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GOVERNMENT GAZETTE

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KANTOOR VAN DIE STAATSPRESIDENT

STATE PRESIDENT'S OFFICE

No. 1612.

13 Julie 1990

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

No. 110 van 1990: Polisiewysigingswet, 1990.

No. 1612.

13 July 1990

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

No. 110 of 1990: Police Amendment Act, 1990.

Wet No. 110, 1990

POLISIEWYSIGINGSWET, 1990

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

WET

Tot wysiging van die Polisiewet, 1958, ten einde die akkommodasie van lede van munisipale polisie-eenhede in die Suid-Afrikaanse Polisie verder te reël; sekere visenterings- en beslagleggingsbevoegdhede te reël; vir die evaluasie van die geskiktheid van lede van genoemde Polisie om daarin te bly, verdere voorsiening te maak; die misbruik van uniforms van genoemde Polisie verder te verbied; en vrystelling van toelae verder te reël; tot wysiging van die Derde Polisiewysigingswet, 1989, ten einde vir die geldigheid van aanstelling van lede van munisipale polisie-eenhede in genoemde Polisie voorsiening te maak; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

*(Engelse teks deur die Staatspresident geteken.)
(Goedgekeur op 28 Junie 1990.)*

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

Wysiging van artikel 1 van Wet 7 van 1958, soos gewysig deur artikel 1 van Wet 53 van 1961, artikel 1 van Wet 64 van 1964, artikel 1 van Wet 74 van 1967, artikel 1 van Wet 94 van 1972, artikel 1 van Wet 34 van 1973, artikel 1 van Wet 64 van 1979, artikel 1 van Wet 68 van 1984, artikel 1 van Wet 36 van 1989, artikel 1 van Wet 75 van 1989 en artikel 1 van Wet 76 van 1989

1. Artikel 1 van die Polisiewet, 1958 (hieronder die Hoofwet genoem), word hierby gewysig—

- (a) deur in subartikel (1) paragraaf (b) van die omskrywing van “die Mag” 10 deur die volgende paragraaf te vervang:
 - “(b) by die toepassing van die bepalings van artikel 12, 14, 17, 17B, 22, 24, 25, 26, 27B, 33 (uitgesonderd paragrafe [(b)bis] (eA) en (v) van subartikel (1), en subartikel (2) daarvan), 34D en 34E, ’n munisipale polisie-eenheid;”;
- (b) deur in subartikel (1) paragraaf (b) van die omskrywing van “lid van die Mag” deur die volgende paragraaf te vervang:
 - “(b) by die toepassing van die bepalings van artikels 4 (3), 9, 10, 11, 12, 14, 15, 16, 17, 17B, 18, 20, 21, 22, 25, 26, 26A, 27, 27B, 28, 31, 32bis, 33 (uitgesonderd paragrafe [(b)bis] (eA) en (v) van subartikel (1), en 20 subartikel (2) daarvan), 34D en 34E, ’n lid van ’n munisipale polisie-eenheid;”;
- (c) deur in subartikel (1) na die omskrywing van “regulasie” die volgende omskrywing in te voeg:

““senior lid” ’n lid van ’n munisipale polisie-eenheid met of bo die rang van 25 inspekteur;”;

POLICE AMENDMENT ACT, 1990

Act No. 110, 1990

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 Police Act, 1958, so as to further regulate the accommodation of members of municipal police units in the South African Police; to regulate certain powers of search and seizure; to make further provision for the evaluation of the fitness of members of the said Police to remain therein; to further prohibit the misuse of uniforms of the said Police; and to further regulate exemption from tolls; to amend the Police Third Amendment Act, 1989, so as to provide for the validity of appointment in the said Police of members of municipal police units; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 28 June 1990.)

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

Amendment of section 1 of Act 7 of 1958, as amended by section 1 of Act 53 of 1961, section 1 of Act 64 of 1964, section 1 of Act 74 of 1967, section 1 of Act 94 of 1972, section 1 of Act 34 of 1973, section 1 of Act 64 of 1979, section 1 of Act 68 of 1984, section 1 of Act 36 of 1989, section 1 of Act 75 of 1989 and section 1 of Act 76 of 1989

1. Section 1 of the Police Act, 1958 (hereinafter referred to as the principal Act), is hereby amended—

- 10 (a) by the substitution in subsection (1) for paragraph (b) of the definition of “member of the Force” of the following paragraph:
 - “(b) for the purpose of sections 4 (3), 9, 10, 11, 12, 14, 15, 17, 17B, 18, 20, 21, 22, 25, 26, 26A, 27, 27B, 28, 31, 32***bis***, 33 (excluding paragraphs **[(b)bis]** (eA) and (v) of subsection (1), and subsection (2) thereof), 34D and 34E, a member of a municipal police unit;”;
- 15 (b) by the insertion in subsection (1) of the following definition after the definition of “regulation”:

““senior member” a member of a municipal police unit of or above the rank of inspector;”;
- 20 (c) by the substitution in subsection (1) for paragraph (b) of the definition of “the Force” of the following paragraph:

“(b) for the purposes of sections 12, 14, 17, 17B, 22, 24, 25, 26, 27B, 33 (excluding paragraphs **[(b)bis]** (eA) and (v) of subsection (1), and subsection (2) thereof), 34D and 34E, any municipal police unit;”;

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- (d) deur die volgende omskrywing by subartikel (1) te voeg:
 “‘uniform’ enige kleredrag wat deur die Kommissaris as uniform vir lede
 van die Mag voorgeskryf is en deur hom by kennisgewing in die
Staatskoerant afgekondig is.”.

