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points delegated



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[MEMORANDUM]

TO: Mr. V. Smith, MP
Ms. M. Boroto, MP
Co – Chairpersons: Interim Joint Committee
on Scrutiny of Delegated Legislation

COPY: Mr. M B Coetzee
Secretary to Parliament

DATE: 04 September 2013

SUBJECT: Regulations: Military Veterans General Regulations,
2013

LEGAL ADVISER: Mr. N Mjexane

REFERENCE NUMBER: 208 / 13



1. Our office received a request for a legal opinion on the draft regulations ("draft regulations") made under section 24(1) of the Military Veterans Act 18 of 2011 ("Principal Act").
2. The draft regulations provide for the criteria that the military veterans have to meet in order to qualify for benefits, made under section 24(1) and tabled in terms of section 24(3) of the Principal Act.
3. Section 24(3) of the Principal Act provides that any regulation relating to criteria that must be met in order to qualify for benefits, contemplated in subsection (1)(a), must be tabled by the Minister in Parliament at least 30 days before such contemplated regulation is passed. In compliance with the aforementioned, the Minister as indicated in the ATC of 20 June 2013 tabled the draft regulations and the draft regulations were referred to the Interim Joint Committee on Scrutiny of Delegated Legislation and the Portfolio Committee on Defence and Military Veterans.
4. The purpose of tabling the draft regulations is to ensure that Parliament has the necessary oversight on same and to comment if necessary before the implementation of the said draft regulations.

Scrutiny Criteria

5. It is mandatory that the scrutiny of delegated legislation follow the criteria as set out in the Interim Rules ("IRs"). The IRs provide as follows:
 - "(1) Delegated legislation shall be scrutinized by the Committee in accordance with some or all of the following criteria:
 - (a) whether they impose levies, taxes or duties not authorized through a money bill passed in accordance with section 77 of the Constitution;
 - (b) whether they comply with procedural aspects pertaining to delegated legislation;
 - (c) whether they impinge on the jurisdiction of the courts;
 - (d) Whether they are retrospective in nature and, if so, whether that is permitted in terms of the parent Act;
 - (e) whether they conform with the objects of the parent Act;
 - (f) whether they appear to make unusual use of powers conferred by the parent Act;
 - (g) whether they have been properly drafted;



- (h) whether they trespass on personal rights and liberties, including those set out in the Bill of Rights, in a manner inconsistent with the Constitution; or
- (i) whether they amount to substantive legislation.”

Advice

6. Having considered the draft regulations in the context of the scrutiny criteria, I set out my opinion below.
7. The draft regulations do not contain provisions that impose levies, taxes or duties.
8. The provisions of the draft regulations do not impinge the jurisdiction of the courts.
9. There draft regulations have no retrospective effect.
10. The draft regulations conform to the objects of the Principal Act.
11. The draft regulations do not unusual use of powers conferred by the Principal Act.
12. The draft regulations have not been properly drafted and as a result are not compliant with drafting convention in respect of grammar, consequential numbering and the cross referencing is also inaccurate. The definition of “Appeals Board” is not necessary in the draft regulations as the “Appeal Board” is already defined in the Principal Act. The cross reference definition of “identity document” to the Identification Act 68 of 1997 is inaccurate. The said Act defines the “identity card” and not “identity document” as indicated in the draft regulations, this drafting error should be corrected. The citation of the Civil Union Act 17 of 2006 is inaccurate; the “s” in Union is misplaced and should not be reflected. Furthermore, regulation 12 is grammatically inaccurate in that “the” is repeated twice; the repetition makes regulation 12 grammatically incorrect and may cause potential confusion. The second “the” should be removed. Regulation 37(2) makes reference to regulations which are incorrectly spelt in that the “s” at the end of “victim” in the regulations referred to here is missing, and there is no reference to the relevant government gazette number as is drafting convention, this should be corrected. In addition, regulation 38(3) makes a cross reference to regulation 44. This cross reference is inaccurate as regulation 44 does not deal with documents but regulation 39 deals with the said documents, this should be corrected.
13. The draft regulations do not contain any provisions that trespass on personal rights and liberties, including those set out in the Bill of Rights.
14. The draft regulations do not amount to substantive legislation.
15. In conclusion, I opine that the draft regulations, save for the matters mentioned in paragraph 12 are consistent with both the Constitution and law.



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A large, stylized handwritten signature in black ink, consisting of a large loop and a vertical stroke.

Mr. N Mjexane
Parliamentary Legal Adviser