



REPUBLIC OF SOUTH AFRICA

GOVERNMENT GAZETTE

STAATSKOERANT

VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

Price 20c Prys
Overseas 30c Oorsee
POST FREE—POSVRY

Vol. 154]

CAPE TOWN, 19 APRIL 1978

KAAPSTAD, 19 APRIL 1978

[No. 5985

DEPARTMENT OF THE PRIME MINISTER

No. 787.

19 April 1978.

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

No. 49 of 1978: Defence Amendment Act, 1978.

DEPARTEMENT VAN DIE EERSTE MINISTER

No. 787.

19 April 1978.

Hierby word bekend gemaak dat die Staatspresident sy goedkeuring gegee het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 49 van 1978: Wysigingswet op Verdediging, 1978.

Wet No. 49, 1978

WYSIGINGSWET OP VERDEDIGING, 1978.

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

WET

Tot wysiging van die bepalings van die Verdedigingswet, 1957, met betrekking tot diensplig van sekere persone wat nie Suid-Afrikaanse burgers is nie; ten einde afwesigheid van hul werk van sekere vakleerlinge ten einde diens ingevolge daardie Wet te verrig, verder te reël; vir die verdediging van die Republiek verdere voorsiening te maak; en ander voorsiening te maak met betrekking tot pligsversuim in verband met die verpligting om diens te doen; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 12 April 1978.)

DAAR WORD BEPAAL deur die Staatspresident, die Senaat en die Volksraad van die Republiek van Suid-Afrika, soos volg:—

Wysiging van
artikel 2 van
Wet 44 van 1957,
soos gewysig deur
artikel 20 van
Wet 39 van 1966
en artikel 2 van
Wet 85 van 1967.

1. (1) Artikel 2 van die Verdedigingswet, 1957 (hieronder die Hoofwet genoem), word hierby gewysig deur subartikels (3), (4) 5 en (5) te skrap.

(2) Subartikel (1) tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

Wysiging van
artikel 4 van
Wet 44 van 1957,
soos gewysig deur
artikel 3 van
Wet 77 van 1963
en artikel 4 van
Wet 85 van 1967.

2. Artikel 4 van die Hoofwet word hierby gewysig deur subartikel (2) *ter* deur die volgende subartikel te vervang: 10

„(2) *ter* Indien 'n in subartikel (2) *bis* bedoelde werknemer 'n vakleerling is soos in die Wet op Vakleerlinge, 1944 (Wet No. 37 van 1944), omskryf, is die bepalings van artikel 26 (1) en (4) (d) van daardie Wet nie van toepassing nie ten opsigte van 'n tydperk van hoogstens— 15

(a) **[vier]** agt maande van **[die]** 'n eerste tydperk van vier-en-twintig maande of langer;

(b) ses maande van 'n eerste tydperk van agtien maande;

(c) vier maande van 'n eerste tydperk van twaalf maande; en **[hoogstens]** 20

(d) **[drie weke]** dertig dae van enige daaropvolgende tydperk,

van sy afwesigheid van sy werk veroorsaak deur bedoelde diens gedurende die voorgeskrewe tydperk van sy vakleerlingskap.” 25

Invoeging van
artikel 99A in
Wet 44 van 1957.

3. (1) Die volgende artikel word hierby in die Hoofwet na artikel 99 ingevoeg:

„Beveiliging 99A. (1) Die Minister kan ter verdediging van die Republiek of ter voorkoming of onderdrukking van terrorisme enige grond sonder die toestemming van 30
enigiemand wat daardeur geraak word of geraak mag word, laat betree deur persone met die nodige toerusting en binne 'n strook hoogstens 10 kilometer breed langs die grens tussen die Republiek en 'n

DEFENCE AMENDMENT ACT, 1978.

Act No. 49, 1978

GENERAL EXPLANATORY NOTE:

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

 Words underlined with solid line indicate insertions in existing enactments.

ACT

To amend the provisions of the Defence Act, 1957, relating to liability for service of certain persons who are not South African citizens; so as to further regulate the absence from their work of certain apprentices for the purpose of carrying out any service under that Act; to provide further for the defence of the Republic; and to make different provision with regard to neglect of duty in connection with the liability to render service; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 12 April 1978.)

BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

1. (1) Section 2 of the Defence Act, 1957 (hereinafter referred to as the principal Act), is hereby amended by the deletion of subsections (3), (4) and (5). Amendment of section 2 of Act 44 of 1957, as amended by section 20 of Act 39 of 1966 and section 2 of Act 85 of 1967.
- (2) Subsection (1) shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
2. Section 4 of the principal Act is hereby amended by the substitution for subsection (2)*ter* of the following subsection: Amendment of section 4 of Act 44 of 1957, as amended by section 3 of Act 77 of 1963 and section 4 of Act 85 of 1967.

