

REPUBLIC OF SOUTH AFRICA

DEFENCE AMENDMENT BILL

(As amended by the Portfolio Committee on Defence (National Assembly))

(MINISTER OF DEFENCE)

[B 14B—97]

REPUBLIEK VAN SUID-AFRIKA

VERDEDIGINGSWYSIGINGS- WETSONTWERP

(Soos gewysig deur die Portefeuljekomitee oor Verdediging (Nasionale Vergadering))

(MINISTER VAN VERDEDIGING)

[W 14B—97]

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Defence Act, 1957, so as to provide that the Secretary for Defence, as head of department of the Department of Defence, and the Chief of the South African National Defence Force shall be on the same hierarchical level in the Department of Defence; and to further determine the powers, duties and functions of the Secretary for Defence and the Chief of the South African National Defence Force; and to provide for matters in connection therewith.

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

Amendment of section 1 of Act 44 of 1957, as amended by section 1 of Act 12 of 1961, section 1 of Act 42 of 1961, section 1 of Act 77 of 1963, section 20 of Act 39 of 1966, section 1 of Act 85 of 1967, section 1 of Act 26 of 1973, section 1 of Act 8 of 1974, section 1 of Act 1 of 1976, section 1 of Act 35 of 1977, section 1 of Act 103 of 1982, section 1 of Act 87 of 1984, section 1 of Act 132 of 1992, section 1 of Act 134 of 1993 and section 1 of Act 72 of 1995 5

1. Section 1 of the Defence Act, 1957 (hereinafter referred to as the principal Act), is hereby amended— 10

(a) by the insertion after the definition of “citizen” of the following definition: 10
“ ‘command’ means the military authority and responsibility of a superior officer to issue orders and directives and give commands to subordinates, and covers every aspect of military operations and administration;” ; and 15

(b) by the substitution for the definition of “Department of Defence” of the following definition: 15
“ ‘Department of Defence’ means the Department of Defence referred to in [the Public Service Act, 1994 (Proclamation No. 103, 1994)] section 4B;” . 20

Substitution of heading to Chapter II of Act 44 of 1957

2. The following heading is hereby substituted for the heading to Chapter II of the principal Act:

“Composition and organisation of the Department of Defence.”.

Insertion of section 4B in Act 44 of 1957

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

“Composition of Department of Defence

4B. The Department of Defence shall consist of— 5
(a) the Defence Secretariat; and
(b) the South African National Defence Force.”.

Substitution of section 7B of Act 44 of 1957, as inserted by section 2 of Act 72 of 1995

4. The following section is hereby substituted for section 7B of the principal Act: 10

“Secretary for Defence

7B. (1) The Minister may, subject to the laws governing the public service, appoint a person to the post of Secretary for Defence in the fixed establishment of the Department of Defence who, as an officer within the meaning of the Public Service Act, 1994 (Proclamation No. 103, 1994), shall serve in that post for the period and in accordance with the terms and conditions of service otherwise applicable to heads of department referred to in that Act, and who shall be entitled to receive the salary, benefits and privileges to which such head may be entitled. 15

(2) The Secretary shall be a citizen of the Republic and may not be a member of the South African National Defence Force. 20

(3) The person serving as Secretary at the commencement of the Defence Amendment Act, 1995, shall be deemed to have been duly appointed under this section from 1 April 1995.”.

Substitution of section 7C of Act 44 of 1957, as inserted by section 2 of Act 72 of 1995 25

5. The following section is hereby substituted for section 7C of the principal Act.

“Powers, duties and functions of Secretary

7C. The Secretary shall—

(a) (i) be head of department and accounting officer of the Department of Defence; and 30
(ii) be the head of the Defence Secretariat and as such be responsible for the management of and administrative control over the staff of the Defence Secretariat;

(b) be the principal Departmental adviser to the Minister with regard to defence policy matters [as well as any matter which may be investigated by the Joint Standing Committee on Defence of Parliament under section 228(3)(d) of the Constitution and in respect of which that Committee may make recommendations]; 35

(c) advise the Minister on any particular matter referred by the Minister to the Secretary; 40

(d) perform such duties and functions as may from time to time be assigned or referred to him or her by the Minister, in particular any duty or function necessary or expedient to enhance Parliamentary oversight and Ministerial control over the South African National Defence Force; 45

(e) [act as the delegate of the Minister in respect of any matter within the competence of the Minister which he delegates to the Secretary;

- (f) upon his appointment as accounting officer of the Department of Defence, act as such;
- (g) upon having been so appointed as accounting officer,] provide the Chief of the Defence Force [for the duration of such appointment,] with comprehensive instructions for the issuing by that Chief of orders and directives and the giving of commands with regard to the functioning of the Secretary as [such] head and accounting officer [in respect of the South African National Defence Force] of the Department of Defence; [and
- (h)](f) monitor compliance with directions issued by the [President or the Minister, as the case may be,] Minister under [section 225 of] the Constitution, to the Chief of the Defence Force, and report thereon to the [President or the] Minister [as the case may be]; and
- (g) perform all functions of a head of department regarding the effective management and administration of the Department of Defence.”.

