

(6 November 2015 – to date)

MILITARY OMBUD ACT 4 OF 2012

*(Government Notice 346 in Government Gazette 35309 dated 3 May 2012. Commencement date:
10 May 2012 [Proc. No. 30, Gazette No. 35324])*

MILITARY OMBUD COMPLAINTS REGULATIONS 2015

*Government Notice R611 in Government Gazette 39375 dated 6 November 2015. Commencement date:
6 November 2015.*

The Minister of Defence and Military Veterans has, under section 15 of the Military Ombud Act, 2012 (Act No. 4 of 2012) and after consultation with the Military Ombud, made the regulations in the Schedule.

(Signed)

Minister of Defence and Military Veterans

SCHEDULE

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1. Definitions

In these Regulations, any word or expression to which a meaning has been assigned either in the Act or the Defence Act, 2002 (Act No. 42 of 2002), has the meaning so assigned and, unless the context otherwise indicates—

"**complainant**" means a member or former member of the Defence Force as contemplated in section 1 of the Defence Act, 2002, or a representative of a member of the Defence Force, or any member of the public who is not a member of the Defence Force;

"complaint" means a complaint, contemplated in section 4 of the Act;

"Grievance Board" means the Grievance Board contemplated in regulation 1 of the Individual Grievances Regulations of June 2010;

"official conduct" means any act or omission committed by a member of the Defence Force in execution of his or her duties, including that of a member deployed to another state;

"the Act" means the Military Ombud Act, 2012 (Act No. 4 of 2012);

"the Defence Act" means the Defence Act, 2002 (Act No. 42 of 2002); and

"written" or **"in writing"** means handwritten in ink or any form of electronic writing as contemplated in section 12 of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002).

2. Purpose and application

- (1) The purpose of these Regulations is to give effect to section 15 of the Act as far as it applies to complaints as contemplated in section 4 of the Act.
- (2) These Regulations apply to—
 - (a) any member or former member of the Defence Force, or a person acting on behalf of a member, who lodges a complaint with the Office regarding the conditions of service of the member or former member; and
 - (b) any member of the public who lodges a complaint regarding the official conduct of members of the Defence Force.

3. Procedure for lodging complaints

- (1) A complainant must lodge a complaint with the Office in writing on a form substantially similar to Form 1, attached hereto as Annexure "A".
- (2) The complainant must ensure that the following information is contained in Form 1:
 - (a) name, personal particulars, including contact details, gender, race and province where the complaint originated;
 - (b) if a representative lodges the complaint on behalf of a member, proof of authorisation from the member to represent him or her;

- (c) the Service or structural component of the Defence Force, as contemplated in section 12(1) and (2) of the Defence Act, from which the complaint originates;
 - (d) the nature of the complaint in question;
 - (e) the grounds on which the complainant believes that an investigation is necessary; and
 - (f) any other information relevant to the complaint.
- (3) The complainant must sign the form and attach all relevant supporting documentation.
- (4) The complainant may submit the complaint contemplated in sub regulation (1) to the Office by—
- (a) electronic mail in PDF format;
 - (b) facsimile;
 - (c) hand delivery to the address and contact details provided by the Office; or
 - (d) by such other means as the Ombud may, from time to time allow, with a view to making the Office accessible to all persons.

4. Timeframes for lodging of complaints

A complaint must be lodged with the Ombud

- (a) by a member or his or her representative, within a period of 180 days from the date on which the Grievance Board made its decision regarding his or her grievance known;
- (b) by a former member, within a period of 180 days from the date on which he or she became aware of the issue that gave rise to the complaint; and
- (c) by a member of the public who wishes to complain about the official conduct of a member of the Defence Force, within a period of 90 days from the date on which he or she became aware of the act or omission concerned.

5. Registration of complaints

The Ombud must, upon receipt of a complaint lodged as contemplated in regulation 3—

- (a) enter such complaint into a register, which must contain the information as contemplated in regulation 3(2);
- (b) allocate an official case reference number to the complaint; and
- (c) issue a written acknowledgment of receipt, including the case reference number contemplated in paragraph (b), to the complainant within 14 days of receipt of the complaint.

6. Condonation for late submission of complaints

- (1) A complainant may submit an application for condonation, in writing, on a form substantially similar to Form 2, attached hereto as Annexure "B", to the Office in the manner contemplated in regulation 3(4).
- (2) The Ombud may condone the late submission of a complaint after consideration of the information provided in the form contemplated in sub-regulation (1) and taking into account—
 - (a) the reasons for the late submission;
 - (b) the time taken to submit the complaint;
 - (c) the prospects of success based on the merits of the complaint lodged;
 - (d) possible prejudice to be suffered by the complainant if the matter is not investigated;
 - (e) possible prejudice to any party having a substantial interest in the outcome of the complaint if the matter is or is not investigated; and
 - (f) any other relevant factors.
- (3) The Ombud must inform the complainant of the outcome of the application within 28 days of receipt thereof.