“(2)*ter* If an employee referred to in subsection (2)*bis* is an apprentice as defined in the Apprenticeship Act, 1944 (Act No. 37 of 1944), the provisions of section 26 (1) and (4) (d) of that Act shall not apply in respect of a period of not more than—

 - (a) **[four]** eight months of [the] a first period of twenty-four months or longer;
 - (b) six months of a first period of eighteen months;
 - (c) four months of a first period of twelve months; and [not more than]
 - (d) **[three weeks]** thirty days of any subsequent period, of his absence from his employment occasioned by such service during the prescribed period of his apprenticeship.”.
3. (1) The following section is hereby inserted in the principal Act after section 99: Insertion of section 99A in Act 44 of 1957.

99A. (1) The Minister may in defence of the Republic or for the prevention or suppression of terrorism cause any land to be entered upon, without the consent of any person who is or may be affected thereby, by persons with the necessary equipment and cause to be performed within a strip not exceeding 10 kilometres in width along the border between the Republic and any state or country other

“Safeguarding borders of Republic.

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ander staat of land as die Republiek die werksaamhede laat verrig wat die Minister bepaal.

(2) Sonder afbreuk aan die algemeenheid van dié werksaamhede, kan hulle die verwydering van bome, gewasse, geboue en bouwerke, die oprigting van geboue en bouwerke en die aanplanting van bome en gewasse behels. 5

(3) Die Staat, die Minister, 'n lid van die Suid-Afrikaanse Weermag, 'n ander persoon in diens van die Staat of enigiemand anders is nie aanspreeklik nie op grond van enigiets wat uit hoofde van die bepalings van subartikel (1) gedoen is. 10

(4) Iemand wat 'n persoon by die verrigting van sy werksaamhede in subartikel (1) bedoel, belemmer of hinder, is aan 'n misdryf skuldig. 15

(5) Iemand wat sonder die skriftelike magtiging van die Minister of sy gevolmagtigde enigiets wat uit hoofde van die bepalings van subartikel (1) op grond gedoen of aangebring of aangeplant is, verwyder, verander, beskadig of vernietig of hom daarmee bemoei, is aan 'n misdryf skuldig. 20

(2) Subartikel (1) word geag op 1 Januarie 1977 in werking te getree het.

Wysiging van artikel 104 van Wet 44 van 1957, soos gewysig deur artikel 19 van Wet 12 van 1961, artikel 56 van Wet 85 van 1967, artikel 10 van Wet 28 van 1970 en artikel 11 van Wet 35 van 1977.

4. Artikel 104 van die Hoofwet word hierby gewysig deur die voorbehoudsbepaling by paragraaf (b) van subartikel (5) te skrap. 25

Herroeping van artikel 110 van Wet 44 van 1957, soos gewysig deur artikel 20 van Wet 12 van 1961 en artikel 11 van Wet 28 van 1970.

5. Artikel 110 van die Hoofwet word hierby herroep.

Herroeping van artikel 126 van Wet 44 van 1957, soos vervang deur artikel 61 van Wet 85 van 1967.

6. Artikel 126 van die Hoofwet word hierby herroep.

Vervanging van artikel 126A van Wet 44 van 1957, soos ingevoeg deur artikel 10 van Wet 66 van 1972.

7. Artikel 126A van die Hoofwet word hierby deur die volgende artikel vervang:

„Pligversuim in Burgermag of kommando's. 126A. (1) Iemand wat ingevolge artikel 22 of 44 30 verplig is om diens te doen en wat sonder grondige rede—

(a) wanneer hy daartoe aangesê is, **[weier]** versuim om hom vir sodanige diens aan te meld; of 35
(b) nadat hy hom aangemeld het, **[weier]** versuim om militêre diens te doen of militêre opleiding te ondergaan,

is aan 'n misdryf skuldig **[en by skuldigbevinding strafbaar met detensie vir 'n tydperk van hoogstens vyftien maande en minstens twaalf maande: Met dien verstande dat iemand wat minstens twaalf maande detensie weens 'n oortreding van hierdie artikel uitdien of uitgedien het, nie weer weens so 'n oortreding aangekla mag word nie].** 40 45

(2) Iemand wat weens 'n oortreding van subartikel

(1) aangekla word—

(a) en wat by sy verhoor bewys dat hy *bona fide* aan 'n erkende kerkgenootskap, volgens die leerstel-

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than the Republic, such functions as the Minister may determine.

(2) Without derogating from the generality of those functions, they may comprise the removal of trees, plants, buildings and structures, the erection of buildings and structures and the planting of trees and plants.

(3) The State, the Minister, a member of the South African Defence Force, any other person in the service of the State or any other person shall not be liable by reason of anything done by virtue of the provisions of subsection (1).

(4) Any person who obstructs or hinders any person in the performance of his functions referred to in subsection (1), shall be guilty of an offence.