Repeal of section 7D of Act 44 of 1957, as inserted by section 2 of Act 72 of 1995

6. Section 7D of the principal Act is hereby repealed.

Amendment of section 8 of Act 44 of 1957, as substituted by section 4 of Act 134 of 1993 and by section 3 of Act 72 of 1995

7. Section 8 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:
- “(1) The Chief of the Defence Force—
- (a) may exercise the powers and shall perform the duties and functions necessary to execute his or her [military executive] command of the South African National Defence Force [referred to in section 225 of the Constitution];
- (b) shall execute his or her [military executive] command by issuing directives, force orders and general instructions and by giving commands.”; and
- (b) by the substitution for subsection (3) of the following subsection:
- “(3) Without derogating from the generality of subsection (1)(a) or from any power, duty or function vested in or assigned to the [Chief of the Defence Force by virtue of any appointment which he may hold] head of department and accounting officer of the Department of Defence by or under any law, [he] the Chief of the Defence Force shall have the powers and be charged with the duties and functions and be responsible to the [President or the] Minister [,as the case may be,] for—
- (a) compliance with any directions by the Minister under the authority of the President [or the Minister, as the case may be, under section 225 of] as provided for in the Constitution;
- (b) the efficient management and administration of the South African National Defence Force, including the effective utilisation and training of all members of that Force;
- (c) the formulation of military policy and doctrines in accordance with directions referred to in paragraph (a);
- [(c)](d) the execution of approved programmes of the budget for the [Department of Defence and, upon the Secretary being appointed as the accounting officer of the Department of Defence, the execution of such programmes of the] South African National Defence Force for which that Chief is responsible;
- [(d)](e) [upon the Secretary being appointed as accounting officer of the Department of Defence and, notwithstanding the provisions of section 7(3)(a) of the Public Service Act, 1994 (Proclamation No. 103, 1994),] the issuing of orders and directives and the giving of commands in accordance with any instruction

- by the Secretary referred to in section 7C[(g)] (e), and for ensuring that such orders, directives and commands are complied with;
- [(e)](f) the supplying of all information and inputs with regard to the South African National Defence Force to the Secretary to enable him or her to perform his or her functions properly; 5
- [(f)](g) the performance of all staff functions required for the effective command and control of the South African National Defence Force;
- [(g)](h) the use of the South African National Defence Force or any part or member thereof which or who [as the case may be] has been employed [by the President] for any service [under the Constitution, for such service] or for the conduct of military operations; 10
- [(h)](i) the training to the required level of all members of the South African National Defence Force in law, including [customary] international law [and law applicable to peace-keeping operations];
- [(i)](j) the maintenance of an adequate military response capability with respect to likely military threats as authorised by the Minister; and 15
- [(j)](k) the maintenance of military discipline within the South African National Defence Force.”.

Substitution of section 83A of Act 44 of 1957, as amended by section 7 of Act 3 of 1969, section 6 of Act 8 of 1974, section 36 of Act 132 of 1992, section 5 of Act 32 of 1993 and section 4 of Act 72 of 1995 20

8. The following section is hereby substituted for section 83A of the principal Act:

“Chief of Defence Force and Secretary for Defence to be on same hierarchical level in Department of Defence

83A. (1) Notwithstanding anything to the contrary contained in the laws governing the Public Service the [officer appointed or lawfully acting as Chief of the South African Defence Force] Secretary for Defence and the Chief of the South African National Defence Force shall for all purposes be deemed to be [the head of that department and he] on the same hierarchical level in the Department of Defence, with such division of duties, functions and responsibilities as may be determined by this Act: Provided that the Secretary for Defence— 25

- (a) shall be vested with all the powers and charged with all the duties and functions conferred or imposed on or entrusted to the head of [that] the department by or under any law; and 35
- (b) shall not be responsible for the execution of the military duties and functions vested in the Chief of the Defence Force under this Act. 35

(2) [Provided that the] The terms and conditions of service of [the said officer] the Chief of the Defence Force shall, subject to the provisions of section 2(2) of the Public Service Act, [1984 (Act No. 111 of 1984)] 1994 (Proclamation No. 103 of 1994), be governed by this Act: Provided [further] that [such officer] the Chief of the Defence Force shall [also] be entitled to the salary, benefits and privileges of a head of department [as are not conferred on such officer by this Act] in terms of that Act. 40

[(2)] (3) For the purposes of the maintenance of discipline over officers [or employees] within the meaning of the laws governing the Public Service who are employed in the [South African Defence Force] Department of Defence, members of the Permanent Force shall be deemed to be officers within the meaning of those laws.”. 45

Short title and commencement

9. This Act shall be called the Defence Amendment Act, 1997, and shall come into operation on 1 April 1997.

**MEMORANDUM ON THE OBJECTS OF THE DEFENCE
AMENDMENT BILL, 1997**

1. The Department of Defence is currently engaged in a transformation process to establish a new, co-located and integrated headquarters to be manned by members of the Defence Secretariat and by the South African National Defence Force (SANDF).

2. The Bill provides for the powers, duties and functions of the Secretary for Defence as head and accounting officer of the Department of Defence. The Secretary will also be the principal departmental adviser to the Minister of Defence with regard to defence policy and will also perform such duties and functions as may from time to time be assigned or referred to him or her by the Minister, in particular any duty or function necessary or expedient to enhance Parliamentary and Ministerial control over the SANDF.

3. The functions of the Chief of the SANDF, as a commander of that Force, are specified and are distinguished from those of the Secretary for Defence. The Chief of the SANDF shall be responsible for the efficient management and administration of the SANDF, and shall be the military adviser to the Minister. The Chief of the SANDF shall be responsible for the functions of the SANDF and the conduct of operations, and shall have original powers to that end.

4. The Secretary for Defence and the Chief of the SANDF are to function at the same hierarchical level in the Department. Both will report to the Minister directly in accordance with the division of functions, duties and responsibilities provided for by the Bill. To that end, the Bill provides that the Chief of the SANDF shall also be entitled to such salary, benefits and privileges of a head of department as are conferred on such head by legislation.

The State Law Advisers, in consultation with the Department, are of the opinion that the Bill does not affect the provinces and that it should be dealt with in terms of section 75 of the Constitution.

Persons, Departments and Establishments consulted

The Secretary for Defence

The Chief of the South African National Defence Force

The Department of Public Service and Administration

The Department of State Expenditure