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GOVERNMENT GAZETTE

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OFFICE OF THE PRESIDENT

KANTOOR VAN DIE PRESIDENT

No. 1527.

4 October 1995

No. 1527.

4 Oktober 1995

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

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

No. 68 of 1995: South African Police Service Act, 1995.

No. 68 van 1995: Wet op die Suid-Afrikaanse Polisie, 1995.

ACT

To provide for the establishment, organisation, regulation and control of the South African Police Service; and to provide for matters in connection therewith.

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WET

Om voorsiening te maak vir die instelling, organisasie, regulering en beheer van die Suid-Afrikaanse Polisie; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

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PREAMBLE

WHEREAS section 214 of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993), requires legislation to provide for the establishment and regulation of a South African Police Service which shall be structured at both national and provincial levels and shall function under the direction of the national government as well as the various provincial governments;

AND WHEREAS there is a need to provide a police service throughout the national territory to—

- (a) ensure the safety and security of all persons and property in the national territory;
- (b) uphold and safeguard the fundamental rights of every person as guaranteed by Chapter 3 of the Constitution;
- (c) ensure co-operation between the Service and the communities it serves in the combating of crime;
- (d) reflect respect for victims of crime and an understanding of their needs; and
- (e) ensure effective civilian supervision over the Service;

(Afrikaans text signed by the President.)
(Assented to 28 September 1995.)

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AANHEF

AANGESIEN artikel 214 van die Grondwet van die Republiek van Suid-Afrika, 1993 (Wet No. 200 van 1993), wetgewing vereis om voorsiening te maak vir die instelling en regulering van 'n Suid-Afrikaanse Polisie-dienste wat op sowel nasionale as provinsiale vlakke gestruktureer is en wat onder gesag van sowel die nasionale regering as die onderskeie provinsiale regerings funksioneer;

EN AANGESIEN daar 'n behoefte bestaan om 'n polisie-dienste reg deur die nasionale grondgebied te voorsien om—

- (a) die veiligheid en sekuriteit van alle persone en eiendom in die nasionale grondgebied te verseker;
- (b) die fundamentele regte van elke persoon soos gewaarborg deur Hoofstuk 3 van die Grondwet te handhaaf en te beskerm;
- (c) samewerking tussen die Diens en die gemeenskappe wat dit dien in die bekamping van misdaad te verseker;
- (d) respek vir die slagoffers van misdaad en begrip vir hul behoeftes te weerspieël; en
- (e) effektiewe burgerlike toesig oor die Diens te verseker;

BE IT THEREFORE enacted by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1 INTERPRETATION

Definitions

5

- 1.** In this Act, unless the context otherwise indicates—
- (i) “board” means the Board of Commissioners established by section 10(1); (xvi)
 - (ii) “certificate of appointment” means the document referred to in section 30; (i)
 - (iii) “commissioned officer” means a commissioned officer appointed under section 33(1); (v) 10
 - (iv) “directorate” means the Independent Complaints Directorate established by section 50(1); (iii)
 - (v) “employee organisation” means an organisation consisting *inter alia* of members or employees of the Service formally associated together and organised in a staff association, trade association or trade union, for the purpose of regulating relations between themselves and the Service; (xxx) 15
 - (vi) “equipment” includes any article supplied by the Service for use by a member in the performance of his or her duties; (xxiii)
 - (vii) “executive co-ordinating committee” means the executive co-ordinating committee established by section 4(1); (xxv) 20
 - (viii) “Executive Director” means the Executive Director appointed in terms of section 51; (xxiv)
 - (ix) “fixed establishment” means the posts which have been created for the normal and regular requirements of the Service; (xxvii) 25
 - (x) “member” means any member of the Service referred to in section 5(2), including—
 - (a) except for the purposes of any provision of this Act in respect of which the National Commissioner may otherwise prescribe, any member of the Reserve while such member is on duty in the Service; 30
 - (b) any temporary member while employed in the Service;
 - (c) any person appointed in terms of any other law to serve in the Service and in respect of whom the Minister has prescribed that he or she be deemed to be a member of the Service for the purposes of this Act; and
 - (d) any person designated under section 29 as a member; (vi) 35
 - (xi) “member of the Executive Council” means the member of the Executive Council referred to in section 217(1) of the Constitution; (vii)
 - (xii) “metropolitan police service” means a metropolitan police service established under section 64(1)(b); (viii)
 - (xiii) “Minister” means the Minister for Safety and Security; (ix) 40
 - (xiv) “municipal police service” means a municipal police service established under section 64(1)(a); (x)
 - (xv) “National Commissioner” means the National Commissioner referred to in section 6(1); (xi)
 - (xvi) “National Orders and Instructions” means National Orders and Instructions issued under section 25(1) or which continue to apply in terms of section 72(4)(a); (xii) 45
 - (xvii) “national public order policing unit” means the national public order policing unit established in terms of section 17(1); (xiii)
 - (xviii) “Parliamentary Committees” means the Standing Committees of the National Assembly and the Senate responsible for safety and security affairs; (xiv) 50
 - (xix) “prescribe” means prescribe by regulation; (xxix)
 - (xx) “Provincial Commissioner” means the Provincial Commissioner of a province referred to in section 6(2); (xv)
 - (xxi) “Rationalisation Proclamation” means the South African Police Service Rationalisation Proclamation, 1995, published by Proclamation No. 5, 1995, dated 27 January 1995; (xvii) 55
 - (xxii) “regulation” means a regulation made under this Act or which continues to apply in terms of section 72(4)(a); (xviii)
 - (xxiii) “Reserve” means the Reserve Police Service referred to in section 48; (xix) 60
 - (xxiv) “secretariat” means the Secretariat for Safety and Security established under section 2(1); (xx)

WORD DAAR DERHALWE deur die Parlement van die Republiek van Suid-Afrika soos volg bepaal:—

HOOFSTUK 1

UITLEG

5 Woordomskrywing

1. In hierdie Wet, tensy uit die samehang anders blyk, beteken—

- (i) “aanstellingsertifikaat” die dokument in artikel 30 bedoel; (ii)
- (ii) “Diens” die Suid-Afrikaanse Polisie diens by artikel 5(1) ingestel; (xxvi)
- (iii) “direktoraat” die Onafhanklike Klagtesdirektoraat by artikel 50(1) ingestel;
- 10 (iv)
- (iv) “hierdie Wet” ook die regulasies; (xxix)
- (v) “kommissie-offisier” ’n offisier by kommissie kragtens artikel 33(1) aangestel; (iii)
- (vi) “lid” enige lid van die Diens bedoel in artikel 5(2), met inbegrip van—
- 15 (a) behalwe vir die doeleindes van enige bepaling van hierdie Wet ten opsigte waarvan die Nasionale Kommissaris anders mag voorskryf, enige lid van die Reserwe terwyl sodanige lid aan diens in die Diens is;
- (b) enige tydelike lid terwyl in diens van die Diens;
- (c) enige persoon ingevolge enige ander wet aangestel om in die Diens te dien en ten opsigte van wie die Minister voorgeskryf het dat hy of sy vir
- 20 die doeleindes van hierdie Wet geag word ’n lid van die Diens te wees; en
- (d) enige persoon kragtens artikel 29 as ’n lid aangewys; (x)
- (vii) “lid van die Uitvoerende Raad” die lid van die Uitvoerende Raad in artikel
- 25 217(1) van die Grondwet bedoel; (xi)
- (viii) “metropolitaanse polisie diens” ’n metropolitaanse polisie diens kragtens artikel 64(1)(b) ingestel; (xii)
- (ix) “Minister” die Minister vir Veiligheid en Sekuriteit; (xiii)
- (x) “munisipale polisie diens” ’n munisipale polisie diens kragtens artikel
- 30 64(1)(a) ingestel; (xiv)
- (xi) “Nasionale Kommissaris” die Nasionale Kommissaris in artikel 6(1) bedoel; (xv)
- (xii) “Nasionale Orders en Instruksies” Nasionale Orders en Instruksies kragtens artikel 25(1) uitgereik of wat kragtens artikel 72(4)(a) voortgaan om van
- 35 toepassing te wees; (xvi)
- (xiii) “nasionale polisie-eenheid vir openbare orde” die nasionale polisie-eenheid vir openbare orde ingevolge artikel 17(1) ingestel; (xvii)
- (xiv) “Parlementêre Komitees” die Staande Komitees van die Nasionale Vergadering en die Senaat wat vir veiligheids- en sekuriteitsaangeleenthede
- 40 verantwoordelik is; (xviii)
- (xv) “Provinsiale Kommissaris” die Provinsiale Kommissaris van ’n provinsie in artikel 6(2) bedoel; (xx)
- (xvi) “raad” die Raad van Kommissarisse by artikel 10(1) ingestel; (i)
- (xvii) “Rasionalisasieproklamasie” die Suid-Afrikaanse Polisie diens Rasionalisasie Proklamasie, 1995, afgekondig by Proklamasie No. 5, 1995, gedateer
- 45 27 Januarie 1995; (xxi)
- (xviii) “regulasie” ’n regulasie kragtens hierdie Wet uitgevaardig of wat ingevolge artikel 72(4)(a) voortgaan om van toepassing te wees; (xxii)
- (xix) “Reserwe” die Reserwe-polisie diens in artikel 48 bedoel; (xxiii)
- 50 (xx) “sekretariaat” die Sekretariaat vir Veiligheid en Sekuriteit kragtens artikel 2(1) ingestel; (xxiv)
- (xxi) “Sekretaris” die Sekretaris vir Veiligheid en Sekuriteit kragtens artikel 2(2) aangestel; (xxv)
- (xxii) “staking” ’n staking binne die bedoeling van die Wet op Arbeidsverhoudinge, 1956 (Wet No. 28 van 1956); (xxviii)
- 55 (xxiii) “toerusting” ook enige artikel wat deur die Diens voorsien is vir gebruik deur ’n lid in die verrigting van sy of haar pligte; (vi)
- (xxiv) “Uitvoerende Direkteur” die Uitvoerende Direkteur ingevolge artikel 51 aangestel; (vii)

- (xxv) "Secretary" means the Secretary for Safety and Security appointed under section 2(2); (xxi)
- (xxvi) "Service" means the South African Police Service established by section 5(1); (ii)
- (xxvii) "stores" means any movable property of the State which is kept in stock for distribution in the Service; (xxviii) 5
- (xxviii) "strike" means a strike within the meaning of the Labour Relations Act, 1956 (Act No. 28 of 1956); (xxii)
- (xxix) "this Act" includes the regulations; (iv) and
- (xxx) "uniform" means a uniform as prescribed. (xxvi) 10

CHAPTER 2

MINISTERIAL SERVICES

Secretariat

2. (1)(a) The Minister shall establish a secretariat to be called the Secretariat for Safety and Security. 15

(b) A provincial government may establish a provincial secretariat to be called the Provincial Secretariat for Safety and Security: Provided that the date on which a provincial secretariat will come into operation shall be determined by a provincial government in consultation with the Minister.

(2) The Minister may, subject to the laws governing the public service, appoint a person to the office of Secretary who shall be responsible for— 20

- (a) the performance of the functions of the secretariat; and
- (b) the management and administration thereof.

(3) The Secretary may, in consultation with the Minister, subject to the laws governing the public service, appoint the necessary personnel to assist the Secretary to perform, subject to his or her control and directions, any function of the secretariat. 25

Functions of secretariat

3. (1) The secretariat shall—

- (a) advise the Minister in the exercise of his or her powers and the performance of his or her duties and functions; 30
- (b) perform such functions as the Minister may consider necessary or expedient to ensure civilian oversight of the Service;
- (c) promote democratic accountability and transparency in the Service;
- (d) promote and facilitate participation by the Service in the Reconstruction and Development Programme; 35
- (e) provide the Minister with legal services and advice on constitutional matters;
- (f) provide the Minister with communication, support and administrative services;
- (g) monitor the implementation of policy and directions issued by the Minister and report to the Minister thereon; 40
- (h) conduct research into any policing matter in accordance with the instructions of the Minister and report to the Minister thereon;
- (i) perform such functions as may from time to time be assigned to the secretariat by the Minister; and
- (j) evaluate the functioning of the Service and report to the Minister thereon. 45

(2) To the extent that it is reasonably necessary for the performance of the functions of the secretariat, any member of its personnel—

- (a) may request and obtain information and documents under the control of the Service;
- (b) may enter any building or premises under the control of the Service; and 50
- (c) shall be entitled to all reasonable assistance by a member.

(3) The Minister may make regulations regarding the establishing and proper functioning of secretariats: Provided that regulations with regard to provincial

- (xxv) "uitvoerende koördineringskomitee" die uitvoerende koördineringskomitee by artikel 4(1) ingestel; (vii)
- (xxvi) "uniform" 'n uniform soos voorgeskryf; (xxx)
- 5 (xxvii) "vaste diensstaat" die poste wat geskep is vir die normale en gewone vereistes van die Diens; (ix)
- (xxviii) "voorraad" enige roerende eiendom van die Staat wat in voorraad gehou word vir verspreiding in die Diens; (xxvii)
- (xxix) "voorskryf" by regulasie voorskryf; (xix) en
- 10 (xxx) "werknemersorganisasie" 'n organisasie wat onder meer bestaan uit lede of werknemers van die Diens wat formeel saam geassosieer is en in 'n personeelvereniging, vakvereniging of vakbond georganiseer is met die doel om verhoudings tussen hulleself en die Diens te reël. (v)

HOOFTUK 2

MINISTERIËLE DIENSTE

15 Sekretariaat

2. (1)(a) Die Minister moet 'n sekretariaat instel wat die Sekretariaat vir Veiligheid en Sekuriteit genoem word.

(b) 'n Provinsiale regering kan 'n provinsiale sekretariaat instel wat die Provinsiale Sekretariaat vir Veiligheid en Sekuriteit genoem word: Met dien verstande dat die datum waarop 'n provinsiale sekretariaat in werking tree, deur 'n provinsiale regering in oorleg met die Minister bepaal word.

(2) Behoudens die wette op die Staatsdiens, kan die Minister 'n persoon in die amp van Sekretaris aanstel wat verantwoordelik is vir—

- (a) die verrigting van die werksaamhede van die sekretariaat; en
- 25 (b) die bestuur en administrasie daarvan.

(3) Behoudens die wette op die Staatsdiens, kan die Sekretaris in oorleg met die Minister die personeel aanstel wat nodig is om die Sekretaris, behoudens sy of haar beheer en voorskrifte, by te staan met die verrigting van enige werksaamheid van die sekretariaat.

30 Werksaamhede van sekretariaat

3. (1) Die sekretariaat—

- (a) adviseer die Minister in die uitoefening van sy of haar bevoegdhede en die verrigting van sy of haar pligte en werksaamhede;
- 35 (b) verrig die werksaamhede wat die Minister nodig of dienstig ag om burgerlike toesig oor die Diens te verseker;
- (c) bevorder demokratiese verantwoordbaarheid en deursigtigheid in die Diens;
- (d) bevorder en vergemaklik deelname deur die Diens aan die Heropbou- en Ontwikkelingsprogram;
- 40 (e) voorsien die Minister van regsdiens en advies oor konstitusionele aangeleenthede;
- (f) voorsien die Minister van kommunikasie-, ondersteunings- en administratiewe dienste;
- (g) monitor die implementering van beleid en voorskrifte deur die Minister uitgereik en doen aan die Minister verslag daaroor;
- 45 (h) doen navorsing oor enige polisiëringsaangeleentheid ooreenkomstig die opdragte van die Minister en doen aan die Minister verslag daaroor;
- (i) verrig die werksaamhede wat van tyd tot tyd deur die Minister aan die sekretariaat opgedra word; en
- 50 (j) evalueer die funksionering van die Diens en doen aan die Minister verslag daaroor.

(2) In die mate waarin dit redelikerwys noodsaaklik is vir die verrigting van die werksaamhede van die sekretariaat kan 'n lid van sy personeel—

- (a) inligting en dokumente onder die beheer van die Diens aanvra en bekom;
- 55 (b) enige gebou of perseel onder die beheer van die Diens betree; en
- (c) aanspraak maak op alle redelike bystand deur 'n lid.

(3) Die Minister kan regulasies betreffende die vestiging en behoorlike funksionering van sekretariate uitvaardig: Met dien verstande dat regulasies met betrekking tot

secretariats shall be made in consultation with the executive co-ordinating committee.

(4) A document in the prescribed form, certifying that a person is a member of the personnel of the secretariat, shall serve as *prima facie* proof that such person is such a member.

(5) Subsections (1), (2) and (4) shall apply *mutatis mutandis* to a Provincial Secretariat for Safety and Security. 5

Executive co-ordinating committee

4. (1) The executive co-ordinating committee contemplated in section 220(1) of the Constitution is hereby established.

(2) The Minister shall convene the first meeting of the executive co-ordinating committee. 10

(3) The Minister or his or her nominee shall preside at meetings of the executive co-ordinating committee and the executive co-ordinating committee shall determine its own procedure.

CHAPTER 3

15

ESTABLISHMENT AND COMPOSITION OF SERVICE

Establishment and composition of Service

5. (1) The South African Police Service contemplated in section 214(1) of the Constitution is hereby established.

(2) The Service shall consist of— 20

(a) all persons who immediately before the commencement of this Act were members—

(i) of a force which, by virtue of section 236(7)(a) of the Constitution, is deemed to constitute part of the Service;

(ii) appointed under the Rationalisation Proclamation; 25

(iii) of the Reserve by virtue of section 12(2)(k) of the Rationalisation Proclamation;

(b) members appointed in terms of section 28(2) of this Act; and

(c) persons who become members of the Reserve under section 48(2) of this Act.

CHAPTER 4

30

COMMISSIONERS

Appointment of National and Provincial Commissioners

6. (1) There shall be a National Commissioner of the Service who shall be appointed in accordance with section 216(2)(a) of the Constitution.

(2) There shall be a Provincial Commissioner of the Service for each province who shall be appointed by the National Commissioner subject to section 218(1)(b) of the Constitution. 35

Terms of office of National and Provincial Commissioners

7. (1) Subject to this Act, the person who is appointed as National or Provincial Commissioner shall occupy that office for a period of five years from the date of his or her appointment or such shorter period as may be determined at the time of his or her appointment by— 40

(a) the President, in relation to the National Commissioner; or

(b) the National Commissioner in consultation with the member of the Executive Council, in relation to a Provincial Commissioner. 45

(2) The term of office referred to in subsection (1) may be extended at the expiry thereof for a period or successive periods not exceeding five years at a time, as may, subject to subsection (3), be determined by—

(a) the President, in relation to the National Commissioner; or

provinsiale sekretariate in oorleg met die uitvoerende koördineringskomitee uitgevaardig word.

(4) 'n Dokument in die voorgeskrewe vorm, wat sertifiseer dat 'n persoon 'n lid van die personeel van die sekretariaat is, is *prima facie*-bewys dat so 'n persoon sodanige lid is.

(5) Subartikels (1), (2) en (4) is *mutatis mutandis* op 'n Provinsiale Sekretariaat vir Veiligheid en Sekuriteit van toepassing.

Uitvoerende koördineringskomitee

4. (1) Die uitvoerende koördineringskomitee in artikel 220(1) van die Grondwet beoog, word hierby ingestel.

(2) Die Minister belê die eerste vergadering van die uitvoerende koördineringskomitee.

(3) Die Minister of sy of haar benoemde sit by vergaderings van die uitvoerende koördineringskomitee voor, en die uitvoerende koördineringskomitee bepaal sy eie prosedure.

HOOFSTUK 3

INSTELLING EN SAMESTELLING VAN DIENS

Instelling en samestelling van Diens

5. (1) Die Suid-Afrikaanse Polisie diens in artikel 214(1) van die Grondwet beoog, word hierby ingestel.

(2) Die Diens bestaan uit—

(a) alle persone wat onmiddellik voor die inwerkingtreding van hierdie Wet lede was—

(i) van 'n mag wat uit hoofde van artikel 236(7)(a) van die Grondwet geag word deel van die Diens uit te maak;

(ii) kragtens die Rasionalisasieproklamasie aangestel;

(iii) van die Reserwe uit hoofde van artikel 12(2)(k) van die Rasionalisasieproklamasie;

(b) lede kragtens artikel 28(2) van hierdie Wet aangestel; en

(c) persone wat kragtens artikel 48(2) van hierdie Wet lede van die Reserwe word.

HOOFSTUK 4

KOMMISSARISSE

Aanstelling van Nasionale en Provinsiale Kommissarisse

6. (1) Daar is 'n Nasionale Kommissaris van die Diens wat ooreenkomstig artikel 216(2)(a) van die Grondwet aangestel word.

(2) Daar is 'n Provinsiale Kommissaris van die Diens vir elke provinsie wat behoudens artikel 218(1)(b) van die Grondwet deur die Nasionale Kommissaris aangestel word.

Ampstermyne van Nasionale en Provinsiale Kommissarisse

7. (1) Behoudens hierdie Wet, beklee 'n persoon wat as Nasionale of Provinsiale Kommissaris aangestel is, daardie amp vir 'n tydperk van vyf jaar vanaf die datum van sy of haar aanstelling of vir die korter tydperk wat ten tyde van sy of haar aanstelling bepaal word deur—

(a) die President, met betrekking tot die Nasionale Kommissaris; of

(b) die Nasionale Kommissaris in oorleg met die lid van die Uitvoerende Raad, met betrekking tot 'n Provinsiale Kommissaris.

(2) Die ampstermyne bedoel in subartikel (1) kan by verstryking daarvan vir 'n tydperk of opeenvolgende tydperke van hoogstens vyf jaar op 'n keer verleng word wat, behoudens subartikel (3), bepaal word deur—

(a) die President, met betrekking tot die Nasionale Kommissaris; of

(b) the National Commissioner in consultation with the member of the Executive Council concerned, in relation to the Provincial Commissioner.

(3) The President or the National Commissioner, as the case may be, shall notify the Commissioner concerned in writing at least two calendar months before the expiry of the period contemplated in subsection (1), or any subsequent extended period contemplated in subsection (2), whether he or she intends extending his or her term of office or not and, if so, for what period. 5

(4) When the National or Provincial Commissioner receives notice of the extension of his or her term of office in accordance with subsection (3), he or she shall notify the President or the National Commissioner, as the case may be, in writing within one calendar month from the date of receipt of such notice of his or her acceptance or not of such extended term of office. 10

(5) If the National or Provincial Commissioner notifies the President or the National Commissioner, as the case may be, in accordance with subsection (4) of his or her acceptance of such extended term of office, his or her term of office shall be extended accordingly. 15

Loss of confidence in National or Provincial Commissioner

8. (1) If the National Commissioner has lost the confidence of the Cabinet, the President may establish a board of inquiry consisting of a judge of the Supreme Court as chairperson, and two other suitable persons, to— 20

- (a) inquire into the circumstances that led to the loss of confidence;
- (b) compile a report; and
- (c) make recommendations.

(2)(a) If a Provincial Commissioner has lost the confidence of the Executive Council, the member of the Executive Council may notify the Minister of such occurrence and the reasons therefor. 25

(b) The Minister shall, if he or she deems it necessary and appropriate, refer the notice contemplated in paragraph (a) to the National Commissioner.

(c) The National Commissioner shall, upon receipt of the notice, establish a board of inquiry consisting of not more than three persons, of which the chairperson shall, subject to paragraph (d), be a person who, for at least 10 years after having qualified as an advocate or an attorney, practised as such, to— 30

- (i) inquire into the circumstances that led to the loss of confidence;
- (ii) compile a report; and
- (iii) make recommendations. 35

(d) The National Commissioner may appoint any other person suitably qualified in law as chairperson of the board of inquiry.

(3) (a) The President or National Commissioner, as the case may be, may, after hearing the Commissioner concerned, pending the outcome of the inquiry referred to in subsection (1) or (2)(c), suspend him or her from office. 40

(b) A Commissioner who is suspended from office under paragraph (a), shall, during the period of such suspension, be entitled to any salary, allowance, privilege or benefit to which he or she is otherwise entitled as a member, unless the President or the National Commissioner, as the case may be, determines otherwise.

(4) If a board of inquiry is established under subsection (1) or (2)(c), the Commissioner concerned shall be notified thereof in writing, and thereupon he or she may— 45

- (a) be assisted or represented by another person or legal representative;
- (b) make written representations to the board;
- (c) be present at the inquiry; 50
- (d) give evidence thereat;
- (e) cross-examine witnesses not called by him or her;
- (f) be heard;
- (g) call witnesses; and
- (h) have access to documents relevant to the inquiry. 55

(5) The board of inquiry shall determine its own procedure.

(6)(a) At the conclusion of the inquiry, the board shall submit its report to—

- (i) (aa) the President, in the event of an inquiry under subsection (1); or
- (bb) the National Commissioner, the member of the Executive Council and

(b) die Nasionale Kommissaris in oorleg met die betrokke lid van die Uitvoerende Raad, met betrekking tot 'n Provinsiale Kommissaris.

(3) Die President of die Nasionale Kommissaris, na gelang van die geval, stel die betrokke Kommissaris minstens twee kalendermaande voor die verstryking van die tydperk in subartikel (1) beoog, of enige opvolgende verlengde tydperk in subartikel 5 (2) beoog, skriftelik in kennis of hy of sy beoog om sy of haar ampstermyn te verleng of nie en, indien wel, vir welke tydperk.

(4) Wanneer die Nasionale of Provinsiale Kommissaris ooreenkomstig subartikel (3) kennis van die verlenging van sy of haar ampstermyn ontvang, moet hy of sy die 10 President of Nasionale Kommissaris, na gelang van die geval, binne een kalendermaand na die datum van ontvangs van die kennisgewing skriftelik in kennis stel van sy of haar aanvaarding of nie, van sodanige verlengde ampstermyn.

(5) Indien die Nasionale of Provinsiale Kommissaris die President of die Nasionale Kommissaris, na gelang van die geval, van sy of haar aanvaarding van die verlengde 15 ampstermyn ooreenkomstig subartikel (4) in kennis stel, word sy of haar ampstermyn dienoooreenkomstig verleng.

