



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

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## STAATSKOERANT

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No. 13312

### STATE PRESIDENT'S OFFICE

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No. 1347. 19 June 1991

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

No. 87 of 1991: Police Second Amendment Act, 1991

### KANTOOR VAN DIE STAATSPRESIDENT

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No. 1347. 19 Junie 1991

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

No. 87 van 1991: Tweede Polisiewysigingswet, 1991

**GENERAL EXPLANATORY NOTE:**

- I** 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 Police Act, 1958, so as to define or further define certain expressions and to delete a definition; to rectify or delete certain outdated references; to regulate differently the prosecution of a member of the South African Police who is accused of misconduct; and to extend the powers of the Minister of Law and Order to make regulations; and to provide for incidental matters.

*(English text signed by the State President.)*  
*(Assented to 5 June 1991.)*

**B**E IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 7 of 1958, as amended by section 1 of Act 53 of 1961, section 1 of Act 64 of 1964, section 1 of Act 74 of 1967, section 1 of Act 94 of 1972, section 1 of Act 34 of 1973, section 1 of Act 64 of 1979, section 1 of Act 68 of 1984, section 1 of Act 36 of 1989, section 1 of Act 75 of 1989, section 1 of Act 76 of 1989, section 1 of Act 110 of 1990 and section 1 of the Police Amendment Act, 1991 5

1. Section 1 of the Police Act, 1958 (hereinafter referred to as the principal Act), is hereby amended—

- (a) by the insertion in subsection (1) before the definition of “division” of the following definitions: 10
  - “‘defence officer’ means an officer designated as such to defend a member in respect of his trial on a charge of misconduct;
  - ‘disciplinary officer’ means an officer appointed as such in terms of section 10C(1);”;
- (b) by the substitution in subsection (1) for paragraph (b) of the definition of “member of the Force” of the following paragraph: 15
  - “(b) for the purpose of sections 4(3), 9, 10, 10A, 10B, 10C, 10D, 10E, 10F, 11, 12, 14, 15, 16, 17, 17B, 18, 20, 21, 22, 25, 26, 26A, 27, 27B, 28, 31, 32bis, 33 (excluding paragraphs (eA) and (v) of subsection (1), and subsection (2) thereof), 34D, 34E and 35, a member of a municipal police unit;”;
- (c) by the insertion in subsection (1) before the definition of “region” of the following definition: 20
  - “‘prosecuting officer’ means an officer designated as such in terms of section 10A(1);”;
- (d) by the insertion in subsection (1) after the definition of “Treasury” of the following definition: 25
  - “‘trial officer’ means an officer or a senior member designated as such in terms of section 10B;”;

## ALGEMENE VERDUIDELIKENDE NOTA:

- [**                      **]**      Woorde in vet druk tussen vierkantige hake dui skrapings uit bestaande verordenings aan.
- \_\_\_\_\_      Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

# WET

Tot wysiging van die Polisiewet, 1958, ten einde sekere uitdrukkings te omskryf of nader te omskryf en 'n omskrywing te skrap; sekere verouderde verwysings reg te stel of te skrap; die vervolging van 'n lid van die Suid-Afrikaanse Polisie wat van wangedrag beskuldig word, anders te reël; en die Minister van Wet en Orde se bevoegdheid om regulasies te maak, uit te brei; en om vir bykomstige aangeleenthede voorsiening te maak.

*(Engelse teks deur die Staatspresident geteken.)*  
*(Goedgekeur op 5 Junie 1991.)*

**D**AAR WORD BEPAAL deur die Staatspresident en die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 7 van 1958, soos gewysig deur artikel 1 van Wet 53 van 1961, artikel 1 van Wet 64 van 1964, artikel 1 van Wet 74 van 1967, artikel 5 1 van Wet 94 van 1972, artikel 1 van Wet 34 van 1973, artikel 1 van Wet 64 van 1979, artikel 1 van Wet 68 van 1984, artikel 1 van Wet 36 van 1989, artikel 1 van Wet 75 van 1989, artikel 1 van Wet 76 van 1989, artikel 1 van Wet 110 van 1990 en artikel 1 van die Polisiewysigingswet, 1991

1. Artikel 1 van die Polisiewet, 1958 (hieronder die Hoofwet genoem), word 10 hierby gewysig—

- (a) deur in subartikel (1) na die omskrywing van “die Mag” die volgende omskrywing in te voeg:  
 “ ‘discipline-offisier’ ’n offisier wat ingevolge artikel 10C(1) as sodanig aangestel is;”;
- 15 (b) deur in subartikel (1) paragraaf (b) van die omskrywing van “lid van die Mag” deur die volgende paragraaf te vervang:  
 “(b) by die toepassing van die bepalings van artikels 4(3), 9, 10, 10A, 10B, 10C, 10D, 10E, 10F, 11, 12, 14, 15, 16, 17, 17B, 18, 20, 21, 22, 25, 26, 26A, 27, 27B, 28, 31, 32bis, 33 (uitgesonderd paragrafe (eA) en (v) van subartikel (1), en subartikel 20 (2) daarvan), 34D, 34E en 35, ’n lid van ’n munisipale polisie-eenheid;”;
- (c) deur die volgende omskrywings by subartikel (1) te voeg:  
 “ ‘verdedigingsoffisier’ ’n offisier wat as sodanig aangewys is om die 25 verdediging van ’n lid ten opsigte van sy verhoor op ’n aanklag van wangedrag, waar te neem;  
 ‘verhooroffisier’ ’n offisier of ’n senior lid wat ingevolge artikel 10B as sodanig aangewys is;  
 ‘vervolgingsoffisier’ ’n offisier wat ingevolge artikel 10A(1) as sodanig 30 aangewys is.”.

**Amendment of section 6A of Act 7 of 1958, as inserted by section 4 of Act 36 of 1989****2. Section 6A of the principal Act is hereby amended—****(a) by the substitution for subsection (1) of the following subsection:**

“(1) The services of a member of the Force may, in terms of the provisions of the Public Service Act, 1984 (Act No. 111 of 1984), be placed at the disposal of any other department of State, or any authority established by or under any law, or of the police force of **[the territory of South West Africa or]** any state the territory of which previously formed part of the Republic or any self-governing territory as defined in section 38 of the **[National States] Self-governing Territories** Constitution Act, 1971 (Act No. 21 of 1971).”; and

**(b) by the substitution for subsection (3) of the following subsection:**

“(3) Notwithstanding the provisions of the Public Service Act, 1984, the services of a member of the Force may be placed at the disposal of any other department of State or any authority established by or under any law, or of the police force of **[the territory of South West Africa or]** any state the territory of which previously formed part of the Republic or any self-governing territory as defined in section 38 of the **[National States] Self-governing Territories** Constitution Act, (Act No. 21 of 1971), or a foreign state.”.

**Substitution of section 9 of Act 7 of 1958, as amended by section 1 of Act 43 of 1958, section 4 of Act 53 of 1961, section 7 of Act 64 of 1964, section 3 of Act 94 of 1972, section 4 of Act 34 of 1973, section 1 of Act 90 of 1977, section 4 of Act 64 of 1979, section 3 of Act 68 of 1984, section 2 of Act 8 of 1988 and section 4 of Act 110 of 1990**

**3. The following section is hereby substituted for section 9 of the principal Act:****“Contravention of Act by members of the Force**

**9. (1) Any member of the Force who contravenes any provision of this Act or fails to comply with an order issued in terms of this Act shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment, imprisonment for a period not exceeding six months or to such imprisonment without the option of a fine or to both such fine and such imprisonment.**

**(2) No prosecution for an offence referred to in subsection (1) of this section shall be instituted without the written authority of the attorney-general.”.**

**Substitution of section 10 of Act 7 of 1958, as substituted by section 5 of Act 110 of 1990**

**4. The following section is hereby substituted for section 10 of the principal Act:****“Misconduct**

**10. Any member of the Force shall be guilty of misconduct if he—**

**(a) contravenes any provision of this Act or fails to comply with an order issued in terms of this Act; or**

**(b) commits any offence which is not included in paragraph (a).”.**

**Substitution of section 10A of Act 7 of 1958, as inserted by section 5 of Act 68 of 1984**

**5. The following section is hereby substituted for section 10A of the principal Act:**

**Wysiging van artikel 6A van Wet 7 van 1958, soos ingevoeg deur artikel 4 van Wet 36 van 1989****2. Artikel 6A van die Hoofwet word hierby gewysig—**

- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) Die dienste van ’n lid van die Mag kan ingevolge die bepalings van die Staatsdienswet, 1984 (Wet No. 111 van 1984), tot die beskikking gestel word van ’n ander Staatsdepartement, of ’n instansie wat by of kragtens ’n wet ingestel is, of van die polisiemag van **[die gebied Suidwes-Afrika of]** ’n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het of ’n selfregerende gebied soos omskryf in artikel 38 van die Grondwet van die **[Nasionale State] Selfregerende Gebiede**, 1971 (Wet No. 21 van 1971).”; en
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Ondanks die bepalings van die Staatsdienswet, 1984, kan die dienste van ’n lid van die Mag tot die beskikking gestel word van ’n ander Staatsdepartement, of ’n instansie wat by of kragtens ’n wet ingestel is, of van die polisiemag van **[die gebied Suidwes-Afrika of]** ’n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het of ’n selfregerende gebied soos omskryf in artikel 38 van die Grondwet van die **[Nasionale State] Selfregerende Gebiede**, 1971 (Wet No. 21 van 1971), of ’n vreemde staat.”.

**Vervanging van artikel 9 van Wet 7 van 1958, soos gewysig deur artikel 1 van Wet 43 van 1958, artikel 4 van Wet 53 van 1961, artikel 7 van Wet 64 van 1964, artikel 3 van Wet 94 van 1972, artikel 4 van Wet 34 van 1973, artikel 1 van Wet 90 van 1977, artikel 4 van Wet 64 van 1979, artikel 3 van Wet 68 van 1984, artikel 2 van Wet 8 van 1988 en artikel 4 van Wet 110 van 1990**

**3. Artikel 9 van die Hoofwet word hierby deur die volgende artikel vervang:****“Oortreding van Wet deur lede van die Mag**

9. (1) ’n Lid van die Mag wat ’n bepaling van hierdie Wet oortree of in gebreke bly om te voldoen aan ’n bevel wat ingevolge hierdie Wet uitgereik is, is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete van hoogstens R2 000 of, by wanbetaling, gevangenisstraf vir ’n tydperk van hoogstens ses maande of met sodanige gevangenisstraf sonder die keuse van ’n boete of met sowel sodanige boete as sodanige gevangenisstraf.
- (2) Geen vervolging weens ’n misdryf bedoel in subartikel (1) van hierdie artikel word sonder die skriftelike magtiging van die prokureur-generaal ingestel nie.”.

**Vervanging van artikel 10 van Wet 7 van 1958, soos vervang deur artikel 5 van Wet 110 van 1990**

**4. Artikel 10 van die Hoofwet word hierby deur die volgende artikel vervang:****“Wangedrag**

10. ’n Lid van die Mag is skuldig aan wangedrag indien hy—
- (a) ’n bepaling van hierdie Wet oortree of in gebreke bly om te voldoen aan ’n bevel wat ingevolge hierdie Wet uitgereik is; of
- (b) enige misdryf pleeg wat nie by paragraaf (a) inbegrepe is nie.”.

**Vervanging van artikel 10A van Wet 7 van 1958, soos ingevoeg deur artikel 5 van Wet 68 van 1984**

**5. Artikel 10A van die Hoofwet word hierby deur die volgende artikel vervang:**

**“Prosecuting officer**

**10A.** (1) The Commissioner shall designate a prosecuting officer, who—

(a) shall have the power to charge any member of the Force in accordance with this Act with misconduct; and

(b) may perform all functions relating to the exercise of such power.

