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PRESIDENT'S OFFICE

No. 495. 27 March 1997

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

No. 4 of 1997: Defence Amendment Act, 1997.

KANTOOR VAN DIE PRESIDENT

No. 495. 27 Maart 1997

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

No. 4 van 1997: Verdedigingswysigingswet, 1997.

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.

ACT

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.

*(English text signed by the Acting President.)
(Assented to 25 March 1997.)*

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

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

(a) by the insertion after the definition of “citizen” of the following definition:
“‘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

(b) by the substitution for the definition of “Department of Defence” of the following definition:

“‘Department of Defence’ means the Department of Defence referred to in [the Public Service Act, 1994 (Proclamation No. 103, 1994)] section 4B;”.

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:

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 Verdedigingswet, 1957, ten einde te bepaal dat die Sekretaris vir Verdediging, as departementshoof van die Departement van Verdediging, en die Hoof van die Suid-Afrikaanse Nasionale Weermag op dieselfde hiërargiese vlak in die Departement van Verdediging staan; en om die bevoegdheide, pligte en werksaamhede van die Sekretaris vir Verdediging en die Hoof van die Suid-Afrikaanse Nasionale Weermag in groter besonderhede te bepaal; en om vir aangeleenthede voorsiening te maak wat daarmee in verband staan.

*(Engelse teks deur die Waarnemende President geteken.)
(Goedgekeur op 25 Maart 1997.)*

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

Wysiging van artikel 1 van Wet 44 van 1957, soos gewysig by artikel 1 van Wet 12 van 1961, artikel 1 van Wet 42 van 1961, artikel 1 van Wet 77 van 1963, artikel 20 van Wet 39 van 1966, artikel 1 van Wet 85 van 1967, artikel 1 van Wet 26 van 1973, artikel 1 van Wet 8 van 1974, artikel 1 van Wet 1 van 1976, artikel 1 van Wet 35 van 1977, artikel 1 van Wet 103 van 1982, artikel 1 van Wet 87 van 1984, artikel 1 van Wet 132 van 1992, artikel 1 van Wet 134 van 1993 en artikel 1 van Wet 72 van 1995

10 1. Artikel 1 van die Verdedigingswet, 1957 (hieronder die Hoofwet genoem), word hierby gewysig—

(a) deur na die omskrywing van “besoekende mag” die volgende omskrywing in te voeg:

15 “‘bevel’ die militêre gesag en verantwoordelikheid van ’n hoër offisier om bevele, instruksies en opdragte aan ondergeskiktes te gee, en omvat elke aspek van militêre operasies en administrasie;” en

(b) deur die omskrywing van “Departement van Verdediging” deur die volgende omskrywing te vervang:

20 “‘Departement van Verdediging’ die Departement van Verdediging in [die Staatsdienswet, 1994 (Proklamasie No. 103, 1994),] artikel 4B bedoel;”.

Vervanging van opskrif by Hoofstuk II van Wet 44 van 1957

2. Die opskrif by Hoofstuk II van die Hoofwet word hierby deur die volgende opskrif vervang:

“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—

- (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;

“Samestelling en organisasie van die Departement van Verdediging.”.**Invoeging van artikel 4B in Wet 44 van 1957**

3. Die volgende artikel word hierby in die Hoofwet na artikel 4A ingevoeg:

“Samestelling van Departement van Verdediging

- 5 **4B. Die Departement van Verdediging bestaan uit—**
 (a) die Verdedigingsekretariaat; en
 (b) die Suid-Afrikaanse Nasionale Weermag.”.

Vervanging van artikel 7B van Wet 44 van 1957, soos ingevoeg by artikel 2 van Wet 72 van 1995

10 4. Artikel 7B van die Hoofwet word hierby deur die volgende artikel vervang:

“Sekretaris vir Verdediging

- 15 **7B. (1)** Die Minister kan, behoudens die wette op die staatsdiens, ’n persoon in die pos van Sekretaris vir Verdediging in die vaste diensstaat van die Departement van Verdediging aanstel wat, as ’n beampte binne die bedoeling van die Staatsdienswet, 1994 (Proklamasie No. 103, 1994), in daardie pos vir die tydperk en ooreenkomstig die bedinge en voorwaardes van diens wat andersins op departementshoofde in daardie Wet bedoel van toepassing is, dien, en wat geregtig is om die salaris, voordele en voorregte waarop so ’n hoof geregtig is, te ontvang.
- 20 (2) Die Sekretaris moet ’n burger van die Republiek wees en mag nie ’n lid van die Suid-Afrikaanse Nasionale Weermag wees nie.
- 25 (3) Die persoon wat ten tyde van die inwerkingtreding van die Wysigingswet op Verdediging, 1995, as Sekretaris dien, word geag om met ingang van 1 April 1995 behoorlik kragtens hierdie artikel aangestel te wees.”.