Verlies van vertroue in Nasionale of Provinsiale Kommissaris

8. (1) Indien die Nasionale Kommissaris die vertroue van die Kabinet verloor het, kan die President 'n raad van ondersoek bestaande uit 'n regter van die Hooggeregshof 20 as voorsitter, en twee ander geskikte persone instel, om—

(a) ondersoek in te stel na die omstandighede wat aanleiding gegee het tot die verlies van vertroue;

(b) 'n verslag op te stel; en

(c) aanbevelings te doen.

25 (2)(a) Indien 'n Provinsiale Kommissaris die vertroue van die Uitvoerende Raad verloor het, kan die lid van die Uitvoerende Raad die Minister van sodanige gebeurtenis en die redes daarvoor in kennis stel.

(b) Indien die Minister dit nodig en gepas ag, verwys hy of sy die kennisgewing in paragraaf (a) beoog na die Nasionale Kommissaris.

30 (c) Die Nasionale Kommissaris stel by ontvangs van die kennisgewing 'n raad van ondersoek in bestaande uit hoogstens drie persone, waarvan die voorsitter, behoudens paragraaf (d), 'n persoon is wat vir minstens 10 jaar nadat hy of sy as 'n advokaat of 'n prokureur gekwalifiseer het, as sodanig gepraktiseer het, om—

35 (i) ondersoek in te stel na die omstandighede wat aanleiding gegee het tot die verlies van vertroue;

(ii) 'n verslag op te stel; en

(iii) aanbevelings te doen.

(d) Die Nasionale Kommissaris kan enige ander persoon gepas in die regte gekwalifiseer as voorsitter van die raad van ondersoek aanstel.

40 (3)(a) Die President of Nasionale Kommissaris, na gelang van die geval, kan, na aanhoor van die betrokke Kommissaris, hangende die uitslag van die ondersoek bedoel in subartikel (1) of (2)(c), die betrokke Kommissaris in sy of haar amp skors.

(b) 'n Kommissaris wat kragtens paragraaf (a) in sy of haar amp geskors is, is gedurende die tydperk van sodanige skorsing geregtig op enige salaris, toelae, voorreg 45 of voordeel waarop hy of sy andersins as 'n lid geregtig is, tensy die President of die Nasionale Kommissaris, na gelang van die geval, anders bepaal.

(4) Indien 'n raad van ondersoek kragtens subartikel (1) of (2)(c) ingestel word, word die betrokke Kommissaris skriftelik daarvan in kennis gestel, en daarop kan hy of sy—

50 (a) deur 'n ander persoon of regsvertegenwoordiger bygestaan of verteenwoordig word;

(b) skriftelike verhoë aan die raad rig;

(c) by die ondersoek teenwoordig wees;

(d) aldaar getuienis lewer;

55 (e) getuies wat nie deur hom of haar geroep is nie, onder kruisverhoor neem;

(f) aangehoor word;

(g) getuies roep; en

(h) toegang tot dokumente ter sake by die ondersoek hê.

(5) Die raad van ondersoek bepaal sy eie prosedure.

(6)(a) Na afloop van die ondersoek lê die raad sy verslag voor aan—

60 (i) (aa) die President, in die geval van 'n ondersoek kragtens subartikel (1); of

(bb) die Nasionale Kommissaris, die lid van die Uitvoerende Raad en die

the standing committee of the provincial legislature responsible for safety and security affairs, in the event of an inquiry under subsection (2);

- (ii) the Commissioner concerned; and
- (iii) the Parliamentary Committees.

5

(b) The report referred to in paragraph (a) may recommend that—

- (i) no action be taken in the matter;
- (ii) the Commissioner concerned be transferred to another post or be employed additional to the fixed establishment;
- (iii) his or her salary or rank or both his or her salary and rank be reduced;
- (iv) action be taken against him or her in accordance with subparagraphs (ii) and (iii);
- (v) he or she be removed from office; or
- (vi) any other appropriate steps (including the postponement of any decision by the President or the National Commissioner, as the case may be, for a period not exceeding 12 calendar months) be taken.

10

15

(7) The President or the National Commissioner, as the case may be, may, upon receipt of a recommendation contemplated in subsection (6), remove the Commissioner concerned from office, or take any other appropriate action: Provided that, if the President or the National Commissioner, as the case may be, postpones his or her decision for a period, he or she shall, at the end of such period, request the same board of inquiry, or a similar board established for that purpose, to compile a new report and to make a new recommendation after having considered the conduct of the Commissioner concerned during such period.

20

(8) If a Provincial Commissioner has lost the confidence of the National Commissioner, the provisions of subsections (2)(c) and (d), (3), (4), (5), (6) and (7) shall apply *mutatis mutandis*.

25

(9) In the event of a Commissioner being removed from office following on an inquiry in accordance with a finding of a loss of confidence in such a Commissioner, or in accordance with a finding of a loss of confidence referred to in section 9(3), his or her term of office shall be deemed to have expired on the date immediately preceding the date on which such removal from office takes effect.

30

Misconduct by or incapacity of National or Provincial Commissioner

9. (1) Subject to this section, subsections (1) to (8) of section 8 shall apply *mutatis mutandis* to any inquiry into allegations of misconduct by the National or Provincial Commissioner, or into his or her fitness for office or capacity for executing his or her official duties efficiently.

35

(2) The board of inquiry established by virtue of subsection (1) shall make a finding in respect of the alleged misconduct or alleged unfitness for office or incapacity of executing official duties efficiently, as the case may be, and make recommendations as contemplated in section 8(6)(b).

40

(3) If the National Commissioner has lost the confidence of the Cabinet or a Provincial Commissioner has lost the confidence of the Executive Council or the National Commissioner, as the case may be, following on an inquiry in terms of this section, the provisions of section 8(7) shall apply *mutatis mutandis*.

45

Board of Commissioners

10. (1) The Board of Commissioners consisting of the National and Provincial Commissioners is hereby established.

(2) The functions of the board shall be to promote co-operation and co-ordination in the Service.

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(3) The board shall be presided over by the National Commissioner or his or her nominee and the board shall determine its own procedure.

CHAPTER 5

POWERS, DUTIES AND FUNCTIONS

National Commissioner

55

11. (1) The National Commissioner may exercise the powers and shall perform the duties and functions necessary to give effect to section 218(1) of the Constitution.

staande komitee van die provinsiale wetgewer wat vir veiligheids- en sekuriteitsaangeleenthede verantwoordelik is, in die geval van 'n ondersoek kragtens subartikel (2);

- (ii) die betrokke Kommissaris; en
 5 (iii) die Parlementêre Komitees.
 (b) Die verslag in paragraaf (a) bedoel, kan aanbeveel dat—
 (i) geen stappe in die saak gedoen word nie;
 (ii) die betrokke Kommissaris na 'n ander pos oorgeplaas word of addisioneel tot die vaste diensstaat in diens gehou word;
 10 (iii) sy of haar salaris of rang of sowel sy of haar salaris as rang verlaag word;
 (iv) stappe teen hom of haar gedoen word ooreenkomstig subparagrafe (ii) en (iii);
 (v) hy of sy van sy of haar amp onthef word; of
 (vi) enige ander gepaste stappe (met inbegrip van die uitstel van enige beslissing
 15 deur die President of die Nasionale Kommissaris, na gelang van die geval, vir 'n tydperk van hoogstens 12 kalendermaande) gedoen word.

(7) Die President of die Nasionale Kommissaris, na gelang van die geval, kan, by ontvangs van 'n aanbeveling in subartikel (6) beoog, die betrokke Kommissaris van sy of haar amp onthef of enige ander gepaste stappe doen: Met dien verstande dat indien
 20 die President of die Nasionale Kommissaris, na gelang van die geval, sy of haar beslissing vir 'n tydperk uitstel, hy of sy aan die einde van sodanige tydperk dieselfde raad van ondersoek, of 'n soortgelyke raad vir daardie doel ingestel, versoek om 'n nuwe verslag op te stel en 'n nuwe aanbeveling te doen nadat die gedrag van die betrokke Kommissaris gedurende sodanige tydperk deur die raad oorweeg is.

(8) Indien 'n Provinsiale Kommissaris die vertroue van die Nasionale Kommissaris verloor, is die bepalings van subartikels (2)(c) en (d), (3), (4), (5), (6) en (7) *mutatis mutandis* van toepassing.

(9) In die geval waar 'n Kommissaris van sy of haar amp onthef word na aanleiding van 'n ondersoek ooreenkomstig 'n bevinding van 'n verlies van vertroue in sodanige
 30 Kommissaris, of ooreenkomstig 'n bevinding van verlies van vertroue in artikel 9(3) bedoel, word sy of haar ampstermyn geag te verstryk het op die datum wat die datum waarop sodanige ontheffing van amp in werking tree, onmiddellik voorafgaan.

Wangedrag deur of onvermoë van Nasionale of Provinsiale Kommissaris

9. (1) Behoudens hierdie artikel, is subartikels (1) tot (8) van artikel 8 *mutatis mutandis*
 35 *mutandis* van toepassing op 'n ondersoek na bewerings van wangedrag deur die Nasionale of Provinsiale Kommissaris, of na sy of haar geskiktheid vir sy of haar amp of vermoë om sy of haar amptelike pligte op 'n bekwame wyse uit te voer.

(2) Die raad van ondersoek uit hoofde van subartikel (1) ingestel, maak 'n bevinding ten opsigte van die beweerde wangedrag of beweerde ongeskiktheid vir amp of
 40 onvermoë om amptelike pligte op 'n bekwame wyse uit te voer, na gelang van die geval, en doen aanbevelings soos in artikel 8(6)(b) beoog.

(3) Indien die Nasionale Kommissaris die vertroue van die Kabinet verloor het of 'n Provinsiale Kommissaris die vertroue van die Uitvoerende Raad of die Nasionale Kommissaris, na gelang van die geval, verloor het na aanleiding van 'n ondersoek
 45 ingevolge hierdie artikel, is die bepalings van artikel 8(7) *mutatis mutandis* van toepassing.

Raad van Kommissarisse

10. (1) Die Raad van Kommissarisse bestaande uit die Nasionale en Provinsiale Kommissarisse word hierby ingestel.

50 (2) Die werksaamhede van die raad is om samewerking en koördinasie in die Diens te bevorder.

(3) Die Nasionale Kommissaris of sy of haar benoemde sit by die raad voor en die raad bepaal sy eie prosedure.

HOOFSTUK 5

55 BEVOEGDHEDE, PLIGTE EN WERKSAAMHEDE

Nasionale Kommissaris

11. (1) Die Nasionale Kommissaris kan die bevoegdhede uitoefen en verrig die pligte en werksaamhede wat nodig is om gevolg te gee aan artikel 218(1) van die Grondwet.

- (2) Without derogating from the generality of subsection (1), the powers, duties and functions referred to in that subsection shall include the power, duty and function to—
- (a) develop a plan before the end of each financial year, setting out the priorities and objectives of policing for the following financial year;
 - (b) determine the fixed establishment of the Service and the number and grading of posts; 5
 - (c) determine the distribution of the numerical strength of the Service after consultation with the board;
 - (d) organise or reorganise the Service at national level into various components, units or groups; 10
 - (e) establish and maintain training institutions or centres for the training of students and other members;
 - (f) establish and maintain bureaus, depots, quarters, workshops or any other institution of any nature whatsoever, which may be expedient for the general management, control and maintenance of the Service; and 15
 - (g) perform any legal act or act in any legal capacity on behalf of the Service.

Provincial Commissioners

12. (1) Subject to this Act, a Provincial Commissioner shall have command of and control over the Service under his or her jurisdiction in the province and may exercise the powers and shall perform the duties and functions necessary to give effect to section 219 of the Constitution. 20

(2) A Provincial Commissioner may—

- (a) subject to a determination under section 11(2)(a), delimit any area in the province and determine the boundaries thereof until the province has been divided into as many areas as may be necessary for the purposes of the organisation of the Service under his or her jurisdiction; and 25
- (b) establish and maintain police stations and units in the province and determine the boundaries of station or unit areas.

(3) A Provincial Commissioner shall determine the distribution of the strength of the Service under his or her jurisdiction in the province among the different areas, station areas, offices and units. 30

Members

13. (1) Subject to the Constitution and with due regard to the fundamental rights of every person, a member may exercise such powers and shall perform such duties and functions as are by law conferred on or assigned to a police official. 35

(2) Where a member becomes aware that a prescribed offence has been committed, he or she shall inform his or her commanding officer thereof as soon as possible.

(3) (a) A member who is obliged to perform an official duty, shall, with due regard to his or her powers, duties and functions, perform such duty in a manner that is reasonable in the circumstances. 40

(b) Where a member who performs an official duty is authorised by law to use force, he or she may use only the minimum force which is reasonable in the circumstances.

(4) Every member shall be competent to serve or execute any summons, warrant or other process whether directed to him or her or to any other member.

(5) Any member may in general or in any particular instance be required to act as prosecutor, or in any other respect to appear on behalf of the State in any criminal matter before any magistrate's court, any magistrate holding a preparatory examination, a court of a special justice of the peace or any other lower court in the Republic. 45

(6) Any member may, where it is reasonably necessary for the purposes of control over the illegal movement of people or goods across the borders of the Republic, without warrant search any person, premises, other place, vehicle, vessel or aircraft, or any receptacle of whatever nature, at any place in the Republic within 10 kilometres or any reasonable distance from any border between the Republic and any foreign state, or in the territorial waters of the Republic, or inside the Republic within 10 kilometres or any 50

(2) Sonder om afbreuk te doen aan die algemeenheid van subartikel (1), sluit die bevoegdhede, pligte en werksaamhede bedoel in daardie subartikel die bevoegdheid, plig en werksaamheid in om—

- 5 (a) 'n plan voor die einde van elke boekjaar te ontwikkel waarin die prioriteite en doelwitte van polisiëring vir die daaropvolgende boekjaar uiteengesit word;
- (b) die vaste diensstaat van die Diens en die getal en gradering van poste te bepaal;
- 10 (c) die verdeling van die getalsterkte van die Diens na oorleg met die raad te bepaal;
- (d) die Diens op nasionale vlak in verskillende komponente, eenhede of groepe te organiseer of reorganiseer;
- (e) opleidingsinrigtings of -sentrums in te stel en in stand te hou vir die opleiding van studente en ander lede;
- 15 (f) buro's, depots, kwartiere, werkswinkels of enige ander instelling van welke aard ook al in te stel en in stand te hou, wat nodig mag wees vir die algemene bestuur, beheer en instandhouding van die Diens; en
- (g) namens die Diens enige regshandeling te verrig of in enige regshoedanigheid op te tree.

20 Provinsiale Kommissaris

12. (1) Behoudens hierdie Wet, het 'n Provinsiale Kommissaris bevel en beheer oor die Diens onder sy of haar jurisdiksie in die provinsie en kan hy of sy die bevoegdhede uitoefen en moet hy of sy die pligte en werksaamhede verrig wat nodig is om aan artikel 219 van die Grondwet gevolg te gee.

- 25 (2) 'n Provinsiale Kommissaris kan—
 - (a) behoudens 'n bepaling kragtens artikel 11(2)(a), enige area in die provinsie afbaken en die grense daarvan bepaal totdat die provinsie in soveel areas verdeel is as wat nodig is vir die doeleindes van die organisasie van die Diens onder sy of haar jurisdiksie; en
 - 30 (b) polisiestasies en -eenhede in die provinsie instel en in stand hou en die grense van stasie- of eenheidsareas bepaal.
- (3) 'n Provinsiale Kommissaris bepaal die verdeling van die getalsterkte van die Diens onder sy of haar jurisdiksie in die provinsie onder die verskillende areas, stasie-areas, kantore en eenhede.

35 Lede

13. (1) Behoudens die Grondwet en met behoorlike inagneming van die fundamentele regte van elke persoon, kan 'n lid die bevoegdhede uitoefen en moet 'n lid die pligte en werksaamhede verrig wat by wet aan 'n polisiebeampte verleen of opgedra word.

- 40 (2) Waar 'n lid bewus raak dat 'n voorgeskrewe misdryf gepleeg is, moet hy of sy so spoedig moontlik sy of haar bevelvoerende offisier daarvan verwittig.
 - (3)(a) 'n Lid wat verplig is om 'n amptelike plig te verrig, moet met behoorlike inagneming van sy of haar bevoeghede, pligte en werksaamhede, so 'n plig verrig op 'n wyse wat redelik is in die omstandighede.
 - 45 (b) Waar 'n lid in die verrigting van 'n amptelike plig regtens gemagtig is om geweld te gebruik, kan hy of sy slegs die minimum geweld aanwend wat in die omstandighede redelik is.
 - (4) Elke lid is bevoeg om enige dagvaarding, lasbrief of ander prosesstuk wat aan hom of haar of aan enige ander lid gerig is, te bestel of uit te voer.
 - 50 (5) Enige lid kan in die algemeen of in 'n bepaalde geval gelas word om in 'n strafsak voor 'n landdroshof, 'n landdros wat 'n voorlopige ondersoek hou, 'n hof van 'n spesiale vrederegter of enige ander laerhof in die Republiek, namens die Staat as 'n aanklaer of in enige ander hoedanigheid op te tree.
 - 55 (6) Enige lid kan, waar dit redelikerwys noodsaaklik is vir die doeleindes van beheer oor die onwettige beweging van mense of goedere oor die grense van die Republiek, sonder 'n lasbrief enige persoon, perseel, ander plek, voertuig, vaartuig of vliegtuig of enige houer van watter aard ook al op enige plek in die Republiek binne 10 kilometer of enige redelike afstand vanaf enige grens tussen die Republiek en 'n vreemde staat, of in die gebiedswaters van die Republiek, of in die Republiek binne 10 kilometer of

reasonable distance from such territorial waters and seize anything found in the possession of such person or upon or at or in such premises, other place, vehicle, vessel, aircraft or receptacle and which may lawfully be seized.

(7)(a) The National or Provincial Commissioner may, where it is reasonable in the circumstances in order to restore public order or to ensure the safety of the public in a particular area, in writing authorise that the particular area or any part thereof be cordoned off. 5

(b) The written authorisation referred to in paragraph (a) shall specify the period, which shall not exceed 24 hours, during which the said area may be cordoned off, the area or part thereof to be cordoned off and the object of the proposed action. 10

(c) Upon receipt of the written authorisation referred to in paragraph (a), any member may cordon off the area concerned or part thereof, and may, where it is reasonably necessary in order to achieve the object specified in the written authorisation, without warrant, search any person, premises or vehicle, or any receptacle or object of whatever nature, in that area or part thereof and seize any article referred to in section 20 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), found by him or her in the possession of such person or in that area or part thereof: Provided that a member executing a search under this paragraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, exhibit to him or her a copy of the written authorisation. 15 20

(8)(a) The National or Provincial Commissioner may, where it is reasonable in the circumstances in order to exercise a power or perform a function referred to in section 215 of the Constitution, in writing authorise a member under his or her command, to set up a roadblock or roadblocks on any public road in a particular area or to set up a checkpoint or checkpoints at any public place in a particular area. 25

(b) The written authorisation referred to in paragraph (a) shall specify the date, approximate duration, place and object of the proposed action.

(c) Any member authorised under paragraph (a) may set up a roadblock or roadblocks or cause a roadblock or roadblocks to be set up on any public road in the area so specified or set up a checkpoint or checkpoints or cause a checkpoint or checkpoints to be set up at any public place in the area so specified. 30

(d) Notwithstanding the provisions of paragraph (a), any member who has reasonable suspicion to believe that—

- (i) an offence mentioned in Schedule 1 to the Criminal Procedure Act, 1977, has been committed and that a person who has been involved in the commission thereof is, or is about to be, travelling in a motor vehicle in a particular area; 35
- (ii) a person who is a witness to such an offence is absconding and is, or is about to be, travelling in a motor vehicle in a particular area and that a warrant for his or her arrest has been issued under section 184 of the Criminal Procedure Act, 1977, or that such a warrant will be issued if the information at the disposal of the member is brought to the attention of the magistrate, regional magistrate or judge referred to in that section, but that the delay in obtaining such warrant will defeat the object of the roadblock; 40
- (iii) a person who is reasonably suspected of intending to commit an offence referred to in subparagraph (i) and who may be prevented from committing such an offence by the setting up of a roadblock is, or is about to be, travelling in a motor vehicle in a particular area; 45
- (iv) a person who is a fugitive after having escaped from lawful custody is, or is about to be, travelling in a motor vehicle in a particular area; or
- (v) any object which— 50
 - (aa) is concerned in;
 - (bb) may afford evidence of; or
 - (cc) is intended to be used in,
 the commission of an offence referred to in subparagraph (i), whether within the Republic or elsewhere, and which is, or is about to be, transported in a motor vehicle in a particular area and that a search warrant will be issued to him or her under section 21(1)(a) of the Criminal Procedure Act, 1977, if he 55

enige redelike afstand vanaf sodanige gebiedswaters, deursoek en enige voorwerp in beslag neem wat hy of sy in besit van sodanige persoon of op of by of in bedoelde perseel, ander plek, voertuig, vaartuig, vliegtuig of houer vind en wat regtens in beslag geneem kan word.

5 (7)(a) Die Nasionale of Provinsiale Kommissaris kan, waar dit in die omstandighede redelik is ten einde die openbare orde te herstel of die veiligheid van die publiek in 'n bepaalde gebied te verseker, skriftelik magtiging verleen dat 'n kordon rondom daardie gebied of enige deel daarvan getrek word.

(b) Die skriftelike magtiging in paragraaf (a) bedoel, moet die tydperk, wat nie 24
10 uur mag oorskry nie, vir die duur van die kordon om die gebied, die gebied of deel daarvan waarom sodanige kordon getrek word en die oogmerk van die beoogde optrede spesifiseer.

(c) Enige lid kan by ontvangs van die skriftelike magtiging in paragraaf (a) bedoel, 'n kordon rondom die betrokke gebied of deel daarvan trek en, waar dit redelikerwys
15 noodsaaklik is ten einde die oogmerk in die skriftelike magtiging gespesifiseer, te bereik, sonder 'n lasbrief enige persoon, perseel of voertuig, of enige houer of voorwerp van watter aard ook al, in daardie gebied of deel daarvan deursoek en op enige voorwerp in artikel 20 van die Strafproseswet, 1977 (Wet No. 51 van 1977),
20 bedoel wat deur hom of haar in die besit van sodanige persoon of in daardie gebied of deel daarvan gevind word, beslag lê: Met dien verstande dat 'n lid wat 'n deursoeking kragtens hierdie paragraaf uitvoer, op versoek van enige persoon wie se regte deur die deursoeking of beslaglegging aangetas word of aangetas is, 'n afskrif van die skriftelike magtiging aan hom of haar moet toon.

(8)(a) Die Nasionale of Provinsiale Kommissaris kan, waar dit in die omstandighede
25 redelik is ten einde 'n bevoegdheid uit te oefen of 'n werksaamheid in artikel 215 van die Grondwet bedoel, te verrig 'n lid onder sy of haar bevel skriftelik magtig om 'n padblokkade of padblokkades op enige openbare pad in 'n bepaalde gebied of 'n kontrolepunt of kontrolepunte op enige openbare plek in 'n bepaalde gebied op te rig.

(b) Die skriftelike magtiging in paragraaf (a) bedoel, moet die datum, geraamde
30 tydsduur, plek en oogmerk van die beoogde optrede spesifiseer.

(c) Enige lid kragtens paragraaf (a) gemagtig, kan 'n padblokkade of padblokkades op enige openbare pad in die aldus gespesifiseerde gebied of 'n kontrolepunt of kontrolepunte op enige openbare plek in die aldus gespesifiseerde gebied oprig of laat oprig.

35 (d) Ondanks die bepalinge van paragraaf (a), kan enige lid wat redelike vermoede het om te glo dat—

(i) 'n misdryf in Bylae 1 by die Strafproseswet, 1977, vermeld, gepleeg is en dat 'n persoon wat by die pleging daarvan betrokke was, besig is of op die punt staan om in 'n motorvoertuig in 'n bepaalde gebied te reis;

40 (ii) 'n persoon wat 'n getuie van sodanige misdryf is, vlug en besig is of op die punt staan om in 'n motorvoertuig in 'n bepaalde gebied te reis en dat 'n lasbrief vir sy of haar inhegtenisname kragtens artikel 184 van die Strafproseswet, 1977, uitgereik is, of dat so 'n lasbrief uitgereik sal word indien die inligting waaroor die lid beskik onder die aandag van die landdros, streeklanddros of regter in daardie artikel bedoel, gebring word, maar dat die vertraging wat deur die verkryging van so 'n lasbrief veroorsaak sal word, die oogmerk van die padblokkade sal verydel;

45 (iii) 'n persoon wat redelikerwys daarvan verdink word dat hy of sy van voorneme is om 'n misdryf bedoel in subparagraaf (i), te pleeg, besig is of op die punt staan om in 'n motorvoertuig in 'n bepaalde gebied te reis en wat van die pleging van sodanige misdryf weerhou kan word deur 'n padblokkade op te rig;

50 (iv) 'n persoon wat 'n voortvlugtige is nadat hy of sy uit wettige bewaring ontsnap het, besig is of op die punt staan om in 'n motorvoertuig in 'n bepaalde gebied te reis; of

55 (v) enige voorwerp wat—

(aa) betrokke is by;

(bb) bewys kan lewer van; of

(cc) bestem is om gebruik te word by,

60 hetsy binne of buite die Republiek, die pleging van 'n misdryf in subparagraaf (i) bedoel, en wat besig is of op die punt staan om in 'n motorvoertuig in 'n bepaalde gebied vervoer te word en dat 'n lasbrief kragtens artikel 21(1)(a) van die Strafproseswet, 1977, aan hom of haar uitgereik sou word

or she had reason to believe that the object will be transported in a specific vehicle and he or she had applied for such warrant, and that the delay that will be caused by first obtaining an authorisation referred to in paragraph (a), will defeat the object of the roadblock, may set up a roadblock on any public road or roads in that area for the purpose of establishing whether a motor vehicle is carrying such a person or object. 5

(e) For the purposes of exercising the powers conferred by paragraph (c) or (d), a member shall display, set up or erect on or next to the road or at the public place such sign, barrier or object as is reasonable in the circumstances to bring the order to stop to the attention of the driver of a vehicle approaching the roadblock so as to ensure that the vehicle will come to a stop or to the attention of a person approaching the checkpoint. 10

(f) Any driver of a vehicle who approaches a roadblock or any person who approaches a checkpoint and who refuses or fails to stop in accordance with an order to stop displayed as contemplated in paragraph (e), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 15

(g) Any member may, without warrant—

(i) in the event of a roadblock or checkpoint that is set up in accordance with paragraph (c), search any person or vehicle stopped at such roadblock or checkpoint and any receptacle or object of whatever nature in the possession of such person or in, on or attached to such vehicle and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him or her in the possession of such person or in, on or attached to such receptacle or vehicle: Provided that a member executing a search under this subparagraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, exhibit to him or her a copy of the written authorisation by the Commissioner concerned; and 20 25

(ii) in the event of a roadblock that is set up in accordance with paragraph (d), search any person or vehicle stopped at such roadblock and any receptacle or object of whatever nature in, on or attached to such vehicle and seize any article referred to in section 20 of the Criminal Procedure Act, 1977, found by him or her in, on or attached to such receptacle or vehicle: Provided that a member executing a search under this subparagraph shall, upon demand of any person whose rights are or have been affected by the search or seizure, inform him or her of the reason for the setting up of the roadblock. 30

(h) For the purposes of this subsection "checkpoint" includes any barrier set up under an authorisation referred to in paragraph (a) in order to control the movement of persons. 35

(9) The provisions of sections 29 to 36 of the Criminal Procedure Act, 1977, shall apply *mutatis mutandis* in respect of a search conducted under subsections (6), (7) and (8) and any object seized during such a search.

