

Government Gazette 14927

STATE PRESIDENT'S OFFICE

No. 1167.
7 July 1993

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

No. 95 of 1993: Security Forces Board of Inquiry Act, 1993

ACT

To provide for the establishment of a Security Forces Board of Inquiry to inquire into any allegation that an offence has been committed by a member of the Security Forces; to regulate the powers, functions and duties of the said Board; and to provide for matters connected therewith.

(English text signed by the State President.)
(Assented to 23 June 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless the context otherwise indicates-

- (i) "area" means an area the boundaries of which have been determined in terms of section 7;(ii)
- (ii) "Area Director" means an Area Director designated under section 8(1); (iii)
- (iii) "Board" means the Security Forces Board of Inquiry established by section 2;(vii)
- (iv) "Chairman" means the Chairman of the Board mentioned in section 3(1)(a); (viii)
- (v) "Chief Executive Officer" means the Chief Executive Officer referred to in section 3(3); (iv)
- (vi) "member of a security force" means a member-

- (a) of the South African Defence Force or the Reserve referred to in sections 5 and 6, respectively, of the Defence Act, 1957 (Act No. 44 of 1957);
- (b) of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958);
- (c) of the Department of Correctional Services referred to in section 2(1) of the Correctional Services Act, 1959 (Act No. 8 of 1959)
- (d) of a category referred to in section 334(1) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), for the purposes of the exercise of his powers likewise referred to; or
- (e) in the case of a self-governing territory in respect of which a proclamation has been issued under section 16, of the police force of such self-governing territory; (v)
- (vii) "Minister" means the Minister of Justice; (vi)
- (viii) "serious offence" means-
 - (a) murder;
 - (b) kidnapping;
 - (c) assault with intent to do grievous bodily harm, if such assault was committed on a person while he was in custody;
 - (d) defeating the ends of justice;
 - (e) a contravention of the Corruption Act, 1992 (Act No. 94 of 1992)
 - (f) any other offence which in the opinion of the Chairman and the Chief Executive Officer is of a serious nature;
 - (g) any attempt to commit an offence mentioned in paragraphs (a) to (e). (i)

Establishment and objects of Board

2. (1) (a) There is hereby established a board to be known as the Security Forces Board of Inquiry.

(b) The seat of the Board shall be in Pretoria.

(2) The objects of the Board are-

- (a) to inquire into the alleged commission of a serious offence by a member of a security force;
- (b) to submit to the State President a report on its finding after an inquiry;
- (c) to make recommendations to the State President, as soon as possible thereafter, in respect of the surmounting of problems experienced in inquiring into serious offences alleged to have been committed by members of a security force.

Constitution of Board

3. (1) The Board shall have three members, appointed by the State President for a period of three years and of whom-

- (a) one shall be a judge of the Supreme Court of South Africa or such a judge that has been discharged from active service or a former judge of the said Court, who shall be the Chairman;
- (b) one shall be called the Chief Executive Officer; and
- (c) one shall be an Area Director.

(2) For the purpose of the performance by the Board of its functions in respect of an offence alleged to have been committed in a particular area, the member referred to in subsection (1)(c) shall be the Area Director for that area.

(3) (a) The member of the Board referred to in subsection (1)(b) shall be-

- (i) an attorney-general; or
- (ii) a person who is duly qualified as contemplated in section 3(1)(b) and (2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964), and, after having become so qualified, was for a period of at least 10 years or for periods which together amount to at least 10 years, involved in the application of the law.

(4) No person shall be appointed as a member of the Board unless he is a South African citizen permanently resident in the Republic.

(5) A member of the Board shall at the expiry of his term of office be eligible for reappointment for such period, not exceeding three

years at a time, as the State President may determine.

(6) The State President may relieve a member of the Board from his office at his request, or of his own accord remove him from office-

- (a) for misconduct;
- (b) on account of continued ill-health; or
- (c) on account of incapacity to carry out his duties of office efficiently.

(7) Any vacancy on the Board arising by virtue of the provisions of subsection (6), or caused by the death of a member, or for any other reason whatsoever, shall subject to the provisions of this section, be filled by the State President by the appointment of another person for the unexpired portion of the period for which the member concerned was appointed.

(8) Two members of the Board shall form a quorum.

Remuneration of members of Board

4. (1) A member of the Board who

- (a) is a judge or an attorney-general shall, notwithstanding anything to the contrary contained in any other law, in addition to his salary and any allowance, including any allowance for reimbursement of travelling and subsistence expenses, which may be payable to him in his capacity as judge or attorney-general, be entitled to such allowance, if any, in respect of the performance of his functions as such a member as the State President may determine;
- (b) is not a judge or an attorney-general, shall be entitled to such remuneration, allowances (including any allowance for reimbursement of travelling and subsistence expenses incurred by him in the performance of his functions as such a member)? benefits and privileges as the State President may determine

(2) Different remunerations, allowances, benefits or privileges may be determined under subsection (1) in respect of the different members of the Board.