(2) The prosecuting officer shall exercise his power and perform his functions subject to the control and directions of the Commissioner, who may reverse any decision arrived at by a prosecuting officer and may himself in general or in any specific matter exercise any part of such power and perform any of such functions.

(3) The prosecuting officer may in writing designate any member of the Force as prosecutor, who may, as the representative of the prosecuting officer and subject to his control and directions, charge any member of the Force with misconduct and perform all functions relating to the exercise of such power.”

**Insertion of sections 10B up to and including 10G in Act 7 of 1958**

6. The following sections are hereby inserted in the principal Act after section 10A:

**“Trial officers**

**10B.** (1) Subject to the provisions of subsection (2), the Commissioner shall designate in general or in any specific matter a trial officer, who—

(a) shall have the power to try in accordance with this Act any member of the Force of a rank equal or lower than himself; and

(b) may perform all functions relating to the exercise of such power.

(2) The Commissioner shall designate in general or in any specific matter for a municipal police unit—

(a) an officer as trial officer, who shall have the power to try in accordance with this Act any member of a municipal police unit of a corresponding or lower rank than himself;

(b) a senior member as trial officer, who shall have the power to try in accordance with this Act any member of a municipal police unit of a rank equal or lower than himself,

and may perform all functions relating to the exercise of such power.

(3) A trial officer shall have the same powers as those vested in a magistrate in criminal proceedings in terms of sections 77, 78, 79, 159, 160, 168, 169, 170, 176 and 178 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and the said sections shall apply *mutatis mutandis* to a trial in accordance with this Act: Provided that a trial officer shall not have the power to direct that a member of the Force charged with misconduct be detained in a mental hospital or a prison pending the signification of the decision of the State President.”

**Disciplinary officer**

**10C.** (1) The Minister shall appoint an officer holding a degree in law as the disciplinary officer, who—

(a) shall have the power to decide any appeal referred to in sections 10F and 17(3), by a member of the Force, and any other appeal or review related to a disciplinary matter in terms of this Act; and

(b) may perform all functions relating to the exercise of such power.”

**“Vervolgingsoffisier**

**10A.** (1) Die Kommissaris wys 'n vervolgingsoffisier aan, wat—

(a) die bevoegdheid het om 'n lid van die Mag ooreenkomstig hierdie Wet weens wangedrag aan te kla; en

(b) alle werksaamhede kan verrig wat met die uitoefening van bedoelde bevoegdheid in verband staan.

(2) Die vervolgingsoffisier se bevoegdhede en werksaamhede word uitgeoefen en verrig onderworpe aan die beheer en voorskrifte van die Kommissaris, wat 'n besluit van 'n vervolgingsoffisier ongedaan kan maak en self, in die algemeen of in 'n besondere geval, enige deel van bedoelde bevoegdhede kan uitoefen en enige van bedoelde werksaamhede kan verrig.

(3) Die vervolgingsoffisier kan skriftelik 'n lid van die Mag as aanklaer aanwys, wat, as verteenwoordiger van die vervolgingsoffisier en onderworpe aan sy beheer en voorskrifte, 'n lid van die Mag weens wangedrag kan aankla en alle werksaamhede wat met die uitoefening van bedoelde bevoegdheid in verband staan, kan uitoefen.”.

**Invoeging van artikels 10B tot en met 10G in Wet 7 van 1958**

6. Die volgende artikels word hierby in die Hoofwet na artikel 10A ingevoeg:

**“Verhooroffisiere**

**10B.** (1) Behoudens die bepalinge van subartikel (2) wys die Kommissaris in die algemeen of met betrekking tot 'n besondere geval 'n verhooroffisier aan, wat—

(a) die bevoegdheid het om enige lid van die Mag van 'n gelyke of laer rang as hyself ooreenkomstig hierdie Wet te verhoor; en

(b) alle werksaamhede kan verrig wat met die uitoefening van bedoelde bevoegdheid in verband staan.

(2) Die Kommissaris wys vir 'n munisipale polisie-eenheid in die algemeen of met betrekking tot 'n besondere geval—

(a) 'n offisier as verhooroffisier aan, wat die bevoegdheid het om enige lid van 'n munisipale polisie-eenheid van 'n ooreenstemmende of laer rang as hyself ooreenkomstig hierdie Wet te verhoor;

(b) 'n senior lid as verhooroffisier aan, wat die bevoegdheid het om enige lid van 'n munisipale polisie-eenheid van 'n gelyke of laer rang as hyself ooreenkomstig hierdie Wet te verhoor, en wat alle werksaamhede kan verrig wat met die uitoefening van bedoelde bevoegdheid in verband staan.

(3) 'n Verhooroffisier beskik oor dieselfde bevoegdhede as dié waaroor 'n landdroos by strafregtelike verrigtinge ingevolge artikels 77, 78, 79, 159, 160, 168, 169, 170, 176 en 178 van die Strafproseswet, 1977 (Wet No. 51 van 1977), beskik, en genoemde artikels is *mutatis mutandis* op 'n verhoor ooreenkomstig hierdie Wet van toepassing: Met dien verstande dat 'n verhooroffisier nie oor die bevoegdheid beskik om te gelas dat 'n lid van die Mag wat van wangedrag aangekla word in 'n hospitaal vir sielsiekes of 'n gevangenis aangehou word hangende die beskikking van die Staatspresident nie.

**Dissipline-offisier**

**10C.** (1) Die Minister stel 'n offisier wat oor 'n graad in die regte beskik as dissipline-offisier aan, wat—

(a) die bevoegdheid het om oor enige appèl bedoel in artikels 10F en 17(3) van 'n lid van die Mag en enige ander appèl of hersiening wat met 'n dissiplinêre aangeleentheid ingevolge hierdie Wet verband hou, te beslis; en

(b) alle werksaamhede kan verrig wat met die uitoefening van bedoelde bevoegdheid in verband staan.

(2) The disciplinary officer may, with the approval of the Minister, in writing delegate the power conferred upon him by subsection (1) to any officer.

