

## AMENDED TERMS OF REFERENCE OF THE INDFSC

In the last interaction between the Minister of Defence and Military Veterans and the interim National Defence Force Service Commission on 13 October 2009, a number of issues were raised amongst which was whether the terms of reference should be amended to include the exploration of the desirability of including/ excluding military unions in the SANDF. The Minister indicated that she would seek legal advice on the matter. Following consultation, she has arrived at the following.

The terms of reference are contained in the briefing document prepared by the INDFSC for the Portfolio Committee.

These are to:

1. advise and make recommendations on a unique service dispensation outside the ambit of the Public Service;
2. advise on the regulatory framework for the unique service dispensation; and
3. investigate and provide advice on remuneration and conditions of service of members of the SANDF.

In order to assist the INDFSC, it is proposed that the INDFSC adopts the following approach:

1. it makes recommendations on a unique service dispensation for the SANDF;
2. the recommendations must include the establishment of a Military Service Commission and:
  - (a) how it is to be appointed;
  - (b) its terms of reference;
  - (c) its functions;
  - (d) its staff component etc;
  - (e) its relationship with the Public Service Commission;
  - (f) its relationship with Parliament;
  - (g) its reporting responsibilities to the President and the Minister;
  - (h) its oversight role over the SANDF in respect of the INDSFC's mandate.
3. it develops a framework for determining the salaries and conditions of service for the SANDF that the new MSC will be able to develop and implement, subject to any changes which it may make.

Please note that:

1. It is not within the terms of reference of the INDFSC to investigate and consider forms of voluntary association for the military, including trade unions. The President, as Commander-in-Chief has, with the support of Cabinet, declared that de-unionisation of the SANDF must be accomplished as soon as possible. No other person has authority to countermand the President's directive.
2. The Commission must therefore not be seen to undermine this expressed command. To do so would undermine the command and control that are central to the Defence Force. It would be advisable for the INDFSC to steer as far as possible from entertaining issues relating to unions or military association.

All of these issues are to be reported upon by the 31 December 2009 or earlier.

All the other issues mentioned in the briefing document be regarded as medium term work in progress to be continued with until the permanent commission is appointed. In performing this function, the INDFSC must have regard to section 80 of the Defence Act.

***Part 4: Rules applicable to both joint committees  
and joint subcommittees generally***

**44. Application of this Part**

The provisions of this Part apply to all joint committees and joint subcommittees established by or in terms of the Joint Rules except in so far as any of these provisions is inconsistent with —

- (a) another provision of the Joint Rules applicable in a specific case; or
- (b) a resolution adopted in both Houses.

**45. Unusual meetings of committees and subcommittees**

- (1) A joint committee or subcommittee may sit on a day which is not a working day, or at a venue beyond the seat of Parliament, or during a recess of both or any of the Houses, or at a time when both or any of the Houses is sitting, but only with the permission of the Chief Whip of the majority party in the Assembly and the Chief Whip of the majority party in the Council.
- (2) If a joint committee or subcommittee applies to the Chief Whips to sit on a day which is not a working day, or at a venue beyond the seat of Parliament, the Chief Whips may give their permission in terms of subrule (1) only after having consulted the Speaker and the Chairperson of the Council.

**46. Persons appearing before joint committees and subcommittees**

Any person, including counsel and attorneys, appearing before a joint committee or subcommittee must observe the directions and conform to the procedures determined by the chairperson or co-chairpersons of the joint committee or subcommittee.

**47. Admission of the public**

- (1) Meetings of joint committees and subcommittees are open to the public, including the media, and the member or members presiding may not exclude the public, including the media, from the meeting, except when —

- (a) legislation, the Joint Rules or resolutions adopted in both Houses provide for the committee or subcommittee to meet in closed session; or
  - (b) the committee or subcommittee is considering a matter which is —
    - (i) of a private nature that is prejudicial to a particular person;
    - (ii) protected under parliamentary privilege, or for any other reason privileged in terms of the law;
    - (iii) confidential in terms of legislation; or
    - (iv) of such a nature that its confidential treatment is for any other reason reasonable and justifiable in an open and democratic society.
- (2) A decision in terms of subrule (1) to exclude the public must be taken by the joint committee or subcommittee concerned, provided that the chairperson of the committee or subcommittee may at any time —
- (a) before the start of the meeting rule that the meeting must take place in closed session, but the committee or subcommittee may at any time after the start of the meeting open the meeting; or
  - (b) close the meeting for a decision by the committee or subcommittee whether the matter should be considered in closed session.
- (3) The Speaker and the Chairperson of the Council, acting jointly, must —
- (a) set aside places for the public in the committee rooms; and
  - (b) determine the entrances and routes through which the public can obtain access to these places.
- (4) The Speaker and the Chairperson, acting jointly, may take reasonable measures -
- (a) to regulate public access, including access of the media, to the joint committees and subcommittees;
  - (b) to prevent and control misconduct of the public in committee rooms;
- and

- (c) to provide for the searching of any person, including that person's vehicle or other property in that person's possession, and, where appropriate, the refusal of entry to, or the removal of, any person.