7. Method and conduct of investigation

- (1) The Ombud must assess the information submitted in the complaint contemplated in regulation 3(1) to determine if he or she has jurisdiction to investigate it.
- (2) The Ombud must, within 21 days after issuing an acknowledgment of receipt in terms of regulation 5(c), in writing, notify the complainant of his or her decision to—
 - (a) investigate the complaint;

- (b) refuse to investigate the complaint and provide written reasons to the complainant for the refusal;
or
 - (c) request additional information or clarity on the information submitted.
- (3) The Ombud may, in accordance with section 6(6)(a) of the Act, summon any person to appear before him or her and such summons must specify—
- (a) information relating to the name and, where known and where applicable, the residential address and occupation or status of person being summoned;
 - (b) the reason for being summoned and the place, date and time for the appearance of the person;
- (4)
- (a) The summons shall be served by any person authorised by the Ombud by delivering it to the person named therein or, if he cannot be found, by delivering it at his residence or place of employment or business to a person apparently over the age of sixteen years and apparently residing or employed there.
 - (b) A return by the person who served the summons that the service thereof has been effected in terms of paragraph (a), may, upon the failure of the person concerned to attend the relevant proceedings, be handed in at such proceedings and shall be prima facie proof of such service.
 - (c) A summons must be served on a person so that he is in possession thereof at least fourteen days (Sundays and public holidays excluded) before the date appointed for the appearance.
- (5) The Ombud must investigate a complaint subject to the provisions of the Act and must determine the format and the procedure to follow in conducting any investigation, based on an assessment of the information provided.

8. Short title

These Regulations are called the Military Ombud Complaints Regulations 2015, and come into operation on the date of publication in the *Government Gazette*.

Annexures

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ANNEXURE A



FORM 1

MILITARY OMBUD COMPLAINT FORM

COMPLAINT IN TERMS OF SECTION 6(2) MILITARY OMBUD ACT 4 OF 2012

(Regulation 3)

UNDERTAKING:

I apply to the Military Ombud to investigate and consider my complaint. All relevant documentation is attached.

1. I _____, Identity number /Force number _____
declare that my complaint does not relate to:
 - The manner in which a military judge performs his or her functions in his or her capacity as a judge;
 - A matter that is pending before a military or civilian court; or
 - A matter on which a decision has been taken by a military or civilian court.
2. I understand the Military Ombud may refuse to investigate a complaint if:
 - An investigation may undermine channels of command or constitute insubordination in the Defence Force;
 - A complaint is not lodged within the prescribed time-frame.(Kindly attach the application for condonation if the complaint is not within the prescribed timeframe);
 - A member has not first used the mechanism available under the Individual Grievances Regulations, 2010, unless the complaint relates to problems inherent in the system which bring about an adverse result to the complainant;
 - A complaint was not lodged within the prescribed timeframe and condonation was not granted; or
 - A complaint was referred for arbitration, conciliation, mediation or negotiation to another competent tribunal or forum.
3. I understand and agree that by submitting this complaint:
 - The complaint and all information contained therein will be treated as confidential by the Military Ombud who will collect, store, process and share my personal information and use the information only in as far as it relates to the investigation and resolution of my complaint;
 - A finding of the Military Ombud does not affect my legal rights or privileges; and

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ANNEXURE A

- Should I not be satisfied with the decision of the Military Ombud, I may apply to the High Court for review against that decision in terms of section 13 of the Military Ombud Act 4 of 2012.

Complainant Signature

Person authorised to sign on behalf of the complainant (where applicable)

Date

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ANNEXURE A

MILITARY OMBUD COMPLAINT FORM

COMPLAINT IN TERMS OF SECTION 6(2) MILITARY OMBUD ACT 4 OF 2012

(Regulation 3)

Plea Note:

1. Kindly complete the form in a legible manner and complete all relevant sections. **Please note that the following are compulsory.**
2. Where the contact person is not the complainant, please provide the relevant person's correct contact details. If the contact person is acting on behalf of the complainant, a *Power of Attorney* must accompany this form.
3. If you have previously referred your complaint for investigation, arbitration, conciliation, mediation or negotiation to another competent tribunal, forum or institution, kindly furnish the relevant details and applicable reference number.
4. Be as comprehensive as possible and provide as much factual detail as possible when completing this form. Ensure that you answer the following questions: **Who, What, When, How, Where** and **What** happened thereafter.
5. Attach all supporting documentation and evidence, which may include copies of photographs, copies of documentation, sworn statements of witnesses, copies of official documents given to you by the Department of Defence, or any other information that may assist the Military Ombud in conducting an investigation.
6. The Declaration and consent section of this form **must** be completed to authorise the Military Ombud to obtain copies of records and to access any information that relates to this complaint.