(10) The National or Provincial Commissioner may, in the exercise of any power or the performance of any function referred to in section 215 of the Constitution, publish or cause to be published, or in any other manner display or cause to be displayed any information, photograph or sketch of any person. 40

(11)(a) A member may, for the purposes of investigating any offence or alleged offence, cordon off the scene of such offence or alleged offence and any adjacent area which is reasonable in the circumstances to cordon off in order to conduct an effective investigation at the scene of the offence or alleged offence. 45

(b) A member may, where it is reasonable in the circumstances in order to conduct such investigation, prevent any person from entering or leaving an area so cordoned off.

(12)(a) If the National Commissioner deems it necessary for the purposes of performing the functions of the Service, he or she may, with the approval of the Minister, direct any member to perform service at any place outside the Republic. 50

(b) A member in respect of whom a direction has been issued under paragraph (a), shall perform service in accordance with such direction and shall, while so performing service, remain, unless the Minister in a particular case otherwise directs, subject to the provisions of this Act as if performing service within the Republic. 55

indien hy of sy rede het om te glo dat die voorwerp in 'n bepaalde voertuig vervoer sal word en die lid om so 'n lasbrief aansoek gedoen het, en dat die vertraging wat veroorsaak sal word deur eers 'n magtiging in paragraaf (a) bedoel, te verkry, die oogmerk van die padblokkade sal verydel, 'n padblokkade op enige openbare pad of paaie in daardie gebied oprig met die doel om vas te stel of 'n motorvoertuig sodanige persoon of voorwerp vervoer.

(e) Vir die doeleindes van die uitoefening van die bevoegdheids deur paragraaf (c) of (d) verleen, moet 'n lid die teken, versperring of voorwerp op of langs die pad of by die openbare plek oprig wat in die omstandighede redelik is om die bevel om te stop onder die aandag te bring van die bestuurder van 'n voertuig wat die padblokkade nader, ten einde te verseker dat die voertuig tot stilstand kom of onder die aandag te bring van 'n persoon wat die kontrolepunt nader.

(f) Enige bestuurder van 'n voertuig wat 'n padblokkade nader of enige persoon wat 'n kontrolepunt nader en wat weier of versuim om te stop ooreenkomstig 'n bevel om te stop wat vertoon word soos in paragraaf (e) beoog, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande.

(g) Enige lid kan sonder 'n lasbrief—

(i) in die geval van 'n padblokkade of kontrolepunt wat ooreenkomstig paragraaf (c) opgerig is, enige persoon of voertuig wat by sodanige padblokkade of kontrolepunt gestop is en enige houer of voorwerp van watter aard ook al in die besit van sodanige persoon of in, op of aan so 'n voertuig deursoek en beslag lê op enige voorwerp in artikel 20 van die Strafproseswet, 1977, bedoel, wat deur hom of haar in die besit van so 'n persoon of in, op of aan so 'n houer of voertuig gevind word: Met dien verstande dat 'n lid wat 'n deursoeking kragtens hierdie subparagraaf uitvoer, op versoek van enige persoon wie se regte deur die deursoeking of beslaglegging aangetas word of aangetas is, aan hom of haar 'n afskrif van die skriftelike magtiging van die betrokke Kommissaris moet toon; en

(ii) in die geval van 'n padblokkade wat ooreenkomstig paragraaf (d) opgerig is, enige persoon of voertuig wat by so 'n padblokkade gestop is en enige houer of voorwerp van watter aard ook al in, op of aan so 'n voertuig deursoek en beslag lê op enige voorwerp in artikel 20 van die Strafproseswet, 1977, bedoel wat deur hom of haar in, op of aan so 'n houer of voertuig gevind word: Met dien verstande dat 'n lid wat 'n deursoeking kragtens hierdie subparagraaf uitvoer, op versoek van enige persoon wie se regte deur die deursoeking of beslaglegging aangetas word of aangetas is, hom of haar van die rede vir die oprigting van die padblokkade moet inlig.

(h) Vir die doeleindes van hierdie subartikel sluit "kontrolepunt" enige versperring in wat kragtens 'n magtiging in paragraaf (a) bedoel, opgestel is ten einde die beweging van persone te beheer.

(9) Die bepalinge van artikels 29 tot 36 van die Strafproseswet, 1977, is *mutatis mutandis* van toepassing op 'n deursoeking wat kragtens subartikels (6), (7) en (8) uitgevoer word en op enige voorwerp waarop gedurende sodanige deursoeking beslag gelê is.

(10) Die Nasionale of Provinsiale Kommissaris kan, by die uitoefening van enige bevoegdheid of die verrigting van enige werksaamheid in artikel 215 van die Grondwet bedoel, enige inligting, foto of skets van enige persoon publiseer of laat publiseer of op enige ander wyse vertoon of laat vertoon.

(11)(a) 'n Lid kan vir die doeleindes van die ondersoek van enige misdryf of beweerde misdryf 'n kordon rondom die toneel van sodanige misdryf of beweerde misdryf en enige aangrensende gebied trek wat in die omstandighede redelik is om te trek ten einde 'n effektiewe ondersoek op die toneel van die misdryf of beweerde misdryf in te stel.

(b) 'n Lid kan, waar dit in die omstandighede redelik is ten einde so 'n ondersoek in te stel, enige persoon verbied om 'n gebied waarom 'n kordon aldus getrek is, binne te gaan of te verlaat.

(12)(a) Indien die Nasionale Kommissaris dit nodig ag vir die doeleindes van die verrigting van die werksaamhede van die Diens, kan hy of sy, met die goedkeuring van die Minister, enige lid gelas om op enige plek buite die Republiek diens te verrig.

(b) 'n Lid ten opsigte van wie 'n lasgewing kragtens paragraaf (a) uitgereik is, verrig diens ooreenkomstig sodanige lasgewing en bly, terwyl hy of sy aldus diens verrig, tensy die Minister in 'n bepaalde geval anders gelas, onderworpe aan die bepalinge van hierdie Wet asof hy of sy diens binne die Republiek verrig.

(13) Subject to the Constitution —

- (a) this section shall not be construed as derogating from any power conferred upon a member by or under this Act or any other law, including the common law; and
- (b) the powers conferred upon a member by this section shall not be limited by any other law, including the common law. 5

Employment of Service in preservation of life, health or property

14. The National or Provincial Commissioner may employ members for service in the preservation of life, health or property.

Delegation 10

15. (1)(a) Subject to section 15 of the Exchequer Act, 1975 (Act No. 66 of 1975), any power conferred on the National or Provincial Commissioner by this Act or any other law, excluding the power contemplated in section 13(7)(a), may be delegated in writing by any such Commissioner to any member or other person in the employment of the Service, or a board or body established by or under this Act or a law referred to in section 217(3) of the Constitution, who or which shall exercise such power subject to the directions of the Commissioner concerned. 15

(b) Paragraph (a) shall apply *mutatis mutandis* in respect of any power delegated by the National Commissioner to a Provincial Commissioner under that paragraph.

(2) The delegation of any power by the National or Provincial Commissioner under subsection (1) may be withdrawn by such a Commissioner and any decision taken by anyone under such delegated power may be withdrawn or amended by such Commissioner, and shall, until it is so withdrawn or amended, be deemed to have been taken by the National or Provincial Commissioner concerned: Provided that any such withdrawal or amendment shall not affect any right, privilege, obligation or liability acquired, accrued or incurred as a result of such decision. 25

CHAPTER 6

ORGANISED CRIME AND PUBLIC ORDER POLICING UNIT

National prevention and investigation of crime

16. (1) Circumstances amounting to criminal conduct or an endeavour thereto, as set out in subsection (2), shall be regarded as organised crime, crime which requires national prevention or investigation, or crime which requires specialised skills in the prevention and investigation thereof. 30

(2) Circumstances contemplated in subsection (1) comprise criminal conduct or endeavour thereto— 35

- (a) by any enterprise or group of persons who have a common goal in committing crimes in an organised manner;
- (b) (i) by a person or persons in positions of trust and making use of specialised or exclusive knowledge;
- (ii) in respect of the revenue or expenditure of the national government; or 40
- (iii) in respect of the national economy or the integrity of currencies;
- (c) which takes on such proportions or is of such a nature that the prevention or investigation thereof at national level would be in the national interest;
- (d) in respect of unwrought precious metals or unpolished diamonds;
- (e) in respect of the hunting, importation, exportation, possession, buying and 45
- selling of endangered species or any products thereof as may be prescribed;
- (f) in more than one province or outside the borders of the Republic by the same perpetrator or perpetrators, and in respect of which the prevention or investigation at national level would be in the national interest;
- (g) in respect of which the prevention or investigation requires the application of 50
- specialised skills and where expedience requires that it be prevented or investigated at national level;

(13) Behoudens die Grondwet—

- (a) word hierdie artikel nie uitgelê as synde afbreuk te doen aan enige bevoegdheid by of kragtens hierdie Wet of enige ander wet, met inbegrip van die gemene reg, aan 'n lid verleen nie; en
- 5 (b) word die bevoegdhede by hierdie artikel aan 'n lid verleen nie deur enige ander wet, met inbegrip van die gemene reg, beperk nie.

Indiensstelling van Diens ter behoud van lewe, gesondheid of eiendom

14. Die Nasionale of Provinsiale Kommissaris kan lede ter behoud van lewe, gesondheid of eiendom in diens stel.

10 Delegasie

15. (1)(a) Behoudens artikel 15 van die Skatkiswet, 1975 (Wet No. 66 van 1975), kan enige bevoegdheid by hierdie Wet of enige ander wet aan die Nasionale of Provinsiale Kommissaris verleen, uitgesonderd die bevoegdheid in artikel 13(7)(a) beoog, skriftelik deur so 'n Kommissaris aan enige lid of ander persoon in diens van die Diens, of 'n raad of liggaam ingestel by of kragtens hierdie Wet of 'n wet in artikel 217(3) van die Grondwet bedoel, gedelegeer word, wat sodanige bevoegdheid behoudens die voorskrifte van die betrokke Kommissaris moet uitoefen.

(b) Paragraaf (a) is *mutatis mutandis* van toepassing ten opsigte van enige bevoegdheid deur die Nasionale Kommissaris kragtens daardie paragraaf aan 'n Provinsiale Kommissaris gedelegeer.

(2) Die delegasie van enige bevoegdheid deur die Nasionale of Provinsiale Kommissaris kragtens subartikel (1) kan deur sodanige Kommissaris ingetrek word en 'n beslissing deur engeen kragtens sodanige gedelegeerde bevoegdheid geneem, kan deur sodanige Kommissaris ingetrek of gewysig word en word, totdat dit aldus ingetrek of gewysig is, geag deur die betrokke Nasionale of Provinsiale Kommissaris geneem te wees: Met dien verstande dat so 'n intrekking of wysiging nie enige reg, voorreg, verpligting of aanspreeklikheid as gevolg van so 'n beslissing verkry, opgehoop of aangegaan, raak nie.

HOOFSTUK 6

30 GEORGANISEERDE MISDAAD EN POLISIE-EENHEID VIR OPENBARE ORDE

Nasionale voorkoming en ondersoek van misdaad

16. (1) Omstandighede wat misdadige gedrag of 'n beywering daartoe uitmaak soos in subartikel (2) uiteengesit, word beskou as georganiseerde misdaad, misdaad wat nasionale voorkoming of ondersoek vereis of misdaad waarvan die voorkoming en ondersoek deskundige vaardighede vereis.

(2) Omstandighede beoog in subartikel (1) bestaan uit misdadige gedrag of beywering daartoe—

(a) deur enige onderneming of groep persone wat 'n gemeenskaplike oogmerk het om misdade op 'n georganiseerde wyse te pleeg;

(b) (i) deur 'n persoon of persone in vertrouensposisies en wat van deskundige of eksklusiewe kennis gebruik maak;

(ii) ten opsigte van die inkomste of uitgawe van die nasionale regering; of

(iii) ten opsigte van die nasionale ekonomie of die integriteit van betaalmiddele;

(c) wat die afmetings aanneem of van so 'n aard is dat die voorkoming of ondersoek daarvan op nasionale vlak in die nasionale belang is;

(d) ten opsigte van onbewerkte edel metale of ongeslypte diamante;

(e) ten opsigte van die jag, invoer, uitvoer, besit, koop en verkoop van bedreigde spesies of enige produkte daarvan soos voorgeskryf;

(f) in meer as een provinsie of buite die grense van die Republiek deur dieselfde dader of daders, en ten opsigte waarvan die voorkoming of ondersoek op nasionale vlak in nasionale belang is;

(g) ten opsigte waarvan die voorkoming of ondersoek die toepassing van deskundige vaardighede vereis en waar doelmatigheid vereis dat dit op nasionale vlak voorkom of ondersoek word;

- (h) which a Provincial Commissioner requests the National Commissioner to prevent or investigate by employing expertise and making resources available at national level and to which request the National Commissioner accedes;
- (i) in respect of which the investigation in the Republic by the Service is requested by an international police agency or the police of a foreign country; and
- (j) in respect of which the prevention or investigation by members under the command of a Provincial Commissioner will detrimentally affect or hamper the prevention or investigation of circumstances referred to in paragraphs (a) to (i).

(3) In the event of a dispute between the National and Provincial Commissioner regarding the question whether criminal conduct or endeavour thereto should be regarded as organised crime, crime which requires national prevention or investigation or crime which requires specialised skills in the investigation and prevention thereof, the determination by the National Commissioner shall prevail.

(4)(a) Notwithstanding the provisions of subsections (1), (2) and (3), the Provincial Commissioner shall be responsible for the prevention and investigation of all crimes or alleged crimes committed in the province concerned.

(b) Where an investigation of a crime or alleged crime reveals that the circumstances referred to in subsection (2) are present, the Provincial Commissioner shall report the matter to the National Commissioner as soon as possible.

(c) The National Commissioner may, in consultation with the Provincial Commissioner concerned, notwithstanding the presence of the circumstances referred to in subsection (2), direct that the investigation or any part thereof, be conducted by the Provincial Commissioner.

National public order policing unit

17. (1) The National Commissioner shall, subject to section 218(1)(k) of the Constitution, establish and maintain a national public order policing unit.

(2) The National Commissioner may deploy the national public order policing unit, or any part thereof, at the request and in support of a Provincial Commissioner, taking into account—

- (a) the reason for the request;
- (b) the personnel and equipment available to the unit; and
- (c) any other circumstances anywhere in the national territory which may have an influence on the maintenance of public order and which may require the deployment of the unit or any part thereof elsewhere.

(3) Where the national public order policing unit or any part thereof is deployed under subsection (2), the unit shall perform its functions subject to the directions of the Provincial Commissioner concerned: Provided that the mere fact of such deployment does not preclude the President from exercising his or her powers under subsection (5) in relation to the area where the unit is so deployed.

(4) The National Commissioner may withdraw the national public order policing unit or any part thereof deployed under subsection (2), taking into account—

- (a) the prevailing circumstances where the unit or part thereof is so deployed;
- (b) the personnel and equipment available to the unit; and
- (c) any other circumstances anywhere in the national territory which may have an influence on the maintenance of public order and which may require the deployment of the unit or any part thereof elsewhere:

Provided that the National Commissioner shall, at the request of the Provincial Commissioner, withdraw the unit or any part thereof so deployed.

(5) The President may, in consultation with the Cabinet, direct the National Commissioner to deploy the national public order policing unit in circumstances where a Provincial Commissioner is unable to maintain public order and the deployment of the unit is necessary to restore public order.

(6) The National Commissioner shall, upon receiving a direction under subsection (5), deploy the national public order policing unit or such part thereof as may be necessary to restore public order to the area concerned, and may from time to time if he or she deems it necessary, deploy additional members of the unit in the area concerned

- (h) wat die Provinsiale Kommissaris die Nasionale Kommissaris versoek om te voorkom of te ondersoek deur op nasionale vlak deskundigheid aan te wend en hulpbronne beskikbaar te stel, en tot welke versoek die Nasionale Kommissaris toestem;
- 5 (i) ten opsigte waarvan die ondersoek in die Republiek deur die Diens versoek word deur 'n internasionale polisie-agentskap of die polisie van 'n vreemde land; en
- (j) ten opsigte waarvan die voorkoming of ondersoek deur lede onder die bevel van 'n Provinsiale Kommissaris 'n nadelige uitwerking op die ondersoek van omstandighede in paragrawe (a) tot (i) bedoel, sal hê of so 'n ondersoek sal belemmer.

(3) In die geval van 'n geskil tussen die Nasionale en Provinsiale Kommissaris betreffende die vraag of misdadige gedrag of beywering daartoe beskou moet word as georganiseerde misdaad, misdaad wat nasionale voorkoming of ondersoek vereis of misdaad waarvan die voorkoming en ondersoek deskundige vaardighede vereis, is die beslissing van die Nasionale Kommissaris deurslaggewend.

(4)(a) Ondanks die bepalinge van subartikels (1), (2) en (3), is die Provinsiale Kommissaris verantwoordelik vir die voorkoming en ondersoek van alle misdade of beweerde misdade in die betrokke provinsie gepleeg.

20 (b) Waar 'n ondersoek van 'n misdaad of beweerde misdaad aan die lig bring dat die omstandighede bedoel in subartikel (2), teenwoordig is, rapporteer die Provinsiale Kommissaris die aangeleentheid so spoedig moontlik aan die Nasionale Kommissaris.

(c) Ondanks die teenwoordigheid van die omstandighede in subartikel (2) bedoel, kan die Nasionale Kommissaris in oorleg met die betrokke Provinsiale Kommissaris 25 gelas dat die Provinsiale Kommissaris die ondersoek of enige deel daarvan behartig.

Nasionale polisie-eenheid vir openbare orde

17. (1) Behoudens artikel 218(1)(k) van die Grondwet, moet die Nasionale Kommissaris 'n nasionale polisie-eenheid vir openbare orde instel en dit in stand hou.

(2) Die Nasionale Kommissaris kan, op versoek en ter ondersteuning van 'n 30 Provinsiale Kommissaris, die nasionale polisie-eenheid vir openbare orde of enige deel daarvan aanwend met inagneming van—

- (a) die rede vir die versoek;
- (b) die personeel en toerusting tot die beskikking van die eenheid; en
- 35 (c) enige ander omstandighede op enige plek in die nasionale grondgebied wat 'n invloed op die handhawing van openbare orde kan hê en wat die aanwending van die eenheid of enige deel daarvan elders kan vereis.

(3) Waar die nasionale polisie-eenheid vir openbare orde of enige deel daarvan kragtens subartikel (2) aangewend word, verrig die eenheid sy werksaamhede behoudens die voorskrifte van die betrokke Provinsiale Kommissaris: Met dien 40 verstande dat die blote feit van sodanige aanwending nie die President belet om sy of haar bevoegdheid kragtens subartikel (5) met betrekking tot die gebied waar die eenheid aldus aangewend word, uit te oefen nie.

(4) Die Nasionale Kommissaris kan die nasionale polisie-eenheid vir openbare orde of enige deel daarvan wat kragtens subartikel (2) aangewend word, onttrek met 45 inagneming van—

- (a) die heersende omstandighede waar die eenheid of gedeelte daarvan aldus aangewend word;
- (b) die personeel en toerusting tot die beskikking van die eenheid; en
- 50 (c) enige ander omstandighede op enige plek in die nasionale grondgebied wat 'n invloed op die handhawing van openbare orde kan hê en wat die aanwending van die eenheid of enige deel daarvan elders kan vereis:

Met dien verstande dat die Nasionale Kommissaris die eenheid of enige deel daarvan wat aldus aangewend word, op versoek van die Provinsiale Kommissaris moet onttrek.

(5) Die President kan, in oorleg met die Kabinet, die Nasionale Kommissaris gelas 55 om die nasionale polisie-eenheid vir openbare orde aan te wend in omstandighede waar 'n Provinsiale Kommissaris nie in staat is om openbare orde te handhaaf nie en die aanwending van die eenheid nodig is om openbare orde te herstel.

(6) Die Nasionale Kommissaris moet, by ontvangs van 'n lasgewing kragtens subartikel (5), die nasionale polisie-eenheid vir openbare orde of die deel daarvan wat 60 nodig is om openbare orde in die betrokke gebied te herstel, aanwend, en kan van tyd tot tyd, indien hy of sy dit nodig ag, bykomende lede van die eenheid in die betrokke

or, subject to subsection (7), withdraw members of the unit from the area concerned if their continued presence is no longer required to restore or maintain public order in the area concerned or in any part thereof.

(7) Where the national public order policing unit or any part thereof is deployed under subsection (5) and public order has been restored in the area concerned, the unit or part thereof shall continue to maintain public order in such area until the President, in consultation with the Cabinet, directs the National Commissioner to withdraw the unit. 5

CHAPTER 7

COMMUNITY POLICE FORUMS AND BOARDS

Objects of community police forums and boards 10

18. (1) The Service shall, in order to achieve the objects contemplated in section 215 of the Constitution, liaise with the community through community police forums and area and provincial community police boards, in accordance with sections 19, 20 and 21, with a view to—

- (a) establishing and maintaining a partnership between the community and the Service; 15
- (b) promoting communication between the Service and the community;
- (c) promoting co-operation between the Service and the community in fulfilling the needs of the community regarding policing;
- (d) improving the rendering of police services to the community at national, provincial, area and local levels; 20
- (e) improving transparency in the Service and accountability of the Service to the community; and
- (f) promoting joint problem identification and problem-solving by the Service and the community. 25

(2) This Chapter shall not preclude liaison by the Service with the community by means other than through community police forums and boards.

Establishment of community police forums

19. (1) A Provincial Commissioner shall, subject to the directions of the member of the Executive Council, be responsible for establishing community police forums at police stations in the province which shall, subject to subsection (3), be broadly representative of the local community. 30

(2) A community police forum may establish community police sub-forums.

(3) Subject to section 23(1)(b), the station commissioner and the members designated by him or her from time to time for that purpose, shall be members of the community police forum and sub-forums established at the police station concerned. 35

Establishment of area community police boards

20. (1) A Provincial Commissioner shall, subject to the directions of the member of the Executive Council, be responsible for establishing area community police boards in all areas within the province. 40

(2) An area community police board shall, subject to subsection (3), consist of representatives of community police forums in the area concerned designated for that purpose by such community police forums.

(3) Subject to section 23(1)(b), the area commissioner and the members designated by him or her from time to time for that purpose, shall be members of the area community police board concerned. 45

Establishment of provincial community police boards

21. (1) A Provincial Commissioner shall, subject to the directions of the member of the Executive Council, be responsible for establishing a provincial community police board. 50

(2) A provincial community police board shall, subject to subsection (3), consist of representatives of area community police boards designated for that purpose by the area community police boards in the province concerned.

gebied aanwend of, behoudens subartikel (7), lede van die eenheid onttrek waar hulle voortgesette teenwoordigheid nie meer nodig is om openbare orde in die betrokke gebied of enige deel daarvan te herstel of te handhaaf nie.

- (7) Waar die nasionale polisie-eenheid vir openbare orde of enige deel daarvan kragtens subartikel (5) aangewend word en openbare orde in die betrokke gebied herstel is, gaan die eenheid of deel daarvan voort om die openbare orde in sodanige gebied te handhaaf totdat die President, in oorleg met die Kabinet, die Nasionale Kommissaris gelas om die eenheid te onttrek.

HOOFSTUK 7

10 GEMEENSKAPSPOLISIEFORUMS EN -RADE

Oogmerke van gemeenskapspolisieforums en -rade

18. (1) Ten einde die oogmerke beoog in artikel 215 van die Grondwet te bereik, moet die Diens ooreenkomstig artikels 19, 20 en 21 met die gemeenskap skakel deur middel van gemeenskapspolisieforums en area- en provinsiale gemeenskapspolisierade met die doel om—

- (a) 'n vennootskap tussen die gemeenskap en die Diens in te stel en in stand te hou;
- (b) kommunikasie tussen die Diens en die gemeenskap te bevorder;
- (c) samewerking tussen die Diens en die gemeenskap by die voldoening aan die behoeftes van die gemeenskap betreffende polisiëring te bevorder;
- (d) die lewering van polisdienste aan die gemeenskap op nasionale, provinsiale, area- en plaaslike vlakke te verbeter;
- (e) deursigtigheid in die Diens en verantwoordbaarheid van die Diens teenoor die gemeenskap te verbeter; en
- (f) gesamentlike probleemidentifikasie en probleemoplossing deur die Diens en die gemeenskap te bevorder.

(2) Hierdie Hoofstuk belet nie skakeling deur die Diens met die gemeenskap op 'n ander wyse as deur gemeenskapspolisieforums en -rade nie.

Instelling van gemeenskapspolisieforums

30 19. (1) 'n Provinsiale Kommissaris is, behoudens die voorskrifte van die lid van die Uitvoerende Raad, verantwoordelik vir die instelling van gemeenskapspolisieforums by polisiestasies in die provinsie wat, behoudens subartikel (3), in die algemeen verteenwoordigend van die plaaslike gemeenskap moet wees.