Vervanging van artikel 7C van Wet 44 van 1957, soos ingevoeg by artikel 2 van Wet 72 van 1995

5. Artikel 7C van die Hoofwet word hierby deur die volgende artikel vervang:

“Bevoegdhede, pligte en werksaamhede van Sekretaris

- 30 **7C. Die Sekretaris—**
- (a) (i) is die departementshoof en rekenpligtige beampte van die Departement van Verdediging; en
- 35 (ii) is die hoof van die Verdedigingsekretariaat en is as sodanig verantwoordelik vir die bestuur van en administratiewe beheer oor die personeel van die Verdedigingsekretariaat;
- (b) is die Minister se departementele hoofadviseur betreffende verdedigingsbeleidsaangeleenthede [asook oor enige aangeleentheid wat deur die Gesamentlike Staande Komitee oor Verdediging van die Parlement kragtens artikel 228(3)(d) van die Grondwet ondersoek mag word en waaroor die Komitee bevoeg is om aanbevelings te doen];
- 40 (c) bedien die Minister met raad oor enige besondere aangeleentheid wat die Minister na die Sekretaris verwys;
- 45 (d) verrig die pligte en werksaamhede wat van tyd tot tyd deur die Minister aan hom of haar opgedra of na hom of haar verwys word, in besonder enige plig of werksaamheid wat nodig of dienstig is ter versterking van Parlementêre oorsig en Ministeriële beheer oor die Suid-Afrikaanse Nasionale Weermag;
- 50 (e) [tree as gedelegeerde van die Minister op ten opsigte van enige aangeleentheid wat die Minister binne sy bevoegdheid aan die Sekretaris deleger;

- (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

- (f) tree by sy aanstelling as rekenpligte beampte van die Departement van Verdediging, as sodanig op;
- (g) moet [nadat hy aldus as rekenpligtige beampte aangestel is, vir die duur van sodanige aanstelling] die Hoof van die Weermag voorsien van omvattende opdragte vir die uitreiking deur daardie Hoof van orders en direktiewe en die gee van bevel met betrekking tot die funksionering van die Sekretaris as [sodanige] hoof en rekenpligtige beampte [ten opsigte] van die [Suid-Afrikaanse Nasionale Weermag] Departement van Verdediging; [en
- (h)](f) moniteer die nakoming van voorskrifte deur die [President of die Minister, na gelang van die geval,] Minister kragtens [artikel 225 van die] Grondwet aan die Hoof van die Weermag uitgereik, en doen daarvoor verslag aan die [President of die] Minister [na gelang van die geval.]; en
- (g) verrig al die werksaamhede van 'n departementshoof betreffende die doeltreffende bestuur en administrasie van die Departement van Verdediging.”.

Herroeping van artikel 7D van Wet 44 van 1957, soos ingevoeg by artikel 2 van Wet 72 van 1995

- 20 6. Artikel 7D van die Hoofwet word hierby herroep.

Wysiging van artikel 8 van Wet 44 van 1957, soos vervang by artikel 4 van Wet 134 van 1993 en by artikel 3 van Wet 72 van 1995

7. Artikel 8 van die Hoofwet word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- 25 “(1) Die Hoof van die Weermag—
- (a) kan die bevoegdhede uitoefen en moet die pligte en werksaamhede verrig wat nodig is om sy of haar [militêre uitvoerende] bevel oor die Suid-Afrikaanse Nasionale Weermag [soos in artikel 225 van die Grondwet bedoel] te voer;
- 30 (b) moet sy of haar [militêre uitvoerende] bevel voer deur die uitreiking van direktiewe, magsorders en algemene opdragte en deur die gee van bevel.”; en
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- 35 “(3) Sonder om afbreuk te doen aan die algemeenheid van subartikel (1)(a) of aan enige bevoegdheid, plig of werksaamheid wat in die [Hoof van die Weermag] departementshoof en rekenpligte beampte van die Departement van Verdediging setel of aan hom of haar opgedra is [uit hoofde van enige aanstelling wat hy] by of kragtens enige wet [beklee], het [hy] die Hoof van die Weermag die bevoegdhede en is hy of sy belas met die pligte en werksaamhede en is hy of sy verantwoordelik teenoor die [President of die] Minister [na gelang van die geval,] vir—
- (a) die nakoming van enige voorskrif deur die Minister kragtens die gesag van die President [of die Minister, na gelang van die geval, kragtens artikel 225 van] soos bepaal deur die Grondwet;
- 45 (b) die doeltreffende bestuur en administrasie van die Suid-Afrikaanse Nasionale Weermag met inbegrip van die doeltreffende benutting en opleiding van alle lede van daardie Weermag;
- (c) die formulering van militêre beleid en doktrines in ooreenstemming met die voorskrifte in paragraaf (a) bedoel;
- 50 [(c)] (d) die uitvoering van gemagtigde programme van die begroting vir die [Departement van Verdediging en, by die aanstelling van die Sekretaris as rekenpligtige beampte van die Departement van Verdediging, die uitvoering van die programme van die] Suid-Afrikaanse Nasionale Weermag waarvoor [dié] daardie Hoof verantwoordelik is;
- 55 [(d)] (e) [by die aanstelling van die Sekretaris as rekenpligtige beampte van die Departement van Verdediging en, ondanks die bepaling van artikel 7(3)(a) van die Staatsdienswet, 1994 (Prokla-

- 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: 25
Provided that the Secretary for Defence—

- (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 30
- (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 40 (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.