I which province in South Africa did the complaint originate?

- ☐ Eastern Cape ☐ Free State ☐ Gauteng ☐ Kwazulu Natal ☐ Limpopo
☐ Mpumalanga ☐ North West ☐ Northern Cape ☐ Western Cape

Where did you see the official of the Ministry of Defence?

- ☐ Radio ☐ Attorney ☐ Newspaper ☐ Other Ombudsman
☐ By word of Mouth ☐ Department of Defence ☐ Other (please specify) _____

PARTICIPANTS

Category of Complaintant:

- ☐ Current SANDF Member ☐ Former Member of the SANDF ☐ Member of the Public
☐ Third Party (e.g. union rep, lawyer, etc.)

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ANNEXURE A

Please Note:

- If you are a member former member or member of the public complaining, complete section 1 & 4.
- If you are member of the public complaining about the official conduct of a member of the SANDF please also complete section 1 & 4 (note: only need to provide ID/Passport no.)
- If you are complaining on behalf of a member or former member, complete section 2, 3 & 4.
- Section 5, 6 & 7 is to be completed by all.

1. **PERSONAL DETAILS** (If you are the member, former member or member of the public lodging the complaint please complete this section only where applicable)

Please indicate your Gender and Race (*): (This information is required for statistical purposes)

☐ Male ☐ Female Race: _____

Surname(*): _____ Full Names(*): _____

Title (Mr/Mrs/Miss/Ms/Dr/Prof(*): _____ Rank: _____

ID/Passport Number(*): _____ Force Number: _____

Unit: _____ Service/Division: _____

Residential Address(*): _____

Postal Address(*): _____

City: _____ Province: _____ Postal Code: _____
 Telephone(*) Home: _____ Cell: _____ Work: _____
 Email Address: _____ Fax: _____

Have you submitted your grievance through the Department of Defence's Individual Grievances Regulations? (*): (To be completed by current members of the SANDF only)

☐ Yes ☐ No

If yes:

- At which grievance office (Unit)? _____
- What is the Grievance ID Number? _____

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ANNEXURE A

2. DETAILS OF THIRD PARTY

Surname(*): _____ Full Names(*): _____

Title(Mr/Mrs/Miss/Ms/Dr/Prof(*): _____ Rank: _____

ID/Passport Number(*): _____ Force Number: _____

Unit: _____ Service/Division: _____

Institution: _____

Residential Address(*): _____

Postal Address(*): _____

City: _____ Province: _____ Postal Code: _____

Telephone(*) Home: _____ Cell: _____ Work: _____

Email Address: _____ Fax: _____

3. PERSONAL DETAILS OF AFFECTED PARTY

Please indicate the Gender and Race of the affected party (*): (This information is required for statistical purposes)

☐ Male ☐ Female

Race: _____

Surname(*): _____ Full Names(*): _____

Title (Mr/Mrs/Miss/Ms/Dr/Prof(*): _____ Rank: _____

ID/Passport Number(*): _____ Force Number: _____

Unit: _____ Service/Division: _____

Residential Address(*): _____

Postal Address(*): _____

City: _____ Province: _____ Postal Code: _____

Telephone(*) Home: _____ Cell: _____ Work: _____

Email Address: _____ Fax: _____

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4. DETAILS OF THE MEMBER OR UNIT YOU ARE COMPLAINING ABOUT

Please indicate the Gender and Race of the person(s) you are complaining against (*): (This information is required for statistical purposes)

☐ Male ☐ Female

Race: _____

Surname: _____ Full Names: _____

Rank: _____ ID/Force Number: _____

Unit: _____ Service/Division: _____

5. DETAILS OF THE COMPLAINT

Kindly complete this Form in a legible manner setting out all the facts which you consider to have a bearing on this complaint, including dates, places and names. Answer the questions **Who**, **What**, **When**, **How**, **Where** and **What** happened thereafter. Attach copies of all relevant documents. If the space provided is not sufficient, you may add additional pages.

Prepared by:

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6. DESCRIBE HOW YOU WOULD LIKE THE MILITARY OMBUD TO ASSIST YOU

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7. DECLARATION AND CONSENT:

The consent granted to the Military Ombud in this paragraph authorises the Military Ombud to obtain copies of any records, to access any information which relates to this complaint and to contact any person or entity for the purposes of obtaining or verifying such information and/or documentation.

