



20 October 2020

## KEY ISSUES FOR FOLLOW-UP: THE MILITARY VETERANS APPEAL BOARD

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### 1. INTRODUCTION

On 24 June 2020, the Military Veterans Appeal Board briefed the Portfolio Committee on Defence and Military Veterans (PCDMV) on its structure and functioning. During the meeting, several matters of concern were raised by Members of the Committee that require follow-up with the Appeal Board. This paper provides a recap of the key functions and establishment of the Appeal Board. Thereafter it highlights matters identified during the meeting of 24 June 2020 that require follow-up. This paper is prepared for the PCDMV meeting of 21 October 2020.

### 2. LEGAL ESTABLISHMENT OF THE APPEAL BOARD

Sections 19 to 23 of the Military Veterans Act (No. 18 of 2011) provides for the Military Veterans Appeal Board. The Board is formally constituted in Section 19. Further sections provide for the following:

#### Section 20: Powers and duties of the Appeal Board

(1) The Appeal Board must-

- (a) consider any appeal lodged with it by a military veteran against any decision taken by an official in terms of this Act which adversely affects the rights of that military veteran;
- (b) consider any question of law relating to military veterans referred to it by the Minister or the Director-General; and
- (c) advise the Minister or Director-General regarding any legal matter relating to military veterans which the Minister or the Director-General refers to it.

(2) The Appeal Board may-

- (a) confirm, set aside or vary a decision contemplated in subsection (1)(a);
- (b) substitute any other decision for the decision; or
- (c) provide the required legal advice.

(3) The Appeal Board may for the purposes of subsection (1)-



- (a) summon any person who, in its opinion, may be able to give information, or who it believes has in his or her possession or custody or under his or her control, any document which has any bearing upon the matter under consideration, to appear before it at a time and place specified in the summons to be questioned or to produce that document, and retain for examination any document so produced;
  - (b) administer an oath to or accept an affirmation from any person called as a witness;
  - (c) call any person present at the proceedings as a witness and interrogate such person and require such person to produce any document in his or her possession or custody or under his or her control, and such a person is entitled to legal representation at his or her own expense.
- (4) The Chairperson of the Appeal Board determines the procedure at any appeal.
- (5) The decision of a majority of the members of the Appeal Board constitutes a decision of the Appeal Board.
- (6) A decision of the Appeal Board must be in writing. and copies thereof must be made available to persons involved in the matter.

### **Section 21: Composition and appointment of Members of the Appeal Board**

- (1) The Appeal Board consists of at least three persons appointed by the Minister in consultation with the association.
- (2) (a) The Minister must appoint as members of the Appeal Board competent persons who have relevant knowledge, experience or expertise that would enable the Appeal Board to perform its functions effectively and efficiently.
- (b) At least one of the members of the Appeal Board must be an advocate or attorney or other legally qualified person with at least 10 years' experience in the practice of law.
- (3) The Minister must designate one of the members of the Appeal Board as chairperson.
- (4) A member of the Appeal Board-
- (a) holds office for a period not exceeding five years;
  - (b) may be appointed either on a full-time or a part-time basis;
  - (c) is appointed according to the terms and conditions determined by the Minister; and
  - (d) is eligible for reappointment at the end of his or her term of office, but may not serve for more than two terms consecutively.

### **Section 22: Disqualification from membership or Appeal Board**

No person may be appointed as or remain a member of the Appeal Board if he or she-

- (a) is an rehabilitated insolvent; or
- (b) has been convicted of an offence committed after the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), took effect. and sentenced to imprisonment without the option of a fine.

### **Section 23: Remuneration, removal from office and resignation of members or Appeal Board**

The remuneration, removal from office and resignation of members of the Appeal Board is the same as the Advisory Council on Military Veterans as per sections 14, 16 and 17 of the Act. These sections provide -



#### *Section 14: Remuneration and allowances.*

The members of the Advisory Council who are not in the full-time employment of the State, must be paid such remuneration and allowances as may be determined by the Minister in consultation with the Minister of Finance.

#### *Section 16: Removal from the office*

(1) The Minister may remove a member of the Advisory Council from office only on the ground of misconduct, incapacity or incompetence.

(2) A decision to remove a member of the Advisory Council from office must be based on a finding of an independent tribunal appointed by the Minister in consultation with the Association.

(3) The Minister may suspend a member of the Advisory Council from office pending the finding of the tribunal referred to in subsection (2).

#### *Section 17: Resignation*

(1) The Chairperson of the Advisory Council may resign by giving written notice of three months to the Minister but the Minister may, after consultation with the Director-General, accept a shorter notice period.

(2) Other members of the Advisory Council may resign by giving written notice of three months to the Chairperson but the Chairperson may accept a shorter notice period.

### **3. SUMMARY OF APPEAL BOARD PRESENTATION**

On 24 June 2020, the Appeal Board of the Department of Military Veterans (DMV) briefed the Portfolio Committee on its mandate, challenges and achievements. The Board told the Committee that financial limitations had had an effect not only on the Board's function, but also on its ability to notify military veterans of its existence, and about the appeal option open to them if they were not happy with the DMVs decisions.