(2) 'n Gemeenskapspolisieforum kan gemeenskapspolisiesubforums instel.

35 (3) Behoudens artikel 23(1)(b), is die stasiekommissaris en die lede deur hom of haar van tyd tot tyd vir dié doel aangewys, lede van die gemeenskapspolisieforum en -subforums by die betrokke polisiestasie ingestel.

Instelling van areagemeenskapspolisierade

40 20. (1) 'n Provinsiale Kommissaris is, behoudens die voorskrifte van die lid van die Uitvoerende Raad, verantwoordelik vir die instelling van areagemeenskapspolisierade in alle areas binne die provinsie.

(2) Behoudens subartikel (3), bestaan 'n areagemeenskapspolisieraad uit verteenwoordigers van gemeenskapspolisieforums in die betrokke area vir dié doel deur sodanige gemeenskapspolisieforums aangewys.

45 (3) Behoudens artikel 23(1)(b), is die areakommissaris en die lede deur hom of haar van tyd tot tyd vir dié doel aangewys, lede van die betrokke areagemeenskapspolisieraad.

Instelling van provinsiale gemeenskapspolisierade

50 21. (1) 'n Provinsiale Kommissaris is, behoudens die voorskrifte van die lid van die Uitvoerende Raad, verantwoordelik vir die instelling van 'n provinsiale gemeenskapspolisieraad.

(2) 'n Provinsiale gemeenskapspolisieraad bestaan, behoudens subartikel (3), uit verteenwoordigers van areagemeenskapspolisierade vir dié doel deur die areagemeenskapspolisierade in die betrokke provinsie aangewys.

(3) Subject to section 23(1)(b), the Provincial Commissioner and the members designated by him or her from time to time for that purpose, shall be members of the provincial community police board concerned.

Functions of community police forums and boards

22. (1) A provincial or area community police board or a community police forum or subforum shall perform the functions it deems necessary and appropriate to achieve the objects contemplated in section 18, which may include the functions contemplated in section 221(2) of the Constitution. 5

(2) The Minister shall, in consultation with the executive co-ordinating committee, make regulations to ensure the proper functioning of community police forums and sub-forums and community police boards. 10

Procedural matters

23. (1) Every provincial or area community police board and community police forum or sub-forum shall—

- (a) elect one of its members as chairperson and another one as vice-chairperson; 15
- (b) determine the number of members to be designated by the provincial, area or station commissioner concerned to serve as members of the board, forum or subforum concerned: Provided that that number shall not be less than one in addition to the provincial, area or station commissioner concerned;
- (c) determine its own procedure and cause minutes to be kept of its proceedings; 20
and
- (d) whenever it deems it necessary, co-opt other members or experts or community leaders to the board or forum in an advisory capacity.

(2) Members of community police forums or boards shall render their services on a voluntary basis and shall have no claim to compensation solely for services rendered to such forums and boards. 25

(3) The majority of the members of the board, forum or sub-forum concerned shall constitute a quorum at a meeting thereof.

(4) If the chairperson of a board or forum referred to in this section is absent from a meeting, the vice-chairperson shall act as chairperson, and if both the chairperson and vice-chairperson are so absent, the members present shall elect one of their number to preside at that meeting. 30

CHAPTER 8

REGULATIONS

Regulations 35

24. (1) The Minister may make regulations regarding—

- (a) the exercising of policing powers and the performance by members of their duties and functions;
- (b) the recruitment, appointment, promotion and transfer of members;
- (c) the training, conduct and conditions of service of members; 40
- (d) the general management, control and maintenance of the Service;
- (e) returns, registers, records, documents, forms and correspondence in the Service;
- (f) labour relations, including matters regarding suspension, dismissal and grievances; 45
- (g) (i) the institution and conduct of disciplinary proceedings or inquiries;
- (ii) conduct by members that will constitute misconduct;
- (iii) the provisions, if any, of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), that shall apply *mutatis mutandis* to disciplinary proceedings or inquiries under this Act; 50
- (iv) the attendance by a member or any witness, of such disciplinary proceedings or inquiries;
- (v) the circumstances under which such disciplinary proceedings or inquiries may be conducted or proceeded with in the absence of the member accused of misconduct or affected by such an inquiry; 55

(3) Behoudens artikel 23(1)(b), is die Provinsiale Kommissaris en die lede deur hom of haar van tyd tot tyd vir dié doel aangewys, lede van die betrokke provinsiale gemeenskapspolisieraad.

Werksaamhede van gemeenskapspolisieforums en -rade

- 5 22. (1) 'n Provinsiale of areagemeenskapspolisieraad of 'n gemeenskapspolisieforum of -subforum verrig die werksaamhede wat dit nodig en gepas ag ten einde die oogmerke in artikel 18 beoog, te bereik, wat die werksaamhede in artikel 221(2) van die Grondwet beoog, kan insluit.
- 10 (2) Die Minister moet in oorleg met die uitvoerende koördineringskomitee regulasies uitvaardig om die behoorlike funksionering van gemeenskapspolisieforums en -subforums en gemeenskapspolisierade te verseker.

Prosedurele aangeleenthede

23. (1) Elke provinsiale of areagemeenskapspolisieraad en gemeenskapspolisieforum of -subforum moet—
- 15 (a) een van sy lede tot voorsitter en 'n ander tot ondervoorsitter verkies;
- (b) die getal lede wat deur die betrokke provinsiale, area- of stasiekommissaris aangewys moet word om as lede van die betrokke raad, forum of subforum te dien, bepaal: Met dien verstande dat dié getal minstens een benewens die betrokke provinsiale, area- of stasiekommissaris moet wees;
- 20 (c) sy eie prosedure bepaal en notule van sy verrigtinge laat hou; en
- (d) wanneer hy dit nodig ag, ander lede of kundiges of gemeenskapsleiers in die raad of forum in 'n raadgewende hoedanigheid koöpteer.
- (2) Lede van gemeenskapspolisieforums of -rade lewer hul dienste op 'n vrywillige grondslag en het geen eis om vergoeding bloot op grond van dienste aan sodanige
- 25 forums en rade gelewer nie.
- (3) Die meerderheid van die lede van die betrokke raad, forum of subforum maak 'n kworum vir 'n vergadering daarvan uit.
- (4) Indien die voorsitter van 'n raad of forum in hierdie artikel bedoel van 'n vergadering afwesig is, tree die ondervoorsitter as voorsitter op, en indien die voorsitter
- 30 sowel as die ondervoorsitter aldus afwesig is, kies die teenwoordige lede een uit hul gelede om by die vergadering voor te sit.

HOOFSTUK 8

REGULASIES

Regulasies

- 35 24. (1) Die Minister kan regulasies uitvaardig betreffende—
- (a) die uitoefening van polisiëringsbevoegdhede en die verrigting deur lede van hul pligte en werksaamhede;
- (b) die werwing, aanstelling, bevordering en verplasing van lede;
- (c) die opleiding, gedrag en diensvoorwaardes van lede;
- 40 (d) die algemene bestuur, beheer en instandhouding van die Diens;
- (e) opgawes, registers, rekords, dokumente, vorms en korrespondensie in die Diens;
- (f) arbeidsverhoudinge, met inbegrip van aangeleenthede betreffende skorsing, ontslag en griewe;
- 45 (g) (i) die instelling en hou van dissiplinêre verrigtinge of ondersoeke;
- (ii) gedrag deur lede wat wangedrag uitmaak;
- (iii) die bepaling, as daar is, van die Strafproseswet, 1977 (Wet No. 51 van 1977), wat *mutatis mutandis* van toepassing is op dissiplinêre verrigtinge of ondersoeke kragtens hierdie Wet;
- 50 (iv) die bywoning deur 'n lid of enige getuie van sodanige dissiplinêre verrigtinge of ondersoeke;
- (v) die omstandighede waaronder sodanige dissiplinêre verrigtinge of ondersoeke gehou of mee voortgegaan kan word in die afwesigheid van die lid wat van wangedrag beskuldig word of wat deur so 'n ondersoek
- 55 geraak word;

- (vi) the hearing and submission of evidence at such disciplinary proceedings or inquiries;
- (vii) competent findings and sanctions in respect of such disciplinary proceedings or inquiries; and
- (viii) review and appeal in respect of such disciplinary proceedings or inquiries; 5
- (h) the issue of a code of conduct for the Service and the upholding thereof;
- (i) the establishment of different categories of personnel, components, ranks, designations and appointments in the Service;
- (j) (i) the standards of physical and mental fitness required, and the medical examination, of members; 10
- (ii) the medical, dental and hospital treatment of members and their families;
- (k) (i) the establishment, management and control of a scheme to provide for the medical, dental and hospital treatment, the provision of medicines and other medical requirements and the transportation during their indisposition of— 15
- (aa) members and members of their families;
- (bb) members who have retired or who retire on pension, and members of their families; and
- (cc) the families of deceased members; 20
- (ii) the categories of members, or other persons who shall or may become members of such a scheme;
- (iii) the portion of the costs of such treatment, medicines, medical requirements and transportation which shall be payable under such a scheme by any member or category of members of such a scheme; 25
- (iv) the termination of membership of such a scheme;
- (v) the rights, privileges and obligations of members of such a scheme;
- (vi) the vesting in such a scheme of assets, rights, liabilities or obligations or the disposal in any way of the assets of such a scheme; and
- (vii) generally, all matters reasonably necessary for the regulation and operation of such a scheme; 30
- (l) the resignation or reduction in rank of members;
- (m) the grading of posts and the remuneration structure, including allowances or benefits of members;
- (n) the establishment and maintenance of training institutions or centres for members and the instruction, training, discipline and control of members at such institutions or centres; 35
- (o) the management of and access to laboratories established for the purposes of the analysis of forensic evidence as well as fees payable for services rendered in that regard; 40
- (p) the attendance by members of instructional or training courses at institutions or centres other than those established and maintained in terms of this Act;
- (q) the establishment and control of funds of clubs referred to in section 62(3);
- (r) the deductions to be made from the salaries, wages or allowances of members;
- (s) the provisioning of the Service, including the provision of stores and equipment required for the Service, and the care, safe custody and maintenance thereof; 45
- (t) the design, award, use, care, loss, forfeiture and restoration of any decoration or medal instituted, constituted or created under this Act, and its bar, clasp or ribbon; 50
- (u) the design of an official flag and coat of arms for the Service;
- (v) the dress and clothing of members, and the control over or disposal of a uniform or part thereof;
- (w) the utilisation by the Service of property— 55
- (i) forfeited to the State;
- (ii) abandoned, lost or taken charge of by a member; or
- (iii) unclaimed and found or taken charge of by a member;
- (x) the retention of rank on retirement from the Service and the award of honorary ranks;
- (y) the occupation by members of quarters, whether owned or rented by the State or placed at its disposal; 60

- (vi) die aanhoor en voorlegging van getuienis by sodanige dissiplinêre verrigtinge of ondersoeke;
- (vii) bevoegde bevindings en strafmaatreëls ten opsigte van sodanige dissiplinêre verrigtinge of ondersoeke; en
- 5 (viii) hersiening en appèl ten opsigte van sodanige dissiplinêre verrigtinge of ondersoeke;
- (h) die uitreik van 'n gedragskode vir die Diens en die nakoming daarvan;
- (i) die instelling van verskillende kategorieë personeel, komponente, range, aanwysings en aanstellings in die Diens;
- 10 (j) (i) die standarde van liggaamlike en geestelike geskiktheid vereis, en die geneeskundige ondersoek, van lede;
- (ii) die geneeskundige, tandheelkundige en hospitaalbehandeling van lede en hul gesinne;
- 15 (k) (i) die instelling, bestuur en beheer van 'n skema om voorsiening te maak vir die geneeskundige, tandheelkundige en hospitaalbehandeling, die verskaffing van medisyne en ander mediese benodigdhede en die vervoer tydens hul ongesteldheid van—
- (aa) lede en lede van hulle gesinne;
- (bb) lede wat met pensioen afgetree het of aftree, en lede van hulle gesinne; en
- 20 (cc) die gesinne van lede wat oorlede is;
- (ii) die kategorieë lede, of ander persone wat lede van so 'n skema moet of kan word;
- (iii) die gedeelte van die koste van sodanige behandeling, medisyne, mediese benodigdhede en vervoer wat deur enige lid of kategorie lede van so 'n skema kragtens sodanige skema betaalbaar is;
- 25 (iv) die beëindiging van lidmaatskap van so 'n skema;
- (v) die regte, voorregte en verpligtinge van lede van so 'n skema;
- (vi) die vestiging in so 'n skema van bates, regte, laste of verpligtinge of die beskikking op enige wyse oor die bates van so 'n skema; en
- 30 (vii) oor die algemeen, alle aangeleenthede wat redelikerwys vir die reëling en werking van so 'n skema nodig is;
- (l) die bedanking of verlaging in rang van lede;
- 35 (m) die gradering van poste en die vergoedingstruktuur, met inbegrip van toelaes of voordele van lede;
- (n) die oprigting en instandhouding van opleidingsinrigtings of -sentrums vir lede en die onderrig, opleiding, dissipline en beheer van lede by sodanige inrigtings of sentrums;
- 40 (o) die bestuur van en toegang tot laboratoriums ingestel vir die doeleindes van die ontleding van forensiese getuienis asook gelde betaalbaar vir dienste in dié verband gelewer;
- (p) die bywoning deur lede van onderrig- of opleidingskursusse by ander inrigtings of sentrums as dié wat ingevolge hierdie Wet opgerig en in stand gehou word;
- 45 (q) die instelling en beheer van fondse van klubs in artikel 62(3) bedoel;
- (r) die aftrekkings wat van die salarisse, lone of toelaes van lede gemaak moet word;
- (s) die bevoorrading van die Diens, met inbegrip van die voorsiening van voorrade en toerusting benodig vir die Diens, en die versorging, veilige bewaring en instandhouding daarvan;
- 50 (t) die ontwerp, toekenning, gebruik, versorging, verlies, verbeuring en herstel van enige dekorasie of medalje kragtens hierdie Wet ingestel, saamgestel of geskep, en die balk, gespe of lint daarvan;
- (u) die ontwerp van 'n amptelike vlag en wapen vir die Diens;
- 55 (v) die drag en kleding van lede, en die beheer of beskikking oor 'n uniform of deel daarvan;
- (w) die benutting deur die Diens van eiendom—
- (i) aan die Staat verbeur;
- (ii) wat geabandoneer, verloor of in beheer geneem is deur 'n lid; of
- 60 (iii) wat onopgeëis is en gevind of in beheer geneem is deur 'n lid;
- (x) die behoud van rang by aftrede uit die Diens en die toekenning van ere-range;
- (y) die okkupasie deur lede van kwartiere, hetsy die eiendom van of gehuur deur die Staat of tot sy beskikking gestel;

- (z) the participation in sport and recreational activities by members;
- (aa) the fair distribution of and access to police services and resources in respect of all communities;
- (bb) the command, control, powers, duties and functions of persons, other than members, employed by the Service; 5
- (cc) the proper functioning of the directorate, including the referral to the directorate of complaints received by the police;
- (dd) any board or body established or constituted by or under this Act, including—
- (i) the procedure thereof; and
- (ii) the attendance by witnesses of the proceedings thereof; 10
- (ee) the development of the plan contemplated in section 11(2)(a) and the monitoring of the implementation thereof;
- (ff) all matters which may or shall be prescribed in accordance with this Act; and
- (gg) all matters generally which are necessary or expedient for the achievement of the objects of this Act. 15
- (2) Different regulations may be made regarding different categories of members or personnel.
- (3) Any regulation under subsection (1)(cc) shall be made in consultation with the Executive Director.
- (4) Any regulation which affects State revenue or expenditure shall be made with the concurrence of the Minister of Finance. 20

National orders and instructions

25. (1) The National Commissioner may issue national orders and instructions regarding all matters which—
- (a) fall within his or her responsibility in terms of the Constitution or this Act; 25
- (b) are necessary or expedient to ensure the maintenance of an impartial, accountable, transparent and efficient police service; or
- (c) are necessary or expedient to provide for the establishment and maintenance of uniform standards of policing at all levels required by law.
- (2) National orders and instructions issued under subsection (1) shall be known and issued as National Orders and Instructions and shall be applicable to all members. 30
- (3) The National Commissioner may issue different National Orders and Instructions in respect of different categories of members.

Provincial orders and instructions

26. (1) Provincial Commissioners may issue orders and instructions which are not inconsistent with this Act or the National Orders and Instructions. 35
- (2) Orders and instructions issued under subsection (1) shall be known and issued as the Provincial Orders and Instructions of the province concerned and shall be applicable to members under the command of the Provincial Commissioner concerned only.
- (3) If any Provincial Order or Instruction is inconsistent with a National Order or Instruction, the National Order or Instruction shall prevail. 40

CHAPTER 9

APPOINTMENTS, TERMS AND CONDITIONS OF SERVICE AND TERMINATION OF SERVICE

Filling of posts

27. (1) Subject to subsection (2), the filling of any post in the Service, whether by appointment, promotion or transfer, shall be done in accordance with section 212(4) of the Constitution.
- (2) Subsection (1) shall not preclude compliance with measures designed to achieve the objects contemplated in sections 8(3)(a) and 212(2) of the Constitution. 50

- (z) die deelname aan sport- en ontspanningsaktiwiteite deur lede;
- (aa) die regverdige verdeling van en toegang tot polisie-dienste en -hulpbronne ten opsigte van alle gemeenskappe;
- 5 (bb) die bevel, beheer, bevoegdhe, pligte en werksaamhede van persone, behalwe lede, in diens van die Diens;
- (cc) die behoorlike funksionering van die direktoraat, met inbegrip van die verwysing na die direktoraat van klagtes deur die polisie ontvang;
- (dd) enige raad of liggaam by of kragtens hierdie Wet ingestel of saamgestel, met inbegrip van—
- 10 (i) die prosedure daarvan; en
- (ii) die bywoning deur getuies van die verrigtinge daarvan;
- (ee) die ontwikkeling van die plan in artikel 11(2)(a) beoog en die monitering van die implementering daarvan;
- 15 (ff) alle aangeleenthede wat ooreenkomstig hierdie Wet voorgeskryf kan of moet word; en
- (gg) alle aangeleenthede in die algemeen wat nodig of dienstig is om die oogmerke van hierdie Wet te bereik.
- (2) Verskillende regulasies kan uitgevaardig word betreffende verskillende kategorieë lede of personeel.
- 20 (3) 'n Regulasie kragtens subartikel (1)(cc) word in oorleg met die Uitvoerende Direkteur uitgevaardig.
- (4) 'n Regulasie wat Staatsinkomste of -uitgawes raak, word met die instemming van die Minister van Finansies uitgevaardig.

Nasionale orders en instruksies

- 25 **25.** (1) Die Nasionale Kommissaris kan nasionale orders en instruksies uitreik betreffende alle aangeleenthede wat—
- (a) ingevolge die Grondwet of hierdie Wet binne sy of haar verantwoordelikheid val;
- (b) nodig of dienstig is om die instandhouding van 'n onpartydige, verantwoordbare, deursigtige en doeltreffende polisie-diens te verseker; of
- 30 (c) nodig of dienstig is om voorsiening te maak vir die instelling en handhawing van eenvormige standaarde van polisieering op alle vlakke by wet vereis.
- (2) Nasionale orders en instruksies kragtens subartikel (1) uitgereik, staan bekend en word uitgereik as Nasionale Orders en Instruksies en is op alle lede van toepassing.
- 35 (3) Die Nasionale Kommissaris kan verskillende Nasionale Orders en Instruksies uitreik ten opsigte van verskillende kategorieë lede.

Provinsiale orders en instruksies

- 26.** (1) Provinsiale Kommissarisse kan orders en instruksies uitreik wat nie strydig met hierdie Wet of die Nasionale Orders en Instruksies is nie.
- 40 (2) Orders en instruksies kragtens subartikel (1) uitgereik, staan bekend en word uitgereik as die Provinsiale Orders en Instruksies van die betrokke provinsie en is slegs van toepassing op lede onder die bevel van die betrokke Provinsiale Kommissaris.
- (3) Indien enige Provinsiale Order of Instruksie strydig is met 'n Nasionale Order of Instruksie, geniet die Nasionale Order of Instruksie voorrang.

45

HOOFSTUK 9

AANSTELLINGS, BEDINGE EN VOORWAARDES VAN DIENS EN BEËINDIGING VAN DIENS

Vulling van poste

- 50 **27.** (1) Behoudens subartikel (2), word die vulling van enige pos in die Diens, hetsy by wyse van aanstelling, bevordering of verplasing, in ooreenstemming met artikel 212(4) van die Grondwet gedoen.
- (2) Subartikel (1) belet nie die nakoming van maatreëls wat ontwerp is om die oogmerke in artikels 8(3)(a) en 212(2) van die Grondwet beoog, te bereik nie.

Recruitment and appointment

28. (1) The National Commissioner shall determine a uniform recruitment procedure for the Service.

(2) Subject to section 27, the National Commissioner may appoint a person to a post in the fixed establishment of the Service.

(3) Any commissioned officer, magistrate, additional magistrate or assistant magistrate may, if sufficient permanent members are not available at a particular locality to perform a specific police duty, appoint such fit and proper persons as may be necessary as temporary members to perform such duty on such terms and conditions as may be prescribed.

Designation as member

29. (1) The Minister may by notice in the *Gazette* designate categories of personnel employed on a permanent basis in the Service and who are not members, as members.

(2) Personnel designated as members under subsection (1), shall be deemed to be members appointed to posts in the fixed establishment of the Service under section 28(2) with effect from a date determined by the Minister in the notice concerned: Provided that a person who is a member of a category of personnel so designated who does not, within one month of such designation, consent thereto and, if applicable, consent as required by section 212(7)(b) of the Constitution, to having the retirement age applicable to him or her on 1 October 1993 changed as a result of such designation, shall not be affected by such notice.

Proof of appointment

30. A document in the prescribed form certifying that a person has been appointed as a member, shall be *prima facie* proof of such appointment.

Salary and benefits

31. (1) A member shall have the right to the salary and benefits determined in his or her case by or under this Act or any other law.

(2) The salary or salary scale of a member shall not be reduced without his or her consent, except in accordance with section 8(7) or following on disciplinary proceedings under section 40 or an inquiry under section 34(1)(b).

Training

32. The National Commissioner shall determine the training that members shall undergo.

Commissioned officers

33. (1) The President may from time to time by commission appoint officers or temporary officers of the Service.

(2) A Deed of Commission, bearing the signatures of the President and the Minister, or replicas thereof, shall be proof of appointment as commissioned officer.

(3) The commission of a commissioned officer shall terminate and be deemed to be cancelled upon—

(a) the discharge of such officer following on disciplinary proceedings under section 40 or an inquiry under section 34(1)(b), (c) or (d);

(b) the reduction in rank of such officer to a rank of non-commissioned officer following on disciplinary proceedings under section 40 or an inquiry under section 34(1)(b);

(c) a direction by the Minister in terms of subsection (5); or

(d) the transfer of such officer to another department under section 14 or 15 of the Public Service Act, 1994 (Proclamation No. R.103 of 1994).

(4) Subject to section 49, a commissioned officer may at any time in writing and, with or without prior notice, resign from the Service.

(5) Any commissioned officer who leaves the Service because of his or her discharge, retirement or resignation, shall retain the commission and rank he or she held immediately prior to his or her discharge, retirement or resignation, unless the Minister, on the recommendation of the National Commissioner, otherwise directs.

Werwing en aanstelling

28. (1) Die Nasionale Kommissaris bepaal 'n eenvormige werwingsprosedure vir die Diens.

(2) Behoudens artikel 27, kan die Nasionale Kommissaris 'n persoon in 'n pos in die vaste diensstaat van die Diens aanstel.

(3) Enige kommissie-offisier, landdros, addisionele landdros of assistentlanddros kan, indien daar nie voldoende permanente lede op 'n besondere plek beskikbaar is om 'n spesifieke polisieplig te verrig nie, die geskikte persone wat nodig is om dié plig te verrig op die bedinge en voorwaardes wat voorgeskryf word, as tydelike lede aanstel.

10 Aanwysing as lid

29. (1) Die Minister kan by kennisgewing in die *Staatskoerant* kategorieë personeel wat op 'n permanente grondslag by die Diens in diens is en wat nie lede is nie, as lede aanwys.

(2) Personeel as lede kragtens subartikel (1) aangewys, word geag lede kragtens artikel 28(2) in poste in die vaste diensstaat van die Diens aangestel te wees vanaf 'n datum deur die Minister in die betrokke kennisgewing bepaal: Met dien verstande dat 'n persoon wat 'n lid is van 'n kategorie personeel aldus aangewys wat nie binne een maand na sodanige aanwysing daartoe toestem nie en, indien van toepassing, nie soos vereis deur artikel 212(7)(b) van die Grondwet toestem dat die aftree-ouderdom op hom of haar van toepassing op 1 Oktober 1993, as gevolg van sodanige aanwysing gewysig word nie, nie deur sodanige kennisgewing geraak word nie.

Bewys van aanstelling

30. 'n Dokument in die voorgeskrewe vorm wat sertifiseer dat 'n persoon as 'n lid aangestel is, is *prima facie*-bewys van sodanige aanstelling.

25 Salaris en voordele

31. (1) 'n Lid is geregtig op die salaris en voordele wat in sy of haar geval by of kragtens hierdie Wet of enige ander wet bepaal word.

(2) Die salaris of salarisskaal van 'n lid word nie sonder sy of haar toestemming verminder nie, behalwe in ooreenstemming met artikel 8(7) of na aanleiding van dissiplinêre verrigtinge kragtens artikel 40 of 'n ondersoek kragtens artikel 34(1)(b).

Opleiding

32. Die Nasionale Kommissaris bepaal die opleiding wat lede moet ondergaan.

Kommissie-offisiere

33. (1) Die President kan van tyd tot tyd offisiere of tydelike offisiere van die Diens by kommissie aanstel.

(2) 'n Akte van Kommissie, bevattende die handtekening van die President en die Minister, of replikas daarvan, is bewys van aanstelling as kommissie-offisier.

