



# GOVERNMENT GAZETTE

OF THE

# REPUBLIC OF NAMIBIA

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N\$5,64

WINDHOEK — 1 March 1995

No. 1038

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 51

1995

### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 5 of 1995: Employees Compensation Amendment Act, 1995.

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**EMPLOYEES COMPENSATION  
AMENDMENT ACT, 1995****EXPLANATORY NOTE:**

- \_\_\_\_\_ Words underlined with solid line indicate insertions in existing enactments.
- [            ] Words in bold type in square brackets indicate omissions from existing enactments.
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**ACT**

To amend the Workmen's Compensation Act, 1941, so as to adjust its provisions in view of the independence of Namibia; to amend certain definitions; to exclude members of the Namibian Defence Force on active service from the definition of "employee"; to remove certain discriminatory provisions; to empower the Commission to issue certain certificates in respect of contractors; to transfer the administration of the Act to the Social Security Commission; to repeal certain provisions relating to the appointment of assessors; to make further provision for the powers, duties and functions of the Commission; to make new provision for powers and procedures in respect of investigations by authorized persons; to make new provision for the preservation of secrecy; to make new provision for the administration of funds; to provide for the writing-off of moneys due to the accident fund; to make new provision for the responsibility of accounting and auditing; to make new provision for the exemption from income tax; to make new provision for the review of compensation; to make new provision for appeals against decisions of the Commission; to repeal certain provisions relating to benefits payable to assessors; to repeal certain provisions relating to the referral of applications to a revision board; to make further provisions for formal hearings; to make new provision for the representation of parties; to provide that the accident fund shall be a juristic person; to amend certain provisions relating to the application of the accident fund; to establish the accident pension fund; to provide that the reserve fund shall be a juristic person; to make new provision for the valuation of funds; to exempt certain employers from the obligation of submitting certain statements; to provide for the transfer of moneys to the accident pension fund; to provide for alternative methods of assessment and payment of assessments; to make new provision for restrictions in respect of

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**compensation; to increase the penalties which may be imposed under the Act; to repeal certain provisions relating to the making of regulations; to extend the provisions relating to the delegation of powers; to amend the short title of the Act; to substitute certain words and expressions in the Act; to make provision for the transfer of certain assets, liabilities, rights and obligations to the Commission and the right of certain persons to enter into employment with the Commission; and to provide for matters incidental thereto.**

*(Signed by the President on 20 February 1995)*

BE IT ENACTED by the Parliament of the Republic of Namibia, as follows:-

Amendment of section 2 of Act 30 of 1941, as amended by section 1 of Act 27 of 1945, section 1 of Act 36 of 1949, section 1 of Act 51 of 1956, section 1 of Act 9 of 1970, section 1 of Act 11 of 1974, section 1 of Act 24 of 1984 and section 3 of Proclamation 45 of 1990.

**1. Section 2 of the Workmen's Compensation Act, 1941 (hereinafter referred to as the principal Act) is hereby amended -**

- (a) by the substitution for the definition of "accident fund" of the following definition:

" 'accident fund' means the fund established by section [~~sixtyfour~~] 64 and includes, for the purposes of sections 64(1)(d) and 67, the accident pension fund established by section 65bis;"

- (b) by the substitution for the definition of "business" of the following definition:

" 'business' means any industry, undertaking, trade or occupation, including any private household or boarding house, or any activity in which any [~~workman~~] employee is employed;"

- (c) by the substitution for the definition of "child" of the following definition:

" 'child' means a son or daughter under the age of eighteen years and includes an illegitimate child of [~~a workman~~] an employee or his or her [~~wife~~] spouse, a posthumous child, a step-child and an adopted child if the [~~commissioner~~] Commission is satisfied that the child was in fact adopted;"

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- (d) by the substitution for the definition of “commissioner” of the following definition:

“ ‘Commission’ means the Social Security Commission established by section 3 of the Social Security Act, 1994;”;

- (e) by the substitution for the definition of “continental shelf” of the following definition:

“ ‘continental shelf’ means the continental shelf referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990 (Act 3 of 1990);”;

- (f) by the deletion of the definition of “date of commencement of this Act”;

- (g) by the substitution for the definition of “employers’ organisation” of the following definition:

“ ‘employers’ organisation’ means an employers’ organisation registered under section 54 of the Labour Act, 1992 (Act 6 of 1992);”;

- (h) by the insertion after the definition of “employers’ organisation” of the following definition:

“ ