

To Fax: 637 2481

Attn: Paul Goller.

From: Non — Draft for [unclear] COSG.

1 page

MOTIVATION FOR COSG TO CONTRIBUTE TO THE LOBBYING COSTS INCURRED IN CONNECTION WITH THE DEFENCE AMENDMENT BILL, June 1992.

1. Lobbying for amendments to the Bill was of paramount importance to the whole anti-militarisation movement, although initiated by ECC.

2. Time was of the essence in the whole lobbying process, and in fact Mark Phillips, an employee of Cheadle Thompson and Haysom was working full-time on this in order to produce:

- \* an initial resume of the Bill, with recommendations for changes, as well as a recommendation that the Bill be withdrawn;
- \* contact with various other organisations, including the Bar Council and political, church and business groups who were then urged (and in some cases helped) to send submissions to the Parliamentary Committee on Security; most of these organisations used the resume of the Bill as their starting point for their own submissions; the committee was as a result deluged with written objections to the Bill;

- \* organising an ECC delegation to Cape Town to argue the case at the Committee, and to lobby the various parliamentary political parties on the scene;

- \* while in Cape Town, producing further documentation to put before the Committee, and liaising with Mike Evans of Mallinck, Ress, etc.

3. The result of all this activity was of course that the "teeth" of the original Bill were drawn, and that the final version was far less draconian than the first version. Main victories were:

- \* a backdown on the compulsory prison sentence for refusing to serve;

- \* removal of the nonsensical clause stipulating "no conscientious objection in time of war"

- \* removal of the compulsory allotment of conscripts to the S.A. Police without their consent.

4. Apart from changes to the Bill itself, the whole lobbying process brought the anti-militarisation movement and its objectives to the attention of such widely differing groups as the MPs in the Houses of Delegates and Representatives, big business, professional lawyers associations, and the ANC. Personal contacts with other parliamentarians such as the DP MPs were also strengthened.

5. Included in the budgets submitted to funders for 1992 was an amount of R120 000 for legal expenses; it was envisaged that this might include some work on the Defence Act. Also, in the COSG national budget for 1992 an amount of R2000 was written in for lobbying. Although the total amounts budgetted for the whole anti-militarisation movement were not fully met by the funders, there is certainly enough to cover the costs of this lobbying exercise.

6. It was recommended at the ECC/CAS/COSG national meeting in August that ECC and COSG share the costs on a two-thirds/one-third basis. Note that all the funding comes from the same sources and is channelled through the Jacaranda Trust.



CONSCRIPTION ADVICE SERVICE

Johannesburg: PO Box 34436  
Jeppestown  
2043  
Tel: 614-8106

Cape Town: PO Box 15467  
Vlaeberg  
8018  
Tel: 23-5848

28 June 1990

Jacaranda Trust  
c/o Mr Paul Goller

Dear Paul

FUNDING APPLICATION FOR THE CONSCRIPTION ADVICE SERVICE

On behalf of the Conscription Advice Service, I would like to request your organisation to assist the work of the Conscription Advice Service.

The Conscription Advice Service provides non-directive advice, counselling and support for conscripts who have moral, religious, political and practical questions about participating in the South African Defence Force. Advice services operate in Pretoria, Johannesburg, Pietermaritzburg, Durban, East London, Grahamstown, Port Elizabeth and Cape Town.

Another part of our work has been holding information meetings on conscription for scholars, mothers, church youth and other interested groups. To improve our presentation at these meetings, we envisage producing a video which would deal with the following:

- Liability for national service
- 'Dad's Army' service
- Deferment and exemption from national service
- Non-combatant service
- Township duty
- Religious Objection
- The legal consequences of evading military service
- Refusing to serve: facing prison
- Leaving the country.

We have produced a series of pamphlets on these aspects, which are enclosed.

We have been given a quotation of R9250.00 for the making of the video. This quotation (which is enclosed) was given some time ago; to allow for escalating costs, we are budgeting R10 000.00 for the making of the video.

It is for this sum of R10 000.00, for the making of the video, that we are applying to your organisation for funding.

If you wish to discuss the work of the Conscription Advice Service, or the video, you are welcome to contact us (Neil Mitchell in Johannesburg or Janet Thorpe in Cape Town).

Yours in the struggle for justice and peace



Neil Mitchell

BUDGET FOR CONSCRIPTION ADVICE SERVICE VIDEO

High Band hired from Sean O'Sullivan at 1/3rd

20 KCS 20 Tapes	@ R84.00 plus GST	R1900.00
Petrol	@ 45c per km	R 400.00
Equipment hire	@ R300.00 per day for six days	R1800.00
Editing CBC suite	for nothing	
Actor	@ R150.00 per day for 5 days	R 750.00
Sound Person	@ R150.00 per day for 6 days	R 900.00
Salary for Liz	for 1 month	R2000.00
Contingency fund		R 500.00
Telephone calls, photostating, faz, etc		R 200.00
		<u>R8450.00</u>

High Band hired from Sean O'Sullivan at 2/3rds

If we hire the equipment	at R500.00 per day	R3000.00
Edited for nothing	on CBC suite	
		<u>R9650.00</u>

Low Band hired from Community Video

If we hire the equipment	at R200.00 per day	R1200.00
Editing cost	at R200.00 per day for 7 days	R1400.00
		<u>R9250.00</u>



## CONSCRIPTION ADVICE SERVICE

### CONSTITUTION

#### NAME

The name shall be the CONSCRIPTION ADVICE SERVICE.