(3) Die kommissie van 'n kommissie-offisier word beëindig en geag gekanselleer te wees by—

(a) die ontslag van sodanige offisier na aanleiding van dissiplinêre verrigtinge kragtens artikel 40 of 'n ondersoek kragtens artikel 34(1)(b), (c) of (d);

(b) die verlaging in rang van sodanige offisier na die rang van 'n onderoffisier na aanleiding van dissiplinêre verrigtinge kragtens artikel 40 of 'n ondersoek kragtens artikel 34(1)(b);

(c) 'n lasgewing deur die Minister ingevolge subartikel (5); of

(d) die oorpasing van sodanige offisier na 'n ander departement kragtens artikel 14 of 15 van die Staatsdienswet, 1994 (Proklamasie No. R.103 van 1994).

(4) Behoudens artikel 49, kan 'n kommissie-offisier te eniger tyd skriftelik en met of sonder vooraf kennisgewing uit die Diens bedank.

(5) Enige kommissie-offisier wat die Diens verlaat as gevolg van sy of haar ontslag, aftrede of bedanking, behou die kommissie en rang wat hy of sy onmiddellik voor sy of haar ontslag, aftrede of bedanking gehad het, tensy die Minister op aanbeveling van die Nasionale Kommissaris anders gelas.

Inquiries

- 34.** (1) The National Commissioner may designate a member, a category of members or any other person or category of persons who may, in general or in a specific case, inquire into—
- (a) the fitness of a member to remain in the Service on account of indisposition, ill-health, disease or injury; 5
 - (b) the fitness or ability of a member to perform his or her duties or to carry them out efficiently;
 - (c) the fitness of a member to remain in the Service if his or her continued employment constitutes a security risk for the State; 10
 - (d) the fitness of a member to remain in the Service in the light of a misrepresentation made by such member regarding a matter in relation to his or her appointment;
 - (e) the absence of a member from duty without leave for more than one calendar month; 15
 - (f) an injury alleged to have been sustained by a member or other employee of the Service in an accident arising out of or in the course of his or her duty, or a disease or indisposition alleged to have been contracted in the course of his or her duty, or any subsequent incapacitation alleged to be due to the same injury, disease or indisposition, or an indisposition alleged to have resulted from vaccination in accordance with this Act; 20
 - (g) the death of a member or other employee of the Service alleged to have been caused as a result of circumstances referred to in paragraph (f);
 - (h) the absence from duty of a member or other employee of the Service owing to illness, indisposition or injury alleged to have resulted from misconduct or serious and deliberate failure on his or her part to take reasonable precautions; 25
 - (i) the suitability, value and purchase of any property or equipment required for use in the Service or the suitability for further service of any part of property or equipment already in use in the Service;
 - (j) any deficiency in or damage to or loss of State property or any property in possession of or under the control of the State or a club referred to in section 62(3) or for which the State is responsible, or any property of a member or other employee of the Service which is alleged to have occurred in connection with the performance of his or her duties or functions in the Service, as well as the liability of any person and the desirability to hold any person liable for such deficiency, damage or loss; 30
 - (k) any deficiency, loss, damage or expense occasioned to the State or a club referred to in section 62(3) as a result of the conduct of a member or other employee of the Service and any money or unpaid debts due by such member or employee to the State or such club as well as the liability of any person and the desirability to hold any person liable for such deficiency, loss, damage or expense; or 35
 - (l) any other matter which the National Commissioner considers to be in the interest of the Service. 40
- (2) The National Commissioner may designate a member, a category of members or any other person or category of persons who may, in general or in a specific case, investigate or lead evidence in an inquiry contemplated in subsection (1). 45
- (3) The Minister may prescribe—
- (a) the procedure applicable to an inquiry contemplated in subsection (1); and
 - (b) the circumstances under which such an inquiry may be converted or deemed to have been converted into disciplinary proceedings. 50

Discharge of members on account of redundancy, interest of Service or appointment to public office

- 35.** The National Commissioner may, subject to the provisions of the Government Service Pension Act, 1973 (Act No. 57 of 1973), discharge a member— 55
- (a) because of the abolition of his or her post, or the reduction in the numerical strength, the reorganisation or the readjustment of the Service;

Ondersoeke

34. (1) Die Nasionale Kommissaris kan 'n lid, 'n kategorie lede of enige ander persoon of kategorie persone aanwys wat, in die algemeen of in 'n besondere geval, ondersoek kan instel na—

- 5 (a) die geskiktheid van 'n lid om in die Diens te bly op grond van ongesteldheid, swak gesondheid, siekte of besering;
- (b) die geskiktheid of vermoë van 'n lid om sy of haar pligte te verrig of dit op 'n doeltreffende wyse uit te voer;
- 10 (c) die geskiktheid van 'n lid om in die Diens te bly as sy of haar voortgesette diens 'n veiligheidsrisiko vir die Staat inhou;
- (d) die geskiktheid van 'n lid om in die Diens te bly in die lig van enige wanvoorstelling deur so 'n lid gemaak betreffende 'n aangeleentheid wat betrekking het op sy of haar aanstelling;
- 15 (e) die afwesigheid van 'n lid van diens sonder verlof vir meer as een kalendermaand;
- (f) 'n besering wat na bewering deur 'n lid of ander werknemer van die Diens opgedoen is in 'n ongeluk wat uit sy of haar diens of in die loop daarvan voortspruit, of 'n siekte of ongesteldheid wat na bewering in die loop van sy of haar diens opgedoen is, of enige daaropvolgende ongeskiktheid wat na bewering die gevolg is van dieselfde besering, siekte of ongesteldheid, of 'n ongesteldheid wat na bewering ontstaan het as gevolg van inenting in ooreenstemming met hierdie Wet;
- 20 (g) die dood van 'n lid of ander werknemer van die Diens wat na bewering veroorsaak is as gevolg van omstandighede in paragraaf (f) bedoel;
- 25 (h) die afwesigheid van diens van 'n lid of ander werknemer van die Diens op grond van siekte, ongesteldheid of besering wat na bewering spruit uit wangedrag of ernstige en opsetlike versuim aan sy of haar kant om redelike voorsorg te tref;
- (i) die geskiktheid, waarde en aankoop van enige eiendom of toerusting wat benodig word vir gebruik in die Diens of die geskiktheid vir verdere diens van enige deel van eiendom of toerusting wat reeds in die Diens in gebruik is;
- 30 (j) enige tekort in of skade aan of verlies van Staatseiendom of enige eiendom in besit van of onder beheer van die Staat of 'n klub bedoel in artikel 62(3) of waarvoor die Staat verantwoordelik is, of enige eiendom van 'n lid of ander werknemer van die Diens wat na bewering ontstaan het in verband met die verrigting van sy of haar pligte of werksaamhede in die Diens, asook die aanspreeklikheid van enige persoon en die wenslikheid om enige persoon aanspreeklik te hou vir sodanige tekort, skade of verlies;
- 35 (k) enige tekort, verlies, skade of uitgawe opgeloop deur die Staat of 'n klub bedoel in artikel 62(3) as gevolg van die optrede van 'n lid of ander werknemer van die Diens en enige geld of onbetaalde skulde deur sodanige lid of werknemer aan die Staat of sodanige klub verskuldig asook die aanspreeklikheid van enige persoon en die wenslikheid om enige persoon aanspreeklik te hou vir sodanige tekort, verlies, skade of uitgawe; of
- 40 (l) enige ander aangeleentheid wat die Nasionale Kommissaris in belang van die Diens ag.
- 45

(2) Die Nasionale Kommissaris kan 'n lid, 'n kategorie lede of enige ander persoon of kategorie persone aanwys wat in die algemeen of in 'n besondere geval in 'n 50 ondersoek in subartikel (1) beoog, ondersoek kan instel of getuienis kan lei.

(3) Die Minister kan—

- 55 (a) die prosedure voorskryf wat van toepassing is op 'n ondersoek in subartikel (1) beoog; en
- (b) die omstandighede voorskryf waaronder so 'n ondersoek omskep kan word of geag word omskep te wees in dissiplinêre verrigtinge.

Ontslag van lede op grond van oortolligheid, belang van Diens of aanstelling in openbare amp

35. Die Nasionale Kommissaris kan, behoudens die bepalings van die Regeringsdienspensioenwet, 1973 (Wet No. 57 van 1973), 'n lid ontslaan—

- 60 (a) omdat sy of haar pos afgeskaf is, of weens die verlaging van die getalsterkte of die herorganisasie of herreëling van die Diens;

- (b) if, for reasons other than the unfitness or incapacity of such member, his or her discharge will promote efficiency or economy in the Service, or will otherwise be in the interest of the Service; or
- (c) if the President or a Premier appoints him or her in the public interest under any law to an office to which this Act or the Public Service Commission Act, 1984 (Act No. 65 of 1984), does not apply.

Discharge on account of sentence imposed

36. (1) A member who is convicted of an offence and is sentenced to a term of imprisonment without the option of a fine, shall be deemed to have been discharged from the Service with effect from the date following the date of such sentence: Provided that, if such term of imprisonment is wholly suspended, the member concerned shall not be deemed to have been so discharged.

(2) A person referred to in subsection (1), whose—

- (a) conviction is set aside following an appeal or review and is not replaced by a conviction for another offence;
- (b) conviction is set aside on appeal or review, but is replaced by a conviction for another offence, whether by the court of appeal or review or the court of first instance, and a sentence to a term of imprisonment without the option of a fine is not imposed upon him or her following on the conviction for such other offence; or
- (c) sentence to a term of imprisonment without the option of a fine is set aside following an appeal or review and is replaced with a sentence other than a sentence to a term of imprisonment without the option of a fine,

may, within a period of 30 days after his or her conviction has been set aside or his or her sentence has been replaced by a sentence other than a sentence to a term of imprisonment without the option of a fine, apply to the National Commissioner to be reinstated as a member.

(3) In the event of an application by a person whose conviction has been set aside as contemplated in subsection (2)(a), the National Commissioner shall reinstate such person as a member with effect from the date upon which he or she is deemed to have been so discharged.

(4) In the event of any application by a person whose conviction has been set aside or whose sentence has been replaced as contemplated in subsection (2)(b) and (c), the National Commissioner may—

- (a) reinstate such person as a member with effect from the date upon which he or she is deemed to have been so discharged; or
- (b) cause an inquiry to be instituted in accordance with section 34 into the suitability of reinstating such person as a member.

(5) For the purposes of this section, a sentence to imprisonment until the rising of the court shall not be deemed to be a sentence to imprisonment without the option of a fine.

(6) This section shall not be construed as precluding any administrative action, investigation or inquiry in terms of any other provision of this Act with respect to the member concerned, and any lawful decision or action taken in consequence thereof.

Discharge of members failing to complete basic training

37. Notwithstanding the provisions of this Act, but subject to the Constitution, the National Commissioner may, in the absence of an inquiry, discharge from the Service a member who fails to complete his or her basic training successfully within a period of 24 months after his or her appointment in the Service.

Missing members and employees

38. (1) If a member or other employee of the Service is reported missing, such member or employee shall for all purposes be deemed to be still employed by the Service until—

- (a) the National or Provincial Commissioner otherwise determines;

- (b) indien, om redes behalwe die ongeskiktheid of onbekwaamheid van sodanige lid, sy of haar ontslag doeltreffendheid of besuiniging in die Diens sal bevorder, of andersins in belang van die Diens is; of
- (c) indien die President of 'n Premier hom of haar in die openbare belang kragtens enige wet in 'n amp aanstel waarop die bepalings van hierdie Wet of die Wet op die Kommissie vir Administrasie, 1984 (Wet No. 65 van 1984), nie van toepassing is nie.

Ontslag op grond van vonnis opgelê

36. (1) 'n Lid wat skuldig bevind word aan 'n misdryf en gevonnissen word tot 'n termyn gevangenisstraf sonder die keuse van 'n boete, word geag uit die Diens ontslaan te wees met ingang van die datum wat volg op die datum van sodanige vonnis: Met dien verstande dat indien sodanige termyn gevangenisstraf in die geheel opgeskort is, die betrokke lid nie geag word aldus ontslaan te wees nie.

(2) 'n Persoon in subartikel (1) bedoel wie se—

- (a) skuldigbevinding tersyde gestel word na appèl of hersiening en nie vervang word deur 'n skuldigbevinding weens 'n ander misdryf nie;
- (b) skuldigbevinding tersyde gestel word op appèl of hersiening, maar vervang word deur 'n skuldigbevinding weens 'n ander misdryf, hetsy deur die hof van appèl of hersiening of die hof van eerste instansie, en 'n vonnis tot 'n termyn gevangenisstraf sonder die keuse van 'n boete hom of haar nie opgelê word na aanleiding van die skuldigbevinding weens sodanige ander misdryf nie; of
- (c) vonnis tot 'n termyn gevangenisstraf sonder die keuse van 'n boete tersyde gestel word op appèl of hersiening en vervang word deur 'n vonnis behalwe 'n vonnis tot 'n termyn gevangenisstraf sonder die keuse van 'n boete, kan binne 'n tydperk van 30 dae nadat sy of haar skuldigbevinding tersyde gestel is of sy of haar vonnis deur 'n ander vonnis as 'n vonnis tot 'n termyn gevangenisstraf sonder die keuse van 'n boete vervang is, by die Nasionale Kommissaris aansoek doen om as 'n lid herstel te word.

(3) In die geval van 'n aansoek deur 'n persoon wie se skuldigbevinding tersyde gestel is soos in subartikel (2)(a) beoog, moet die Nasionale Kommissaris so 'n persoon as lid herstel met ingang van die datum waarop hy of sy geag word aldus ontslaan te gewees het.

(4) In die geval van 'n aansoek deur 'n persoon wie se skuldigbevinding tersyde gestel of vonnis vervang is soos in subartikel (2)(b) en (c) beoog, kan die Nasionale Kommissaris—

- (a) so 'n persoon as lid herstel met ingang van die datum waarop hy of sy geag word aldus ontslaan te gewees het; of
- (b) 'n ondersoek in ooreenstemming met artikel 34 laat instel na die wenslikheid om sodanige persoon as lid te herstel.

(5) By die toepassing van hierdie artikel word 'n vonnis tot aanhouding totdat die hof verdaag, nie geag 'n vonnis tot gevangenisstraf sonder die keuse van 'n boete te wees nie.

(6) Hierdie artikel word nie uitgelê as synde dit enige administratiewe handeling of ondersoek ingevolge enige ander bepaling van hierdie Wet ten opsigte van die betrokke lid en enige regmatige stappe daaruit voortspruitend gedoen, belet nie.

Ontslag van lede wat nie basiese opleiding voltooi nie

37. Ondanks die bepalings van hierdie Wet, maar behoudens die Grondwet, kan die Nasionale Kommissaris, in die afwesigheid van 'n ondersoek, 'n lid uit die Diens ontslaan wat nie daarin slaag om sy of haar basiese opleiding binne 'n tydperk van 24 maande na sy of haar aanstelling in die Diens suksesvol te voltooi nie.

Vermiste lede en werknemers

38. (1) Indien 'n lid of ander werknemer van die Diens as vermis gerapporteer word, word sodanige lid of werknemer vir alle doeleindes geag steeds in diens van die Diens te wees totdat—

- (a) die Nasionale of Provinsiale Kommissaris anders bepaal;

- (b) he or she again reports for duty; or
 - (c) a competent court issues an order whereby the death of such member or employee is presumed.
- (2) The salary or wages and allowances accruing to a member or employee during his or her absence contemplated in subsection (1) shall, subject to subsection (4), be paid— 5
- (a) to his or her spouse; or
 - (b) if he or she has no spouse, to his or her dependants; or
 - (c) to any other person who, in the opinion of the Commissioner concerned, is competent to receive and administer such salary or wages and allowances on behalf of the member or employee or his or her spouse or such other dependants. 10
- (3) Payment of any salary or wages and allowances in terms of subsection (2) shall for all purposes be deemed to be payment thereof to the member or employee concerned.
- (4) Notwithstanding subsection (2), the National or Provincial Commissioner may from time to time direct that only a portion of the salary or wages and allowances of a member or employee be paid in terms of the said subsection or that no portion thereof be so paid. 15

Secondment of members

39. (1) The services of a member may be placed at the disposal of any other department of State or any authority established by or under any law. 20
- (2) If a member is seconded under subsection (1), such member shall be deemed to be serving in the Service and shall retain all powers and privileges as a member, subject to such conditions as may be agreed upon by the National Commissioner and the department of State or authority concerned.
- (3) A member seconded under subsection (1) shall, in the performance of his or her functions, act in terms of the laws applicable to the department of State or authority to which he or she is seconded, subject to such conditions as may be agreed upon by the National Commissioner and the department of State or authority concerned. 25
- (4) The National Commissioner shall determine uniform standards and procedures regarding the secondment of members. 30

Disciplinary proceedings

40. Disciplinary proceedings may be instituted in the prescribed manner against a member on account of misconduct, whether such misconduct was committed within or outside the borders of the Republic.

Strikes

41. (1) No member shall strike, induce any other member to strike or conspire with another person to strike. 35
- (2) If the National or Provincial Commissioner has reason to believe that a member is striking or conspiring with another person to strike, the Commissioner concerned may, in a manner which is reasonable in the circumstances, issue an ultimatum to the member concerned to terminate or desist from carrying out such conduct within the period specified in such ultimatum. 40
- (3) In the event that the member refuses or fails to comply with the ultimatum referred to in subsection (2), or if the National or Provincial Commissioner could not reasonably be expected to issue such an ultimatum to a member personally, the Commissioner concerned may, without a hearing, summarily discharge such member from the Service: 45
Provided that—
- (a) such member shall as soon as practicable after the date of such discharge, be notified in writing of such discharge and the reasons therefor;
 - (b) such member may, within 30 days after the date of receipt of such notice, make written representations to the Minister regarding the revocation of the discharge; and 50
 - (c) the Minister may, after having considered any representations, reinstate such member from the date of such discharge.
- (4) A discharge from the Service under subsection (3) shall not be invalid solely by reason of such member not receiving notice of the ultimatum referred to in subsection (2). 55

- (b) hy of sy weer vir diens rapporteer; of
 - (c) 'n bevoegde hof 'n bevel uitreik waarby die dood van sodanige lid of werknemer vermoed word.
- (2) Die salaris of lone en toelaes wat aan 'n lid of werknemer toeval gedurende sy 5 of haar afwesigheid in subartikel (1) beoog, word, behoudens subartikel (4), betaal—
- (a) aan sy of haar gade; of
 - (b) indien hy of sy geen gade het nie, aan sy of haar afhanklikes; of
 - (c) aan enige ander persoon wat, na die oordeel van die betrokke Kommissaris, bevoeg is om sodanige salaris of lone en toelaes namens die lid of werknemer 10 of sy of haar gade of sodanige ander afhanklikes te ontvang en te bestuur.
- (3) Betaling van enige salaris of lone en toelaes ingevolge subartikel (2) word vir alle doeleindes geag betaling daarvan te wees aan die betrokke lid of werknemer.
- (4) Ondanks subartikel (2), kan die Nasionale of Provinsiale Kommissaris van tyd tot tyd gelas dat slegs 'n gedeelte van die salaris of lone en toelaes van 'n lid of werknemer 15 ingevolge genoemde subartikel betaal word of dat geen gedeelte daarvan aldus betaal word nie.

Sekondering van lede

39. (1) Die dienste van 'n lid kan tot beskikking gestel word van enige ander staatsdepartement of enige gesag by of kragtens enige wet ingestel.
- 20 (2) Indien 'n lid kragtens subartikel (1) gesecondeer word, word sodanige lid geag diens in die Diens te doen en behou die lid alle bevoegdhede en voorregte as 'n lid behoudens die voorwaardes waarop die Nasionale Kommissaris en die betrokke staatsdepartement of gesag ooreenkom.
- (3) 'n Lid kragtens subartikel (1) gesecondeer, tree in die verrigting van sy of haar 25 werksaamhede op ingevolge die wette van toepassing op die staatsdepartement of gesag waarheen hy of sy gesecondeer is, behoudens die voorwaardes waarop die Nasionale Kommissaris en die betrokke staatsdepartement of gesag ooreenkom.
- (4) Die Nasionale Kommissaris bepaal eenvormige standaarde en prosedures betreffende die sekondering van lede.

30 Dissiplinêre verrigtinge

40. Dissiplinêre verrigtinge kan op die voorgeskrewe wyse ingestel word teen 'n lid op grond van wangedrag, hetsy sodanige wangedrag binne of buite die grense van die Republiek plaasgevind het.

Stakings

- 35 41. (1) Geen lid mag staak, enige ander lid oorhaal om te staak of met enige ander persoon saamspan om te staak nie.
- (2) Indien die Nasionale of Provinsiale Kommissaris rede het om te glo dat 'n lid staak of met enige ander persoon saamspan om te staak, kan die betrokke Kommissaris op 'n wyse wat redelik onder die omstandighede is, 'n ultimatum aan die betrokke lid 40 stel om sodanige gedrag te beëindig of hom of haar daarvan te weerhou, binne die tydperk in sodanige ultimatum gespesifiseer.
- (3) In die geval waar die lid weier of versuim om aan die ultimatum in subartikel (2) bedoel, te voldoen, of indien daar nie redelikerwys van die Nasionale of Provinsiale Kommissaris verwag kan word om sodanige ultimatum aan 'n lid persoonlik uit te reik 45 nie, kan die betrokke Kommissaris, sonder aanhoor van sodanige lid, die lid summier uit die Diens ontslaan: Met dien verstande dat—
- (a) sodanige lid so gou doenlik na die datum van sodanige ontslag, skriftelik in kennis gestel word van sodanige ontslag en die redes daarvoor;
 - (b) sodanige lid binne 30 dae na die datum van ontvangs van sodanige kennisgewing, skriftelike versoë aan die Minister met betrekking tot die herroeping van die ontslag kan rig; en
 - (c) die Minister, na oorweging van enige versoë, sodanige lid in diens kan herstel vanaf die datum van sodanige ontslag.
- (4) 'n Ontslag uit die Diens kragtens subartikel (3) is nie ongeldig bloot omdat 55 sodanige lid nie kennis van die ultimatum in subartikel (2) bedoel, ontvang het nie.

Conduct sheets

42. (1) The National or Provincial Commissioner shall cause a conduct sheet to be maintained in respect of every member under his or her command.

(2) The National Commissioner shall determine the manner and form in which conduct sheets shall be maintained and when entries recorded thereon may be deleted. 5

Suspension while in detention or imprisoned

43. (1) Subject to section 36, a member who is in detention or is serving a term of imprisonment shall be deemed to be suspended from the Service for the period during which he or she is so detained or is serving such term of imprisonment.

(2) A member referred to in subsection (1) shall, unless the National or Provincial Commissioner otherwise directs, not be entitled for the applicable period to any salary, wages, allowances, privileges or benefits to which he or she would otherwise be entitled as a member. 10

(3) Where a member—

(a) is detained pending the outcome of criminal proceedings against him or her and such member is subsequently found not guilty on all charges or is convicted but such conviction is subsequently set aside; or 15

(b) serves a term of imprisonment which is subsequently set aside, such member may make representations to the National or Provincial Commissioner that any salary, wages, allowances, privileges or benefits forfeited by him or her under subsection (2), be restored to him or her. 20

(4) The National or Provincial Commissioner may, in the circumstances contemplated in subsection (3), *mero motu* or after consideration of any representations received from a member, determine that any forfeited salary, wages, allowances, privileges or benefits be restored to such member. 25

Rewards and recognitions

44. (1) The National or Provincial Commissioner may, after consultation with the Minister or member of the Executive Council, make an appropriate award to any member or other person for meritorious service in the interest of the Service.

(2) The President may institute, constitute and create decorations and medals, as well as bars, clasps and ribbons in respect of such decorations and medals, which may be awarded by the President, the Minister or the member of the Executive Council, subject to such conditions as the President may determine, to any member or other person who has rendered exceptional service to the Service. 30

Retirement 35

45. (1) (a) Subject to subsection (7), a member may retire from the Service, and shall be so retired on the date when he or she attains the age of 60 years.

(b) If a member attains the age of 60 years after the first day of the month, he or she shall be deemed to have attained it on the first day of the following month.

(2) A member who is at least 50 years of age may, at any time before attaining the age of 60 years, give written notification to the Minister of his or her wish to retire from the Service, and shall be allowed so to retire if a sufficient reason therefor exists and the retirement will be to the advantage of the Service. 40

(3) (a) Subject to paragraph (b), a member who in terms of section 212(7)(b) of the Constitution or any other law has the right to retire at an earlier age than that contemplated in subsection (1)(a), shall give written notification to the National Commissioner of his or her wish to be so retired and he or she shall— 45

(i) if that notification is given to the National Commissioner at least three calendar months prior to the date on which he or she attains the retirement age applicable to him or her, be so retired on the date on which he or she attains that age or, if he or she attains it after the first day of the month, on the first day of the following month; or 50

(ii) if that notification is not given to the National Commissioner at least three calendar months prior to the date on which he or she attains the said age, be so retired on the first day of the fourth month after the month in which the notification is received. 55

Gedragstate

42. (1) Die Nasionale of Provinsiale Kommissaris moet 'n gedragstaat ten opsigte van elke lid onder sy of haar bevel laat byhou.

(2) Die Nasionale Kommissaris bepaal die wyse waarop en vorm waarin gedragstate 5 bygehou word en wanneer inskrywings daarop geskrap kan word.

Skorsing terwyl in aanhouding of gevangeskap

43. (1) Behoudens artikel 36, word 'n lid wat in aanhouding is of 'n termyn gevangenisstraf uitdien, geag uit die Diens geskors te wees vir die tydperk waartydens hy of sy aldus aangehou word of sodanige termyn gevangenisstraf uitdien.

10 (2) 'n Lid in subartikel (1) bedoel, is, tensy die Nasionale of Provinsiale Kommissaris anders gelas, nie vir die toepaslike tydperk geregtig op enige salaris, lone, toelaes, voorregte of voordele waartoe hy of sy andersins as lid geregtig is nie.

(3) Waar 'n lid—

15 (a) in aanhouding is hangende die uitslag van strafregtelike verrigtinge teen hom of haar en sodanige lid daarna onskuldig bevind word op alle aanklagte of skuldig bevind word maar sodanige skuldigbevinding daarna tersyde gestel word; of

(b) 'n termyn gevangenisstraf uitdien wat daarna tersyde gestel word, kan sodanige lid vertoë aan die Nasionale of Provinsiale Kommissaris rig dat enige 20 salaris, lone, toelaes, voorregte of voordele deur hom of haar kragtens subartikel (2) verbeur, aan hom of haar terugbetaal word.

