

REPUBLIC OF SOUTH AFRICA

**DEFENCE SPECIAL TRIBUNAL
BILL**

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

(MINISTER OF DEFENCE)

[B 100B—98]

REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP DIE SPESIALE
TRIBUNAAAL VIR VERDEDIGING**

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

(MINISTER VAN VERDEDIGING)

[W 100B—98]

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BILL

To enable the Labour Court to act as a special tribunal in the adjudication of disputes which arise out of the implementation of transitional arrangements in respect of military institutions or the rationalisation of the Department of Defence; to provide for expeditious procedures for the adjudication of those disputes; and to provide for matters connected therewith.

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

Definitions

1. In this Act, unless the context indicates otherwise—
- (i) “dispute” means any dispute or alleged dispute which results from, or is attributable to, the implementation of transitional arrangements in respect of military institutions or the rationalisation of the Department of Defence, as the case may be, and which is connected with the remuneration or any other conditions of service of an employee in terms of a law regulating employment, or with any unfair labour practice by virtue of such a law; (ii) 5
 - (ii) “employee” means any person who is or was, whether in a civilian or military capacity, in the service of a military institution, the South African National Defence Force or the Department of Defence; (viii) 10
 - (iii) “employee organisation” means any staff association or trade union of which employees are members; (ix) 15
 - (iv) “Labour Court” means the Labour Court established by section 151(1) of the Labour Relations Act; (i)
 - (v) “Labour Relations Act” means the Labour Relations Act, 1995 (Act No. 66 of 1995); (x)
 - (vi) “law regulating employment”, in relation to an employee, means any law regulating the employment of the employee, or any law relating to labour relations, any other law or the common law applicable to that employment, as at the time at which the employee was or is affected by the implementation of transitional arrangements in respect of military institutions or the rationalisation of the Department of Defence, as the case may be; (xi) 20
 - (vii) “military institution” means any department of defence or military force as contemplated in section 236(1) of the Interim Constitution, as the said section 236(1) existed immediately before the commencement of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996); (iv) 25
 - (viii) “responsible authority” means any authority or person to whom any power, duty or function relating to the implementation of transitional arrangements in respect of military institutions or the rationalisation of the Department of Defence, as the case may be, has been entrusted or assigned by or under any law; (vii) 30
 - (ix) “rules” means the rules made under section 5; (v) 35
 - (x) “special tribunal” means the special tribunal as contemplated in section 3(1); (vi)
 - (xi) “this Act” includes the rules. (iii)

Application of Act

2. This Act shall apply in respect of any dispute between an employee or between an employee organisation, as the case may be, and the responsible authority.

Labour Court sitting as special tribunal

3. (1) For the purposes of adjudicating disputes, the Labour Court shall sit as a special tribunal. 5

(2) Save as is otherwise provided in this Act, the provisions of sections 151 to 156, 157(1) and (2), 159(1), (2), (3)(c), (d) and (e), and (4) to (9), 160, 161, 162(1), (2)(b) and (3), 163 to 166 and 184 of the Labour Relations Act shall apply, with the necessary changes, to the special tribunal. 10

Orders of special tribunal

4. The special tribunal may—

- (a) in granting urgent interim relief in respect of any dispute, make any order which the Labour Court would have been competent to make; or
- (b) in granting final relief in respect of any dispute, make any order which any court, including the industrial court or Labour Court, would have been competent to make in accordance with, or having due regard to, a law regulating employment. 15

Rules for special tribunal and appeals

5. The powers conferred upon the Rules Board for Labour Courts by section 159 of the Labour Relations Act shall include the power to make rules not inconsistent with this Act as to— 20

- (a) expeditious procedures for the adjudication of disputes by the special tribunal, including the process by which proceedings are brought before the special tribunal and the form and content thereof; and 25
- (b) the period within which appeals to the Labour Appeal Court against the final orders of the special tribunal must be noted, and the other expeditious procedures for the hearing of those appeals.

Adjudication of disputes

6. (1) Any employee who, or any employee organisation which, as the case may be, is a party to any dispute with the responsible authority may apply to the special tribunal for an order under this Act without it being necessary to make use of, or to exhaust, any other procedure as required by any other law or the common law, on condition— 30

- (a) that the applicant who so applies for an order shall observe the rules; and
- (b) that, in the case of an application for urgent interim relief, the applicant may request the special tribunal to dispense with any rule. 35

(2) Unless the special tribunal on good cause shown directs otherwise, no order may be made under this Act if the relevant application was not made within 90 days—

- (a) from the date on which the reasons for the dispute became known to the applicant; or 40
- (b) from the date of commencement of this Act,

whichever is the later date.

(3) The special tribunal shall adjudicate the dispute as soon as possible, but not later than 60 days after receipt of the application.

(4) The special tribunal may on good cause shown, or of its own accord— 45

- (a) either before or after the expiry of any period prescribed by this Act, extend that period;
- (b) condone the non-compliance with any time limit prescribed by this Act.

(5) The special tribunal shall not make any order for costs in respect of proceedings under this Act, except—

- (a) on the grounds of unreasonableness or frivolousness on the part of any party to the dispute;
- (b) on the grounds that any party refused or failed without sufficient cause to attend any pre-trial conference, or failed to participate properly at such conference in order to limit or to define the issues in dispute. 5

Extraordinary procedure

7. If in any proceedings under this Act any matter arises for which no provision has been made in this Act, the special tribunal may make such order, adopt such procedure or deal with that matter in such manner as it considers necessary or expedient in order to achieve the objects of this Act. 10

Duration of Act

8. (1) Subject to the provisions of subsection (2), this Act shall cease to have effect on 31 December 2001. 15

(2) The President may at any time before the date referred to in subsection (1) and by proclamation in the *Gazette* declare that this Act shall cease to have effect on any earlier or later date specified in the proclamation.

(3) If any proceedings have been brought before the special tribunal before the date on which this Act ceases to have effect in terms of subsection (1) or (2), those proceedings shall be continued and concluded as if this Act had not ceased to have effect. 20

Short title and commencement

9. This Act shall be called the Defence Special Tribunal Act, 1998, and shall come into operation on 1 January 1999.

**MEMORANDUM ON THE OBJECTS OF THE DEFENCE SPECIAL
TRIBUNAL BILL, 1998**

The Labour Appeal Court Sitting as Special Tribunal Act, 1995 (Act No. 30 of 1995), was enacted to enable the relevant special tribunal to determine claims and disputes of right which arose out of the implementation of the transitional arrangements on public administration and the rationalisation of the public administration as contemplated in sections 236 and 237 of the Interim Constitution.

The provisions of the said Act will lapse in respect of the South African National Defence Force on 31 December 1998. The incorporation or integration of certain military institutions as well as the rationalisation of the Department of Defence will, however, not have been completed by that date. Consequently, it is necessary to re-enact the provisions of the said Act for that purpose. In this instance the Labour Court established by section 151(1) of the Labour Relations Act, 1995 (Act No. 66 of 1995), will sit as a special tribunal.

Even though the provisions of the Bill will be applicable to employees in the public service, the Bill cannot, in the opinion of the State Law Adviser, be regarded as legislation envisaged in section 197 of the Constitution. Accordingly, the Bill must be dealt with in accordance with the procedure prescribed by section 75 of the Constitution.

The Departments of Justice, of Labour and of Public Service and Administration were consulted in the preparation of the Bill.