(3) The disciplinary officer or his delegate referred to in subsection (2) shall exercise his power and perform his functions subject to the control and directions of the Minister, who may reverse any decision arrived at by the disciplinary officer or his delegate and may himself in general or in any specific matter exercise any part of such power and perform any of such functions.

#### Admission of guilt fine

**10D.** (1) When a member of the Force is accused of misconduct the prosecuting officer may, if he believes that a trial officer, on convicting the member concerned of misconduct, will not impose a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, afford the member concerned by means of a written notice the opportunity to admit his guilt in respect of the misconduct in question and to pay the fine determined by the prosecuting officer in the said notice before the date specified in the said notice, without appearing before the trial officer.

(2) Any member of the Force who wishes to pay an admission of guilt fine in terms of subsection (1)—

- (a) may, in the manner prescribed by regulation, pay the fine before the date determined in the written notice; and
- (b) shall surrender the written notice at the time of the payment of the fine.

#### Procedure in case of alleged misconduct

**10E.** (1) When a member of the Force is accused of misconduct and—

- (a) an admission of guilt fine as referred to in section 10D is not determined; or
- (b) such an admission of guilt fine was determined, but not paid by the member concerned before the date specified in the notice, the prosecuting officer may, in the manner prescribed by regulation, charge the member concerned with misconduct.

(2) Where a member of the Force is charged with misconduct which constitutes an offence in respect of which he has been convicted by a court of law, a certified copy of the record of the trial in question shall, on its mere production by a prosecuting officer or prosecutor, be admissible in evidence before the trial officer who tries the charge, and a certified copy of the charge and conviction in question shall, on its mere production by the prosecuting officer or prosecutor to the trial officer, be conclusive proof of the commission of such offence by such member.

(3) A member of the Force who is charged in terms of this section, shall forthwith be tried by a trial officer, who shall, after the member concerned or his legal adviser has been afforded an opportunity of addressing the trial officer, find the member concerned guilty or not guilty of the misconduct with which he has been charged.

(4) Subject to the provisions of section 12, the following sentences may be passed upon a member of the Force by a trial officer after a conviction in terms of subsection (3), namely—

- (a) a warning or reprimand; or
- (b) a fine not exceeding the amount determined by the Minister from time to time by notice in the *Gazette* and which may be recovered by way of deductions from the salary or allowances of the member concerned; or

(2) Die dissipline-offisier kan, met die goedkeuring van die Minister, skriftelik die bevoegdheid wat by subartikel (1) aan hom verleen is, aan 'n offisier deleger.

5 (3) Die dissipline-offisier of sy gedelegeerde bedoel in subartikel (2) se bevoegdhede en werksaamhede word uitgeoefen en verrig onderworpe aan die beheer en voorskrifte van die Minister, wat 'n besluit van die dissipline-offisier of sy gedelegeerde ongedaan kan maak en self, in die algemeen of in 'n besondere geval, enige deel van bedoelde bevoegdhede kan uitoefen en enige van bedoelde werksaamhede kan verrig.

### Skulderkenningsboete

15 10D. (1) Wanneer 'n lid van die Mag van wangedrag beskuldig word, kan die vervolgingsoffisier, indien hy van oordeel is dat 'n verhooroffisier, by skuldigbevinding van die betrokke lid aan wangedrag, nie 'n boete sal ople wat die bedrag wat die Minister van tyd tot tyd by kennisgewing in die Staatskoerant bepaal te bowe gaan nie, die betrokke lid by wyse van 'n skriftelike kennisgewing die geleentheid bied om sy skuld ten opsigte van die betrokke wangedrag te erken en die boete soos deur die vervolgingsoffisier in genoemde kennisgewing bepaal, voor die datum in genoemde kennisgewing vermeld, te betaal, sonder om voor 'n verhooroffisier te verskyn.

20 (2) 'n Lid van die Mag wat 'n skulderkenningsboete ingevolge subartikel (1) wil betaal—

25 (a) kan op die by regulasie voorgeskrewe wyse die boete betaal voor die datum in die skriftelike kennisgewing bepaal; en

(b) moet die skriftelike kennisgewing ten tyde van die betaling van die boete afgee.

### Prosedure in geval van beweerde wangedrag

30 10E. (1) Wanneer 'n lid van die Mag van wangedrag beskuldig word en—

(a) 'n skulderkenningsboete soos bedoel in artikel 10D nie vasgestel is nie; of

35 (b) sodanige skulderkenningsboete wel vasgestel is, maar nie deur die betrokke lid voor die datum in die kennisgewing bepaal, betaal is nie,

kan die vervolgingsoffisier die betrokke lid op die by regulasie voorgeskrewe wyse weens wangedrag aankla.

40 (2) Waar 'n lid van die Mag aangekla word weens wangedrag wat 'n misdryf uitmaak ten opsigte waarvan hy deur 'n geregshof veroordeel is, is 'n gesertifiseerde afskrif van die relaas van die betrokke verhoor by blote oorlegging daarvan deur 'n vervolgingsoffisier of aanklaer as getuienis toelaatbaar voor die verhooroffisier wat die aanklag verhoor, en is 'n gesertifiseerde afskrif van die betrokke aanklag en skuldigbevinding by blote oorlegging aan die verhooroffisier deur die vervolgingsoffisier of aanklaer, afdoende bewys dat die betrokke lid bedoelde misdryf gepleeg het.

45 (3) 'n Lid van die Mag wat ingevolge hierdie artikel aangekla word, word onverwyld deur 'n verhooroffisier verhoor, wat nadat die betrokke lid of sy regsverteenwoordiger die geleentheid gegee is om die verhooroffisier toe te spreek, die betrokke lid skuldig of onskuldig bevind aan die wangedrag hom ten laste gelê.

50 (4) Behoudens die bepalings van artikel 12 kan die volgende strawwe 'n lid van die Mag by skuldigbevinding ingevolge subartikel (3) deur 'n verhooroffisier opgelê word, naamlik—

55 (a) 'n waarskuwing of berisping; of

(b) 'n boete wat nie die bedrag wat die Minister van tyd tot tyd by kennisgewing in die Staatskoerant bepaal te bowe gaan nie en wat by wyse van aftrekkings van die salaris of toelaes van die betrokke lid verhaal kan word; of

- (c) reduction in salary to a lower notch on the scale applicable to his rank; or
- (d) reduction in rank; or
- (e) dismissal from the Force.

#### Appeals and reviews

**10F. (1)** Any member of the Force who has been convicted and sentenced by a trial officer in terms of section 10E, may, subject to the provisions of the regulations, appeal to the disciplinary officer against the conviction and sentence, and thereupon the disciplinary officer may—

- (a) confirm the conviction and sentence; or
- (b) make such finding or impose such sentence as, in his opinion, should have been made or imposed at the trial of such member; or
- (c) allow the appeal if he is of opinion that the conviction should be set aside on the ground of a wrong decision on any question of law or that on any other ground there was a failure of justice; or
- (d) make such other order as justice may require.

(2) In the event of an appeal under subsection (1), the execution of the sentence imposed in respect of the conviction which is the subject of the appeal, shall be suspended pending the disciplinary officer's decision on the appeal.

(3) Whenever any member of the Force has been convicted and sentenced by a trial officer, the disciplinary officer may, if he thinks fit, direct that the record of the proceedings of the trial be submitted to him for review, and may thereupon act in respect of the conviction and sentence as provided by subsection (1).

#### Offences committed outside Republic

**10G.** If a member of the Force does or omits to do any act outside the Republic which, if done or omitted in the Republic, would have constituted misconduct in terms of this Act, it shall be deemed for the purposes of Chapter 2 of this Act that such act was done or omitted in the Republic.”

**Substitution of section 11 of Act 7 of 1958, as substituted by section 6 of Act 110 of 1990**

7. The following section is hereby substituted for section 11 of the principal Act:

#### “Witnesses before trial officers or boards of enquiry

**11. (1) (a)** For the purposes of a trial by a **[commissioned] trial officer [or a senior member referred to in section 9(2)]** or an enquiry by a board of enquiry appointed in terms of this Act, the trial officer **[or senior member]** or board concerned may—

- (i) in the manner prescribed by regulation subpoena any person to appear as a witness at the time and place specified in the subpoena before the trial officer **[or senior member]** or board concerned in order to answer questions or to produce a document or thing under his control; and
- (ii) call any person present at the trial or enquiry as a witness and administer an oath or affirmation to him or admonish him to tell the truth.

(b) At such trial or enquiry the provisions of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), relating to witnesses and evidence which are applicable in connection with criminal proceedings in a magistrate's court, except paragraph (a) of the

- (c) verlaging in salaris na 'n laer kerf op die skaal wat op sy rang van toepassing is; of
- (d) verlaging in rang; of
- (e) afdanking uit die Mag.

## 5 Appèlle en hersienings

10 **10F.** (1) 'n Lid van die Mag wat deur 'n verhooroffisier ingevolge artikel 10E skuldig bevind en gevonnissen is, kan, onderworpe aan die bepalinge van die regulasies, teen die skuldigbevinding en vonnis by die dissipline-offisier appèl aanteken, en daarop kan die dissipline-offisier—

- (a) die skuldigbevinding en vonnis bekragtig; of
- (b) die bevinding maak of die vonnis oplê wat, na sy oordeel, by die verhoor van daardie lid gemaak of opgelê moes gewees het; of
- (c) die appèl handhaaf indien hy van oordeel is dat die skuldigbevinding op grond van 'n verkeerde beslissing oor 'n regsvraag tersyde gestel behoort te word of dat om enige ander rede geregtigheid nie geskied het nie; of
- (d) die ander bevel uitreik wat geregtigheid vereis.

20 (2) In geval van 'n appèl ingevolge subartikel (1) word die uitvoering van die vonnis opgelê ten opsigte van die skuldigbevinding wat die onderwerp van die appèl is, opgeskort totdat die dissipline-offisier oor die appèl beslis het.

25 (3) Wanneer 'n lid van die Mag deur 'n verhooroffisier skuldig bevind en gevonnissen is, kan die dissipline-offisier na goeddunke gelas dat die relaas van die verrigtinge van die verhoor vir hersiening aan hom voorgelê word, en daarop ten opsigte van die skuldigbevinding en vonnis optree soos by subartikel (1) bepaal.

## Misdrywe buite die Republiek gepleeg

30 **10G.** Indien 'n lid van die Mag buite die Republiek iets doen of nalaat wat wangedrag ingevolge hierdie Wet sou uitmaak indien dit binne die Republiek gedoen of nagelaat was, word daar by die toepassing van Hoofstuk 2 van hierdie Wet geag dat so iets binne die Republiek gedoen of nagelaat is.”

35 **Vervanging van artikel 11 van Wet 7 van 1958, soos vervang deur artikel 6 van Wet 110 van 1990**

7. Artikel 11 van die Hoofwet word hierby deur die volgende artikel vervang:

### “Getuienis voor verhooroffisiere of rade van ondersoek

40 **11.** (1) (a) Vir die doeleindes van 'n verhoor deur 'n [offisier of 'n senior lid bedoel in artikel 9(2)] verhooroffisier of 'n ondersoek deur 'n raad van ondersoek aangestel ingevolge hierdie Wet, kan die betrokke [offisier of senior lid] verhooroffisier of raad—

- (i) enige persoon op die by regulasie voorgeskrewe wyse dagvaar om op die tyd en plek in die dagvaarding vermeld voor die betrokke [offisier of senior lid] verhooroffisier of raad as getuie te verskyn ten einde vrae te beantwoord of 'n stuk of saak onder sy beheer voor te lê; en
- (ii) enige persoon wat by die verhoor of ondersoek aanwesig is, as getuie oproep en van hom 'n eed of bevestiging afneem of hom waarsku om die waarheid te praat.

50 (b) By so 'n verhoor of ondersoek is die bepalinge van die Strafproseswet, 1977 (Wet No. 51 van 1977), met betrekking tot getuies en getuienis wat in verband met strafsake in 'n landdroshof van toepassing is, uitgesonderd paragraaf (a) van die voorbehoudsbepaling by artikel 217(1), *mutatis mutandis*

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proviso to section 217(1), shall *mutatis mutandis* apply, in so far as it is not in conflict with the provisions of this Act.

(c) A witness at such trial or enquiry who—

- (i) having been duly subpoenaed under paragraph (a)(i), fails to appear at the time and place specified in the subpoena or fails to remain in attendance at the trial or enquiry concerned until he has been lawfully excused from further attendance; 5
- (ii) refuses to take an oath or to make an affirmation administered to him under paragraph (a)(ii); 10
- (iii) refuses or fails to answer satisfactorily all questions which have lawfully been put to him; or
- (iv) refuses or fails to produce a document or thing which he has been lawfully required to produce, 15

shall, unless he proves sufficient cause for that failure or refusal, be guilty of an offence and liable on conviction to a fine not exceeding **[R100] R1 000** or imprisonment for a period not exceeding three months.

(2) Any such witness who—

- (a) at any such enquiry or trial, having taken an oath, having made an affirmation or having been admonished as contemplated in subsection (1)(a)(ii), makes any false statement knowing it to be false, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the crime of perjury; or 20
- (b) does anything in relation to any such enquiry or trial which if done in relation to a court of law would have constituted contempt of court, shall be guilty of an offence and liable on conviction to the penalties which may be imposed under the law for the offence of contempt of court.”. 25 30

#### Amendment of section 12 of Act 7 of 1958, as substituted by section 6 of Act 36 of 1989

8. Section 12 of the principal Act is hereby amended by the addition of the following subsections, the existing section becoming subsection (1):

“(2) If the prosecuting officer is of opinion that dismissal from the Force or reduction in rank will possibly be imposed as sentence upon a member of the Force on conviction after a trial referred to in section 10E, he shall request the disciplinary officer to designate in the manner prescribed by regulation a defence officer for the member concerned if the member is not represented and assisted by a legal adviser. 35 40

(3) No member of the Force may be sentenced by a trial officer to dismissal from the Force or reduction in rank if he did not have legal representation at his trial or was not afforded the opportunity to be represented and assisted by a defence officer.”.

#### Amendment of section 14 of Act 7 of 1958, as amended by section 5 of Act 74 of 1967 45

9. Section 14 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A member of the Force may be suspended from his office pending his trial or after his conviction of misconduct or any offence whether under this Act or otherwise, or pending any enquiry at which **[a charge of misconduct against him or]** his fitness to remain in the Force or to retain his rank is being investigated, and shall be so suspended for any period during which he is under arrest or detention or is serving a term of imprisonment, but shall not by reason of such suspension cease to be a member of the Force.”. 50

van toepassing, vir sover dit nie met die bepalings van hierdie Wet strydig is nie.

(c) 'n Getuie by so 'n verhoor of ondersoek wat—

- (i) nadat hy behoorlik kragtens paragraaf (a)(i) gedagvaar is, versuim om op die tyd en plek in die dagvaarding vermeld, te verskyn of by die betrokke verhoor of ondersoek aanwesig te bly totdat hy wettig van verdere bywoning verskoon is;
- (ii) weier om 'n eed af te lê of 'n bevestiging te doen wat kragtens paragraaf (a)(ii) afgeneem word;
- (iii) weier of versuim om alle vrae wat wettig aan hom gestel is, bevredigend te beantwoord; of
- (iv) weier of versuim om 'n stuk of saak voor te lê wat wettig van hom vereis is om voor te lê,

is, tensy hy voldoende rede vir daardie versuim of weiering bewys, aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R100]** R1 000 of gevangenisstraf vir 'n tydperk van hoogstens drie maande.

(2) So 'n getuie wat—

- (a) by so 'n ondersoek of verhoor, nadat hy 'n eed afgelê het, 'n bevestiging gedoen het of gewaarsku is soos beoog in subartikel (1)(a)(ii), 'n valse verklaring doen met die wete dat dit vals is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met die strawwe wat kragtens die reg vir die misdaad van meened opgelê kan word; of
- (b) in verband met so 'n ondersoek of verhoor iets doen wat, indien dit in verband met 'n geregshof gedoen was, minagting van die hof sou uitgemaak het, is aan 'n misdryf skuldig en by **[veroordeling]** skuldigbevinding strafbaar met die strawwe wat kragtens die reg vir die misdryf van minagting van die hof opgelê kan word."

#### Wysiging van artikel 12 van Wet 7 van 1958, soos vervang deur artikel 6 van Wet 36 van 1989

8. Artikel 12 van die Hoofwet word hierby gewysig deur die volgende subartikels by te voeg terwyl die bestaande artikel subartikel (1) word:

"(2) Indien die vervolgingsoffisier van oordeel is dat afdanking uit die Mag of verlaging in rang 'n lid van die Mag as straf by skuldigbevinding na 'n verhoor bedoel in artikel 10E moontlik opgelê sal word, moet hy die dissipline-offisier versoek om op die by regulasie voorgeskrewe wyse 'n verdedigingsoffisier vir die betrokke lid aan te wys indien die lid nie deur 'n regsverteenvoerder verteenwoordig en bygestaan word nie.

(3) Geen lid van die Mag kan deur 'n verhooroffisier tot afdanking uit die Mag of verlaging in rang gevonnissen word indien hy nie regsverteenvoering by sy verhoor geniet het of die geleentheid gegun is om deur 'n verdedigingsoffisier verteenwoordig en bygestaan te word nie."

#### Wysiging van artikel 14 van Wet 7 van 1958, soos gewysig deur artikel 5 van Wet 74 van 1967

9. Artikel 14 van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Lid van die Mag kan in sy amp geskors word in afwagting van sy verhoor of na sy veroordeling weens wangedrag of enige misdryf, hetsy ingevolge hierdie Wet of andersins, of in afwagting van 'n ondersoek waar **[ 'n aanklag van wangedrag teen hom of ]** sy geskiktheid om in die Mag te bly of sy rang te behou, ondersoek word, en moet aldus geskors word gedurende enige tydperk wat hy in hegtenis is of aangehou word of gevangenisstraf uitdien, maar hou nie uit hoofde van die skorsing op om 'n lid van die Mag te wees nie."

**Substitution of section 16 of Act 7 of 1958, as substituted by section 7 of Act 36 of 1989**

10. The following section is hereby substituted for section 16 of the principal Act:

**“Member of the Force may be charged and tried in terms of this Act as well as other laws** 5

16. (1) The provisions of **[sections 9(2) and 10]** section 10E shall not indemnify any member of the Force from liability to prosecution in and conviction by a court of law in respect of an offence.

(2) No member of the Force who has been acquitted or convicted by a court of law on a charge relating to the commission of an offence shall be indemnified from being tried **[or charged]** in terms of section **[9(2) or 10] 10E.**” 10

**Substitution of section 17 of Act 7 of 1958, as amended by section 6 of Act 53 of 1961, section 10 of Act 64 of 1964, section 8 of Act 64 of 1979, section 4 of Act 8 of 1988 and section 7 of Act 110 of 1990** 15

11. The following section is hereby substituted for section 17 of the principal Act:

**“Dismissal, discharge or reduction in rank of members of the Force**

17. (1) A member of the Force **[who is not a commissioned officer]** may be discharged or dismissed from the Force or be reduced in rank if after enquiry in the manner prescribed by the regulations, as to his fitness to remain in the Force or to retain his rank, the Commissioner or **[the divisional commissioner of the division in which such member is serving or]** any other commissioned officer designated by the Commissioner is of opinion that he is unfit to remain in the Force or to retain his rank, as the case may be. 20 25

**[(1A)](2)** Notwithstanding the provisions of subsection (1), the Commissioner may discharge any such member from the Force in the absence of any such enquiry— 30

(a) if the member undergoes imprisonment on account of a sentence of imprisonment without the option of a fine; or

(b) if the member has been sentenced to death; or

**[(b)](c)** within a period of 24 months, exclusive of any period of training, after the member's enrolment as a member of the Force, if it appears to the Commissioner that, on account of unfitness for his duties or incapacity to carry them out efficiently or on account of any conduct which is prejudicial to the good order, efficient administration, control or discipline of the Force, the member is unfit to remain in the Force. 35 40

**[(2)](3)** Any member mentioned in subsection (1) or **[(1A)](2)** may in the manner prescribed by the regulations appeal to the **[Minister] disciplinary officer** against an order discharging or dismissing him or reducing him in rank, and in such event the **[Minister] disciplinary officer** may confirm, alter or set aside such order or make such other order as to him seems just.” 45

**Repeal of section 17A of Act 7 of 1958**

12. Section 17A of the principal Act is hereby repealed.

**Amendment of section 33 of Act 7 of 1958, as amended by section 8 of Act 53 of 1961, section 19 of Act 64 of 1964, section 1 of Act 80 of 1970, section 5 of Act 94 of 1972, section 1 of Act 47 of 1981, section 46 of Act 97 of 1986, section 6 of Act 8 of 1988, section 3 of Act 75 of 1989 and section 3 of Act 76 of 1989** 50

13. Section 33 of the principal Act is hereby amended—

**Vervanging van artikel 16 van Wet 7 van 1958, soos vervang deur artikel 7 van Wet 36 van 1989**

10. Artikel 16 van die Hoofwet word hierby deur die volgende artikel vervang:

5 “Lid van die Mag kan ingevolge hierdie Wet sowel as ander wette aangekla en verhoor word

16. (1) Die bepalings van [artikels 9(2) en 10] artikel 10E vrywaar nie ’n lid van die Mag teen vervolging in en veroordeling deur ’n geregshof ten opsigte van ’n misdryf nie.

10 (2) Geen lid van die Mag wat deur ’n geregshof op ’n aanklag weens die pleging van ’n misdryf vrygespreek of veroordeel is, is gevrywaar teen ’n verhoor [of aanklag] ingevolge artikel [9(2) of 10] 10E nie.”.

Vervanging van artikel 17 van Wet 7 van 1958, soos gewysig deur artikel 6 van Wet 53 van 1961, artikel 10 van Wet 64 van 1964, artikel 8 van Wet 64 van 1979, 15 artikel 4 van Wet 8 van 1988 en artikel 7 van Wet 110 van 1990

11. Artikel 17 van die Hoofwet word hierby deur die volgende artikel vervang:

“Ontslag, afdanking of verlaging in rang van lede van die Mag

20 17. (1) ’n Lid van die Mag [wat nie ’n offisier is nie] kan uit die Mag ontslaan of afgedank word of in rang verlaag word indien na ondersoek volgens voorskrif van die regulasies aangaande sy geskiktheid om in die Mag te bly of om sy rang te behou, die Kommissaris of [die afdelingskommissaris van die afdeling waarin so ’n lid dien of] ’n ander offisier deur die Kommissaris aangewys van oordeel is dat hy ongeskik is om in die Mag te bly of, al na die geval, om sy rang te behou.

25 [(1A)](2) Ondanks die bepalings van subartikel (1) kan die Kommissaris so ’n lid by ontstentenis van so ’n ondersoek uit die Mag ontslaan—

30 (a) indien die lid gevangenisstraf ondergaan uit hoofde van ’n vonnis van gevangenisstraf sonder die keuse van ’n boete; of

35 [(b)](c) binne ’n tydperk van 24 maande, uitgesonderd enige tydperk van opleiding, na die lid se inlywing as ’n lid van die Mag; indien dit aan die Kommissaris blyk dat die lid weens ongeskiktheid vir sy pligte of onvermoë om hulle op ’n bekwame wyse uit te voer of weens enige gedrag wat tot nadeel van die goeie orde, doeltreffende administrasie, beheer of dissipline van die Mag strek, ongeskik is om in die Mag te bly.

