

# PRESENTATION TO THE PARLIAMENTARY COMMITTEE ON DEFENCE ON THE PROPOSED AMENDMENT TO THE DEFENCE ACT RE THE CALL-UP OF RESERVES



**PRESENTED BY:  
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20 JULY 2010**



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# AIM

**To brief the PCD on the Defence  
Amendment Bill on obligatory service for  
volunteer members of the Reserve Force  
in times other than war.**



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# SCOPE

- **Obligation to serve in Reserve Force:**
  - ❖ **Background**
  - ❖ **Policy Theme**
  - ❖ **Legal position**
  - ❖ **Legislative proposal**
  - ❖ **Consultation**
- **Conclusion**



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# RESERVE FORCE: BACKGROUND

- Reserve Force members currently serve on a voluntary basis and render service in terms of a contracted period
- Furthermore members of the Reserve Force have no statutory obligation to report for training, exercises or any deployment for borderline control or peacekeeping purposes.
- They can only be compelled to serve in time of war, state of emergency or state of national defence.



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# RESERVE FORCE: BACKGROUND

- **This makes it extremely difficult for defence planners to plan and allocate resources as the availability of Reserve Force members is not certain/guaranteed.**
- **Previously introduced in Parliament but withdrawn with the rest of the Defence Amendment Bill in 2008.**
- **The proposal was revived and was approved by Cabinet on 24 April 2010 in view of:**
  - ❖ **Ever expanding mandate of and demands on the SANDF (12 500 called-up FY 2009/10)**
  - ❖ **Shrinking budget**



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# LEGAL POSITION

- **An analysis of the Defence Act reveals that there is nothing in the law that makes service compulsory for Reserve Force members in circumstances short of a time of war or state of national defence.**
- **It has often been argued that the voluntary nature of service of the Reserve Force is a contractual arrangement and therefore does not warrant intervention of the Legislature.**
- **However, if the Reserve Force is to serve as a “force multiplier” it is critical that Reserve Force members are compelled to serve once they have volunteered and when required by the SANDF both for training and operations.**
- **Enforcing of individual contracts through the Courts is time consuming.**
- **Certainty requires that a matter of service in the Defence Force should not be left to the whims of an individual but to legislation. This approach will eliminate contractual disputes at a later stage.**



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# POLICY THEME

- **It is the DOD's view that Reserve Force members should be obliged to serve during peacetime under the following circumstances.**
  - **where life, health or property are in imminent danger;**
  - **to ensure the provision of essential services;**
  - **support any department of state, including support for purposes of socio-economic upliftment; and**
  - **effect national border control.**



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# LEGISLATIVE PROPOSAL

- **The Bill proposes to make it compulsory for members of the Reserve Force to serve in peace time when called up to do so, inter alia, in the following circumstances:**
  - **where life, health or property are in imminent danger;**
  - **to ensure the provision of essential services;**
  - **support any department of state, including support for purposes of socio-economic upliftment; and**
  - **effect national border control.**
- **An offence is created for failure to honour a call-up whilst under contract.**



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# SAFEGUARDS

- **The member must voluntarily sign the contract before he/she is compelled to respond to a call-up.**
- **S 104 provides that:**  
**“Any employer who unfairly discriminates against any of his or her employees on the grounds that the employee wishes to be or is a voluntary member of the Reserve Force, is guilty of an offence and liable on conviction to a fine or imprisonment for a period not exceeding one year”**
- **S 63-69 provides for an Exemption Board which deals with deferments/exemptions with a further appeal to the Minister.**



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# CONSULTATION

- **The proposed legislation has been approved by the Defence Reserve Board and the Reserve Force Council.**
- **The Interim Service Commission has been kept informed.**
- **A Information Bulletin was issued on 8 June 2010 and a summary provided on the Reserve Force Website ([www.rfdiv.mil.za](http://www.rfdiv.mil.za))**



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# CONCLUSION

**The amendment will provide certainty for the Volunteer and the DOD and will provide more opportunities for the Reserve Force.**



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