association established in respect of military veterans that lawfully represents the interests of military veterans.

Functions of association

8. (1) The association must—
(a) perform the functions provided for in this Act;
(b) advise the Minister on such matters relating to legislation and policy affecting military veterans as the Minister may require; and
(c) advise the Minister or the Director-General on any other matter relating to the affairs of military veterans that the Minister or the Director-General may require.

Establishment of Advisory Council on Military Veterans

9. An Advisory Council on Military Veterans is hereby established to attend to the interests of military veterans.

Powers and duties of Advisory Council

10. (1) The Advisory Council is responsible to the Minister and must—
(a) perform the functions provided for in this Act;
(b) advise the Minister on any matter relating to the policy applicable to military veterans; and
(c) on its own initiative or at the request of the Minister, or of the Director-General, make recommendations to the Minister or the Director-General, as the case may be, and furnish advice on all matters pertaining to military veterans and their dependants.

(2) The Advisory Council must, within 90 days after 31 March in every year, submit a report to the Minister on its activities, and the Minister must table it in Parliament.

Composition of Advisory Council

11. The Advisory Council consists of—
(a) the Chairperson and members appointed in terms of section 12(1); and
(b) the Director-General or an employee of the Department delegated by the Director-General.

Appointment of members of Advisory Council

12. (1) *(a)* The Minister must appoint not fewer than 10 and not more than 15 persons to serve on the Advisory Council.

(b) At least 50 per cent of the members of the Advisory Council must be military veterans.

(2) The members of the Advisory Council must have relevant knowledge, experience or expertise that would enable the Advisory Council to perform its functions effectively and efficiently.

(3) The members referred to in subsection (1) must be appointed from persons nominated in accordance with the procedure set out in section 13.

Nomination procedure for Advisory Council members

13. (1) The nomination procedure for members of the Advisory Council is as follows:

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(a) The Minister must, by notice in at least two national newspapers, invite nominations for the appointment of the members of the Advisory Council;
(b) every nomination must be in writing and submitted to the Director-General within a period of three months after publication of the notice contemplated in paragraph (a); and
(c) every nomination must contain—
(i) full written personal and career particulars of every nominee;
(ii) full reasons and motivation for the nomination; and
(iii) the written and signed acceptance of the nomination by every nominee.

(2) The Association must in the manner provided for in subsection (1)(b) and (c) nominate at least three persons for appointment.

(3) The Director-General must forward a full report on all nominations and information received, together with motivated recommendations regarding particular nominees for appointment, to the Minister.

(4) The Minister must—
(a) subject to section 12(1)(b), appoint members of the Advisory Council from the list of nominees submitted to him or her by the Director-General; and
(b) by notice in the *Gazette*, publish the names of the persons appointed.

(5) The Minister must designate one of the members of the Advisory Council as the Chairperson of the Advisory Council.

Remuneration and allowances of members of Advisory Council

14. The members of the Advisory Council who are not in the full-time employment of the State, must be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

Term of office

15. (1) The members of the Advisory Council serve in a part-time capacity.

(2) The members of the Advisory Council serve for a period not exceeding five years but are eligible for reappointment at the end of their term of office.

Removal from office

16. (1) The Minister may remove a member of the Advisory Council from office only on the ground of misconduct, incapacity or incompetence.

(2) A decision to remove a member of the Advisory Council from office must be based on a finding of an independent tribunal appointed by the Minister in consultation with the Association.

(3) The Minister may suspend a member of the Advisory Council from office pending the finding of the tribunal referred to in subsection (2).

Resignation

17. (1) The Chairperson of the Advisory Council may resign by giving written notice of three months to the Minister but the Minister may, after consultation with the Director-General, accept a shorter notice period.

(2) Other members of the Advisory Council may resign by giving written notice of three months to the Chairperson but the Chairperson may accept a shorter notice period.

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Meetings of Advisory Council

18. (1) The first meeting of the Advisory Council must be held on such a date, time and place as the Chairperson may determine.

(2) All subsequent meetings must be held on such dates, times and places as the Chairperson may determine in consultation with the Advisory Council.

(3) The Advisory Council must determine the rules of procedure for the conduct of business at its meetings.

(4) A decision of the majority of the members of the Advisory Council present and forming a quorum at a meeting is binding on the Advisory Council.

(5) The quorum for any meeting of the Advisory Council is fifty per cent of the total members of the Advisory Council plus one.

(6) In the event of an equality of votes the Chairperson has a casting vote in addition to his or her deliberative vote.