40 [(2)](3) ’n Lid in subartikel (1) of [(1A)](2) vermeld, kan op die by regulasie voorgeskrewe wyse teen ’n bevel waarby hy ontslaan of afgedank of in rang verlaag word, by die [Minister] dissipline-offisier appèl aanteken, en in so ’n geval kan die [Minister] dissipline-offisier die bevel bekragtig, verander of tersyde stel of so ’n ander bevel uitvaardig as wat hy billik ag.”.

45 Herroeping van artikel 17A van Wet 7 van 1958

12. Artikel 17A van die Hoofwet word hierby herroep.

Wysiging van artikel 33 van Wet 7 van 1958, soos gewysig deur artikel 8 van Wet 53 van 1961, artikel 19 van Wet 64 van 1964, artikel 1 van Wet 80 van 1970, artikel 5 van Wet 94 van 1972, artikel 1 van Wet 47 van 1981, artikel 46 van Wet 50 97 van 1986, artikel 6 van Wet 8 van 1988, artikel 3 van Wet 75 van 1989 en artikel 3 van Wet 76 van 1989

13. Artikel 33 van die Hoofwet word hierby gewysig—

- (a) by the insertion in subsection (1) after paragraph (c) of the following paragraph:  
 “(cA) the correspondence between the ranks of members of the Force and members of municipal police units;”;
- (b) by the insertion in subsection (1) after paragraph (g) of the following paragraph:  
 “(gA) the payment and control of admission of guilt fines in terms of this Act;”;
- (c) by the substitution for paragraph (h) of subsection (1) of the following paragraph:  
 “(h) the practice and procedure at trials by **[commissioned]** trial officers under this Act and the attendance of witnesses thereat;”;
- (d) by the insertion in subsection (1) after paragraph (h) of the following paragraphs:  
 “(hA) the legal representation of members of the Force;”;  
 (hB) the exclusion of the public or any category of the public at trials by trial officers under this Act and the publication and release of information relating to such trials;  
 (hC) the conditional or unconditional postponement or suspension of a sentence after conviction of misconduct in terms of this Act;”;
- (e) by the substitution for paragraph (j) of subsection (1) of the following paragraph:  
 “(j) appeals, reviews and representations in regard to decisions and recommendations in terms of this Act;”;
- (f) by the deletion of paragraph (k) of subsection (1).

**Amendment of section 34G of Act 7 of 1958, as inserted by section 20 of Act 36 of 1989**

**14.** Section 34G of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The Minister may enter into agreements with the Minister or other person responsible for the Police Force of a foreign state, **[the territory of South West Africa]** any state the territory of which previously formed part of the Republic or a self-governing territory as defined in section 38 of the **[National States] Self-governing Territories** Constitution Act, 1971 (Act No. 21 of 1971), in regard to co-operation and mutual aid between the Police Force of the Republic and that of such state or territory, the circumstances and conditions in terms of which members of the respective Police Forces may undertake cross-border operations or any other matter of mutual concern.”

**Short title and commencement**

**15.** This Act shall be called the Police Second Amendment Act, 1991, and shall come into operation on a date fixed by the State President by proclamation in the *Gazette*.

- (a) deur in subartikel (1) na paragraaf (c) die volgende paragraaf in te voeg:  
 “(cA) die ooreenstemming tussen die range van lede van die Mag en lede van munisipale polisie-eenhede;”;
- 5 (b) deur in subartikel (1) na paragraaf (g) die volgende paragraaf in te voeg:  
 “(gA) die betaling van en beheer oor skulderkenningsboetes in-gevolge hierdie Wet;”;
- 10 (c) deur paragraaf (h) van subartikel (1) deur die volgende paragraaf te vervang:  
 “(h) die praktyk en prosedure by verhoor deur **[offisiere]** verhoor-offisiere ingevolge hierdie Wet en die verskyning van getuies daarby;”;
- 15 (d) deur in subartikel (1) na paragraaf (h) die volgende paragrawe in te voeg:  
 “(hA) die regsverteenvoording van lede van die Mag;  
 (hB) die uitsluiting van die publiek of ’n kategorie van die publiek by verhoor deur verhooroffisiere ingevolge hierdie Wet en die publikasie en beskikbaarstelling van inligting betreffende sodanige verhoor;  
 (hC) die voorwaardelike of onvoorwaardelike uitstel of opskorting van ’n vonnis by skuldigbevinding aan wangedrag ingevolge hierdie Wet;”;
- 20 (e) deur paragraaf (j) van subartikel (1) deur die volgende paragraaf te vervang:  
 “(j) appèlle, hersienings en verhoë met betrekking tot beslissings en aanbevelings ingevolge hierdie Wet;” en
- 25 (f) deur paragraaf (k) van subartikel (1) te skrap.

Wysiging van artikel 34G van Wet 7 van 1958, soos ingevoeg deur artikel 20 van  
 30 Wet 36 van 1989

14. Artikel 34G van die Hoofwet word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

- 35 “(1) Die Minister kan ooreenkomste aangaan met die Minister of ander persoon verantwoordelik vir die Polisiemag van ’n vreemde Staat, **[die gebied Suidwes-Afrika]** ’n staat waarvan die grondgebied voorheen deel van die Republiek uitgemaak het of ’n selfregerende gebied soos omskryf in artikel 38 van die Grondwet van die **[Nasionale State] Selfregerende Gebiede**, 1971 (Wet No. 21 van 1971), met betrekking tot samewerking tussen en wedersydse hulpverlening deur die Polisiemag van die Republiek en dié van daardie staat of gebied, die omstandighede waaronder en voorwaardes waarop lede van die onderskeie Polisiemagte oor grense mag optree of enige ander aangeleentheid van wedersydse belang.”
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Kort titel en inwerkingtreding

15. Hierdie Wet heet die Tweede Polisiewysigingswet, 1991, en tree in  
 45 werking op ’n datum deur die Staatspresident by proklamasie in die *Staatskoerant* bepaal.