#### OBJECTIVES

To give conscripts information and advice about their legal rights and alternatives to military service.

To educate the community about alternatives to military service.

#### MEMBERSHIP

Membership shall be open to all persons who subscribe to the objectives of the organisation and who participate in its activities.

#### OFFICE BEARERS

A National Convenor and a National Treasurer shall be appointed annually at an Annual General Meeting.

They will be accountable at all times to the Co-ordinating Committee.

#### CO-ORDINATING COMMITTEE

This will consist of the National Convenor, the National Treasurer and at least one person nominated from each regional CAS to each meeting.

The Co-ordinating Committee will meet at least twice per annum.

A quorum of a Co-ordinating Committee shall include representatives from at least four regional CASs.

Notice of a Co-ordinating Committee meeting shall be given to each regional CAS at least two weeks prior to that meeting.

#### FUNCTIONS OF THE CO-ORDINATING COMMITTEE

To be responsible for co-ordinating activities between the centres.

To see to the raising and allocation of funds that the Service requires for its meetings.

To call, and prepare the agenda of, the Annual General Meeting.

#### FINANCES

A bank account will be opened in the name of the Conscription Advice Service.

Money received will be deposited in this bank account.

Signing powers for cheques will be vested in any two of the National Treasurer, the National Convenor and two others appointed by the Co-ordinating Committee.

Disbursement of money shall be ratified by the Co-ordinating Committee.

#### DISSOLUTION

Dissolution will be agreed upon at an AGM by a two-thirds majority.

Funds will revert to the donors.

#### AMENDMENTS

The constitution may be amended by a two-thirds majority at an Annual General Meeting.



## About the Conscription Advice Service

We offer an independent counselling and advice service for anyone experiencing difficulties or problems regarding military conscription - either the conscript or a friend or relative.

The service is non-directive. We do not try to influence the decision you have to make. Nor do we offer any magic solutions or an easy way out. But we can help you to clarify the issues, and can provide information about the various options and their consequences, so that you will be equipped to make a well-considered decision that is appropriate for you.

We can provide practical advice if you decide to apply to the Board for Religious Objectors.

If necessary, we can refer you to lawyers, psychologists and church ministers for specialist help.

**Please don't wait until the last minute panic hits you. Our advice is free. Take advantage of it now!**

### YOUR LOCAL C.A.S. CONTACT IS:

**Johannesburg** Neil  
011-614-8106 (all hours)

**Pretoria** Linda  
012-320-2230 (o)

**Cape Town** CAS office  
021-689-1194 (all hours)

**Grahamstown** Rudi  
0461-26067 (all hours)

**Durban** Richard  
031-301-5663 (all hours)

**Pietermaritzburg** Mark  
0331-94-4079 (h)

**East London** Sharlene  
0431-27713 (o)

**Port Elizabeth** Debbie  
041-561-483



**CONCERNED  
ABOUT YOUR  
CALL-UP ?**



Published by the Conscription Advice Service,  
PO Box 15467, Vlaeberg 8018.



## Your Call-up

In the next few weeks or months, you (or a friend or family member), together with thousands of other South Africans, may be due to report for two years initial service in the SADF, or a camp.

## Asking questions

Your call-up is bound to raise many questions.

Maybe you are worried about leaving family and friends for two years, or about how your call-up will interrupt an exciting career. It could be that you feel unhappy about being trained as a soldier, to kill other people, or you could be questioning the role the security forces play in our society.

These questions all raise genuine concerns. Nevertheless, you probably feel that you have to go no matter what - that there are no other options.

## You do have a choice

Going to the army when you are called up is not the only option.

## Your main options

- deferment
- exemption
- non-combatant service: legally recognised conscientious objection
- community service: legally recognised conscientious objection
- imprisonment: unrecognised conscientious objection
- leaving the country

**Even if you go into the SADF, you have choices.**

**Soldiers do have rights!**

Your life is your own. Give yourself the chance to find out about these alternatives, and make an informed choice about how to respond to your call-up.

## Know Your Options

## Know Your Rights

**Remember: The Choice Is Yours!**

## Common questions

- What are the grounds for deferment and exemption?
- Do I have to do township duty?
- What happens if I fail to report for a camp?
- What will happen if I refuse an order in the army?
- What are my rights as a soldier?
- How do I apply to the Board for Religious Objection?
- What happens if I, or my son, does not register?
- I am a foreign citizen. Am I liable for military service?
- I am on the reserve. What are my "Dad's Army" obligations?
- I am a South African. If I leave the country and acquire foreign citizenship, will I have military obligations on my return?

## What does the law say about conscientious objection ?

### Recognised Conscientious Objection

Section 72D of the Defence Act, 1983, recognises conscientious objectors who have religious objections to being a combatant in, or serving in, any armed force. Such objectors can apply to: The Board for Religious Objection, Private Bag X2051, Bloemfontein 9300.