(4) Die Nasionale of Provinsiale Kommissaris kan, in die omstandighede in subartikel (3) beoog, *mero motu* of na oorweging van enige vertoë van 'n lid ontvang, bepaal dat enige verbeurde salaris, lone, toelaes, voorregte of voordele aan sodanige lid 25 terugbetaal word.

Belonings en aanprysings

44. (1) Die Nasionale of Provinsiale Kommissaris kan, na oorleg met die Minister of lid van die Uitvoerende Raad, 'n toepaslike toekenning vir voortreffiike diens in die belang van die Diens aan enige lid of ander persoon maak.

30 (2) Die President kan dekorasies en medaljes instel, saamstel en skeep, asook balke, gespes en linte ten opsigte van sodanige medaljes en dekorasies, wat deur die President, die Minister of die lid van die Uitvoerende Raad, behoudens die voorwaardes wat die President bepaal, aan enige lid of ander persoon wat buitengewone diens aan die Diens gelewer het, toegeken kan word.

35 Aftrede

45. (1)(a) Behoudens subartikel (7), kan 'n lid uit die Diens aftree, en tree 'n lid aldus af op die datum wanneer hy of sy die ouderdom van 60 jaar bereik.

(b) Indien 'n lid die ouderdom van 60 jaar bereik na die eerste dag van 'n maand, word hy of sy geag dit te bereik het op die eerste dag van die volgende maand.

40 (2) 'n Lid wat minstens 50 jaar oud is, kan, te eniger tyd voor die bereiking van die ouderdom van 60 jaar, skriftelik aan die Minister kennis gee van sy of haar voorneme om uit die Diens af te tree, en word toegelaat om aldus af te tree indien daar voldoende rede daarvoor bestaan en die aftrede tot voordeel van die Diens sal wees.

45 (3)(a) Behoudens paragraaf (b), moet 'n lid wat ingevolge artikel 212(7)(b) van die Grondwet of enige ander wet die reg het om op 'n vroeër ouderdom as in subartikel (1)(a) beoog, af te tree, skriftelik aan die Nasionale Kommissaris van sy of haar voorneme om aldus af te tree, kennis gee en—

50 (i) indien daardie kennisgewing aan die Nasionale Kommissaris gegee is minstens drie kalendermaande voor die datum waarop hy of sy die aftree-ouderdom op hom of haar van toepassing, bereik, tree hy of sy aldus af op die datum waarop hy of sy daardie ouderdom bereik of, indien hy of sy dit bereik na die eerste dag van die maand, op die eerste dag van die volgende maand; of

55 (ii) indien daardie kennisgewing nie minstens drie kalendermaande voor die datum waarop hy of sy genoemde ouderdom bereik aan die Nasionale Kommissaris gegee is nie, tree hy of sy aldus af op die eerste dag van die vierde maand na die maand waarin die kennisgewing ontvang is.

(b)(i) Subject to subsection (4), the National or Provincial Commissioner shall give written notification of his or her wish to be retired from the Service at least six calendar months prior to the date on which he or she attains the retirement age applicable to him or her, and if he or she has so given notification, paragraph (a)(i) shall apply *mutatis mutandis*.

(ii) If the National or Provincial Commissioner has not given written notification at least six calendar months prior to the date on which he or she attains the said age, he or she shall be so retired on the first day of the seventh month following the month in which that notification is received.

(4) Notwithstanding the provisions of this section, the National or Provincial Commissioner may retire from the Service and he or she shall be so retired at the expiry of the term contemplated in section 7, or any extended term contemplated in that section, as the case may be, and he or she shall be deemed to have been so retired in terms of section 35(a).

(5) Subject to subsections (1) and (3)(b)—

(a) the President may at the request of the National Commissioner allow him or her to retire from the Service before the expiry of the term contemplated in section 7 or any extended term contemplated in that section if a reason exists which the President deems sufficient; and

(b) the National Commissioner may at the request of the Provincial Commissioner allow him or her to retire from the Service before the expiry of the term contemplated in section 7 or any extended term contemplated in that section if a reason exists which the National Commissioner deems sufficient.

(6) If the National or Provincial Commissioner is allowed to retire under subsection (5), he or she shall be deemed to have been retired in terms of subsection (2), and shall be entitled to such pension as he or she would have been entitled to if he or she had retired from the Service under the latter subsection.

(7)(a) Notwithstanding the provisions of subsection (1)(a), a member may be retained, with his or her consent, in his or her post beyond the age of 60 years with the approval of the Minister or member of the Executive Council for further periods which shall not, except with the approval by resolution of Parliament, exceed the aggregate of five years.

(b) A member shall only be retained under paragraph (a) if it is—

- (i) reasonable; and
- (ii) in the interest of the Service; or
- (iii) generally in the public interest.

(8) Pension benefits shall be paid to a retired member by the institution responsible for the administration of the pension fund to which that member was a contributor, subject to any law regulating the payment of such benefits.

(9) A benefit payable by the Service in terms of any law shall be paid to the person entitled to such benefit within a period of 90 days after the date on which the National Commissioner received the written notification of such member's termination of service, for any reason, in such a form and with such documents as the National Commissioner may determine for the purposes of this section or, if he or she receives such notification and documents 90 days before the date on which a benefit is payable to the person concerned in terms of such law, on the date on which such benefit is so payable.

(10) Nothing in this section contained shall be construed as derogating from section 212(7) of the Constitution.

Political activities of members

46. (1) No member shall—

- (a) publicly display or express support for or associate himself or herself with a political party, organisation, movement or body;
- (b) hold any post or office in a political party, organisation, movement or body;
- (c) wear any insignia or identification mark in respect of any political party, organisation, movement or body; or
- (d) in any other manner further or prejudice party-political interests.

(2) Subsection (1) shall not be construed as prohibiting a member from—

- (a) joining a political party, organisation, movement or body of his or her choice;

- (b)(i) Behoudens subartikel (4), moet die Nasionale of Provinsiale Kommissaris skriftelik kennis gee van sy of haar voorneme om uit die Diens af te tree minstens ses kalendermaande voor die datum waarop hy of sy die aftree-ouderdom op hom of haar van toepassing bereik, en indien hy of sy aldus kennis gegee het, is paragraaf (a)(i) 5 *mutatis mutandis* van toepassing.
- (ii) Indien die Nasionale of Provinsiale Kommissaris nie minstens ses kalendermaande voor die datum waarop hy of sy genoemde ouderdom bereik, kennis gegee het nie, tree hy of sy aldus af op die eerste dag van die sewende maand wat volg op die maand waarin die kennisgewing ontvang word.
- 10 (4) Ondanks die bepalings van hierdie artikel, kan die Nasionale of Provinsiale Kommissaris uit die Diens aftree en tree hy of sy aldus af by die verstryking van die termyn in artikel 7 beoog, of enige verlengde termyn in daardie artikel beoog, na gelang van die geval, en word hy of sy geag aldus ingevolge artikel 35(a) af te getree het.
- (5) Behoudens subartikels (1) en (3)(b)—
- 15 (a) kan die President op versoek van die Nasionale Kommissaris toelaat dat hy of sy uit die Diens aftree voor die verstryking van die termyn in artikel 7 beoog of enige verlengde termyn in daardie artikel beoog indien 'n rede bestaan wat die President voldoende ag; en
- (b) kan die Nasionale Kommissaris op versoek van die Provinsiale Kommissaris 20 toelaat dat hy of sy uit die Diens aftree voor die verstryking van die termyn in artikel 7 beoog of enige verlengde termyn in daardie artikel beoog indien 'n rede bestaan wat die Nasionale Kommissaris voldoende ag.
- (6) Indien die Nasionale of Provinsiale Kommissaris toegelaat word om kragtens subartikel (5) af te tree, word hy of sy geag kragtens subartikel (2) af te getree het, en 25 is hy of sy geregtig op die pensioen waarop hy of sy geregtig sou gewees het by afrede uit die Diens kragtens laasgenoemde subartikel.
- (7)(a) Ondanks die bepalings van subartikel (1)(a), kan 'n lid met sy of haar toestemming na die ouderdom van 60 jaar met die goedkeuring van die Minister of lid van die Uitvoerende Raad in sy of haar pos in diens gehou word vir verdere tydperke 30 wat nie, behalwe met die goedkeuring by besluit van die Parlement, in totaal vyf jaar oorskry nie.
- (b) 'n Lid word slegs kragtens paragraaf (a) in diens gehou indien dit—
- (i) redelik; en
- (ii) in die belang van die Diens; of
- 35 (iii) in die algemeen in openbare belang,
- is.
- (8) Pensioenvoordele word aan 'n afgetrede lid betaal deur die instelling verantwoordelik vir die administrasie van die pensioenfonds waartoe daardie lid bygedra het, behoudens enige wet wat die betaling van sodanige voordele reguleer.
- 40 (9) 'n Voordeel ingevolge enige wet deur die Diens betaalbaar aan die persoon wat daarop geregtig is, word binne 'n tydperk van 90 dae na die datum waarop die Nasionale Kommissaris die kennisgewing van sodanige lid se beëindiging van diens, om watter rede ook al, ontvang het in die vorm en met die dokumente wat die Nasionale Kommissaris vir die doeleindes van hierdie artikel bepaal, betaal of, indien 45 hy of sy sodanige kennisgewing en dokumente ontvang 90 dae voor die datum waarop die voordeel aan die betrokke persoon ingevolge sodanige wet betaalbaar is, op die datum waarop sodanige voordeel aldus betaalbaar is.
- (10) Niks in hierdie artikel vervat, word so uitgelê dat dit afbreuk doen aan artikel 212(7) van die Grondwet nie.

50 Politieke bedrywighede van lede

46. (1) Geen lid—
- (a) betoon of betuig openlik ondersteuning vir of assosieer homself of haarself met 'n politieke party, organisasie, beweging of liggaam nie;
- (b) beklee enige pos of amp in 'n politieke party, organisasie, beweging of 55 liggaam nie;
- (c) dra enige kenteken of identifikasiemerk ten opsigte van enige politieke party, organisasie, beweging of liggaam nie; of
- (d) bevorder of benadeel op enige ander wyse partypolitieke belange nie.
- (2) Subartikel (1) word nie so uitgelê dat dit 'n lid verbied om—
- 60 (a) by 'n politieke party, organisasie, beweging of liggaam van sy of haar keuse aan te sluit nie;

- (b) attending a meeting of a political party, organisation, movement or body:
Provided that no member shall attend such a meeting in uniform; or
- (c) exercising his or her right to vote.

Obedience

47. (1) Subject to subsection (2), a member shall obey any order or instruction given to him or her by a superior or a person who is competent to do so: Provided that a member shall not obey a patently unlawful order or instruction. 5

(2) Where it is reasonable in the circumstances, a member may demand that an order or instruction referred to in subsection (1) be recorded in writing before obeying it.

(3) A member may, after having obeyed an order or instruction referred to in subsection (1), demand that such an order or instruction be recorded in writing. 10

Reserve Police Service

48. (1) The National Commissioner may determine the requirements for recruitment, resignation, training, ranks, promotion, duties and nature of service, discipline, uniform, equipment and conditions of service of members of the Reserve Police Service and any other matter which he or she deems necessary in order to establish and maintain different categories of members of the Reserve Police Service. 15

(2) The National Commissioner may appoint a person as a member of the Reserve in the prescribed manner.

(3) The National or Provincial Commissioner may in the prescribed manner order any member of the Reserve to report for service, and any such member who refuses or fails to comply with such order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months: Provided that the Minister may by regulation exclude categories of members of the Reserve from the application of this subsection. 20 25

(4) The National or Provincial Commissioner may, subject to the Constitution, at any time discharge a member of the Reserve from the Service.

(5) During a period contemplated in section 49, the National or Provincial Commissioner may refuse to accept the resignation of a member of the Reserve, unless he or she produces evidence that he or she has enlisted for military service in a recognised unit of the South African National Defence Force. 30

(6) A member of the Reserve shall be deemed to be in the employ of the Service while on duty, notwithstanding the fact that such member may not be remunerated by the Service.

Limitation on right to resign

49. (1) No member may, during a period in which a state of national defence, declared under section 82(4)(b)(i) of the Constitution, or a state of emergency, proclaimed in accordance with section 34(1) of the Constitution, is in force, resign from the Service without the written permission of the National Commissioner. 35

(2) The National Commissioner may, in circumstances other than those mentioned in subsection (1), where the maintenance of public order in the Republic or any part thereof so requires, order that no member may resign from the Service without his or her written permission during a period of time specified in the order, which period may not exceed 30 days. 40

CHAPTER 10

45

INDEPENDENT COMPLAINTS DIRECTORATE

Establishment and independence

50. (1)(a) The Independent Complaints Directorate, which shall be structured at both national and provincial levels, is hereby established.

(b) The date on which the provincial structures of the directorate will come into operation, shall be determined by the Executive Director in consultation with the Minister. 50

(2) The directorate shall function independently from the Service.

(3) (a) No organ of state and no member or employee of an organ of state nor any

- (b) 'n vergadering van 'n politieke party, organisasie, beweging of liggaam by te woon nie: Met dien verstande dat geen lid so 'n vergadering in uniform bywoon nie; of
- (c) sy of haar reg om te stem, uit te oefen nie.

5 Gehoorsaamheid

47. (1) Behoudens subartikel (2), kom 'n lid enige bevel of opdrag aan hom of haar gegee deur 'n meerdere of 'n persoon bevoeg om dit te doen, na: Met dien verstande dat 'n lid nie 'n ooglopend onwettige bevel of opdrag gehoorsaam nie.

(2) Waar dit in die omstandighede redelik is, kan 'n lid eis dat 'n bevel of opdrag in subartikel (1) bedoel, op skrif gestel word voordat dit gehoorsaam word.

(3) 'n Lid kan, nadat hy of sy 'n bevel of opdrag bedoel in subartikel (1) gehoorsaam het, eis dat so 'n bevel of opdrag op skrif gestel word.

Reserwe-polisiediens

48. (1) Die Nasionale Kommissaris kan die vereistes bepaal vir werwing, bedanking, 15 opleiding, range, bevordering, pligte en aard van diens, dissipline, uniform, toerusting en diensvoorwaardes van lede van die Reserwe-polisiediens en enige ander aangeleentheid wat hy of sy nodig ag ten einde verskillende kategorieë lede van die Reserwe-polisiediens in te stel en te onderhou.

(2) Die Nasionale Kommissaris kan op die voorgeskrewe wyse 'n persoon as lid van 20 die Reserwe aanstel.

(3) Die Nasionale of Provinsiale Kommissaris kan op die voorgeskrewe wyse enige lid van die Reserwe beveel om vir diens te rapporteer, en enige sodanige lid wat weier of versuim om sodanige bevel na te kom, is aan 'n misdryf skuldig en by 25 skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande: Met dien verstande dat die Minister by regulasie kategorieë lede van die Reserwe van die toepassing van hierdie subartikel kan uitsluit.

(4) Behoudens die Grondwet, kan die Nasionale of Provinsiale Kommissaris te eniger tyd 'n lid van die Reserwe uit die Diens ontslaan.

(5) Gedurende 'n tydperk in artikel 49 beoog, kan die Nasionale of Provinsiale 30 Kommissaris die bedanking van 'n lid van die Reserwe weier, tensy hy of sy bewys lewer dat hy of sy vir militêre diens in 'n erkende eenheid van die Suid-Afrikaanse Nasionale Weermag aangesluit het.

(6) 'n Lid van die Reserwe word, terwyl aan diens, geag in diens van die Diens te wees ondanks die feit dat sodanige lid nie deur die Diens vergoed word nie.

35 Beperking op reg om te bedank

49. (1) Gedurende 'n tydperk waarin 'n staat van nasionale verdediging, kragtens artikel 82(4)(b)(i) van die Grondwet verklaar, of 'n noodtoestand, in ooreenstemming met artikel 34(1) van die Grondwet verklaar, van krag is, kan geen lid uit die Diens bedank sonder die skriftelike toestemming van die Nasionale Kommissaris nie.

40 (2) Die Nasionale Kommissaris kan in omstandighede, behalwe dié in subartikel (1) vermeld, waar die handhawing van openbare orde in die Republiek of enige deel daarvan dit vereis, beveel dat geen lid sonder sy of haar skriftelike toestemming vir 'n tydperk in die bevel gespesifiseer, welke tydperk nie 30 dae mag oorskry nie, uit die Diens bedank nie.

45

HOOFSTUK 10

ONAFHANKLIKE KLAGTESDIREKTORAAT

Instelling en onafhanklikheid

50. (1)(a) Die Onafhanklike Klagtesdirektoraat wat op sowel nasionale as provin- siale vlakke gestruktureer moet word, word hierby ingestel.

50 (b) Die datum waarop die provinsiale strukture van die direktoraat in werking tree, word deur die Uitvoerende Direkteur in oorleg met die Minister bepaal.

(2) Die direktoraat funksioneer onafhanklik van die Diens.

(3)(a) Geen staatsorgaan en geen lid of werknemer van 'n staatsorgaan of enige

other person shall interfere with the Executive Director or a member of the personnel of the directorate in the exercise and performance of his or her powers and functions.

(b) Any person who wilfully interferes with the Executive Director or a member of the personnel of the directorate in the exercise or performance of his or her powers or functions, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 5

(4) All organs of state shall accord such assistance as may be reasonably required for the protection of the independence, impartiality, dignity and effectiveness of the directorate in the exercise and performance of its powers and functions.

Appointment of Executive Director 10

51. (1) The Minister shall nominate a suitably qualified person for appointment to the office of Executive Director to head the directorate in accordance with a procedure to be determined by the Minister in consultation with the Parliamentary Committees.

(2) The Parliamentary Committees shall, within a period of 30 parliamentary working days of the nomination in terms of subsection (1), confirm or reject such nomination. 15

(3) In the event of the nomination being confirmed—

(a) such person shall be appointed to the office of Executive Director subject to the laws governing the public service with effect from a date agreed upon by such person and the Minister; and

(b) such appointment shall be for a period not exceeding five years: Provided that such person shall be eligible for consecutive appointments in accordance with this section. 20

(4) The Executive Director may be removed from his or her office under the circumstances and in the manner prescribed by the Minister in consultation with the Parliamentary Committees. 25

Personnel and expenditure

52. (1) The personnel of the directorate shall consist of persons appointed by the Executive Director in consultation with the Minister subject to the laws governing the public service and such other persons as may be seconded or transferred to the directorate. 30

(2) The terms and conditions of service of the personnel of the directorate shall be determined by the Minister in consultation with the Executive Director and the Public Service Commission.

(3) The functions of the directorate shall be funded by money appropriated by Parliament for that purpose. 35

(4) The Executive Director shall, subject to the Exchequer Act, 1975 (Act No. 66 of 1975)—

(a) be the accounting officer charged with the responsibility of accounting for all money appropriated by Parliament for the purposes of the performance of the functions of the directorate and the utilisation thereof; and 40

(b) cause the necessary accounting and other related records to be kept.

Functions of directorate

53. (1) (a) The principal function of the directorate shall be the achievement of the object contemplated in section 222 of the Constitution.

(b) The Executive Director shall be responsible for— 45

(i) the performance of the functions of the directorate; and

(ii) the management and administration of the directorate.

(2) In order to achieve its object, the directorate—

(a) may *mero motu* or upon receipt of a complaint, investigate any misconduct or offence allegedly committed by any member, and may, where appropriate, refer such investigation to the Commissioner concerned; 50

(b) shall *mero motu* or upon receipt of a complaint, investigate any death in police custody or as a result of police action; and

(c) may investigate any matter referred to the directorate by the Minister or the member of the Executive Council. 55

(3) (a) The Minister may, upon the request of and in consultation with the Executive Director, authorise those members of the personnel of the directorate identified by the

ander persoon mag die Uitvoerende Direkteur of 'n lid van die personeel van die direktoraat in die uitoefening en verrigting van sy of haar bevoegdhe en werksaamhede hinder nie.

(b) Enige persoon wat die Uitvoerende Direkteur of 'n lid van die personeel van die direktoraat opsetlik in die uitoefening of verrigting van sy of haar bevoegdhe of werksaamhede hinder, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(4) Alle staatsorgane verleen die bystand wat redelikerwys vereis mag word vir die beskerming van die onafhanklikheid, onpartydigheid, waardigheid en doeltreffendheid van die direktoraat in die uitoefening en verrigting van sy bevoegdhe en werksaamhede.

Aanstelling van Uitvoerende Direkteur

51. (1) Die Minister nomineer 'n paslik gekwalifiseerde persoon vir aanstelling in die amp van Uitvoerende Direkteur as hoof van die direktoraat in ooreenstemming met 'n prosedure deur die Minister in oorleg met die Parlementêre Komitees bepaal.

(2) Die Parlementêre Komitees bevestig of verwerp die nominasie ingevolge subartikel (1) binne 'n tydperk van 30 parlementêre werksdae na sodanige nominasie.

(3) Indien die nominasie bevestig word—

(a) word die persoon behoudens die wette op die Staatsdiens in die amp van Uitvoerende Direkteur aangestel vanaf 'n datum deur sodanige persoon en die Minister ooreengekom; en

(b) geld sodanige aanstelling vir 'n tydperk van hoogstens vyf jaar: Met dien verstande dat sodanige persoon benoembaar is vir opeenvolgende aanstellings ooreenkomstig hierdie artikel.

(4) Die Uitvoerende Direkteur kan van sy of haar amp onthef word onder die omstandighede en op die wyse deur die Minister in oorleg met die Parlementêre Komitees voorgeskryf.

Personeel en uitgawes

52. (1) Die personeel van die direktoraat bestaan uit persone deur die Uitvoerende Direkteur in oorleg met die Minister behoudens die wette op die Staatsdiens aangestel en die ander persone wat na die direktoraat gesekeundeer of oorgeplaas word.

(2) Die bedinge en voorwaardes van diens van die personeel van die direktoraat word deur die Minister in oorleg met die Uitvoerende Direkteur en die Staatsdienskommissie bepaal.

(3) Die werksaamhede van die direktoraat word fundeer deur geld wat deur die Parlement vir daardie doel bewillig word.

(4) Die Uitvoerende Direkteur moet behoudens die Skatkiswet, 1975 (Wet No. 66 van 1975)—

(a) die rekenpligtige beampte wees belas met die verantwoording van alle geld deur die Parlement vir die doeleindes van die verrigting van die werksaamhede van die direktoraat bewillig en die aanwending daarvan; en

(b) die nodige rekeningkundige en ander verwante aantekeninge laat hou.

Werksaamhede van direktoraat

53. (1)(a) Die hoofwerksaamheid van die direktoraat is die bereiking van die oogmerk in artikel 222 van die Grondwet bedoel.

(b) Die Uitvoerende Direkteur is verantwoordelik vir—

(i) die verrigting van die werksaamhede van die direktoraat; en

(ii) die bestuur en administrasie van die direktoraat.

(2) Ten einde sy oogmerk te bereik—

(a) kan die direktoraat, *mero motu* of by ontvangs van 'n klage, enige wangedrag of misdryf na bewering deur 'n lid gepleeg, ondersoek en, waar gepas, sodanige ondersoek na die betrokke Kommissaris verwys;

(b) moet die direktoraat, *mero motu* of by ontvangs van 'n klage, ondersoek instel na enige sterfte in polisie-aanhouding of as gevolg van polisie-optrede; en

(c) kan die direktoraat, enige aangeleentheid deur die Minister of lid van die Uitvoerende Raad na die direktoraat verwys, ondersoek.

(3)(a) Die Minister kan, op versoek van en in oorleg met die Uitvoerende Direkteur, daardie lede van die personeel van die direktoraat deur die Uitvoerende Direkteur

Executive Director, to exercise those powers and perform those duties conferred on or assigned to any member by or under this Act or any other law.

(b) The members of the personnel referred to in paragraph (a) shall have such immunities and privileges as may be conferred by law on a member in order to ensure the independent and effective exercise and performance of their powers and duties. 5

(4) A document, in the prescribed form, certifying that a person is a member of the personnel of the directorate and has been authorised to exercise the powers and perform the duties of a member, shall be *prima facie* proof that such member has been authorised as contemplated in subsection (3).

(5) Any member of the personnel of the directorate who wilfully discloses any information in circumstances in which he or she knows or could reasonably be expected to know that such disclosure would or may prejudicially affect the performance by the directorate or the Service of its functions, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 10

(6) The Executive Director may— 15

(a) at any time withdraw any referral made under subsection (2)(a);

(b) request and obtain information from any Commissioner or police official as may be necessary for conducting any investigation;

(c) (i) monitor the progress of; 20
(ii) set guidelines regarding;

(iii) request and obtain information regarding, an investigation referred to a Commissioner under subsection (2)(a);

(d) request and obtain the co-operation of any member as may be necessary to achieve the object of the directorate;

(e) commence an investigation on any matter notwithstanding the fact that an investigation regarding the same matter has been referred under subsection (2)(a), is pending or has been closed by the Service, or the docket regarding the matter has been submitted to the attorney-general for decision: Provided that in the case of a— 25

(i) referred or pending investigation, the directorate shall act after consultation with the member heading the investigation; or 30

(ii) docket regarding a matter having been submitted to the attorney-general for decision, the directorate shall act in consultation with the attorney-general;

(f) request and obtain information from the attorney-general's office in so far as it may be necessary for the directorate to conduct an investigation: Provided that the attorney-general may on reasonable grounds refuse to accede to such request; 35

(g) submit the results of an investigation to the attorney-general for his or her decision; 40

(h) in consultation with the Minister and with the concurrence of the Minister of Finance, obtain the necessary resources and logistical support or engage the services of experts, or other suitable persons, to enable the directorate to achieve its object;

(i) make recommendations to the Commissioner concerned; 45

(j) make any recommendation to the Minister or a member of the Executive Council which he or she deems necessary regarding any matter investigated by the directorate or relating to the performance of the directorate's functions: Provided that in the event of a recommendation made to a member of the Executive Council, a copy thereof shall be forwarded to the Minister; and 50

(k) subject to the Exchequer Act, 1975 (Act No. 66 of 1975), delegate any of his or her powers to any member of the personnel of the directorate.