Staff of Board

5. (1) In the performance of its functions under this Act the Board shall be assisted by officers in the public service made available for such

purpose by the Director-General: Justice.

(2) Any person appointed or designated to take down or record the proceedings of the Board in shorthand or by mechanical means or to transcribe such proceedings which have been so taken down or recorded shall beforehand take an oath or make an affirmation in the following form:

I, A.B., declare under oath/affirm and declare-

- (a) that I shall faithfully and to the best of my ability take down/record the proceedings of the Board in shorthand/by mechanical means as ordered by the Chairman;
- (b) that I shall transcribe fully and to the best of my ability any shorthand notes/mechanical record of the proceedings of the said Board made by me or by any other person.

(3) No shorthand notes or mechanical record of the proceedings of the Board shall be transcribed except by order of the Chairman.

(4) Every person employed in the performance of the functions of the Board including any person referred to in subsection (2), shall aid in preserving secrecy in regard to any matter or information that may come to his knowledge in the performance of his duties in connection with the said functions, except in so far as the publication of such matter or information shall be necessary for the purpose of the report of the Board.

Expenditure in connection with functions of Board

6. The expenditure in connection with the performance of the Board's functions shall be paid out of money appropriated by Parliament for such purpose.

Areas

7. (1) The Minister may by notice in the Gazette-

- (a) determine the boundaries of any area for the purposes of this Act, and assign a name to such area;
- (b) extend or contract the boundaries of any area so determined;
- (c) withdraw a notice in terms of paragraph (a).

Area Director

8. (1) The State President shall appoint for each area an Area Director, who shall perform the functions conferred or imposed upon him in

terms of this Act.

(2) The Area Director shall be a person-

- (a) duly qualified as contemplated in section 3(1)(b) and (2) of the Admission of Advocates Act, 1964 (Act No. 74 of 1964); or
- (b) who satisfies the requirements contemplated in section 15(1)(b)(iii)(aa) or (bb) of the Attorneys Act, 1979 (Act No. 53 of 1979); or
- (c) who holds the necessary qualifications to be appointed as a magistrate under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944),

and who-

- (i) for an uninterrupted period of at least seven years practiced as an advocate or attorney or occupied the office of a magistrate or a prosecutor or magistrate and prosecutor; or
- (ii) for a period of at least seven years was involved in the tuition of law and also practiced as an advocate or attorney for such period as, in the opinion of the State President, makes him suitable to be so appointed; or
- (iii) has such other experience as, in the opinion of the State President, renders him suitable to be so appointed.

Staff of Area Directors

9. (1) An Area Director shall in the performance of his functions be assisted by investigating officers who shall be appointed by the Board and who shall be persons-

- (a) who have served for at least seven years as magistrates or public prosecutors or as magistrates and public prosecutors;
- (b) who have practiced as advocates or attorneys for at least seven years; or
- (c) who have for at least seven years in the South African Police been involved in the investigation of offences; or
- (d) whose services in the opinion of the Board are necessary-

- (i) for the purpose of a particular inquiry by the Area Director; or
- (ii) for inquiries in general by him.

(2) If any person in the service of the State is appointed in terms of subsection (1)(a), (b), (c) or (d)(ii), he shall one month after he has been so appointed cease to be so in service.

(3) (a) The Minister shall determine the conditions of service of a person appointed in terms of subsection (1), who shall be entitled to such remuneration, allowances (including any allowance for reimbursement of travelling and subsistence expenses incurred by him in the performance of his functions in terms of this Act), benefits and privileges as the Minister may, with the concurrence of the Minister of State Expenditure, determine.

(b) Different remunerations, allowances, benefits or privileges may be determined under paragraph (a) in respect of different persons.

Reporting of certain allegations to Board or Area Director

10. (1) If a person has reasonable grounds to suspect that a serious offence is being or has been committed by a member of a security force while he is or was exercising or performing his duties or functions as such a member, he may report what he suspects to the Board or the Area Director concerned by means of an affidavit or affirmed declaration in which is also mentioned-

- (a) the grounds on which the suspicion is based; and
- (b) all other relevant information known to him.

(2) If a member of the South African Police or a military policeman has heard of an allegation that a member of a security force is committing or has committed an offence as contemplated in subsection (1), he shall forthwith report it to the station commander of the police station concerned, who shall forthwith notify the Area Director concerned thereof.

(3) If an Area Director has heard, as is contemplated in subsections (1) and (2), of the alleged commission of an offence, he shall forthwith notify the Chairman thereof.

Inquiries by Area Director

11. (1) (a) If an Area Director has by virtue of the provisions of section 10(1) or (2) heard of the alleged commission of a serious offence

or if the alleged commission of such an offence has been reported to the Board in terms of the said section 10(1), or if the Minister has directed that the alleged commission of such an offence be inquired into, such Area Director or the other Area Director concerned shall, unless he is of the opinion that the allegations contemplated in the said section 10(1) or (2) are of a vexatious or frivolous nature, forthwith hold an inquiry into the matter concerned and notify the members of the South African Police or the Military Police concerned thereof.