Wysiging van artikel 4 van Wet 7 van 1958, soos gewysig deur artikel 3 van Wet 74 van 1967, artikel 2 van Wet 68 van 1984, artikel 2 van Wet 36 van 1989 en artikel 2 van Wet 75 van 1989

2. Artikel 4 van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

- “(2) (a) ’n Bevoegdheid kragtens hierdie Wet aan die Kommissaris verleen, (uitgesonderd artikel 6 (4A) (cA)) kan skriftelik deur die Kommissaris gedelegeer word aan ’n lid van die Mag of ’n ander persoon in diens van die Mag of ’n raad of liggaam ingestel kragtens hierdie Wet, wat daardie bevoegdheid uitoefen onderworpe aan die voorskrifte van die Kommissaris.”.

Wysiging van artikel 6 van Wet 7 van 1958, soos gewysig deur artikel 4 van Wet 64 van 1964, artikel 1 van Wet 74 van 1965, artikel 3 van Wet 34 van 1973, artikel 2 van Wet 64 van 1979, artikel 1 van Wet 50 van 1980, artikel 1 van Wet 24 van 1983 en artikel 3 van Wet 36 van 1989

3. Artikel 6 van die Hoofwet word hierby gewysig—
 (a) deur paragraaf (b) van subartikel (4) deur die volgende paragraaf te vervang:

- “(b) Wanneer ’n vrou ingevolge paragraaf (a) of artikel 6 (4A) (cA) gevisenteer word, moet die visentering slegs deur ’n vrou gedoen word, met stipte inagneming van welvoeglikheid, en indien daar geen vrou wat lid van die Mag is, vir die visentering beskikbaar is nie, kan die visentering gedoen word deur enige vrou wat spesiaal vir die doel deur ’n lid van die Mag aangewys word.”;

- (b) deur na paragraaf (c) van subartikel (4A) die volgende paragraaf in te voeg:
 “(cA) Ondanks andersluidende wetsbepalings, maar sonder om afbreuk te doen aan die bepalinge van subartikel (4) of die bepalinge van die gemene reg, kan ’n lid van die Mag by die verrigting van die in artikel 5 (d) bedoelde werksaamhede, indien daartoe gelas deur ’n offisier wat optree met die geskrewe goedkeuring van die Kommissaris waarin die datum, beraamde duur, plek en oogmerk van die beoogde optrede aangedui word, indien die Kommissaris dit vir die doeleindes van die verrigting van die werksaamhede van die Suid-Afrikaanse Polisie nodig ag, enige persoon of voertuig op enige openbare plek of enige houer of voorwerp van watter aard ook al in, op of aan die voertuig sonder lasbrief visenteer en enige voorwerp bedoel in artikel 20 van die Strafproseswet, 1977, wat hy op bedoelde persoon of in of op of aan die voertuig of in die houer vind, in beslag neem: Met dien verstande dat ’n lid van die Mag wat ’n visentering uitvoer na sodanige uitvoering, op versoek van iemand wie se regte geraak is ten opsigte van ’n visentering of voorwerp waarop beslag gelê is, ’n afskrif van die geskrewe goedkeuring van die Kommissaris oorhandig.”; en

- (c) deur paragraaf (d) van subartikel (4A) deur die volgende paragraaf te vervang:
 “(d) Die bepalinge van die Strafproseswet, 1977, met betrekking tot die beskikking oor ’n voorwerp bedoel in artikel 20 van daardie Wet wat kragtens die bepalinge van daardie Wet in beslag geneem is, is *mutatis mutandis* van toepassing ten opsigte van ’n voorwerp wat ingevolge paragraaf (a) of (cA) in beslag geneem word.”.

Wysiging van artikel 9 van Wet 7 van 1958, soos gewysig deur artikel 1 van Wet 43 van 1958, artikel 4 van Wet 53 van 1961, artikel 7 van Wet 64 van 1964, artikel 3 van Wet 94 van 1972, artikel 4 van Wet 34 van 1973, artikel 1 van Wet 90 van 1977, artikel 4 van Wet 64 van 1979, artikel 3 van Wet 68 van 1984 en artikel 2 van Wet 8 van 1988

4. Artikel 9 van die Polisiewet, 1958, word hierby gewysig—

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(d) by the addition to subsection (1) of the following definition:

"uniform" means clothes prescribed by the Commissioner as a uniform for members of the Force, and published by him by notice in the Gazette."

5 Amendment of section 4 of Act 7 of 1958, as amended by section 3 of Act 74 of 1967, section 2 of Act 68 of 1984, section 2 of Act 36 of 1989 and section 2 of Act 75 of 1989

2. Section 4 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

10 “(2) (a) Any power vested in the Commissioner under this Act (excluding section 6 (4A) (cA)) may be delegated in writing by the Commissioner to any member of the Force or other person in the employment of the Force or the board or body established under this Act, who shall exercise that power subject to the directions of the Commissioner.”.

15 Amendment of section 6 of Act 7 of 1958, as amended by section 4 of Act 64 of 1964, section 1 of Act 74 of 1965, section 3 of Act 34 of 1973, section 2 of Act 64 of 1979, section 1 of Act 50 of 1980, section 1 of Act 24 of 1983 and section 3 of Act 36 of 1989

3. Section 6 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (4) of the following paragraph:

20 “(b) Whenever a woman is searched under paragraph (a) or section 6 (4A) (cA), the search shall be made by a woman only, with strict regard to decency, and if there is no woman who is a member of the Force, available for such search, the search may be made by any woman specially designated for the purpose by a member of the Force.”;

25 (b) by the insertion after paragraph (c) of subsection (4A) of the following paragraph:

30 “(cA) Notwithstanding anything to the contrary in any law contained, but without prejudice to the provisions of subsection (4) or the provisions of the common law, any member of the Force may, in the performance of the functions referred to in section 5 (d), if directed thereto by any commissioned officer acting with the written approval of the Commissioner in which the date, estimated duration, place and purpose of the proposed action are mentioned, if the Commissioner deems it necessary for the purposes of the performance of the functions of the South African Police, search without warrant any person or vehicle at any public place or any receptacle or object of whatever nature in, on or attached to the vehicle, and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him upon such person or in, on or attached to the vehicle or in the receptacle: Provided that a member of the Force executing a search shall, after such execution, upon demand of any person whose rights in respect of any search or article seized have been affected, hand to him a copy of the written approval of the Commissioner.”; and

45 (c) by the substitution for paragraph (d) of subsection (4A) of the following paragraph:

50 “(d) The provisions of the Criminal Procedure Act, 1977, with regard to the disposal of an article referred to in section 20 of that Act and seized under the provisions of that Act, shall *mutatis mutandis* apply in respect of an article seized under paragraph (a) or (cA).”.

Amendment of section 9 of Act 7 of 1958, as amended by section 1 of Act 43 of 1958, section 4 of Act 53 of 1961, section 7 of Act 64 of 1964, section 3 of Act 94 of 1972, section 4 of Act 34 of 1973, section 1 of Act 90 of 1977, section 4 of Act 64 of 1979, section 3 of Act 68 of 1984 and section 2 of Act 8 of 1988

55 4. Section 9 of the principal Act is hereby amended—

- (a) deur subartikels (2), (4) en (5) deur onderskeidelik die volgende subartikels te vervang:

“(2) Ondanks die bepalings van subartikel (1), kan enige lid van die Mag wat nie ’n offisier of ’n senior lid is nie, weens ’n oortreding van ’n bepaling van hierdie Wet verhoor word deur ’n offisier of ’n senior lid onder wie se bevel hy dien of wat algemeen of spesiaal daartoe aangewys is, en kan hy by skuldigbevinding deur bedoelde offisier of senior lid berispe word of gevonniss word tot ’n boete van hoogstens R100, wat by wyse van aftrekkings van die salaris of loon van die aldus veroordeelde lid verhaal word.”

(4) ’n Offisier of ’n senior lid wat ’n lid van die Mag ingevolge hierdie artikel vonnis, stuur onverwyld die relaas van die verrigtinge in die saak aan die afdelingskommissaris van die afdeling waarin daardie lid dien of ’n ander offisier met of bo die rang van luitenant-kolonel deur die Kommissaris aangewys, en bedoelde afdelingskommissaris of ander offisier kan die skuldigbevinding nietig verklaar of die vonnis bekragtig of verminder.

(5) ’n Skuldigbevinding of vonnis deur ’n offisier of ’n senior lid is nie van krag nie tensy dit bekragtig is en, waar ’n vonnis verminder word, die betrokke afdelingskommissaris of ander offisier met of bo die rang van luitenant-kolonel die bedrag van die boete wat die veroordeelde moet betaal, vasgestel het.”;

- (b) deur in subartikel (6) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“’n Lid van die Mag wat ingevolge hierdie artikel deur ’n offisier of ’n senior lid skuldig bevind en gevonniss is, kan, onderworpe aan die bepalings van die regulasies, teen die skuldigbevinding en vonnis by die Kommissaris appél aanteken, en daarop kan die Kommissaris—”;

- (c) deur subartikels (8) en (9) deur onderskeidelik die volgende subartikels te vervang:

“(8) Die Kommissaris kan na goëddunke ten opsigte van enige offisier of senior lid die by hierdie artikel verleende regsbevoegdheid beperk.

(9) Wanneer ’n lid van die Mag ingevolge hierdie artikel deur ’n offisier of ’n senior lid skuldig bevind en gevonniss is, kan die Kommissaris na goëddunke gelas dat die relaas van die verrigtinge in die saak vir hersiening aan hom voorgelê word, en daarop ten opsigte van die skuldigbevinding en vonnis optree soos by subartikel (6) bepaal.”; en

- (d) deur in subartikel (10) die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:

“Met dien verstande dat die offisier of senior lid voor wie die oorspronklike verhoor kragtens subartikel (2) gediën het, nie die verhoor wat deur die Kommissaris aldus gelas word, mag waarneem nie.”.

Vervanging van artikel 10 van Wet 7 van 1958, soos gewysig deur artikel 8 van Wet 64 van 1964, artikel 4 van Wet 74 van 1967, artikel 5 van Wet 64 van 1979, artikel 4 van Wet 68 van 1984, artikel 30 van Wet 97 van 1986, artikel 3 van Wet 8 van 1988 en artikel 5 van Wet 36 van 1989

5. Artikel 10 van die Hoofwet word hierby deur die volgende artikel vervang:

“**Prosedure in geval van beweerde wangedrag van offisiere of senior lede**

10. (1) Die Kommissaris of ’n ander offisier wat op sy gesag handel, kan op die by regulasie voorgeskrewe wyse ’n offisier of ’n senior lid weens wangedrag aankla.

(2) Indien ’n offisier of ’n senior lid aldus weens wangedrag aangekla word, kan die Minister of die Kommissaris ’n raad van ondersoek aanstel om die betrokke aanklag te ondersoek.

[(2A)] (3) ’n Raad van ondersoek bestaan uit een of meer persone, wat—

(a) in die geval van ’n raad deur die Minister aangestel, offisiere met dieselfde of ’n hoër rang as die aangeklaagde offisier of senior lid, of magistrate is;

(b) in die geval van ’n raad deur die Kommissaris aangestel, bedoelde offisiere is.

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- (a) by the substitution for subsections (2), (4) and (5) of the following subsections, respectively:

“(2) Notwithstanding anything contained in subsection (1), any member of the Force who is not a commissioned officer or a senior member may be tried for a contravention of any provision of this Act by any commissioned officer or a senior member under whose command he is serving or who has been generally or specially deputed thereto, and may on conviction by such officer or senior member be reprimanded or sentenced to a fine not exceeding R100, which shall be recovered by stoppages from the salary or wages of the member so convicted.

(4) Any commissioned officer or senior member who sentences any member of the Force under this section, shall forthwith transmit the record of the proceedings in the case to the divisional commissioner of the division in which that member is serving or any other commissioned officer of or above the rank of lieutenant-colonel designated by the Commissioner, and such divisional commissioner or other officer may quash the conviction or confirm or reduce the sentence.

(5) No conviction or sentence by a commissioned officer or a senior member shall have any force or effect unless it has been confirmed and, where a sentence is reduced, the amount of the fine to be paid by the person convicted has been determined by the divisional commissioner or other commissioned officer of or above the rank of lieutenant-colonel concerned.”;

- (b) by the substitution in subsection (6) for the words preceding paragraph (a) of the following words:

“Any member of the Force who has been convicted and sentenced by a commissioned officer or a senior member under this section, may, subject to the provisions of the regulations, appeal to the Commissioner against the conviction and sentence, and thereupon the Commissioner may—”;

- (c) by the substitution for subsections (8) and (9) of the following subsections, respectively:

“(8) The Commissioner may, if he thinks fit, restrict in respect of any officer or senior member the jurisdiction conferred by this section.

(9) Whenever any member of the Force has been convicted and sentenced by a commissioned officer or a senior member under this section, the Commissioner may, if he thinks fit, direct that the record of the proceedings in the case be submitted to him for review, and may thereupon act in respect of the conviction and sentence as provided by subsection (6).”; and

- (d) by the substitution in subsection (10) for the proviso of the following proviso:

“Provided that the commissioned officer or senior member before whom the original trial took place under subsection (2) shall not conduct the trial so directed by the Commissioner.”.

Substitution of section 10 of Act 7 of 1958, as amended by section 8 of Act 64 of 1964, section 4 of Act 74 of 1967, section 5 of Act 64 of 1979, section 4 of Act 68 of 1984, section 30 of Act 97 of 1986, section 3 of Act 8 of 1988 and section 5 of Act 36 of 1989

5. The following section is hereby substituted for section 10 of the principal Act:

“Procedure in case of alleged misconduct of commissioned officers or senior members

10. (1) The Commissioner or any other commissioned officer acting under his authority may, in the manner prescribed by regulation, charge any commissioned officer or senior member with misconduct.

(2) If a commissioned officer or senior member has been so charged with misconduct, the Minister or the Commissioner may appoint a board of enquiry to investigate the charge in question.

[(2A)] (3) A board of enquiry shall consist of one or more persons, who—

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

[(5)] (4) Waar 'n offisier of 'n senior lid aangekla word weens wangedrag wat 'n misdryf uitmaak ten opsigte waarvan hy deur 'n geregshof veroordeel is, is 'n gesertifiseerde afskrif van die relaas van die betrokke verhoor by blote oorlegging daarvan deur enige persoon as getuienis toelaatbaar voor die raad van ondersoek wat die aanklag 5 ondersoek, en is 'n gesertifiseerde afskrif van die betrokke aanklag en skuldigbevinding by blote oorlegging aan die raad deur enige persoon, *prima facie* bewys dat die betrokke offisier of senior lid bedoelde misdryf gepleeg het.

[(6)] (5) Na oorweging van die getuienis by die ondersoek aangevoer 10 en nadat die aangeklaagde offisier of senior lid of sy regsvertegenwoordiger die geleentheid gegee is om die raad van ondersoek toe te spreek, vind die raad bedoelde offisier of senior lid skuldig of onskuldig aan die wangedrag hom ten laste gelê en verwittig hom van die bevinding van die raad: Met dien verstande dat, indien die aangeklaagde offisier of senior 15 lid erken dat hy aan die betrokke wangedrag skuldig is, hy, indien die Kommissaris voor die aanvang van die ondersoek deur die raad magtiging daartoe verleen het, skuldig bevind kan word sonder dat getuienis aangevoer is.

[(6A)] (6) 'n Offisier of senior lid wat aan wangedrag skuldig bevind 20 word, kan binne die tydperk en op die by regulasie voorgeskrewe wyse teen die bevinding van die raad van ondersoek na die Minister appelleer en skriftelike verhoër met betrekking tot enige aanbeveling deur die raad of die Kommissaris kragtens subartikel **[(6B)] (7)** gedoen, tot die Minister rig. 25

[(6B)] (7) Nadat 'n raad van ondersoek 'n offisier of 'n senior lid aan wangedrag skuldig bevind het—

- (a) moet die raad by die Minister aanbevelings doen met betrekking tot die straf wat die offisier of senior lid kragtens subartikel **[(6C)] (8)** opgelê kan word; en 30
- (b) kan die Kommissaris by die Minister aanbevelings doen met betrekking tot 'n bevinding of aanbeveling van die raad:

Met dien verstande dat die betrokke offisier of senior lid vir die doeleindes van sy verhoër bedoel in subartikel **[(6A)] (6)** in kennis gestel moet word van die aanbevelings van die raad en die Kommissaris. 35

[(6C)] (8) Die Minister kan, na oorweging van die relaas van die verrigtinge voor die raad van ondersoek, die aanbevelings van die raad en die Kommissaris, die appèlgronde van en verhoër gerig deur die aangeklaagde offisier of senior lid, en die raad en die Kommissaris se repliek daarop— 40

- (a) indien hy van oordeel is dat geregtigheid om die een of ander rede nie geskied het nie, die bevinding van die raad tersyde stel; of
- (b) gelas dat geen verdere stappe in verband met die saak gedoen word nie; of
- (c) gelas dat die saak weer vir afhandeling ingevolge hierdie artikel aan 45 hom voorgelê word na verstryking van die tydperk, maar hoogstens 12 maande, wat hy bepaal; of
- (d) gelas dat die betrokke offisier of senior lid gewaarsku of berispe word; of
- (e) gelas dat die betrokke offisier of senior lid 'n boete van hoogstens 50 R300 opgelê word, wat by wyse van aftrekkings van die salaris of toelaes van die betrokke offisier of senior lid verhaal kan word; of
- (f) gelas dat die salaris van die betrokke offisier of senior lid verlaag word na 'n laer kerf op die skaal wat op sy rang van toepassing is; of
- (g) enige van die in artikel 3 (1B) (b) bedoelde stappe doen of die saak 55 na die Staatspresident verwys, wat daarop die Minister kragtens daardie artikel kan gelas om enige van bedoelde stappe te doen; of
- (h) die ander bevel uitvaardig wat hy billik ag.

[(7)] (9) By die toepassing van hierdie artikel beteken 'wangedrag'—

- (a) 'n oortreding van hierdie Wet; of 60
- (b) die pleg van enige ander misdryf.”

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5 **[(5)]** (4) Where an officer or a senior member is charged with misconduct which constitutes an offence in respect of which he has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by any person, be admissible in evidence before the board of enquiry investigating the charge, and a certified copy of the charge and conviction in question shall, on its mere production by any person to such board, be *prima facie* proof of the commission of such offence by such officer or senior member.

10 **[(6)]** (5) After considering the evidence adduced at the enquiry and affording the commissioned officer or senior member charged or his legal adviser an opportunity of addressing the board of enquiry, the board shall find the said officer or senior member guilty or not guilty of the misconduct with which he has been charged and inform him of its finding: Provided that, if the officer or senior member charged admits that he is guilty of the misconduct in question, he may, if the Commissioner has prior to the commencement of the enquiry by the board granted permission thereto, be found guilty without any evidence having been adduced.

20 **[(6A)]** (6) A commissioned officer or senior member found guilty of misconduct may, within such period and in such manner as may be prescribed by regulation, appeal to the Minister against the finding of the board of enquiry and make representations in writing to the Minister in regard to any recommendation made by the board or the Commissioner under subsection **[(6B)]** (7).

25 **[(6B)]** (7) After a board of enquiry has found a commissioned officer or senior member guilty of misconduct—

- 30 (a) the board shall make recommendations to the Minister in regard to any punishment which may be imposed upon the commissioned officer or senior member under subsection **[(6C)]** (8); and
(b) the Commissioner may make recommendations to the Minister in regard to any finding or recommendation of the board:

35 Provided that the commissioned officer or senior member concerned shall, for the purposes of his representations referred to in subsection **[(6A)]** (6), be notified of the recommendations of the board and the Commissioner.

40 **[(6C)]** (8) The Minister may, after considering the record of the proceedings before the board of enquiry, the recommendations of the board and the Commissioner, the grounds of appeal of and any representations made by the commissioned officer or senior member charged, and the reply of the board and the Commissioner thereto—

- 45 (a) if he is of the opinion that for any reason there was a failure of justice, set aside the finding of the board; or
(b) direct that no further action be taken in connection with the matter; or
(c) direct that the matter be re-submitted to him for disposal in terms of this section after the expiry of such period, not exceeding 12 months, as he may specify; or
(d) direct that the commissioned officer or senior member concerned be cautioned or reprimanded; or
50 (e) direct that a fine not exceeding R300 be imposed upon the commissioned officer or senior member concerned, which may be recovered by way of deductions from the salary or allowances of the commissioned officer or senior member concerned; or
(f) direct that the salary of the commissioned officer or senior member
55 concerned be reduced to a lower notch on the scale applicable to his rank; or
(g) take any of the steps referred to in section 3 (1B) (b) or refer the matter to the State President, who may thereupon order the Minister under that section to take any of the said steps; or
60 (h) make such other order as to him seems just.

[(7)] (9) For the purposes of this section 'misconduct' means—

- (a) any contravention of this Act; or
(b) the commission of any other offence.”.

Wet No. 110, 1990

POLISIEWYSIGINGSWET, 1990

Vervanging van artikel 11 van Wet 7 van 1958, soos gewysig deur artikel 6 van Wet 64 van 1979 en artikel 6 van Wet 68 van 1984

6. Artikel 11 van die Hoofwet word hierby deur die volgende artikel vervang:

“Getuienis voor offisiere of senior lede of rade van ondersoek

11. (1) (a) Vir die doeleindes van 'n verhoor deur 'n offisiër of 'n senior lid bedoel in artikel 9 (2) of 'n ondersoek deur 'n raad van ondersoek aangestel ingevolge hierdie Wet, kan die betrokke offisiër of senior lid of raad—
- (i) enige persoon op die by regulasie voorgeskrewe wyse dagvaar om op die tyd en plek in die dagvaarding vermeld voor die betrokke offisiër of senior lid of raad as getuie te verskyn ten einde vrae te beantwoord of 'n stuk of saak onder sy beheer voor te lê; en
 - (ii) enige persoon wat by die verhoor of ondersoek aanwesig is, as getuie oproep en van hom 'n eed of bevestiging afneem of hom waarsku om die waarheid te praat.
- (b) By so 'n verhoor of ondersoek is die bepalings van die Strafproseswet, 1977 (Wet No. 51 van 1977), met betrekking tot getuies en getuienis wat in verband met strafsake in 'n landdroshof van toepassing is, uitgesonderd paragraaf (a) van die voorbehoudsbepaling by artikel 217 (1), *mutatis mutandis* van toepassing.
- (c) 'n Getuie by so 'n verhoor of ondersoek wat—
- (i) nadat hy behoorlik kragtens paragraaf (a) (i) gedagvaar is, versuim om op die tyd en plek in die dagvaarding vermeld, te verskyn of by die betrokke verhoor of ondersoek aanwesig te bly totdat hy wettig van verdere bywoning verskoon is;
 - (ii) weier om 'n eed af te lê of 'n bevestiging te doen wat kragtens paragraaf (a) (ii) afgeneem word;
 - (iii) weier of versuim om alle vrae wat wettig aan hom gestel is, bevredigend te beantwoord; of
 - (iv) weier of versuim om 'n stuk of saak voor te lê wat wettig van hom vereis is om voor te lê,
- is, tensy hy voldoende rede vir daardie versuim of weiering bewys, aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R100 of gevangenisstraf vir 'n tydperk van hoogstens drie maande.
- (2) So 'n getuie wat—
- (a) by so 'n ondersoek of verhoor, nadat hy 'n eed afgelê het, 'n bevestiging gedoen het of gewaarsku is soos beoog in subartikel (1) (a) (ii), 'n valse verklaring doen met die wete dat dit vals is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met die strawwe wat kragtens die reg vir die misdaad van meened opgelê kan word; of
 - (b) in verband met so 'n ondersoek of verhoor iets doen wat, indien dit in verband met 'n geregshof gedoen was, minagting van die hof sou uitgemaak het, is aan 'n misdryf skuldig en by veroordeling strafbaar met die strawwe wat kragtens die reg vir die misdryf van minagting van die hof opgelê kan word.”

Wysiging van artikel 17 van Wet 7 van 1958, soos gewysig deur artikel 6 van Wet 53 van 1961, artikel 10 van Wet 64 van 1964, artikel 8 van Wet 64 van 1979 en artikel 4 van Wet 8 van 1988

7. Artikel 17 van die Hoofwet word hierby gewysig deur in subartikel (1A) paragraaf (b) deur die volgende paragraaf te vervang:

- “(b) binne 'n tydperk van **[12] 24** maande, uitgesonderd enige tydperk van opleiding, na die lid se inlywing as 'n lid van die Mag, indien dit aan die Kommissaris blyk dat die lid weens ongeskiktheid vir sy pligte of onvermoë om hulle op 'n bekwame wyse uit te voer of weens enige gedrag wat tot nadeel van die goeie orde, doeltreffende administrasie, beheer of dissipline van die Mag strek, ongeskik is om in die Mag te bly.”

POLICE AMENDMENT ACT, 1990

Act No. 110, 1990

Substitution of section 11 of Act 7 of 1958, as amended by section 6 of Act 64 of 1979 and section 6 of Act 68 of 1984

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

“Witnesses before commissioned officers or senior members or boards of enquiry

11. (1) (a) For the purposes of a trial by a commissioned officer or a senior member referred to in section 9 (2) or an enquiry by a board of enquiry appointed in terms of this Act, the officer or senior member or board concerned may—

(i) in the manner prescribed by regulation subpoena any person to appear as a witness at the time and place specified in the subpoena before the officer or senior member or board concerned in order to answer questions or to produce a document or thing under his control; and

(ii) call any person present at the trial or enquiry as a witness and administer an oath or affirmation to him or admonish him to tell the truth.

(b) At such trial or enquiry the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to witnesses and evidence which are applicable in connection with criminal proceedings in a magistrate's court, except paragraph (a) of the proviso to section 217 (1), shall *mutatis mutandis* apply.

(c) A witness at such trial or enquiry who—

(i) having been duly subpoenaed under paragraph (a) (i), fails to appear at the time and place specified in the subpoena or fails to remain in attendance at the trial or enquiry concerned until he has been lawfully excused from further attendance;

(ii) refuses to take an oath or to make an affirmation administered to him under paragraph (a) (ii);

(iii) refuses or fails to answer satisfactorily all questions which have lawfully been put to him; or

(iv) refuses or fails to produce a document or thing which he has been lawfully required to produce,

shall, unless he proves sufficient cause for that failure or refusal, be guilty of an offence and liable on conviction to a fine not exceeding R100 or imprisonment for a period not exceeding three months.

(2) Any such witness who—

(a) at any such enquiry or trial, having taken an oath, having made an affirmation or having been admonished as contemplated in subsection (1) (a) (ii), makes any false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the crime of perjury; or

(b) does anything in relation to any such enquiry or trial which if done in relation to a court of law would have constituted contempt of court, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the offence of contempt of court.”

Amendment of section 17 of Act 7 of 1958, as amended by section 6 of Act 53 of 1961, section 10 of Act 64 of 1964, section 8 of Act 64 of 1979 and section 4 of Act 8 of 1988

7. Section 17 of the principal Act is hereby amended by the substitution in subsection (1A) for paragraph (b) of the following paragraph:

“(b) within a period of **[12] 24 months**, exclusive of any period of training, after the member's enrolment as a member of the Force, if it appears to the Commissioner that, on account of unfitness for his duties or incapacity to carry them out efficiently or on account of any conduct which is prejudicial to the good order, efficient administration, control or discipline of the Force, the member is unfit to remain in the Force.”

Wet No. 110, 1990

POLISIEWYSIGINGSWET, 1990

Vervanging van artikel 26 van Wet 7 van 1958, soos gewysig deur artikel 7 van Wet 53 van 1961, artikel 16 van Wet 64 van 1964, artikel 6 van Wet 90 van 1977 en artikel 13 van Wet 36 van 1989

8. Artikel 26 van die Hoofwet word hierby deur die volgende artikel vervang:

“Dra van uniforms, kentekens of knope van die Mag

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26. Iemand wat 'n uniform of kenmerkende kentekens of knoop van die Mag dra, of enigiets **[dra wat soveel na so 'n uniform, kentekens of knoop lyk dat dit bereken is om te mislei]** wat wesenlik ooreenstem met so 'n uniform, kentekens of knoop dra of enigiets dra met die opset dat dit as so 'n uniform, kentekens of knoop beskou moet word, is, tensy—

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(a) hy 'n lid van die Mag is wat uit hoofde van sy aanstelling, rang of aanwysing geregtig is om bedoelde uniform, kentekens of knoop te dra; of

(b) deur die Kommissaris **[of 'n ander offisier met of bo die rang van luitenant-kolonel wat die Kommissaris daartoe gemagtig het]** aan hom vergunning verleen is om bedoelde uniform, kentekens of knoop te dra, aan 'n misdryf skuldig.”

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Wysiging van artikel 28 van Wet 7 van 1958, soos gewysig deur artikel 18 van Wet 64 van 1964 en artikel 9 van Wet 90 van 1977

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9. Artikel 28 van die Hoofwet word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Behoudens die bepalings van subartikel (3) is 'n lid van die Mag wat dit by die uitoefening van sy bevoegdheid of die verrigting van sy pligte of werksaamheid nodig vind om 'n kaai, landingsplek, pont, brug, tolhek, hek of deur te betree of daardeur of daaroor te gaan, waar of ten opsigte waarvan tolgeld, gelde of leges wettiglik geëis kan word, **[is]** vrygestel van die betaling van sodanige tolgeld, gelde of leges ten opsigte van homself, elke persoon wat hy in hegtenis het en enige dier, vervoermiddel of uitrustingstuk wat hy by die uitoefening van bedoelde bevoegdheid of die verrigting van bedoelde pligte of werksaamheid nodig mag hê: Met dien verstande dat indien so 'n lid nie in uniform is nie, hy op versoek van iemand wat sodanige tolgeld, gelde of leges mag eis, sy identiteit moet openbaar deur sy in subartikel (3) van artikel vier bedoelde aanstellingsertifikaat aan daardie persoon oor te lê.”; en

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(b) deur die volgende subartikel by te voeg:

“(3) Die Kommissaris kan, indien die Kommissaris dit vanweë die aard van die bevoegdheid of die verrigting van pligte of werksaamheid van 'n lid van die Mag nodig ag, skriftelik gelas dat die bepalings van subartikel (1) nie op sodanige lid van toepassing is nie, in welke geval tolgeld, gelde of leges in subartikel (1) bedoel, betaalbaar sal wees.”