(7) The Executive Director shall, in consultation with the Minister, issue instructions to be complied with by the directorate which shall *inter alia* include instructions regarding— 55

(a) the lodging, receiving and processing of complaints;

(b) recording and safe-guarding of information and evidence;

(c) disclosure of information;

(d) the making of findings and recommendations; and

geïdentifiseer, magtig om daardie bevoegdheid uit te oefen en daardie pligte te verrig wat deur hierdie Wet of enige ander wet aan 'n lid verleen of opgedra is.

(b) Die lede van die personeel in paragraaf (a) bedoel, het die vrywarings en voorregte wat by wet aan 'n lid verleen word ten einde die onafhanklike en doeltreffende uitoefening en verrigting van hulle bevoegdhede en pligte te verseker.

(4) 'n Dokument, in die voorgeskrewe vorm, wat sertifiseer dat 'n persoon 'n lid van die personeel van die direktoraat is en gemagtig is om die bevoegdhede en pligte van 'n lid uit te oefen en te verrig, is *prima facie*-bewys dat sodanige lid gemagtig is soos in subartikel (3) beoog.

(5) Enige lid van die personeel van die direktoraat wat opsetlik enige inligting openbaar onder omstandighede waar hy of sy geweet het of daar redelikerwys van hom of haar ver wag kon word om te weet dat sodanige openbaring die verrigting deur die direktoraat of die Diens van sy werksaamhede, nadelig sal beïnvloed, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(6) Die Uitvoerende Direkteur kan—

(a) te eniger tyd 'n verwysing kragtens subartikel (2)(a) gedoen, terugtrek;

(b) inligting van enige Kommissaris of polisiebeampte aanvra en bekom wat vir enige ondersoek nodig is;

(c) (i) die vordering van enige ondersoek wat kragtens subartikel (2)(a) na 'n Kommissaris verwys is, moniteer;

(ii) riglyne vir sodanige ondersoek stel; en

(iii) inligting daarvoor versoek en bekom;

(d) die samewerking van enige lid versoek en verkry wat nodig mag wees om die oogmerk van die direktoraat te bereik;

(e) met 'n ondersoek na enige aangeleentheid begin ondanks die feit dat 'n ondersoek betreffende dieselfde aangeleentheid kragtens subartikel (2)(a) verwys is, hangende is of deur die Diens afgesluit is, of die dossier betreffende die aangeleentheid aan die prokureur-generaal vir sy of haar beslissing voorgelê is: Met dien verstande dat in die geval van—

(i) 'n verwysde of hangende ondersoek, die direktoraat na oorleg met die lid in beheer van die ondersoek optree; of

(ii) 'n dossier betreffende 'n aangeleentheid wat aan die prokureur-generaal vir beslissing voorgelê is, die direktoraat in oorleg met die prokureur-generaal optree;

(f) inligting versoek en bekom van die prokureur-generaal se kantoor vir sover dit nodig is vir die direktoraat om 'n ondersoek in te stel: Met dien verstande dat die prokureur-generaal op redelike gronde kan weier om aan sodanige versoek te voldoen;

(g) die uitslag van 'n ondersoek aan die prokureur-generaal vir sy of haar beslissing voorlê;

(h) in oorleg met die Minister en met die instemming van die Minister van Finansies, die nodige middele en logistiese steun of die dienste van kundiges of ander geskikte persone bekom ten einde die direktoraat in staat te stel om sy oogmerk te bereik;

(i) aanbevelings aan die betrokke Kommissaris doen;

(j) enige aanbeveling aan die Minister of 'n lid van die Uitvoerende Raad doen wat hy of sy nodig ag betreffende enige aangeleentheid wat deur die direktoraat ondersoek is of met betrekking tot die verrigting van die direktoraat se werksaamhede: Met dien verstande dat in die geval van 'n aanbeveling aan 'n lid van die Uitvoerende Raad gedoen, 'n afskrif daarvan aan die Minister gestuur word; en

(k) behoudens die Skatkiswet, 1975 (Wet No. 66 van 1975), enige van sy of haar bevoegdhede aan 'n lid van die personeel van die direktoraat delegeer.

(7) Die Uitvoerende Direkteur reik, in oorleg met die Minister, opdragte uit wat deur die direktoraat nagekom moet word wat onder andere insluit opdragte betreffende—

(a) die indien, ontvangs en prosessering van klagtes;

(b) notulering en beskerming van inligting en getuienis;

(c) openbaring van inligting;

(d) die maak van bevindings en doen van aanbevelings; en

- (e) all matters incidental to the matters referred to in paragraphs (a) to (d).
- (8) The National or Provincial Commissioner shall notify the directorate of all cases of death in police custody or as a result of police action.
- (9) The Minister may prescribe procedures regarding—
- (a) protecting the identity and integrity of complainants; and 5
 - (b) witness protection programmes.

Reporting

54. The Executive Director shall—
- (a) within three months after the end of each financial year, submit to the Minister a written report on the activities of the directorate during that financial year, which report shall be tabled in Parliament by the Minister within 14 days after receipt thereof or, if Parliament is not then in session, within 14 days after the commencement of the next ensuing session; and 10
 - (b) at any time when requested to do so by the Minister or either the Parliamentary Committees, submit a report on the activities of the directorate to the Minister or that Committee. 15

CHAPTER 11

GENERAL PROVISIONS

Non-liability for acts under irregular warrant

55. (1) Any member who acts under a warrant or process which is bad in law on account of a defect in the substance or form thereof shall, if he or she has no knowledge that such warrant or process is bad in law and whether or not such defect is apparent on the face of the warrant or process, be exempt from liability in respect of such act as if the warrant or process were valid in law. 20
- (2)(a) Any member who is authorised to arrest a person under a warrant of arrest and who, in the reasonable belief that he or she is arresting such person arrests another, shall be exempt from liability in respect of such wrongful arrest. 25
- (b) Any member who is called upon to assist in making an arrest as contemplated in paragraph (a) or who is required to detain a person so arrested, and who reasonably believes that the said person is the person whose arrest has been authorised by the warrant of arrest, shall likewise be exempt from liability in respect of such assistance or detention. 30

Limitation of liability of State and members

56. Whenever any person is conveyed in or makes use of any vehicle, aircraft or vessel, being the property or under the control of the State in the Service, the State or any member shall not be liable to such person or his or her spouse, parent, child or other dependant for any loss or damage resulting from any bodily injury, loss of life or loss of or damage to property caused by or arising out of or in any way connected with the conveyance in or the use of such vehicle, aircraft or vessel, unless such person is so conveyed or makes use thereof in or in the interest of the performance of the functions of the State: Provided that the provisions of this section shall not affect the liability of a member who wilfully causes the said loss or damage. 35 40

Actions against Service

57. (1) No legal proceedings shall be instituted against the Service or any body or person in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, unless the legal proceedings are instituted before the expiry of a period of 12 calendar months after the date upon which the claimant became aware of 45

- (e) alle aangeleenthede bykomstig tot die aangeleenthede in paragrawe (a) tot (d) bedoel.
- (8) Die Nasionale of Provinsiale Kommissaris moet die direktoraat in kennis stel van alle gevalle van sterfte in polisie-aanhouding of as gevolg van polisie-optrede.
- 5 (9) Die Minister kan prosedures voorskryf betreffende—
- (a) die beskerming van die identiteit en integriteit van klaers; en
- (b) getuiebeskermingsprogramme.

Verslagdoening

54. (1) Die Uitvoerende Direkteur moet—
- 10 (a) binne drie maande na die einde van elke boekjaar, aan die Minister 'n skriftelike verslag voorlê oor die bedrywighede van die direktoraat gedurende daardie boekjaar, welke verslag deur die Minister in die Parlement ter Tafel gelê word binne 14 dae na ontvangs daarvan of, indien die Parlement nie dan in sessie is nie, binne 14 dae na die aanvang van die
- 15 eersvolgende sessie; en
- (b) te eniger tyd wanneer daartoe versoek deur die Minister of enige een van die Parlementêre Komitees, 'n verslag van die aktiwiteite van die direktoraat aan die Minister of daardie Komitee voorlê.

HOOFSTUK 11

20 ALGEMENE BEPALINGS

Nie-aanspreeklikheid vir handeling kragtens onreëlmatige lasbrief

55. (1) Enige lid wat kragtens 'n lasbrief of prosesstuk optree wat regtens gebrekkig is weens 'n tekortkoming in die inhoud of vorm daarvan is, indien hy of sy nie weet dat sodanige lasbrief of prosesstuk regtens gebrekkig is nie en hetsy bedoelde gebrek
- 25 ooglopend uit die lasbrief of prosesstuk blyk of nie, onthef van aanspreeklikheid ten opsigte van sodanige optrede asof die lasbrief of prosesstuk regtens in orde is.
- (2)(a) Enige lid wat kragtens 'n lasbrief tot inhegtenisneming gemagtig is om 'n persoon in hegtenis te neem en wat, terwyl hy of sy redelikerwys glo dat hy of sy daardie persoon in hegtenis neem 'n ander in hegtenis neem, is onthef van aanspreek-
- 30 likheid ten opsigte van sodanige onreëlmatige inhegtenisneming.
- (b) Enige lid wat aangesê word om behulpsaam te wees met die uitvoering van 'n in paragraaf (a) beoogde inhegtenisneming of van wie dit vereis word om 'n aldus gearresterde persoon aan te hou, en wat redelikerwys glo dat bedoelde persoon die persoon is wie se inhegtenisneming deur die lasbrief tot inhegtenisneming gemagtig is,
- 35 word insgelyks onthef van aanspreeklikheid ten opsigte van sodanige bystand of aanhouding.

Beperking van aanspreeklikheid van Staat en lede

56. Wanneer enige persoon in enige voertuig, vliegtuig of vaartuig wat die eiendom of onder beheer van die Staat in die Diens is, vervoer word of daarvan gebruik maak,
- 40 is die Staat of enige lid nie teenoor sodanige persoon of sy of haar gade, ouer, kind of ander afhanklike aanspreeklik vir enige verlies of skade as gevolg van enige liggaamlike besering, lewensverlies of verlies of skade aan eiendom wat veroorsaak is of ontstaan het uit of op enige wyse verband hou met die vervoer in of gebruik van sodanige voertuig, vliegtuig of vaartuig nie, tensy sodanige persoon aldus vervoer word
- 45 of daarvan gebruik maak by of in belang van die verrigting van die werksaamhede van die Staat: Met dien verstande dat die bepalinge van hierdie artikel nie die aanspreeklikheid van 'n lid raak wat bedoelde verlies of skade opsetlik veroorsaak nie.

Regsgedinge teen Diens

57. (1) Geen regsgeding word teen die Diens of 'n liggaam of persoon ten opsigte
- 50 van enige beweerde handeling kragtens of ingevolge hierdie Wet of enige ander wet verrig, of 'n beweerde versuim om iets te doen wat ingevolge hierdie Wet of enige ander wet gedoen behoort te word, ingestel nie, tensy die regsgeding ingestel word voor die verstryking van 'n tydperk van 12 kalendermaande na die datum waarop die eiser

the alleged act or omission, or after the date upon which the claimant might be reasonably expected to have become aware of the alleged act or omission, whichever is the earlier date.

(2) No legal proceedings contemplated in subsection (1) shall be instituted before the expiry of at least one calendar month after written notification of the intention to institute such proceedings, has been served on the defendant, wherein particulars of the alleged act or omission are contained. 5

(3) If any notice contemplated in subsection (2) is given to the National Commissioner or to the Provincial Commissioner of the province in which the cause of action arose, it shall be deemed to be notification to the defendant concerned. 10

(4) Any process by which any proceedings contemplated in subsection (1) is instituted and in which the Minister is the defendant or respondent, may be served on the National or Provincial Commissioner referred to in subsection (3).

(5) Subsections (1) and (2) shall not be construed as precluding a court of law from dispensing with the requirements or prohibitions contained in those subsections where the interests of justice so require. 15

Salary or allowance not to be assigned or attached

58. No member shall, without the approval of the National or Provincial Commissioner, assign the whole or any part of any salary, wages or allowance payable to him or her under this Act, nor shall the whole or any part of any such salary, wages or allowance be capable of being seized or attached under or in consequence of any judgment or order of any court of law, other than a garnishee order. 20

Prohibition on certain dealings

59. (1) No member shall, without the permission of the person under whose command he or she serves, lend any means of transport or equipment which he or she is required to keep and possess, or sell, pledge or otherwise dispose of any such property, irrespective of whether it is the property of the State or his or her own property. 25

(2) Every sale, pledge, loan or other disposition of any property contrary to subsection (1), shall be null and void.

Property of Service not liable to seizure or attachment 30

60. Property which in terms of this Act may not be sold, pledged, lent or otherwise disposed of, shall not be capable of being seized or attached, under or in consequence of any judgment or order of any court of law.

Exemption from tolls, fees and fees of office

61. (1) Subject to subsection (3), any member who, in the exercise of his or her powers or the performance of his or her duties or functions finds it necessary to enter, pass through or go over any wharf, landing place, ferry, bridge, toll-bar, gate or door at or in respect of which any toll, fee or fee of office may be lawfully demanded, shall be exempted from the payment of such toll, fee or fee of office in respect of himself or herself, every person under his or her arrest and any animal, means of transport or property which he or she may require in the exercise of such powers or the performance of such duties or functions: Provided that if such member is not in uniform, he or she shall, upon a request by any person who may demand such toll, fee or fee of office, disclose his or her identity by exhibiting to such person his or her certificate of appointment. 45

(2) Any person who may demand any such toll, fee or fee of office, and who subjects any such member, person, animal, means of transport or property to unreasonable delay or detention in respect of the entry to, passage through or going over any such wharf, landing place, ferry, bridge, toll-bar, gate or door, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months. 50

(3) The National or Provincial Commissioner may, if he or she deems it necessary, with regard to the nature of the powers, duties or functions of a member, order that subsection (1) is not applicable to such member, in which event any toll, fee or fee of office contemplated in subsection (1), shall be payable.

bewus geword het van die beweerde handeling of versuim, of na die datum waarop redelikerwys verwag kan word dat die eiser van die beweerde handeling of versuim bewus sou geword het, na gelang van watter datum die vroegste is.

(2) Geen regsgeding in subartikel (1) beoog, word ingestel voor die verstryking van
5 minstens een kalendermaand nadat skriftelike kennisgewing, waarin besonderhede aangaande die beweerde handeling of versuim vervat word, van die voorneme om sodanige regsgeding in te stel, op die verweerder beteken is nie.

(3) Indien 'n kennisgewing in subartikel (2) beoog, gegee word aan die Nasionale Kommissaris of aan die Provinsiale Kommissaris van die provinsie waarin die
10 eisoorsaak ontstaan het, word dit geag kennisgewing aan die betrokke verweerder te wees.

(4) Enige prosesstuk waarby 'n geding in subartikel (1) beoog, ingestel word en waarin die Minister die verweerder of respondent is, kan op die Nasionale of Provinsiale Kommissaris in subartikel (3) bedoel, beteken word.

15 (5) Subartikels (1) en (2) word nie so uitgelê as sou dit 'n geregshof belet om van die vereistes of verbodinge in daardie subartikels vervat, af te sien waar dit in belang van geregtigheid vereis word nie.

Salaris of toelae nie afgestaan of in beslag geneem nie

58. Geen lid staan sonder goedkeuring van die Nasionale of Provinsiale Kommissaris enige salaris, lone of toelae of deel daarvan af wat kragtens hierdie Wet aan hom of haar betaalbaar is nie, en sodanige salaris, lone of toelae of deel daarvan is ook nie vir beslaglegging kragtens of ten gevolge van 'n vonnis of bevel van 'n geregshof, behalwe 'n skuldbeslagorder, vatbaar nie.

Verbod op sekere handeling

25 59. (1) Geen lid leen sonder vergunning van die persoon onder wie se bevel hy of sy dien, enige vervoermiddel of toerusting wat hy of sy moet hou en besit, uit nie, of verkoop, verpand of beskik andersins oor sodanige eiendom nie, ongeag of dit Staatseiendom of sy of haar eie eiendom is.

(2) Elke verkoping, verpanding, uitlening van of ander beskikking oor enige
30 eiendom in stryd met subartikel (1), is nietig.

Eiendom van Diens nie vatbaar vir beslaglegging nie

60. Eiendom wat ingevolge hierdie Wet nie verkoop, verpand, uitgeleen of andersins oor beskik mag word nie, kan nie kragtens of ten gevolge van 'n vonnis of bevel van 'n geregshof in beslag geneem word nie.

35 Vrystelling van tolgelde, gelde en leges

61. (1) Behoudens subartikel (3), is 'n lid wat dit by die uitoefening van sy of haar bevoegdhede of die verrigting van sy of haar pligte of werksaamhede nodig vind om 'n kaai, landingsplek, pont, brug, tolhek, hek of deur te betree of daardeur of daaroor te gaan, waar of ten opsigte waarvan tolgeld, gelde of leges wettig geëis kan word,
40 vrygestel van die betaling van sodanige tolgeld, gelde of leges ten opsigte van homself of haarself, elke persoon wat hy of sy in hegtenis het en enige dier, vervoermiddel of eiendom wat hy of sy by die uitoefening van bedoelde bevoegdhede of die verrigting van bedoelde pligte of werksaamhede nodig mag hê: Met dien verstande dat indien so 'n lid nie in uniform is nie, hy of sy op versoek van iemand wat sodanige tolgeld, gelde
45 of leges mag eis, sy of haar identiteit moet openbaar deur sy of haar aanstellingsertifikaat aan daardie persoon te toon.

(2) Enige persoon wat sodanige tolgeld, gelde of leges mag eis, en wat so 'n lid, persoon, dier, vervoermiddel of eiendom by die betreding, deurgang of oorgang van so 'n kaai, landingsplek, pont, brug, tolhek, hek of deur op onredelike wyse verdraag of
50 aanhou, is aan 'n misdryf skuldig en by skuldigebevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(3) Die Nasionale of Provinsiale Kommissaris kan, indien hy of sy dit nodig ag, met inagneming van die aard van die bevoegdhede, pligte of werksaamhede van 'n lid, beveel dat subartikel (1) nie op sodanige lid van toepassing is nie, in welke geval
55 tolgeld, gelde of leges in subartikel (1) beoog, betaalbaar is.

Police clubs exempt from licence duties and other fees

62. (1) No licence money, tax, duty or fee (other than customs, excise or value-added tax) shall be payable by any person under any law or by-law in respect of a certified club of the Service or in respect of any article on sale at such a club.

(2) The production of an official document bearing the signature of the Minister or member of the Executive Council or any person authorised by the Minister or member of the Executive Council to sign such document, and indicating that he or she has certified the club as a club of the Service, shall, for the purposes of this section, be conclusive proof that it is such a club. 5

(3) For the purposes of this section "club" includes any mess or institution of the Service or any premises temporarily or permanently used for providing recreation, refreshment or articles of necessity mainly for members or retired members or other persons employed by the Service or for the families of such members, retired members or employees or such other persons employed in any work in or in connection with any such mess, institution or premises. 10 15

Payment by public for police services

63. (1) The National Commissioner shall, with due regard to sections 215, 218 and 219 of the Constitution, determine whether a particular function, duty or service falls within the scope of the normal and generally accepted responsibilities of the Service and, if such function, duty or service does not fall within such scope, it shall, subject to subsection (2), be performed only on such conditions as may be prescribed in consultation with the Treasury. 20

(2) Notwithstanding the provisions of subsection (1), the National Commissioner may authorise that any function, duty or service be performed free of charge on behalf of any deserving charity or in any case considered to be of general, cultural or educational interest. 25

CHAPTER 12**MUNICIPAL AND METROPOLITAN POLICE SERVICES****Municipal and metropolitan police services**

64. (1) Any local government may, subject to the Constitution and this Act, establish— 30

- (a) a municipal police service; or
- (b) a metropolitan police service.

(2) (a) The Minister shall prescribe which provisions of this Act shall apply *mutatis mutandis* to any municipal or metropolitan police service. 35

(b) The Minister may make regulations regarding the establishment of municipal and metropolitan police services, including which categories of local governments may establish municipal police services and which categories of local governments may establish metropolitan police services.

(3) The National Commissioner shall determine the minimum standards of training that members of municipal and metropolitan police services shall undergo. 40

(4) Legal proceedings in respect of any alleged act performed under or in terms of this Act or any other law, or an alleged failure to do anything which should have been done in terms of this Act or any other law, by any member of a municipal or metropolitan police service, shall be instituted against the local government concerned and section 57 shall not be applicable to such legal proceedings. 45

(5) The establishment of a municipal or metropolitan police service shall not derogate from the functions of the Service or the powers, duties or functions of a member in terms of any law.

(6) Where a municipal or metropolitan police service has been established, such service shall be represented by at least one of its members designated by such service for that purpose on every community police forum or sub-forum established in terms of section 19 in its area of jurisdiction. 50

Polisieklubs vrygestel van lisensie- en ander gelde

62. (1) Geen lisensiegelde, belasting, reg of gelde (behalwe doeane- of aksynsbelasting of belasting op toegevoegde waarde) is deur enige persoon kragtens enige wet of verordening ten opsigte van 'n gesertifiseerde klub van die Diens of ten opsigte van enige artikel wat in sodanige klub te koop is, betaalbaar nie.

(2) Die voorlegging van 'n amptelike dokument onder die handtekening van die Minister of lid van die Uitvoerende Raad of iemand wat deur die Minister of lid van die Uitvoerende Raad gemagtig is om so 'n dokument te onderteken, en waarin aangedui word dat hy of sy die klub sertifiseer as 'n klub van die Diens, is afdoende bewys vir die doeleindes van hierdie artikel dat dit so 'n klub is.

(3) By die toepassing van hierdie artikel beteken "klub" ook 'n menasie of inrigting van die Diens of 'n perseel wat tydelik of permanent gebruik word om ontspanning, verversings of benodigdhede te verskaf hoofsaaklik vir lede of afgetrede lede of ander persone in diens van die Diens of vir die gesinne van sodanige lede, afgetrede lede of werknemers of vir die ander persone wat enige werk in of in verband met so 'n menasie, inrigting of perseel verrig.

Betaling deur publiek vir polisie Dienste

63. (1) Die Nasionale Kommissaris bepaal, met behoorlike inagneming van artikels 215, 218 en 219 van die Grondwet, of 'n besondere werksaamheid, plig of diens binne die bestek van die normale en algemeen aanvaarde verantwoordelikhede van die Diens val en, indien sodanige werksaamheid, plig of diens nie binne sodanige bestek val nie, word dit, behoudens subartikel (2), slegs verrig op die voorwaardes wat in oorleg met die Tesourie voorgeskryf word.

(2) Ondanks die bepalings van subartikel (1), kan die Nasionale Kommissaris magtiging daarvoor verleen dat 'n werksaamheid, plig of diens gratis verrig word ten behoeve van 'n verdienstelike liefdadigheid of in 'n geval wat geag word van algemene, kulturele of opvoedkundige belang te wees.

HOOFSTUK 12**MUNISIPALE EN METROPOLITAANSE POLISIEDIENSTE****30 Munisipale en metropolitaanse polisie Dienste**

64. (1) Enige plaaslike regering kan, behoudens die Grondwet en hierdie Wet—

(a) 'n munisipale polisie Dienste; of

(b) 'n metropolitaanse polisie Dienste,

instel.

(2)(a) Die Minister moet voorskryf watter bepalings van hierdie Wet *mutatis mutandis* op enige munisipale of metropolitaanse polisie Dienste van toepassing is.

(b) Die Minister kan regulasies uitvaardig betreffende die instelling van munisipale en metropolitaanse polisie Dienste; met inbegrip van watter kategorieë plaaslike regerings munisipale polisie Dienste en watter kategorieë plaaslike regerings metropolitaanse polisie Dienste kan instel.

(3) Die Nasionale Kommissaris bepaal die minimum standarde van opleiding wat lede van munisipale en metropolitaanse polisie Dienste moet ondergaan.

(4) 'n Regsgeding ten opsigte van enige beweerde handeling kragtens of ingevolge hierdie Wet of enige ander wet, of 'n beweerde versuim om enigiets te doen wat ingevolge hierdie Wet of enige ander wet gedoen moes wees deur 'n lid van 'n munisipale of metropolitaanse polisie Dienste, word teen die betrokke plaaslike regering ingestel en artikel 57 is nie op sodanige regsgeding van toepassing nie.

(5) Die instelling van 'n munisipale of metropolitaanse polisie Dienste doen nie afbreuk aan die werksaamhede van die Diens of die bevoegdhede, pligte of werksaamhede van 'n lid ingevolge enige wet nie.

(6) Waar 'n munisipale of metropolitaanse polisie Dienste ingestel is, moet sodanige diens deur ten minste een van sy lede wat vir dié doel deur sodanige diens aangewys word, op elke gemeenskapspolisieforum of -subforum wat in sy regsgebied ingevolge artikel 19 ingestel is, verteenwoordig word.