(5) Any person who without the written authority of the Minister or his deputy removes, alters, damages, destroys or interferes with anything done or effected or planted on land by virtue of the provisions of subsection (1), shall be guilty of an offence."

(2) Subsection (1) shall be deemed to have come into operation on 1 January 1977.

4. Section 104 of the principal Act is hereby amended by the deletion of the proviso to paragraph (b) of subsection (5).

Amendment of section 104 of Act 44 of 1957, as amended by section 19 of Act 12 of 1961, section 56 of Act 85 of 1967, section 10 of Act 28 of 1970 and section 11 of Act 35 of 1977.

5. Section 110 of the principal Act is hereby repealed.

Repeal of section 110 of Act 44 of 1957, as amended by section 20 of Act 12 of 1961 and section 11 of Act 28 of 1970.

6. Section 126 of the principal Act is hereby repealed.

Repeal of section 126 of Act 44 of 1957, as substituted by section 61 of Act 85 of 1967.

7. The following section is hereby substituted for section 126A of the principal Act:

Substitution of section 126A of Act 44 of 1957, as inserted by section 10 of Act 66 of 1972.

30 "Neglect of duty in Citizen Force or commandos. 126A. (1) Any person liable to render service in terms of section 22 or 44 who without good reason—

(a) when called up, **[refuses]** fails to report for such service; or

(b) having reported for service, **[refuses]** fails to render military service or to undergo military training,

35 shall be guilty of an offence **[and liable on conviction to be sentenced to detention for a period of not more than fifteen months and not less than twelve months: Provided that a person who is serving or has served not less than twelve months detention for a contravention of this section may not again be charged with such a contravention].**

(2) Any person charged with a contravention of subsection (1)—

45 (a) who at his trial proves that he *bona fide* belongs and adheres to a recognized religious denomina-

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lings waarvan sy lede nie aan oorlog mag deelneem nie, behoort en dit aanhang, is by skuldigbevinding strafbaar—

- (i) indien hy versuim het om hom vir diens van twaalf maande of langer aan te meld of, nadat hy hom aangemeld het, versuim het om militêre diens te doen of militêre opleiding te ondergaan, met detensie vir 'n tydperk van ses-en-dertig maande; of
- (ii) indien hy versuim het om hom vir diens van minder as twaalf maande aan te meld of, nadat hy hom aangemeld het, versuim het om militêre diens te doen of militêre opleiding te ondergaan, met detensie vir 'n tydperk van agtien maande:

Met dien verstande dat iemand wat detensie in hierdie paragraaf bedoel, uitdien of uitgedien het, nie weer weens 'n oortreding van subartikel (1) aangekla mag word nie;

- (b) is in enige ander geval by skuldigbevinding strafbaar met 'n boete van hoogstens tweeduisend rand of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar of met sowel daardie boete as daardie gevangenisstraf.

[(2)] (3) Ondanks andersluidende wetsbepalings **[of die bepalinge van artikel 104 (5) (b) (vi) van hierdie Wet]**, is 'n krygsraad bevoeg om die **[straf]** strawwe op te lê waarvoor in subartikel **[(1)] (2) (a)** voorsiening gemaak word.

- (4) Indien dit by 'n vervolging weens 'n oortreding van subartikel (1) bewys word dat die beskuldigde versuim het om vir die diens wat daarin bedoel word, aan te meld of, nadat hy hom aangemeld het, versuim het om militêre diens te doen of militêre opleiding te ondergaan, word daar vermoed, tensy die teendeel bewys word, dat hy sonder gegronde rede aldus versuim het."

Kort titel.

8. Hierdie Wet heet die Wysigingswet op Verdediging, 1978.

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tion by the tenets whereof its members may not participate in war, shall upon conviction be liable—

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(i) if he failed to report for service of twelve months or longer or, having reported for service, failed to render military service or to undergo military training, to be sentenced to detention for a period of thirty-six months; or

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(ii) if he failed to report for service of less than twelve months or, having reported for service, failed to render military service or to undergo military training, to be sentenced to detention for a period of eighteen months:

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Provided that a person who is serving or has served detention referred to in this paragraph, may not again be charged with a contravention of this subsection;

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(b) shall in any other case be liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

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[(2)] (3) Notwithstanding anything to the contrary contained in any **[other]** law **[or the provisions of section 104 (5) (b) (vi) of this Act]**, courts martial shall have jurisdiction to impose the **[sentence]** sentences provided for in subsection **[(1)] (2) (a)**.

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(4) If in any prosecution for a contravention of subsection (1) it is proved that the accused failed to report for the service referred to therein or, having reported for service, failed to render military service or to undergo military training, it shall be presumed, unless the contrary is proved, that his said failure was without good reason.

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8. This Act shall be called the Defence Amendment Act, 1978. Short title.