(7) A member who has a personal or financial interest in any matter before the Advisory Council, must disclose that interest and withdraw from the proceedings of the Advisory Council when that matter is considered.

Establishment of Military Veterans Appeal Board

19. A Military Veterans Appeal Board is hereby established.

Powers and duties of Appeal Board

20. (1) The Appeal Board must—

(a) consider any appeal lodged with it by a military veteran against any decision taken by an official in terms of this Act which adversely affects the rights of that military veteran;

(b) consider any question of law relating to military veterans referred to it by the Minister or the Director-General; and

(c) advise the Minister or Director-General regarding any legal matter relating to military veterans which the Minister or the Director-General refers to it.

(2) The Appeal Board may—

(a) confirm, set aside or vary a decision contemplated in subsection (1)*(a)*;

(b) substitute any other decision for the decision; or

(c) provide the required legal advice.

(3) The Appeal Board may for the purposes of subsection (1)—

(a) summon any person who, in its opinion, may be able to give information, or who it believes has in his or her possession or custody or under his or her control, any document which has any bearing upon the matter under consideration, to appear before it at a time and place specified in the summons to be questioned or to produce that document, and retain for examination any document so produced;

(b) administer an oath to or accept an affirmation from any person called as a witness; and

(c) call any person present at the proceedings as a witness and interrogate such person and require such person to produce any document in his or her possession or custody or under his or her control, and such a person is entitled to legal representation at his or her own expense.

(4) The Chairperson of the Appeal Board determines the procedure at any appeal.

(5) The decision of a majority of the members of the Appeal Board constitutes a decision of the Appeal Board.

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(6) A decision of the Appeal Board must be in writing, and copies thereof must be made available to persons involved in the matter.

Composition and appointment of members of Appeal Board

21. (1) The Appeal Board consists of at least three persons appointed by the Minister in consultation with the association.

(2) *(a)* The Minister must appoint as members of the Appeal Board competent persons who have relevant knowledge, experience or expertise that would enable the Appeal Board to perform its functions effectively and efficiently.

(b) At least one of the members of the Appeal Board must be an advocate or attorney or other legally qualified person with at least 10 years' experience in the practice of law.

(3) The Minister must designate one of the members of the Appeal Board as chairperson.

(4) A member of the Appeal Board—

(a) holds office for a period not exceeding five years;

(b) may be appointed either on a full-time or a part-time basis;

(c) is appointed according to the terms and conditions determined by the Minister; and

(d) is eligible for reappointment at the end of his or her term of office, but may not serve for more than two terms consecutively.

Disqualification from membership of Appeal Board

22. No person may be appointed as or remain a member of the Appeal Board if he or she—

(a) is an unrehabilitated insolvent; or

(b) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect, and sentenced to imprisonment without the option of a fine.

Remuneration, removal from office and resignation of members of Appeal Board

23. Sections 14, 16 and 17 apply with the changes required by the context to the Appeal Board.

Regulations

24. (1) The Minister may, subject to the provisions of this Act, make regulations relating to—

(a) the criteria that must be met in order to qualify for benefits;

(b) any matter required or permitted to be prescribed by or in terms of this Act;

(c) any matter ancillary or incidental to the administration or procedures of the Advisory Council or the Appeal Board;

(d) the remuneration, allowances and other terms and conditions of employment and service benefits of any member of the Advisory Council and the Appeal Board in respect of services rendered, in consultation with the Minister of Finance;

(e) generally, any ancillary or incidental administrative or procedural matter that it is necessary to prescribe for the proper implementation or administration of this Act.

(2) Different regulations may be made regarding different categories of persons or bodies, if such differential treatment does not amount to unfair discrimination.

(3) Any regulation relating to criteria that must be met in order to qualify for benefits, contemplated in subsection (1)*(a)*, must be tabled by the Minister in Parliament at least 30 days before such regulation is published.

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Regulations made under any law

25. The Minister and the Advisory Council must be consulted when a regulation relating to a matter exclusively affecting the rights, benefits or entitlements of military veterans or their dependants is made under any law.

Funding

26. The costs and expenses connected with the administration and implementation of this Act must be defrayed from moneys appropriated by Parliament to the Department for that purpose.

Repeal of laws

27. The Military Veterans' Affairs Act, 1999 (Act No. 17 of 1999), is hereby repealed.

Short title and commencement

28. This Act is called the Military Veterans Act, 2011, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

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