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Wysiging van artikel 4 van Wet 76 van 1989

10. Artikel 4 van die Derde Polisiewysigingswet, 1989, word hierby gewysig deur in subartikel (4) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

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“Behoudens die bepalings van hierdie artikel word 'n persoon wat onmiddellik voor die datum van inwerkingtreding van hierdie Wet uit hoofde van 'n aanstelling kragtens artikel 34 van genoemde Wet op Swart Plaaslike Owerhede, 1982, in diens van 'n plaaslike owerheid soos omskryf in daardie Wet is, of heet te wees, geag, met erkenning van sy dienstermyn uit hoofde van so 'n aanstelling, kragtens artikel 17D van die Hoofwet, soos by artikel 2 van hierdie Wet ingevoeg, in die Suid-Afrikaanse Polisie aangestel te wees om as lid van die munisipale polisie-eenheid te dien wat vir die gebied van daardie plaaslike owerheid ingestel is, op die diensvoorwaardes wat kragtens die Hoofwet vir lede van munisipale polisie-eenhede voorgeskryf is, en teen die salaris, loon of toelaes wat aldus vir daardie lede bepaal is.”

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POLICE AMENDMENT ACT, 1990

Act No. 110, 1990

Substitution of section 26 of Act 7 of 1958, as amended by section 7 of Act 53 of 1961, section 16 of Act 64 of 1964, section 6 of Act 90 of 1977 and section 13 of Act 36 of 1989

8. The following section is hereby substituted for section 26 of the principal Act:

“Wearing of uniforms, badges or buttons of the Force

- 5 26. Any person who wears any uniform or distinctive badge or button of the Force or wears anything **[so closely resembling any such uniform, badge or button as to be calculated to deceive]** materially resembling any such uniform, badge or button or wears anything with the intention that it should be regarded as such uniform, badge or button, shall, unless—
- 10 (a) he is a member of the Force entitled by reason of his appointment, rank or designation to wear such uniform, badge or button; or
- (b) he has been granted permission by the Commissioner **[or any other commissioned officer of or above the rank of Lieutenant-Colonel authorized thereto by the Commissioner]** to wear such uniform, badge or button,
- 15 be guilty of an offence.”.

Amendment of section 28 of Act 7 of 1958, as amended by section 18 of Act 64 of 1964 and section 9 of Act 90 of 1977

9. Section 28 of the principal Act is hereby amended—

- 20 (a) by the substitution for subsection (1) of the following subsection:

 “(1) Subject to the provisions of subsection 3 any member of the Force who in exercise of his powers or the performance of his duties or functions finds it necessary to enter, pass through or go over any wharf, landing place, ferry, bridge, toll-bar, gate or door at or in respect of which any toll, fee or due may be lawfully demanded, shall be exempted from the payment of such toll, fee or due in respect of himself, every person under his arrest and any animal, means of transport or article of equipment which he may require in the exercise of such powers or the performance of such duties or functions: Provided that if such member is not in uniform, he shall, upon a request by any person who may demand such toll, fee or due, disclose his identity by producing to such person his certificate of appointment referred to in sub-section (3) of section four.”; and

30 (b) by the addition of the following subsection:

35 “(3) The Commissioner may, if, with regard to the nature of the powers or the exercise of duties or functions of a member of the Force the Commissioner deems it necessary, order that the provisions of subsection (1) are not applicable to such member, in which event toll money, moneys or fees as provided for in subsection (1), shall be payable.”.

Amendment of section 4 of Act 76 of 1989

- 40 10. Section 4 of the Police Third Amendment Act, 1989, is hereby amended by the substitution in subsection (4) for the words preceding the proviso of the following words:

45 “Subject to the provisions of this section a person who immediately prior to the date of commencement of this Act is, by virtue of an appointment under section 34 of the said Black Local Authorities Act, 1982, in the employment of a local authority as defined in that Act, or purports to have been so appointed, shall, with recognition of his period of service by virtue of such appointment, be deemed to be appointed under section 17D of the principal Act, as inserted by section 2 of this Act, in the South African Police to serve as a member of the municipal police unit established for the area of that local authority, on such conditions of service as may under the principal Act be prescribed for members of municipal police units, and at such salary, wage or allowances as may be so determined for those members.”.

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Wet No. 110, 1990

POLISIEWYSIGINGSWET, 1990

Kort titel en inwerkingtreding

11. (1) Hierdie Wet heet die Polisie wysigingswet, 1990, en tree in werking op 'n datum wat die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

(2) Verskillende datums kan aldus ten opsigte van verskillende bepalings van hierdie Wet bepaal word.

POLICE AMENDMENT ACT, 1990

Act No. 110, 1990

Short title and commencement

- 11.** (1) This Act shall be called the Police Amendment Act, 1990, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.
(2) Different dates may be so fixed in respect of different provisions of this Act.