The Board classifies applicants into two main categories:

- 1. Non-combatants: these applicants serve in the SADF in a non-combatant capacity, for the normal call-up period;
- 2. Community service: these applicants do service in a government department, provincial or municipal department, for a period lasting one-and-a-half times the length of all SADF service outstanding (currently the maximum period is three years), upon completion of which they are exempted from any further military service requirements.

### Unrecognised Conscientious Objection

Section 126A of the Defence Amendment Act, 1983, applies to those conscientious objectors who do not qualify for recognition under Section 72D, or who could, but choose not to apply for such recognition, and those who are turned down by the Board. Such conscientious objectors are liable to prosecution, and face a prison sentence one-and-a-half times the length of all SADF service outstanding (i.e. up to six years, although remission of up to 50% of the sentence may be granted), upon completion of which they are exempted from any further military service requirements.



# AM I LIABLE FOR NATIONAL SERVICE ?

## Liability For Service

Every white South African male experiences the effects of conscription. From school cadets, and registration for military service at the age of 16, their liability for service in the SADF extends to the age of 65.

National military service begins with a 13 year period, 1 year of which is continuous, the other 12 years discontinuous, in the form of "camps". Thereafter the conscript becomes a member of the Active Citizen Force Reserve for 5 years. He is then liable for "Dad's Army" until the age of 55 years. He remains part of the National Reserve until the age of 65 years.

## Cadets

Although many white school-boys undergo cadet training between the ages of 12 and 17 years, cadets is not compulsory. The pupil's parent or guardian may object in writing and the pupil will then not be required to do cadets.

## Registration

By law every white male South African must register for military service with the SADF. Registration must occur during the period from the first of January to the last day of February in the year in which the person turns 16 years of age.

If for any reason the person failed to register, he must do so within 30 days of the reason no longer being applicable e.g. return from outside South Africa, unless the person is then over 55 years of age.

If a person refuses to register, the SADF is entitled to register him without his consent. Any male liable for military service who is unable to produce his registration certificate, is guilty of an offence and liable to a fine not exceeding R200 or imprisonment for up to 6 months.

## Change Of Address

Every registered conscript is required to inform the SADF of their residential address within 14 days of it changing. This address is defined as the one at which the conscript normally resides. The penalty for not informing the SADF of such a change in address is punishable with a fine of up to R200 or a prison sentence not exceeding six months.

## National Military Service

### Citizen Force

This 13 year period includes one year continuous and 12 years discontinuous service in six, two year cycles. Each cycle comprises 60 days. The 5th cycle camps must be authorised by the Officer Commanding the Regional Command. A 6th cycle call-up requires an order from the Minister of Defence. Annual camp commitments are currently about 30 days long.

Alternatively conscripts who are "area bound" may be allotted to serve in their local commandos. They serve a maximum of 1000 days, 50 days per annum for as long as required, and thereafter, 12 days per year.

Completed cycles are credited to the conscript even if he was not called up for the maximum possible period. Service not rendered because of deferment applications will result in cycles being postponed.





### **Active Citizen Force Reserve**

For a five year period after the completion of Citizen Force service: members are only called up if a mass mobilisation is announced.

### **The Commandos /Dad's Army**

Until the age of 55 years: a maximum of 30 days in the first year and 12 days per year thereafter.

### **The National Reserve**

Until the age of 65 years: members are only called up should mass mobilisation occur.

### **Exemption And Deferment**

Anyone has the right to apply (or re-apply) for exemption or deferment of military service.

#### **The Basis For Application:**

According to the Defence Act, an exemption Board may grant deferment (i.e. temporary reprieve) or exemption on a number of grounds: (i) education, (ii) domestic, (iii) business, (iv) medical.

The crucial point however, is whether or not the Board is convinced that military service would: (i) cause the applicant undue hardship, or (ii) be contrary to the public interest.

[See C.A.S. Factsheet Number 4/90 on Deferment & Exemption for further details.]

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## DADS' ARMY SERVICE

All white males between the ages of 18 and 54 who are citizens of the RSA may be called-up for commando service (Dads' Army). This is irrespective of previous national service. Permanent residents of other nationalities may also be called-up if the Minister gazettes this specifically.

Under current provisions your service commitments vary according to the registration procedure followed. Most members of the Dads' Army are liable for up to 12 days service annually.

Commandos are usually deployed locally and current practice is that many commandos are used to police black townships.

### Registration Procedures

The Defence Act (44 of 1957) as amended (103/82) makes provision for six procedures to be followed in the registration of men for commando service.

#### 1. Request for Information (Completion of a Questionnaire)

Section 54 (2A) provides for a designated officer of the SADF to request information from all white male citizens of the RSA between the ages of 18 and 54 in order to register them for Commando Service.

If requested to furnish information or to register under this section of the Act, you are entitled to ask the officer in question for written proof that he has been designated by the Minister of Defence to request such information. His failure to respond will not necessarily affect your liability to serve.

If you do not respond, the SADF can still register you.

#### 2. A Gazetted Order To Register

Section 54 (2B) provides for the Minister of Defence to promulgate a notice in the Government Gazette indicating that white male citizens of the RSA between the ages of 18 and 54 in a particular area are required to furnish personal information in order to register them for commando service. Once an area has been gazetted, the registering officer may register you for commando service, whether or not you provide the information requested. Usually a questionnaire will be sent to you.