**48. Participation of Assembly and Council members**

- (1) Any Assembly or Council member who is not a member of the joint committee or subcommittee may be present at a meeting of a joint committee or subcommittee.
- (2) A member mentioned in subrule (1) who is present at a meeting of a joint committee or subcommittee —
  - (a) may speak on a matter before a joint committee or subcommittee subject to any reasonable restrictions the chairperson or co-chairpersons may impose; and
  - (b) may not vote except when the vote is cast as an alternate or as a co-opted member.

**49. Exclusion of members of the public from meetings**

The member or members presiding at a meeting of a joint committee or subcommittee may —

- (a) order a member of the public to leave the meeting —
  - (i) when the public is excluded from a meeting in terms of joint rule 47 (1); or
  - (ii) when necessary to give effect to the measures taken under joint rule 47 (3); or
- (b) order a person referred to in joint rule 46 to leave the meeting if that person does not comply with a ruling of the presiding member or members.

**50. Exclusion of other persons from meetings**

When the public is excluded from a meeting of a joint committee or subcommittee in terms of rule 47 (1), the member or members presiding may order a staff member, a member or official of the executive or an Assembly or Council member who is not a member of the committee or subcommittee, also to leave the meeting.



#### **51. Removal of persons**

When instructed by the member or members presiding, the Serjeant-at-Arms of the Assembly or the Usher of the Council must remove or arrange for the removal of any person -

- (a) who, without permission, is present in that part of a committee room designated for members of the joint committee or subcommittee only; or
- (b) who disrupts the proceedings of a joint committee or subcommittee, causes a nuisance or does not leave when ordered to leave under joint rule 49 or 50.

#### **52. Publication of proceedings, evidence, reports, etc.**

- (1) All documents officially before, or emanating from, a joint committee or subcommittee are open to the public, including the media, but the following documents may not be published, and their contents may not be disclosed, except with the permission of the committee, or the parent committee in the case of a subcommittee, or by order of the Speaker and the Chairperson of the Council, acting jointly, or by resolutions adopted in both Houses:
  - (a) The proceedings of, or evidence taken by or placed before, the committee or subcommittee while the public were excluded from a meeting in terms of joint rule 47 (1).
  - (b) Any report on or summary of such proceedings or evidence.
  - (c) Any document placed before, or presented to, the committee or subcommittee as a confidential document and declared by it as a confidential document.
  - (d) Any document —
    - (i) submitted or to be submitted to members of the committee or subcommittee as a confidential document by order of the chairperson or co-chairpersons of the committee or subcommittee; or
    - (ii) after its submission to members declared by the chairperson or co-chairpersons as a confidential document.

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- (2) The permission, order or resolution authorising the publication, or the disclosure of the contents, of documents mentioned in subrule (1) may provide that specific parts of, or names mentioned in, the document may not be published or disclosed.
  - (3) For the purposes of subrule (1) a document is officially before a joint committee or subcommittee when -
    - (a) the presiding member or members place the document or permit the document to be placed before the committee or subcommittee; or
    - (b) a person appearing before the committee or subcommittee as a witness or to make representations, presents the document to the committee or subcommittee.
  - (4) Subrule (1)(c) and (d) applies only to documents that —
    - (a) contain private information that is prejudicial to a particular person;
    - (b) are protected under parliamentary privilege, or for any other reason are privileged in terms of the law;
    - (c) are confidential in terms of legislation;
    - (d) are subject to a media embargo, until the embargo expires; or
    - (e) are of such a nature that their confidential treatment is for any other reason reasonable and justifiable in an open and democratic society.

### ***Part 5: Joint Rules Committee***

#### **53. Establishment**

There is a Joint Rules Committee.

#### **54. Composition**

The Joint Rules Committee consists of the Rules Committee of the Assembly and the Rules Committee of the Council sitting together.