I _____ (name, surname, ID/Force number)
declare that to the best of my knowledge, the information provided in the complaint form is true and correct in every respect;

I confirm that I am complaining in my personal capacity / representative capacity.

I hereby consent to the release, to the Military Ombud, of copies of all documentation and/or information, including, but not limited to documentation or information, that in any way relates to this complaint arising from the circumstances detailed in the complaint form.

I further consent to and authorise the Military Ombud to contact any person or entity for purposes of obtaining or verifying such information and/or documentation.

Complainant Signature

Person authorised to sign on behalf of the complainant (where applicable)

Date

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ANNEXURE B



FORM 2

MILITARY OMBUD

APPLICATION FOR CONDONATION IN TERMS OF REGULATION 6(3)

NOTES ON COMPLETION OF THE SA MILITARY OMBUD CONDONATION FORM

1. A complaint must be referred to the Military Ombud within the time period for lodging complaints as provided in Regulation 4. If Regulation 4 is not complied with, an application must be made to the Military Ombud to condone the delay for the late submission of the complaint.
2. This application for condonation must accompany the fully completed complaint form and must be done on the affidavit (under oath / affirmation) included in this Form.
3. The calculation of the required days is done by excluding the first day and including the last day unless the last day happens to fall on a Sunday or any public holiday, in which case the last day would be the normal working day preceeding that Sunday or public holiday.
4. The Military Ombud considers the following when deciding whether or not to grant condonation.
 - The degree of lateness of the complaint;
 - The reasons for the lateness;
 - The prospects of success on the merits of the complaint;
 - The complainant's interest in the outcome of the complaint;
 - Any prejudice to the other party in the complaint; and
 - Any other relevant factors.
5. The above factors are not individually decisive but are interrelated and will be weighed one against the other. Thus a slight delay and a good explanation may help to compensate for prospects of success that may not be very strong.
6. It is therefore important that applicants for condonation provide a detailed explanation with sufficient support documentation to their averments.
7. The degree of lateness is the time period in relation to the date of the act or omission (or becoming aware thereof). It is thus important to indicate the date of the act or omission and or make it clear when the complainant became aware thereof.

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ANNEXURE B

8. The applicant for condonation must indicate why, on a balance of probability, he or she will be likely to succeed against the Department with the complaint.
9. The applicant for condonation must give a clear indication of the prejudice he or she will suffer if condonation is not granted and must also address the reasons he or she believes it will not be prejudicial to the Department if condonation is granted. Interest in the outcome of the complaint does not only relate to the personal importance of the complaint to the complainant, but should address the objective importance of the matter to the Department and other members and former members of the Department and/or the public. These may typically be complaints that have the potential to change policy, operating procedures, etcetera within the Department.

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ANNEXURE B

MILITARY OMBUD

APPLICATION FOR CONDONATION

Please Note:

Kindly complete the form in a legible manner and complete all the pages that are relevant to you. Please note that the fields marked with an asterix (*) are compulsory.

PARTICULARS OF COMPLAINT**Category of Complainant (*):**

- ☐ Current SANDF Member
 ☐ Former Member of the SANDF
 ☐ Member of the Public
- ☐ Third Party (e.g. union rep, lawyer, etc.)

PERSONAL DETAILS (If you are the member, former member or member of the public lodging the complaint please complete this section only where applicable)

Please indicate your Gender and Race (*): (This information is required for statistical purposes)

- ☐ Male
 ☐ Female
 Race: _____
- Surname (*): _____
 Full Names
- (*) _____

Title (Mr/Mrs/Miss/Ms/Dr/Prof (*): _____ Rank: _____

ID/Passport Number (*): _____ Force Number: _____

Unit: _____ Service/Division: _____

Residential Address (*): _____

Postal Address _____

City: _____ Province: _____ Postal Code: _____

Telephone (*) Home: _____ Cell: _____ Work: _____

Email Address: _____ Fax: _____

I, the undersigned, (Full name of Applicant) _____

1. BACKGROUND

- 1.2. I, the applicant, followed the following internal procedure: _____
- _____
- _____
- _____
- _____

2.1. The referral is _____ days late. (excluding the 180 day and 90 day period, whichever is applicable, as provided in Military Ombud Complaints Regulations of 2015)

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YUNIBESITHI YA PRETORIA

ANNEXURE B

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YUNIBESITHI YA PRETORIA

ANNEXURE B

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Signed before me on _____ at _____ by _____
the deponent who acknowledges that he/she knows and understands the contents of the affidavit, had no objection to taking the oath/affirmation and considers it binding on his/her conscience.

Name: _____

Address: _____

Capacity: _____