Before completing the questionnaire you could check with a legal adviser whether the magisterial district in which you reside has been gazetted.

#### 3. Automatic registration after 5 years in Active Citizen Force Reserve

It is currently SADF policy to transfer all persons who have completed service in the Citizen Force (i.e. initial national service and camps) to the "Active Citizen Force Reserve". Persons who have spent 5 years in the Active Citizen Force Reserve can automatically be registered for Commando Service without a request for information as in Paragraphs 1 and 2 above. You will then be liable for up to 12 days service annually until the age of 55.

#### 4. Registration of persons who finished service in the SADF on or before 31/12/82

If you:

- finished your service in the Citizen Force or Commando Service under the old laws governing military service on or before 31/12/82, AND
  - you are under the age of 55 years, AND
  - you are not liable for service in the Active Citizen Force Reserve
- you can automatically be registered for Commando Service.

If you are registered under this procedure, you will be liable for up to 12 days service annually up to the age of 55.

#### 5. Registration of "Area Bound" persons

If you are told that you have been declared "Area Bound" this means that you have been moved out of the ordinary Citizen Force camps system and have been registered for service in the commandos.





You can only be declared area bound if you:

- have applied for deferment or exemption from a camp, AND
- the exemption board has given you a chance to say whether or not you want to become area bound, AND
- the exemption board has not already granted deferment of exemption, nor refused it.

If you are registered under this procedure you will be potentially liable for more service than other members of the Commando Service: up to 50 days annually for the first 20 years in the commandos, and 12 days annually thereafter until you turn 55.

This does **not** mean that you **will** definitely be called up for more service than other members of the commando.

### **6. Citizen Force duty in the commandos**

Ordinary Citizen Force service can be done in a commando unit, if so ordered. If this happens, you will maintain your Citizen Force liability for service until it is completed.

### **Consequences of Objection**

If you fail to respond to a legally valid request to return questionnaire forms, you will be liable to a fine not exceeding R200 or a period of imprisonment not exceeding six months.

### **If Registration is Complete and you Receive a Call-up but;**

#### **• You fail to report for service**

You will be liable on conviction to a fine or imprisonment (or detention) of up to 18 months, which is not regarded as service completed.

First offenders will normally receive a fine.

#### **• You refuse to report**

You will be liable on conviction to imprisonment for a period 1.5 times your outstanding service or 18 months whichever is the longer. The onus is on you to prove that you did not refuse to report.

#### **• Reporting for duty**

If you report for service you may approach your commanding officer to ask him to exempt you from township duty. If he is not sympathetic and you refuse to obey an order you will be charged in a court martial and will be liable on conviction to a fine or detention for a period of up to two years. (See CAS Factsheet Number 6/90 entitled "Non-combatant Status and/or Township Duty")

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## DEFERMENT AND EXEMPTION FROM MILITARY SERVICE

### Who May Apply ?

Any person who is liable for compulsory military service has the right to apply for exemption or deferment. Furthermore, any interested person acting on behalf of the conscript (e.g. a doctor, parent, employer) may apply for his exemption or deferment. The conscript should then either confirm the application or submit a separate one to the relevant authority where possible. Exemption is more difficult to obtain than deferment because of its permanent nature.

### Grounds For Application

The Board may grant exemption or deferment for any reason. The most commonly used grounds being:

- Educational
- Domestic obligations, e.g. work commitments
- Medical reasons
- Detention

**Educational reasons** apply to full time students with documentary evidence provided to substantiate one's registration at a particular educational institution. Deferment will usually be granted one year at a time with the onus on the conscript to re-apply each year. Deferment for up to 8 years can be expected in general, provided satisfactory progress in a particular field can be shown.

**Domestic obligations** might include, (i) illness in the immediate family, marriage, birth of a child etc. or, (ii) work commitments, including employment in certain occupations critical to the economy and/or completion of government contracts

Complete exemption is rare but certain persons have been granted exemption by virtue of their profession, e.g. farmers and owners of small businesses. More recently ballet dancers and jockeys have received exemption conditional on their continued pursuance of these occupations for ten years.

**Medical reasons** are generally the only grounds on which exemption will be granted. Any conscript who has been medically examined and pronounced by the prescribed medical authority to be unfit for military service in any capacity will be exempted from military service for as long as they remain unfit. Reasons may include physical defects, ill health or mental incapacity.

The conscript may be required to be examined by SADF medical practitioners. It is sometimes possible to make an appointment for such an examination at the nearest military hospital to facilitate your exemption application. It is recommended that prior to this, the conscript should see a civilian doctor/psychologist/social worker to back up his application.

**Detention** refers to the compulsory detention of a conscript in an institution, for example, in terms of emergency regulations, imprisonment for any other reason or confinement in a mental institution .

**It is however not enough** to have a factual basis which falls within the stated grounds for deferment, the application must also satisfy the board that the call-up would:

- Cause undue hardship, **or** is
- Contrary to the public interest.





## Making Your Application

### The application must be submitted to:

- (1) The chairman of the Exemption Board, Private Bag X281, Pretoria 0001, if made prior to the initial two years military service; **or**
- (2) The commanding officer of the conscript's unit for exemption/deferment of camps.

Applications can be made at any stage provided that the conscript has been called-up or notified of his allotment.

### An application must contain:

- (1) full personal details such as name, rank, force number, address;
- (2) reference to the specific call-up instruction, including its date;
- (3) the grounds upon which the application is based;
- (4) proof that the call-up would cause undue hardships or is contrary to the public interest;
- (5) reference to any relevant documents. These should be attached as annexures e.g. statements from one's professor, employer, medical practitioner, minister of religion etc. in support of the application.

The application should preferably be presented in the form of an affidavit, i.e. sworn to under oath before a commissioner of oaths, eg. a policeman, postmaster, priest or lawyer.

A photocopy should be made of the complete application and retained by the conscript. The original application should be posted by registered mail or delivered by hand.

**Note:** The posting of an application does not automatically relieve the conscript of his duty to report. He is liable for service until advised otherwise by the Board. It should also be noted that application for deferment or exemption may result in allotment to commandos i.e. the conscript is then "area bound", and may be liable for a maximum of 1000 days service or 50 days per year.

### Unsuccessful application

If the conscript is notified by the Exemption Board or his Commanding Officer that deferment or exemption has not been granted, he may re-apply, incorporating new and more effective information to support it.

If the application is again refused, the only legal option which the conscript has is to take the decision of the Exemption Board on review to the Supreme Court. This will require a formal court application drafted by a lawyer.

**Make your deferment application promptly so that you know the outcome sooner and have time to lodge a further application.**

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## YOUR RIGHTS IN THE SADF

### Conscripts Do Have Rights

These are included in the South African Defence Force Orders (SADFO). However the difficulty lies in establishing and maintaining your rights. Your corporal or Commanding Officer is unlikely to brief you on your rights in the SADF, so the responsibility to find out what they are, and to insist on them, is yours! A copy of the SADFO's is available from most military chaplains.

### Unfair/Unlawful Treatment; Victimisation and Bullying.

Ill treatment is defined as "any act which tends to adversely affect a person physically or mentally or which affects his self respect or dignity".

### Basic Rights

- Punishment of the whole group for errors made by some individuals is forbidden (SADFO 1/6/812).
- Initiation is forbidden.
- Threatening physical contact is forbidden.
- Indecent language, yours and theirs, is forbidden.
- Extra drill may not last longer than one hour per day and there must be a 30 second break every 15 minutes. It must be given by an authorised P.T. instructor. It is usually done with full field dress, skeleton webbing and water bottle with or without a rifle but no other gear is permitted.
- Physical training as a form of punishment is forbidden. Find out the details and dangers of heat fatigue in SADFO 1/5/79.

### Laying a complaint

If a conscript is ill-treated, he should pursue the following procedure:

- Raise the problem with a military chaplain and/or the unit welfare officer.
- Complain formally to your platoon commander. If you get no relief, approach the next officer in the chain of command and so on, until the issue is resolved.
- Such a complaint should be made in writing and you should keep a copy.
- If you complain about improper treatment you might encounter some hostility. Do not be intimidated. You have committed no offence by complaining.
- Inform your parents of the situation and ask them to take up the matter if you reach an impasse.

Your parent could take the following steps:

- Complain to the Defence Complaints Office, Private Bag X159 Pretoria 0001. or telephone 021-21-4611
- If the situation is not satisfactorily resolved, they could phone the OC of your base, their local MP or even the Minister of Defence.

The more pressure they bring to bear, the more likely it is that the problem will be speedily resolved.

### Other basic rights included in the SADFO's are:

#### Religious

The chaplain is accessible to a conscript at all times. In requesting to see the chaplain, the conscript is not required to explain why, but can merely say "personal reasons".

Conscripts are compelled to attend one church service per Sunday during Basic Training and before weekend leave is granted. Transport must be provided (SADFO 1/21/78).

You are entitled to apply to the Board for Religious Objection to obtain non-combatant status or apply to do community service. The application must be sent via your OC.

#### Leave

After three months of service, you are entitled to seven days paid leave plus travelling time. A free rail warrant is issued which can be used in part





payment for an airticket. During the second year, 14 days uninterrupted leave is allowed.

A maximum of ten days compassionate leave can be applied for in the event of the death or serious illness of a close relative. A total of 28 days special leave is available to sportsmen who represent their province or country. The unit commander is allowed to grant up to 20 days leave in deserving cases.

### Debts

The Moratorium Act of 1963 provides that any contractual debt incurred by a conscript before commencing service, but payable after the start of service, will be suspended by the length of the service plus one additional month. There are instances where the obligation to pay is not suspended, for example, when an employer is making up his wages.

### Employers

The Defence Act of 1957 protects the conscript in his civilian employment. It is an offence for an employer to dismiss a conscript, reduce or alter his position in any disadvantageous way, because of his service obligations.

### Military Offences

These are dealt with by the Military Disciplinary Code (MDC) which defines a number of offences.

#### One offence is: "disobeying a lawful command".

If wilful "defiance" is found to be present, the offence is seen as serious and carries a maximum sentence of five years imprisonment. The maximum in all other cases is one year. As a first offender you will be most unlikely to receive the maximum sentence.

#### Another offence is: "AWOL".

This is "absence without leave", and is an offence punishable on conviction with a maximum sentence of one year's imprisonment. A sentence that long is unlikely, but it is common for persons who have been on AWOL to be sent to detention barracks for a period.

### Military trials

Within the SADF, the authorities can deal with an offender at a summary trial or a court martial.

The **Summary trial** is relatively informal; it is not held in public; one has no right to legal representation although you may ask for it, the maximum sentence is R150 or 40 days; the sentence is immediately effective; the case must be reviewed by a higher authority.

The **Court martial** hears more serious cases; it is formal; it hears the case in open court; one has a right to legal representation. The sentence must be reviewed by higher authority before it is implemented; it can range from death by firing squad to reprimand. No appeal exists from a military court to the Supreme Court, although it may be asked to review a procedural irregularity.

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## NON-COMBATANT STATUS AND/OR TOWNSHIP DUTY

### SADF policy

The serving conscript does not have the right not to carry a rifle unless he has been recognised as a non-combatant by the Board for Religious Objection (See CAS Factsheet Number 7/90 on Religious Objection). He also does not have the right not to do duty in the townships. If he is ordered to carry a rifle or do township duty and refuses to do so, then he commits an offence by disobeying a lawful command.

In practice, however, the SADF does give the OC of the Unit the discretion to grant a conscript informal status as a non-combatant or to exempt him from township duty and allocate him to other duties instead. Such "rights" are often, but not always granted. They are informal "rights" and may be taken away at any time. The conscript attempting to claim such "rights" may encounter considerable hostility and resistance.

### The correct procedure

When trying to get informal non-combatant status or to get out of township duty:

- (1) Go to the OC direct. Do not follow the chain of command.
- (2) See him privately, not in the presence of other troops.
- (3) Insist on seeing him as soon as you report for the camp, or as soon as you discover you might be doing township duty. (Or you could write to him before the camp, once any deferment application you have made has finally been refused, but remember to keep copies of the letter and take one with you.)
- (4) Give him a statement spelling out the grounds for your request. You might be given the opportunity to explain yourself. Do so clearly and logically.
- (5) Supporting affidavits from a parent, minister of religion or any other suitable person testifying to your sincerity, give added weight to your request.
- (6) Be diplomatic and non-confrontational, but be firm in your convictions.
- (7) Be fully aware of the legal implications of your action.
- (8) If you have strong principles on the matter, stick to them. Do not be intimidated by threats.

### Once you have informal status

- Try to get confirmation in writing
- Be prepared for attempts by your officers to dissuade you from your stand, and to tell you that you cannot have political views in the SADF.
- Be prepared for some initial criticism from your peers and especially people with lower ranks — ultimately most will respect you for sticking to your principles.





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## RELIGIOUS OBJECTION

### **Military service is not your only legal option as a conscript.**

If your religious beliefs conflict with rendering military service, making you unwilling to do so, you have a legal alternative open to you, religious objection.

### **Options Available To Religious Objectors**

The Defence Amendment Act provides for 3 categories of religious objectors:

#### **1. Non-combatant Military Service**

Those prepared to serve in the SADF wearing a military uniform, but in a non-combatant capacity i.e. they are not prepared to use weapons.

Non-combatancy may be granted to conscripts whose religious beliefs prevent them from carrying and/or using a weapon in any army.

If non-combatant status is granted the applicant is still liable for two years continuous military service in the SADF followed by camps during the subsequent years.

He is required to complete basic training without the use of a weapon, and may later serve as a cook, clerk, driver, etc. including possible service in an operational area.

#### **2. Non-uniformed Non-combatant Service**

Those prepared to serve in the army but not in either a non-combatant capacity or in uniform. Application for this option is uncommon.

#### **3. Non-military Community Service**

Those whose convictions prevent the performing of any military service or related tasks within any army:-

If non-military service is granted, the applicant is liable for one and a half times the total length of military service owed. It has to be rendered in one continuous period i.e. for someone objecting to their initial period of service, it is currently three years; for someone refusing camps only, it will be not more than about 18 months.

Non-military service may be performed in any government, provincial or municipal department.

### **The Board**

To be recognised as a Religious Objector, the conscript must apply to the Board for Religious Objection, convincing them of the sincerity of his beliefs.

The Board for Religious Objection is appointed by the Minister of Manpower. It consists of a judge or retired judge in the chair, three theologians from different denominations, a military chaplain and a SADF representative.

### **The Function Of The Board**

The function of the Board is to examine the application and determine:

- (i) evidence of religious conviction,
- (ii) the universality of his objection i.e. he objects to participation in **any** armed force,
- (iii) sincerity.

These are the three vital criteria in a conscript's application to the Board for Religious Objection. Sincerity is the overriding test applied to all aspects of the applications case.

"Religion" is not defined in the Defence Act and may be interpreted widely - although it must involve belief in a deity (unless the applicant is a Buddhist). It should not be assumed that one must have orthodox religious beliefs or that one should be a member of a specific denomination; neither are you required to prove regular religious practice. Detailed theological knowledge is also not required.





While the applicant must emphasize that his objection applies to any armed force it is not required that he reject all use of force; condemn all use of armed force by others; or hold an apolitical world view. However the Board is suspicious of strong political statements and may form the opinion that the underlying motivation is more political than religious.