CHAPTER 13

OFFENCES

Receipt or possession of certain property

65. Any person who receives or has in his or her possession any property which in terms of this Act may not be sold, pledged, lent or otherwise disposed of, knowing the same to have been sold, pledged, lent or otherwise disposed of in contravention of this Act, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months. 5

Wearing and use of uniforms, badges, etc. of Service

66. (1) Any person who wears any uniform or distinctive badge or button of the Service or wears anything materially resembling any such uniform, badge or button or wears anything with the intention that it should be regarded as such uniform, badge or button, shall, unless— 10

(a) he or she is a member entitled by reason of his or her appointment, rank or designation to wear such uniform, badge or button; or 15

(b) he or she has been granted permission by the National or Provincial Commissioner to wear such uniform, badge or button,

be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

(2) Any person who wears, or without the written permission of the National Commissioner, makes use of any decoration or medal instituted, constituted or created under this Act, or its bar, clasp or ribbon, or anything so closely resembling any such decoration, medal, bar, clasp or ribbon as to be calculated to deceive, shall, unless he or she is the person to whom such decoration or medal was awarded, be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 25

Interference with members

67. (1) Any person who—

(a) resists or wilfully hinders or obstructs a member in the exercise of his or her powers or the performance of his or her duties or functions or, in the exercise of his or her powers or the performance of his or her duties or functions by a member wilfully interferes with such member or his or her uniform or equipment or any part thereof; or 30

(b) in order to compel a member to perform or to abstain from performing any act in respect of the exercise of his or her powers or the performance of his or her duties or functions, or on account of such member having done or abstained from doing such an act, threatens or suggests the use of violence against, or restraint upon such member or any of his or her relatives or dependants, or threatens or suggests any injury to the property of such member or of any of his or her relatives or dependants, 35 40

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

(2) Any person who—

(a) conspires with or induces or attempts to induce any member not to perform his or her duty or any act in conflict with his or her duty; or 45

(b) is a party to, assists or incites the commission of any act whereby any lawful order given to a member may be evaded,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any person who induces or attempts to induce a member to commit misconduct shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 50

(4) In the event of a criminal prosecution of any member or a representative of an employee organisation on account of a contravention of subsection (2) or (3), it shall constitute a defence if the sole purpose of such person's conduct was to— 55

HOOFSTUK 13**MISDRYWE****Ontvangs of besit van sekere eiendom**

65. Enige persoon wat enige eiendom ontvang of in sy of haar besit het, wat
 5 ingevolge hierdie Wet nie verkoop, verpand, uitgeleen of andersins oor beskik mag
 word nie, met die wete dat dit in stryd met hierdie Wet verkoop, verpand, uitgeleen of
 andersins oor beskik is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met
 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

Dra en gebruik van uniforms, kentekens, ens. van Diens

10 66. (1) Enige persoon wat 'n uniform of kenmerkende kenteken of knoop van die
 Diens dra of enigiets dra wat wesenlik na sodanige uniform, kenteken of knoop lyk of
 enigiets dra met die opset dat dit vir sodanige uniform, kenteken of knoop aangesien
 moet word, is, tensy—

- (a) hy of sy 'n lid is wat uit hoofde van sy of haar aanstelling, rang of aanwysing
 15 geregtig is om sodanige uniform, kenteken of knoop te dra; of
 (b) hy of sy deur die Nasionale of Provinsiale Kommissaris vergunning verleen
 is om sodanige uniform, kenteken of knoop te dra,
 aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met
 gevangenisstraf vir 'n tydperk van hoogstens ses maande.

20 (2) Enige persoon wat 'n dekorasie of medalje wat kragtens hierdie Wet ingestel,
 saamgestel of geskep is of die balk, gespe of lint daarvan of iets wat soveel na so 'n
 dekorasie, medalje, balk, gespe of lint lyk dat dit bereken is om te mislei, dra of sonder
 skriftelike vergunning van die Nasionale Kommissaris, gebruik, is, tensy hy of sy die
 persoon is aan wie daardie dekorasie of medalje toegeken is, aan 'n misdryf skuldig en
 25 by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van
 hoogstens ses maande.

Bemoeïing met lede

67. (1) Enige persoon wat—
 30 (a) 'n lid by die uitoefening van sy of haar bevoegdheid of die verrigting van sy
 of haar pligte of werksaamhede weerstaan of opsetlik hinder of belemmer of,
 by die uitoefening van sy of haar bevoegdheid of die verrigting van sy of
 haar pligte of werksaamhede deur 'n lid, hom of haar opsetlik met so 'n lid
 of sy of haar uniform of uitrusting of enige deel daarvan bemoei; of
 35 (b) ten einde 'n lid te dwing om 'n handeling ten opsigte van die uitoefening van
 sy of haar bevoegdheid of die verrigting van sy of haar pligte of werksaam-
 hede te verrig of na te laat of, omdat so 'n lid so 'n handeling verrig of
 nagelaat het, dreig om geweld of dwang te gebruik of die gebruik van geweld
 of dwang voorstel teen daardie lid of enige van sy of haar naasbestaandes of
 afhanklikes, of dreig om die eiendom van daardie lid of van enige van sy of
 40 haar naasbestaandes of afhanklikes te beskadig of die beskadiging daarvan
 voorstel,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met
 gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(2) Enige persoon wat—
 45 (a) saamspan met of enige lid beweeg of poog te beweeg om nie sy of haar plig
 te verrig nie of om enige handeling strydig met sy of haar plig te verrig; of
 (b) 'n party is by, bystand verleen by of die pleeg van 'n handeling aanhits wat
 tot gevolg sal hê dat 'n wettige bevel aan 'n lid ontduik word,
 is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met
 50 gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(3) Enige persoon wat 'n lid beweeg of poog te beweeg om wangedrag te pleeg, is
 skuldig aan 'n misdryf en by skuldigbevinding strafbaar met 'n boete of met
 gevangenisstraf vir 'n tydperk van hoogstens ses maande.

(4) In die geval van 'n strafregtelike vervolging van enige lid of 'n verteenwoordiger
 55 van 'n werknemersorganisasie op grond van 'n oortreding van subartikel (2) of (3), is
 dit 'n verweer indien die enigste oogmerk van sodanige persoon se gedrag was om—

- (a) further or cause a strike by members; or
- (b) further the activities of a *bona fide* employee organisation.

False representations

68. (1) Any person who pretends that he or she is a member shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years. 5

(2) Any person who by means of a false certificate or any false representation obtains an appointment in the Service, or, having been dismissed from the Service, receives, by concealing the dismissal, any salary, wages, allowance, gratuity or pension, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 10

(3) Any person who, in connection with any activity carried on by him or her takes, assumes, uses or in any manner publishes any name, description, title or symbol indicating or conveying or purporting to indicate or convey or is calculated or is likely to lead other persons to believe or infer that such activity is carried on under or in terms of the provisions of this Act or under the patronage of the Service, or is in any manner associated or connected with the Service, without the approval of the National Commissioner, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months. 15

Prohibition on making of sketches or taking of photographs of certain persons and publication thereof 20

69. (1) For the purposes of this section—

“photograph” includes any picture, visually perceptible image, depiction or any other similar representation of the person concerned;

“publish”, in relation to a photograph, includes to exhibit, show, televise, represent or reproduce; and 25

“take”, in relation to a photograph, includes the performance of any act which by itself or as part of a process or as one of a sequence of acts renders possible the production of a photograph.

(2) (a) A member who has reason to believe that the taking of a photograph or the making of a sketch of any person who is, in relation to criminal proceedings, detained in custody, will prejudicially affect an ongoing investigation into an offence or alleged offence, may prohibit any person from taking such photograph or making such sketch. 30

(b) Any person who takes a photograph or makes a sketch in contravention of a prohibition under paragraph (a), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months. 35

(3)(a) No person may, without the written permission of the National or Provincial Commissioner, publish a photograph or sketch of a person—

(i) who is suspected of having committed an offence and who is—

(aa) fleeing; 40

(bb) in custody pending a decision to institute criminal proceedings against him or her; or

(cc) in custody pending the completion of criminal proceedings in which such person is an accused; or

(ii) who is or may reasonably be expected to be a witness in criminal proceedings and who is in custody pending such proceedings. 45

(b) Any person who publishes a photograph or sketch in contravention of paragraph (a), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 12 months.

Unauthorised disclosure of information 50

70. Any member who wilfully discloses information in circumstances in which he or she knows, or could reasonably be expected to know, that such a disclosure will or may prejudicially affect the exercise or the performance by the Service of the powers or the functions referred to in section 215 of the Constitution, shall be guilty of an offence and

- (a) 'n staking deur lede te bevorder of te veroorsaak; of
- (b) die bedrywighede van 'n *bona fide*-werknemersorganisasie te bevorder.

Valse voorstellings

68. (1) Enige persoon wat voorgee dat hy of sy 'n lid is, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(2) Enige persoon wat deur middel van 'n vals sertifikaat of 'n valse voorstelling 'n aanstelling in die Diens verkry, of wat, nadat hy of sy uit die Diens ontslaan is, deur die ontslag te verswyg enige salaris, lone, toelae, gratifikasie of pensioen verkry, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande.

(3) Enige persoon wat, sonder die goedkeuring van die Nasionale Kommissaris, in verband met enige bedrywigheid waarop hy of sy hom of haar toelê, 'n naam, beskrywing, titel of kenteken aanneem, gebruik of op enige wyse publiseer wat aandui of te kenne gee of heet aan te dui of te kenne te gee of wat bereken is om ander persone te laat glo of te laat aflei of hulle waarskynlik sal laat glo of aflei dat bedoelde bedrywigheid kragtens of ingevolge die bepalings van hierdie Wet of onder die beskerming van die Diens bedryf word, of op enige wyse met die Diens geassosieer word of in verband daarmee staan, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens ses maande.

Verbod op maak van sketse of neem van foto's van sekere persone en publikasie daarvan

69. (1) Vir die doeleindes van hierdie artikel beteken—

“foto” ook enige prent, visueel waarneembare beeld, voorstelling of ander soortgelyke weergawe van die betrokke persoon;
 “neem”, met betrekking tot 'n foto, ook om 'n handeling te verrig wat op sigself of as deel van 'n proses of as een van 'n reeks handeling die voortbrenging van 'n foto moontlik maak; en
 “publiseer”, met betrekking tot 'n foto, ook vertoon, wys, beeldsend, weergee of reproduseer.

(2)(a) 'n Lid wat rede het om te glo dat die neem van 'n foto of die maak van 'n skets van enige persoon wat in verband met strafregtelike verrigtinge in hegtenis is, 'n nadelige uitwerking op 'n bestaande ondersoek na 'n misdryf of beweerde misdryf sal hê, kan enige persoon verbied om sodanige foto te neem of sodanige skets te maak.

(b) Enige persoon wat 'n foto neem of 'n skets maak strydig met 'n verbod kragtens paragraaf (a), is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

(3)(a) Niemand mag, sonder die skriftelike toestemming van die Nasionale of Provinsiale Kommissaris, 'n foto of skets publiseer van 'n persoon wat—

- (i) daarvan verdink word dat hy of sy 'n misdryf gepleeg het en wat—
 - (aa) op die vlug is;
 - (bb) in hegtenis is hangende 'n besluit om strafregtelike verrigtinge teen hom of haar in te stel; of
 - (cc) in hegtenis is hangende die voltooiing van strafregtelike verrigtinge waarin sodanige persoon 'n beskuldigde is; of
- (ii) in hegtenis is hangende strafregtelike verrigtinge waarin hy of sy 'n getuie is of redelikerwys verwag kan word 'n getuie te wees.

(b) Enige persoon wat 'n foto of skets publiseer strydig met paragraaf (a), is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens 12 maande.

Ongemagtigde openbaring van inligting

70. Enige lid wat opsetlik inligting openbaar onder omstandighede waarin hy of sy weet of redelikerwys verwag kan word om te weet dat sodanige openbaring die uitoefening of verrigting van die bevoegdhede of werksaamhede in artikel 215 van die Grondwet bedoel deur die Diens nadelig sal of kan beïnvloed, is aan 'n misdryf skuldig

liable on conviction to a fine or to imprisonment for a period not exceeding two years.

Unauthorised access to or modification of computer material

71. (1) Without derogating from the generality of subsection (2)—

“access to a computer” includes access by whatever means to any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Service;

“contents of any computer” includes the physical components of any computer as well as any program or data contained in the random access memory of a computer or stored by any computer on any storage medium, whether such storage medium is physically attached to the computer or not, where such storage medium belongs to or is under the control of the Service;

“modification” includes both a modification of a temporary or permanent nature; and

“unauthorised access” includes access by a person who is authorised to use the computer but is not authorised to gain access to a certain program or to certain data held in such computer or is unauthorised, at the time when the access is gained, to gain access to such computer, program or data.

(2) Any person who wilfully gains unauthorised access to any computer which belongs to or is under the control of the Service or to any program or data held in such a computer, or in a computer to which only certain or all members have restricted or unrestricted access in their capacity as members, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(3) Any person who wilfully causes a computer which belongs to or is under the control of the Service or to which only certain or all members have restricted or unrestricted access in their capacity as members, to perform a function while such person is not authorised to cause such computer to perform such function, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.

(4) Any person who wilfully performs an act which causes an unauthorised modification of the contents of any computer which belongs to or is under the control of the Service or to which only certain or all members have restricted or unrestricted access in their capacity as members with the intention to—

(a) impair the operation of any computer or of any program in any computer or of the operating system of any computer or the reliability of data held in such computer; or

(b) prevent or hinder access to any program or data held in any computer, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

(5) Any act or event for which proof is required for a conviction of an offence in terms of this section which was committed or took place outside the Republic shall be deemed to have been committed or have taken place in the Republic: Provided that—

(a) the accused was in the Republic at the time he or she performed the act or any part thereof by means of which he or she gained or attempted to gain unauthorised access to the computer, caused the computer to perform a function or modified or attempted to modify its contents;

(b) the computer, by means of or with regard to which the offence was committed, was in the Republic at the time the accused performed the act or any part thereof by means of which he or she gained or attempted to gain unauthorised access to it, caused it to perform a function or modified or attempted to modify its contents; or

(c) the accused was a South African citizen at the time of the commission of the offence.

en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

Ongemagtigde toegang tot of verandering van rekenaarmateriaal

71. (1) Sonder om afbreuk te doen aan die algemeenheid van subartikel (2),
5 beteken—

“inhoud van enige rekenaar” ook die fisiese komponente van enige rekenaar asook enige program of data in die ewekansige toegangsgeheue van 'n rekenaar of wat deur 'n rekenaar op enige medium geberg is, hetsy sodanige medium fisies aan die rekenaar geheg is of nie, waar sodanige medium aan
10 die Diens behoort of onder beheer van die Diens is;

“ongemagtigde toegang” ook toegang deur 'n persoon wat gemagtig is om die rekenaar te gebruik, maar wat nie gemagtig is om toegang tot 'n sekere program of sekere data wat in sodanige rekenaar gehou word, te verkry nie of waartoe hy of sy op die tydstip dat toegang verkry word, nie gemagtig is
15 om toegang tot sodanige rekenaar, program of data te verkry nie;

“toegang tot 'n rekenaar” ook toegang op watter wyse ook al tot enige program of data in die ewekansige toegangsgeheue van 'n rekenaar of wat deur 'n rekenaar op enige medium geberg is, hetsy sodanige medium fisies aan die rekenaar geheg is of nie, waar sodanige medium aan die Diens
20 behoort of onder die beheer van die Diens is; en

“verandering” ook sowel 'n tydelike as permanente verandering.

(2) Enige persoon wat opsetlik ongemagtigde toegang verkry tot enige rekenaar wat aan die Diens behoort of onder beheer van die Diens is of enige program of data wat in sodanige rekenaar gehou word of wat in 'n rekenaar gehou word waartoe slegs
25 sekere of al die lede in hulle hoedanigheid as lede beperkte of onbeperkte toegang het, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(3) Enige persoon wat opsetlik veroorsaak dat 'n rekenaar wat aan die Diens behoort of onder beheer van die Diens is of waartoe slegs sekere of alle lede in hulle
30 hoedanigheid as lede beperkte of onbeperkte toegang het, 'n funksie verrig terwyl sodanige persoon nie gemagtig is om sodanige rekenaar sodanige funksie te laat verrig nie, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens twee jaar.

(4) Enige persoon wat opsetlik 'n handeling verrig wat die ongemagtigde verandering tot gevolg het van die inhoud van enige rekenaar wat aan die Diens behoort of onder beheer van die Diens is of waartoe slegs sekere of alle lede in hulle hoedanigheid as lede beperkte of onbeperkte toegang het, met die oogmerk om—

(a) die werking van enige rekenaar of enige program in enige rekenaar of die bedryfstelsel van enige rekenaar of die betroubaarheid van data wat in
40 sodanige rekenaar gehou word, te belemmer; of

(b) toegang tot enige program of data wat in enige rekenaar gehou word, te verhinder of te belemmer,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar.

(5) Enige handeling of gebeurtenis wat bewys moet word vir 'n skuldigbevinding weens 'n misdryf ingevolge hierdie artikel en wat buite die Republiek gepleeg is of plaasgevind het, word geag binne die Republiek gepleeg te wees of plaas te gevind het: Met dien verstande dat—

(a) die beskuldigde binne die Republiek was ten tyde van die verrigting van die handeling of enige gedeelte daarvan waardeur hy of sy ongemagtigde toegang tot die rekenaar verkry het of gepoog het om ongemagtigde toegang tot die rekenaar te verkry, veroorsaak het dat die rekenaar 'n funksie verrig het of die inhoud daarvan verander het of gepoog het om dit te verander;

(b) die rekenaar deur middel of ten opsigte waarvan die misdryf gepleeg is, in die Republiek was ten tyde van die verrigting van die handeling deur die beskuldigde of enige gedeelte daarvan deur middel waarvan hy of sy ongemagtigde toegang daartoe verkry het of gepoog het om ongemagtigde toegang daartoe te verkry, veroorsaak het dat dit 'n funksie verrig of die inhoud daarvan verander het of gepoog het om dit te verander; of

60 (c) die beskuldigde 'n Suid-Afrikaanse burger was ten tyde van die pleging van die misdryf.

CHAPTER 14

REPEAL AND TRANSITIONAL PROVISIONS

Repeal and transitional provisions

72. (1)(a) Subject to this section, the Rationalisation Proclamation is hereby repealed, 5
excluding—
- (i) sections 8(1), 9(1) to (8), 10, 12(1) and (2)(a) to (j), 13 and 14 thereof; and
 - (ii) any other provision of that Proclamation in so far as it relates to the 10
interpretation or execution of a provision mentioned in subparagraph (i).
- (b) Sections 11, 12 and 15 of this Act shall, where applicable, be subject to section 10
9(1) to (8) of the Rationalisation Proclamation until the National Commissioner has
certified that the assignment of the functions referred to in section 219 of the
Constitution by the National Commissioner to all Provincial Commissioners as
contemplated in section 9(4)(a) of the Rationalisation Proclamation, has been
completed, whereupon sections 11, 12 and 15 of this Act shall be applicable to the 15
National and Provincial Commissioner in relation to the Province concerned.
- (c) The Minister may make regulations regarding all matters which are necessary or
expedient for the purposes of this subsection.
- (d) Any person who, immediately before the commencement of this Act, was a
member of a force contemplated in section 5(2)(a)(i), and who has not been appointed 20
to a post in or additional to the fixed establishment or otherwise dealt with in accordance
with section 14 of the Rationalisation Proclamation, shall serve in a pre-rationalised post
until he or she is appointed to a post in or additional to the fixed establishment or is
otherwise dealt with in accordance with that section.
- (e) Any person referred to in paragraph (d) who has been or is appointed to a post in 25
or additional to the fixed establishment or is otherwise dealt with in terms of the
Rationalisation Proclamation, shall be deemed to have been so appointed or dealt with
under the corresponding provision of this Act.
- (2) In the application of the provisions mentioned in subsection (1)(a), and unless the
context otherwise indicates or if clearly inappropriate, any reference therein to the 30
Rationalisation Proclamation or to the Police Act, 1958 (Act No. 7 of 1958), or to any
repealed provision thereof, shall be construed as a reference to this Act, or to the
corresponding provision thereof, as the case may be.
- (3) Any reference in any law to a Commissioner of a police force shall, except where
such post has not yet been abolished, and unless clearly inappropriate, be construed as 35
a reference to the National Commissioner or, in regard to any matter in respect of which
a Provincial Commissioner is lawfully responsible, and subject to section 219 of the
Constitution, to the Provincial Commissioner concerned.
- (4) (a) Anything done, including any regulation made or standing order or instruction
issued or other administrative measure taken or any contract entered into or any 40
obligation incurred under the Rationalisation Proclamation or any law repealed by this
Act or the Rationalisation Proclamation which could be done under this Act and in force
immediately before the commencement of this Act, shall be deemed to have been so
done, made, issued, taken, entered into or incurred, as the case may be, under this Act
until amended, abolished, withdrawn or repealed under this Act.
- (b) Any reference in any regulation, standing order or administrative measure to a 45
regional commissioner or a district commissioner shall, unless clearly inappropriate, be
construed as a reference to a Provincial Commissioner or an area commissioner,
respectively.
- (5) Every existing statutory institution or other body performing policing functions of
whatever nature under the control of a local government (hereinafter in this section 50
referred to as a "service") shall cease to exist six months from the date of the
promulgation of the regulations contemplated in section 64(2) unless—
- (a) the local authority concerned has by resolution decided that such service
would continue to exist under its control; and
 - (b) the member of the Executive Council concerned has approved the continued 55
existence of such service.
- (6) If the provisions of subsection (5)(a) and (b) are complied with, the service
referred to in that subsection shall be deemed to have been established in terms of
section 64(1) on the date upon which the member of the Executive Council has approved

HOOFSTUK 14

HERROEPINGS- EN OORGANGSBEPALINGS

Herroepings- en oorgangsbepalings

72. (1)(a) Behoudens hierdie artikel, word die Rasionalisasieproklamasie hierby
5 herroep, uitgesonderd—
- (i) artikels 8(1), 9(1) tot (8), 10, 12(1) en (2)(a) tot (j), 13 en 14 daarvan; en
(ii) enige ander bepaling van daardie Proklamasie vir sover dit betrekking het op
die interpretasie of uitvoering van 'n bepaling in subparagraaf (i) vermeld.
- (b) Artikels 11, 12 en 15 van hierdie Wet is, waar toepaslik, onderhewig aan artikel
10 9(1) tot (8) van die Rasionalisasieproklamasie totdat die Nasionale Kommissaris
gesertifiseer het dat die opdra van die werksaamhede in artikel 219 van die Grondwet
bedoel deur die Nasionale Kommissaris aan al die Provinsiale Kommissarisse soos in
artikel 9(4)(a) van die Rasionalisasieproklamasie beoog, voltooi is, waarop artikels 11,
12 en 15 van hierdie Wet van toepassing op die Nasionale en Provinsiale Kommissaris
15 met betrekking tot die betrokke Provinsie word.
- (c) Die Minister kan regulasies uitvaardig betreffende alle aangeleenthede wat nodig
of dienstig is vir die doeleindes van hierdie subartikel.
- (d) Enige persoon wat onmiddellik voor die inwerkingtreding van hierdie Wet 'n lid
was van 'n mag in artikel 5(2)(a)(i) beoog, en wat nog nie aangestel is in 'n pos in of
20 addisioneel tot die vaste diensstaat of andersins ooreenkomstig artikel 14 van die
Rasionalisasieproklamasie mee gehandel is nie, dien in 'n pre-gerasionaliseerde pos
totdat hy of sy aangestel is in 'n pos in of addisioneel tot die vaste diensstaat of
andersins mee gehandel word ooreenkomstig daardie artikel.
- (e) 'n Persoon in paragraaf (d) bedoel wat aangestel is of word in 'n pos in of
25 addisioneel tot die vaste diensstaat of andersins mee gehandel is of word ingevolge die
Rasionalisasieproklamasie, word geag aldus aangestel of gehandel mee te wees
krachtens die ooreenstemmende bepaling van hierdie Wet.
- (2) By die toepassing van die bepaling in subartikel (1)(a) vermeld, word enige
verwysing, tensy dit uit die samehang anders blyk of duidelik onvanpas is, na die
30 Rasionalisasieproklamasie of die Polisie wet, 1958 (Wet No. 7 van 1958), of enige
herroepe bepaling daarvan, uitgelê as 'n verwysing na hierdie Wet of die ooreenstem-
mende bepaling daarvan, na gelang van die geval.
- (3) Enige verwysing in enige wet na 'n Kommissaris van 'n polisiemag word,
behalwe waar sodanige pos nog nie afgeskaf is nie, en tensy dit duidelik onvanpas is,
35 uitgelê as 'n verwysing na die Nasionale Kommissaris of, ten opsigte van 'n
aangeleentheid waarvoor 'n Provinsiale Kommissaris regtens verantwoordelik is en
behoudens artikel 219 van die Grondwet, na die betrokke Provinsiale Kommissaris.
- (4)(a) Enigiets gedoen, met inbegrip van enige regulasie, staande order of instruksie
uitgevaardig of ander administratiewe maatreël getref of enige ooreenkoms gesluit of
40 enige verpligting opgeloopt krachtens die Rasionalisasieproklamasie of enige wet wat
deur hierdie Wet of die Rasionalisasieproklamasie herroep is wat krachtens hierdie Wet
gedoen kan word en van krag is onmiddellik voor die inwerkingtreding van hierdie
Wet, word geag aldus krachtens hierdie Wet gedoen, uitgevaardig, verrig, gesluit of
opgeloop te wees, na gelang van die geval, totdat dit krachtens hierdie Wet gewysig,
45 afgeskaf, ingetrek of herroep is.
- (b) Enige verwysing in enige regulasie, staande order of administratiewe maatreël na
'n streekkommissaris of 'n distrikskommissaris word, tensy dit duidelik onvanpas is,
uitgelê as 'n verwysing na onderskeidelik 'n Provinsiale Kommissaris of 'n areakom-
missaris.
- (5) Elke bestaande statutêre instelling of ander liggaam wat polisiëringswerksaam-
hede van watter aard ook al onder die beheer van 'n plaaslike regering verrig (hieronder
in hierdie artikel 'n "diens" genoem) hou ses maande vanaf die datum van die
promulgering van die regulasies in artikel 64(2) beoog, op om te bestaan, tensy—
- (a) die betrokke plaaslike regering by resolusie besluit het dat sodanige diens
55 onder sy beheer voortbestaan; en
- (b) die betrokke lid van die Uitvoerende Raad die voortbestaan van sodanige
diens goedgekeur het.
- (6) Indien aan die bepaling van subartikel (5)(a) en (b) voldoen word, word die
diens in daardie subartikel bedoel, geag krachtens artikel 64(1) ingestel te wees op die
60 datum waarop die lid van die Uitvoerende Raad sy voortbestaan goedgekeur het: Met

its continued existence: Provided that the powers of the members of such service shall be limited as contemplated by section 221(3)(b) and (c) of the Constitution.

CHAPTER 15

SHORT TITLE AND COMMENCEMENT

Short title and commencement

5

73. This Act shall be called the South African Police Service Act, 1995, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

dien verstande dat die bevoegdheede van die lede van sodanige diens beperk is soos in artikels 221(3)(b) en (c) van die Grondwet beoog.

HOOFSUK 15

KORT TITEL EN INWERKINGTREDING

5 Kort titel en inwerkingtreding

73. Hierdie Wet staan bekend as die Wet op die Suid-Afrikaanse Polisie, 1995, en tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

