



# defence

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22 September 2015

Mr G.B. Dixon  
Committee Secretary  
SC on Security and Justice  
Cape Town

## **RE: BRIEFING ON THE DEFENCE LAWS REPEAL AND AMENDMENT BILL, 2015.**

Appendix A: Copy of the Defence Laws Repeal and Amendment Bill, 2015.

### **AIM**

1. To brief the Select Committee on Security and Justice on the Defence Laws Repeal and Amendment Bill, 2015.

### **BACKGROUND**

2. The South African Law Reform Commission ("SALRC") has been mandated with the task of revising the South African statute book with the purpose of identifying and recommending Acts which are to be repealed because they are inconsistent with the equality clause in the Constitution or redundant and obsolete.

3. In May 2011, the SALRC published discussion paper 123 on its findings on the research that it conducted in respect of legislation administered by the Department of Defence ("the Department").

4. The SALRC identified a number of laws administered by the Department that are obsolete or redundant which need to be repealed or amended. The Department considered the recommendations of the SALRC and responded accordingly.

This research paper then culminated into the Defence Laws Repeal and Amendment Bill, which seeks to repeal or amend those laws.

## DISCUSSION

5. The Bill consists of two Schedules.

6. The laws specified in Schedule 1 consists of a list of Acts that may be repealed in their entirety, and Schedule 2 consists of provisions that need to be amended because of being found to be unconstitutional.

### (a) Schedule 1

7. The Bill seeks to repeal 12 amendment Acts, which dates back to 1929, because they have no independent surviving provisions.

8. The Bill further seeks to repeal the so called "time specific Acts". These are Acts that were promulgated to operate within a particular time frame and circumstances. Once the period for and the purpose intended lapses, the Acts become stale and may be repealed. For instance:

#### (a) Demobilisation Act 99 of 1996

(i) This Act was enacted to provide for the demobilisation of those members of the former non-statutory forces (the Azanian People's Liberation Army and uMkhonto we Sizwe) who did not enter into agreements for temporary or permanent appointment with the South African Defence Force, as contemplated in section 236(8)(d) of the Interim Constitution, and to provide for a demobilisation gratuity to be paid to such member or his or her dependants and to determine the requirements for that gratuity.

(ii) The 'closing date', for the purposes of the submission of applications for such gratuities was fixed generally as 31 March 1999 except for those persons who were entitled to be integrated into the South African National Defence Force in terms of the Termination of Integration Intake Act of 2001. In the latter case the 'closing date' was fixed as 31 December 2002.

(iii) The particular time-frame and circumstances to which this Act applied have passed and the Act may be repealed.

#### (b) Demobilisation Amendment Act 128 of 1998

(i) This Act was enacted to amend the Demobilisation Act of 1996, so as to amend certain definitions; to further regulate the payment of a dependant's benefit; and to effect certain technical amendments; and to provide for matters connected therewith.

(ii) As the particular time-frame and circumstances to which this Act applied have passed and as it has no independent surviving provisions, this Act may be repealed.

#### (c) Defence Special Tribunal Act 81 of 1998

(i) This Act was enacted to enable the Labour Court to act as a special tribunal in the adjudication of disputes connected with:

(aa) the remuneration or any other conditions of service of an employee in terms

of a law regulating employment;

(bb) any unfair labour practice by virtue of such a law which arose 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 with any of them.

(ii) Section 8 of this Act provided further that it would cease to have effect on 31 December 2001 and that proceedings brought before the special tribunal before that date were to be continued and concluded as if the Act had not ceased to have effect.

(iii) As the particular time-frame and circumstances to which this Act applied have passed, this Act may be repealed.

**(d) Termination of Integration Intake Act 44 of 2001**

(i) This Act was enacted to provide for the termination of the intake of members of non-statutory forces (the Azanian People's Liberation Army or uMkhonto we Sizwe) into the South African National Defence Force for integration purposes; to provide for the integration of the members of the said forces who are likely to be granted amnesty; and to provide for matters connected therewith.

(ii) This Act amended section 236(8)(d) of the Interim Constitution. It made 31 March 2002 the final date by which the affected members could enter into an agreement for temporary or permanent appointment with the South African National Defence Force.

(iii) As the particular time-frame and circumstances to which this Act applied have passed, this Act may be repealed.

**(b) Schedule 2**

9. The Bill also seeks to amend section 7(f) of the Castle Management Act, 1993 (Act No. 2017 of 1993) which discriminates unfairly on the basis of age, in order to bring the Act in line with the Constitution.

10. The Department will be available to fully engage in further deliberations with the Select Committee on Security and Justice this Bill as may be required.

  
(DR S. GULUBE)

SECRETARY FOR DEFENCE: DEPUTY DIRECTOR-GENERAL