[(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

- masie No. 103 van 1994),] die uitreiking van orders en direkteure en die gee van bevel in ooreenstemming met enige opdrag van die Sekretaris in artikel 7C[(g)](e)bedoel, en om toe te sien dat sodanige orders, direkteure en bevel nagekom word;
- 5 [(e)] (f) die voorsiening van alle inligting en insette met betrekking tot die Suid-Afrikaanse Nasionale Weermag aan die Sekretaris om hom of haar in staat te stel om sy of haar werksaamhede behoorlik te verrig;
- 10 [(f)] (g) die verrigting van alle staffunksies wat nodig mag wees vir doeltreffende bevel en beheer oor die Suid-Afrikaanse Nasionale Weermag;
- [(g)] (h) die aanwending van die Suid-Afrikaanse Nasionale Weermag of enige deel of lid daarvan wat [deur die President] vir enige diens [ingevolge die Grondwet] in diens ingestel is, [vir sodanige diens] of vir die voer van militêre operasies;
- 15 [(h)] (i) die opleiding tot die vereiste vlak van alle lede van die Suid-Afrikaanse Nasionale Weermag in die regte, met inbegrip van internasionale [gewoontereg en die reg wat betrekking het op vredesoperasies] reg;
- 20 [(j)] (j) die instandhouding van 'n genoegsame militêre reaksievermoë ten opsigte van waarskynlike militêre bedreigings soos deur die Minister gemagtig; en
- [(i)] (k) die handhawing van militêre dissipline binne die Suid-Afrikaanse Nasionale Weermag.”.

Vervanging van artikel 83A van Wet 44 van 1957, soos gewysig by artikel 7 van
 25 Wet 3 van 1969, artikel 6 van Wet 8 van 1974, artikel 36 van Wet 132 van 1992, artikel 5 van Wet 32 van 1993 en artikel 4 van Wet 72 van 1995

8. Artikel 83A van die Hoofwet word hierby deur die volgende artikel vervang:

“Hoof van Weermag en Sekretaris vir Verdediging staan op dieselfde hiërargiese vlak in Departement van Verdediging

- 30 **83A.** (1) Ondanks andersluidende wetsbepalings op die Staatsdiens word die [offisier wat aangestel is of wettiglik waarneem as Hoof van die Suid-Afrikaanse Weermag] Sekretaris vir Verdediging en die Hoof van die Suid-Afrikaanse Nasionale Weermag vir alle doeleindes geag [die hoof van daardie departement te wees en] op dieselfde hiërargiese vlak
- 35 in die Departement van Verdediging te staan, met dié verdeling van pligte, werksaamhede en verantwoordelikhede wat deur hierdie Wet bepaal word: Met dien verstande dat die Sekretaris vir Verdediging—
- (a) [beskik hy] oor al die bevoegdhede beskik en [is hy bekleed] met al die pligte en werksaamhede belas is wat aan die hoof van [daardie] die departement by of kragtens enige wetsbepaling verleen of opgelê of toevertrou word; en
- 40 (b) nie verantwoordelik is nie vir die uitvoering van die militêre pligte en werksaamhede wat in die Hoof van die Weermag kragtens hierdie Wet gevestig is.
- 45 (2) [Met dien verstande dat die diensvoorwaardes] Die bedinge en voorwaardes van diens van [bedoelde offisier] die Hoof van die Weermag word behoudens die bepalinge van artikel 2(2) van die Staatsdienswet [1984 (Wet No. 111 van 1984)] 1994 (Proklamasie No. 103 van 1994), deur hierdie Wet gereël: Met dien verstande [voorts] dat
- 50 [bedoelde offisier ook] die Hoof van die Weermag geregtig is op die salaris, byvoordele en voorregte van 'n departementshoof [wat nie deur hierdie Wet aan bedoelde offisier verleen word nie] ingevolge daardie Wet.
- 55 [(2)] (3) Vir die doeleindes van die handhawing van dissipline oor beamptes [of werknemers] binne die bedoeling van die wetsbepalings op die Staatsdiens wat in die [Suid-Afrikaanse Weermag] Departement van Verdediging werksaam is, word lede van die Staande Mag geag beamptes te wees binne die bedoeling van daardie wetsbepalings.”.

Short title and commencement

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

Kort titel en inwerkingtreding

9. Hierdie Wet heet die Verdedigingswysigingswet, 1997, en tree op 1 April 1997 in werking.