The Board emphasised its operational challenges and the Department's non-cooperation, which often led the Board to be immersed in default judgments. It bemoaned the contemptuous manner in which military veterans, who had served the country meritoriously and brought South Africa freedom, were treated. Even houses constructed for military veterans remained unoccupied and were then overrun. By the time the veterans entered those houses, they had to fight to remain there.<sup>1</sup>

Other key issues noted by the Appeal Board include:

- Between 2016 and 2020, the Appeal Board received 63 appeals from military veteran. Of these, 160 appeals had been finalised, while 303 were pending.
- Notable weaknesses in the regulation where it dealt with housing provision for military veterans.
- Poor historic working relationship between the Appeal Board and the Directors-General of the DMV. However, the Appeal Board noted that its relationship with the current Acting Director-General is satisfactory.

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<sup>1</sup> Summary as per the Parliamentary Monitoring Group.



- The Appeal Board noted the necessity for the following steps to be taken going forward:
  - a workshop between the Department and the Ministerial structures;
  - independence and accountability for the AB budget, through a transfer payment from the Department;
  - a bi-monthly meeting between the AB and the Acting DG; and
  - a quarterly meeting with the Deputy Minister.

#### 4. KEY FOCUS AREAS FOR FOLLOW-UP

During the meeting of *24 June 2020*, the PCDMV made the following resolutions which should form the basis for the follow-up meeting on 21 October 2020:

- The budget of the Appeal Board should be allocated at commencement of the financial year and must be ring-fenced.
- The Committee requested the DMV to include an annual target on DMV entities in their Annual Performance Plan.
- The DMV has a responsibility to advise claimants that they have recourse to the Appeal Board should they be unhappy with a decision of the DMV.
- The Deputy Minister will report on progress regarding the functioning of the Appeal Board, during the DMV's quarterly report engagements with the Committee.
- The Committee resolved to monitor whether the DMV adheres to Regulation 21 which states that DMV should within 30 working days from the date of the application for a benefit, notify the applicant in writing of the outcome of the application.

The key resolutions noted above stems from discussion during the meeting of 24 October as noted below. Further potential discussion points are also raised for follow-up:

- **Funding:** The Appeal Board previously indicated that it was in fact functioning on an unfunded mandate. The Board had been asked to submit a budget to the DMV, but this requirement did not materialise and the structure is therefore operating on a very limited budget. For 2020/21, the Board received R600 000 from the DMV to fulfil its functions. This concern gave rise to the PCDMV recommendation for the Appeal Board budget to be ring-fenced?
- **Visiting military veterans:** In recent years, the Appeal Board found it very difficult to liaise with the DMV to take part in its outreach programmes to military veterans in the various provinces.
- **Attending hearings and pre-hearings:** The Board does not receive sufficient support from the DMV to enable/assist it to conduct hearings and pre-hearings.
- **Marketing:** The Board largely reaches its target audience through WhatsApp and word-of-mouth. It does not have the financial capacity to reach a broader audience.



- **Support staff and tools of trade:** One Assistant Director and two secretariat officials are provided by the DMV to the Board. The DMV has also since indicated that it will place its Director of Legal Services at the disposal of the Board if necessary. Furthermore, the DMV provides cell phones and iPads, but the Director-General of the DMV indicated that further assistance may be required. The PCDMV noted that the Deputy Minister of Defence and Military Veterans should facilitate a discussion between the Board and the Acting Director-General to resolve this matter, as the non-availability of the tools of trade was affecting the Board's ability to function effectively. During the meeting, the Deputy Minister committed that his Office will engage the DMV on this matter in order to secure Secretarial Support for the Board.
- **Executive responsibility for the Appeal Board:** The Deputy Minister of Defence and Military Veterans indicated to the Board that the executive responsibility for the Board was delegated to the office of the Deputy Minister. However, the Minister ultimately remains responsible for decisions on the Board.
- **Communication with military veterans (applicants):** The DMV should revert back to all applicants within 30 days of their application, but failed to do so in the majority of cases. The PCDMV vowed to monitor compliance with the spirit of this law going forward. Applicants should also be advised of the reasons for reaching a certain conclusion, and that they had the right to appeal such a decision.
- **Funding the appeals process:** There seemed to be a difference in opinion between the Board and the Deputy Minister of Defence and Military Veterans regarding assistance to applicants to access to the appeals process. The Deputy Minister indicated that it will be difficult to reimburse/fund all people for expenses incurred during the process of appealing the outcome application. This is because not everyone will be successful in their appeal. It was also evident that some appeals have no grounds for success. However, the Board indicated that they were dealing with veterans who had no money to fund an appeals process and therefore the DMV's assistance was imperative. In his closing statement, the PCDMV reiterated that it remained the responsibility of the Department to ensure that appellants were able to appear before the Board.

In his closing statement, the Deputy Minister of Defence and Military Veterans indicated that the Department would revert back to the Committee on the various areas of concern, and would provide quarterly reports. The meeting of 21 October 2020 therefore presents the first opportunity for the DMV to respond on progress made in relation to the challenges captured on 24 June 2020.