### The Application

An application to the Board must state the following:

- the **category** in which the applicant wishes to be classified
- the **reasons** for applying.
- the **"books of revelation"** upon which the religious objections are based. For example, state whether it is the Bible, Koran, Book of Mormon etc.
- **affidavits** from witnesses in support of the application, preferably including a clergyperson, the applicant's statement should include: a copy of his most recent call-up, a curriculum vitae, a history of how he became an objector, the sincerity with which he holds these views, the life-style he has adopted as a result, and the position his religious organisation has taken on the matter.

The application should be submitted within 30 days of receiving a call-up.

If the applicant is already doing military service, he must apply through his commanding officer, and request leave to be sent home on unrecorded leave pending his hearing.

Once the applicant has received acknowledgment of his application from the Board, he need not report for National Service until they have decided on his application and have advised him of the outcome.

An applicant may be required to appear before the Board, usually in Bloemfontein.

### After The Board Hearing

If the application was for non-combatant status, before call-up, the conscript's allotment may be changed to a different unit and if he is already in the SADF, he may be transferred to another area of work.

If the applicant is granted non-military service, the applicant will be employed in a post arranged with the Department of Manpower, usually near his place of residence.

### The Board's Address

The Board For Religious Objection,  
Private Bag X 20521  
9300 Bloemfontein.

Telephone: 051-7609617

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# EVADING MILITARY SERVICE

## The Legal Consequences Of Evading Military Service

### From when do I fall under the authority of the SADF ?

As soon as you have been notified of the date upon which, and the place where you are required to commence service, you are regarded as a member of the Citizen Force. This applies both with regard to the initial two year period of service, and to subsequent camps. You are similarly regarded as a member of the Commandos once you have been informed where and when to report. (Section 146A of the Defence Act)

### What are the legal implications of this ?

Even though you have not actually commenced service, the Military Disciplinary Code will still apply to you and you can still be compelled to perform certain acts by the SADF (Section 104(5) of the Defence Act). This is the basis on which members of the Defence Force are often required to inform the SADF of any intended departure from South Africa, prior to commencing their service.

## Change Of Address

### Am I under any legal obligation to inform the SADF of a change of address ?

From the moment you register for military service, you are required to notify the Registering officer of any change in your residential address, within 14 days of your address changing (Section 64 of the Defence Act). In addition, once you are a member of the Citizen Force, you are required to notify your Commanding Officer of any change of address, within 14 days of such change occurring (Section 29 of the Defence Act).

### Should I keep proof of the fact that I have notified the SADF of my change of address ?

Yes. If you are charged with failing to notify the SADF of a change of address, you must either produce an acknowledgment of receipt by the SADF, or a registered slip as proof of postage.

### What is the maximum penalty for not notifying the SADF of change of address ?

The maximum penalty is a fine of R200 or imprisonment for a period not exceeding 6 months.

### What is meant by "residential address" ?

"Residential address" quite simply refers to the place where you reside. Thus, if you reside in London, and return to South Africa for a 4-week holiday, it is arguable that your residence remains in London and that you are consequently under no obligation to inform the SADF of your temporary return to South Africa.

## Failure To Report For Service

### If I fail to report for a camp or my initial call-up, what are the specific offences for which I can be charged ?

There are three possible offences for which you could be charged:

(i) You could be charged under Section 14 of the Military Disciplinary Code. This states that:

*"Any person who ..... fails to appear at a place of parade or duty or at any other place appointed by his Commanding Officer, ... shall be guilty of an offence".*

If you are convicted, you face a maximum penalty of one year's imprisonment, or a fine of up to R600 for a Private. If you were charged with this offence, the trial would in all likelihood take place at a Court Martial.

(ii) Alternatively, you could be charged under Section 126A(1)(b) of the Defence Act for failure to report for service. In all likelihood, if you were charged with this offence, the trial would take place in a Magistrate's Court. If you were convicted, you would face a fine of up to R600 (for Privates) or imprisonment for up to 18 months.





(iii) It is unlikely, but it is possible that you would be charged with refusal to do military service in terms of the Section 126A(1)(a) of the Defence Act. If you were charged with this offence, the onus would be on you to show that, although you failed to report for service, you did not actually intend to refuse to serve.

A first offender charged with failure to report for service in terms of either (i) or (ii) above, is extremely unlikely to receive a sentence of more than six months imprisonment, or a R600,00 fine, with half the imprisonment or fine suspended for a period of time.

Conviction for refusal to serve is severe, calculated at one-and-a-half times the length of the military service you still owe the SADF. This is dealt with in greater detail in the notes on the "prison option".

**If I am charged with failure to report for service, is it a defence to argue that I did not receive a call-up ?**

The law presumes that any call-up sent to your registered address has reached you (Section 150 of the Defence Act). It is not a defence, for example, for you to argue that you received a registered slip, but did not collect the registered letter from the post office. The onus would therefore be on you to prove to the court that you did not receive the call-up.

**If I fail to report for my call-up, what is likely to happen to me ?**

Sometime after the date that you were due to report for service, you will probably be contacted by the Military Police, either by telephone or in person. You will probably be asked to visit the Military Police and present some explanation of your failure to report.