(b) If an Area Director conducts an inquiry and has given notice in terms of paragraph (a), the South African Police and the Military Police shall not inquire into the alleged offence or, if they have already commenced such an inquiry, shall cease such inquiry and forthwith deliver all documents and exhibits in connection with the alleged offence at their disposal to the Area Director concerned.

(2) If an Area Director, at any time during the holding of an inquiry in terms of subsection (1), believes that it is in the interest of the administration of justice or in the public interest to inquire also into any other alleged offence which he suspects to be connected with the subject-matter of his inquiry, he may conduct an inquiry into such other offence as well.

(3) (a) An Area Director may for the purposes of an inquiry in terms of subsection (1) or (2) at any time prior to or during the holding of the inquiry designate any person referred to in section 9 to assist him with the inquiry and to report to him.

(b) An Area Director and a person assisting him in terms of paragraph (a) shall for the purpose of the inquiry concerned be deemed to be a police official as defined in section 1 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and have the same powers as those which such an official has in terms of the said Act and section 5(c) of the Police Act, 1958 (Act No. 7 of 1958).

(4) An Area Director may request the South African Police to make available for the purposes of an inquiry in terms of this section their scientific resources and experts, and the South African Police shall, in so far as it is possible for them, accede to such request.

(5) When an Area Director has completed an inquiry in terms of this section he shall furnish a report on his inquiry to the other members of the Board.

Functions of Board

12. (1) (a) When the Chairman and the Chief Executive Officer receive a report in terms of section 11(5) they may request the Area Director to

conduct such further inquiry in terms of section 11 as they may determine and to submit again to them a report in terms of section 11(5).

(b) If the two members of the Board do not take steps in terms of paragraph (a), the Board may refer the matter to the South African Police for disposal.

(c) If the two members of the Board do not take steps in terms of paragraph (a) and the Board does not take steps in terms of paragraph (b) and is not of opinion that the allegations concerned are of a vexatious or trivial nature, the Board shall conduct such further inquiry as it may deem fit.

(2) For the purposes of the performance of its functions the Board shall be deemed to be a commission contemplated in the Commissions Act, 1947 (Act No. 8 of 1947).

(3) The proceedings of the Board shall be recorded in such manner as the Chairman may determine.

(4) (a) When the Board is satisfied upon evidence or information presented to it that an inquiry may adversely affect existing, instituted or pending judicial proceedings or inquiries which may lead to the institution of judicial proceedings, evidence which is relevant to such proceedings or inquiries shall be dealt with by the Board in such a manner that such proceedings or inquiries are not adversely affected.

(b) The provisions of paragraph (a) shall not preclude the Board from taking cognizance of evidence given during such proceedings or inquiries which is relevant to its functions, and the Board may take cognizance of the findings made during such proceedings and inquiries.

(5) The Board shall not inquire into-

(a) any occurrence which took place and ended before the commencement of this Act; or

(b) occurrences in respect of which a prosecution or an inquest or an inquiry by a commission of inquiry established by the State President or in terms of an Act, was instituted or completed before the commencement of this Act.

(6) The Board shall at least every six months submit to the State President a report on its work during the preceding six months and may at any time before the completion of any inquiry by it submit to the State President an interim report in respect of any matter which in its opinion should urgently be brought to the attention of the State President.

(7) The Board shall after completion of an inquiry-

- (a) submit to the State President a report as contemplated in section 2(2) (b) and a recommendation as contemplated in section 2(2)(c) (if any); and
- (b) submit to the attorney-general concerned a report together with all relevant statements, recorded evidence and documents for his decision.

Publication of reports by State President

13. The State President shall within 14 days after a report has been submitted to him in accordance with the provisions of this Act, make known for public information such report, and may also table it in Parliament, except in so far as the publication thereof is prohibited by any law.

Limitation of liability

14. A member of the Board or a member of its staff or a person referred to in section 9(1) shall not be liable in respect of anything done in good faith under a provision of this Act.

Regulations

15. The Minister may make regulations regarding any matter in respect of which he considers it necessary or expedient to make regulations to achieve the objects of this Act.

Application of Act in self-governing territories

16. (1) If the Board has reason to suspect that a serious offence has been or is being committed by a member of a security force in a self-governing territory as defined in section 38(1) of the Self-governing Territories Constitution Act, 1971 (Act No. 21 of 1971), it may notify the Minister accordingly, and thereupon the State President may, at the request of the Minister and after consultation by the Minister with the government of the self-governing territory concerned, by proclamation in the Gazette declare this Act to be applicable in that self-governing territory and that the Minister and the Board and its staff shall be competent to perform their respective functions under this Act also in that self-governing territory.

(2) After such a proclamation has been issued, this Act shall, notwithstanding the Self-governing Territories Constitution Act, 1971, apply mutatis mutandis in the self-governing territory concerned until the inquiry into the offence suspected to have been committed and all criminal or civil proceedings arising from such inquiry have been disposed of.

Short title and commencement

17. This Act shall be called the Security Forces Board of Inquiry Act, 1993, and shall come into operation on a date fixed by the State President by proclamation in the Gazette