Once you have presented them with an explanation (preferably in affidavit form), the military authorities will decide what course of action to follow. They may decide to prosecute you under any of the offences mentioned above, or alternatively they may merely file away your affidavit and take no further action.

The type of action they take against you will be affected by the extent of your own cooperation. Thus if you clearly indicate that you are trying to evade them and avoid their phone calls or visits, there is a greater chance that you will be prosecuted for failure to report for service.

**Departure From South Africa Prior To Call-up**

**What is the situation if I leave South Africa prior to my call up ?**

The SADF has gone on record that you will not be prosecuted for failing to report for military service if you comply with the following:

- leave South Africa prior to the date of your call-up.
- advise the Exemption Board of your departure before the date of your call-up.
- submit an application for deferment in the prescribed form.

In such cases the SADF normally grants deferment. The conscript must then inform the Registering Officer of his return to South Africa, within 14 days of his return.

In the unlikely event that the military decide to charge you, they would probably do so under Section 10(5) of the Military Disciplinary Code. This states that

*"any person who neglects to obey any Unit, formation or Force order, of which it is his duty to have knowledge, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding six months", (or a fine of up to R600,00 for a Private).*

**What is the position regarding "independent homelands" ?**

Because independent homelands are regarded as independent States, the situation is the same as moving to any other country.

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## LEAVING THE COUNTRY

More and more people are leaving South Africa, among them a large number of conscripts who, rather than face military service, choose to emigrate or go into exile by applying for political asylum or refugee status in another country.

Although it may appear to be one of the more attractive options, emigration or exile is not an easy one. The procedures are complicated and lengthy, with no certainty of outcome.

Those who emigrate may return to South Africa, but those who do not qualify for emigration and are forced into exile may not return until a popular democratic government is in power.

### Emigration

In order to emigrate into any of the following English-speaking countries; UK, USA, Canada, New Zealand, Australia, the applicant would need at least one of the following:

**1. A passport of that country; or**

**2. Family**

The applicant must have immediate family who are permanent residents or citizens of that country. In some countries e.g. Canada and Australia, the family member must act as a sponsor of the applicant, showing that she/he has the financial means to provide for the her/him; **or**

**3. Work Permits**

In order to work in a foreign country the applicant must have a work permit. Preference is given to those whose jobs/skills etc. are in demand by that particular country. Details of occupational demand are usually available from the respective local embassies. In some countries an offer of permanent employment from a prospective employer is essential to the application; **or**

**4. Study Visas**

The applicant must present evidence of his acceptance at an educational institution in his application. He must be able to meet the cost of his studies, accommodation and other personal needs. Generally a student visa does not include permission to seek work or to stay after the completion of your course. Bursaries are not usually given to foreign students and the fees are exceptionally high.

It is possible to apply for permanent residence once in the country of your destination or apply from South Africa through the local embassy.

NOTE:-In all the above cases, details differ from country to country and change over time. It is thus very important to contact a local embassy to find out the precise details and procedures to follow.

### The Homeland Option

The South African government regards Transkei, Venda, Bophuthaswana and Ciskei as independent countries. South Africans residing in these areas are not liable for call-ups.

### Refugee Status/Political Asylum

In each of the above-mentioned countries there is a category for "special immigrants" applying on humanitarian grounds for refugee status or political asylum. A conscript applying for this category must show a well founded fear that should he return to South Africa, he would be persecuted for reasons of race, religion, nationality, membership of a particular social group or for political opinion. Applicants may also be assessed against factors measuring their genuine ability to adapt to the particular country chosen.





### Countries To Consider

Previously refugee status has been granted in the UK, Netherlands and Canada. Belgium and Sweden would probably be sympathetic. Botswana, Lesotho, Swaziland and Zimbabwe have allowed war resisters to stay for limited periods, but will not grant them refugee status.

### Application Procedures

The conscript must travel directly to the country in which he plans to apply for status, i.e. on a temporary visa, with a return ticket and enough money to support him for a few months. It is not advisable to announce or reveal one's intentions to seek refugee status on arrival at the airport, but he should contact a refugee agency as soon thereafter as possible.

It is suggested that supporting documentation such as call-up papers be posted to a contact address there, rather than carried in person.

The refugee agency will assist in formulating an application for refugee status, which should be made as soon as possible after entering the country. The applicant must show that he has a well founded fear of persecution for reasons of race, religion or political belief.

Procedures for obtaining refugee status differ from one country to another. In Britain, the application is sent to the Home Office. The applicant is placed on the dole, which provides for basic living expenses. After a few months he is called for an interview and cross-examined on the details of his personal history, political involvement and beliefs.

Some months after the interview, the applicant should receive permission to work. He may have to wait up to two years before hearing further from the Home Office.

If refugee status is granted, the applicant is issued with a United Nations travel document (and may for the first time, leave the country).

If the application is unsuccessful, he may appeal against the decision, a process that can take up to a year or more but refusal is less likely than at the first stage. If this too fails, the applicant must return to South Africa and may not apply for refugee status in any other country.

If he is successful in this application, he may apply for permanent citizenship after about 5 years of residence in his new country, and will then receive a passport.

Despite all the factors working against exile as a viable option to military service, hundreds of young men find a way to take this path and follow it through every year.

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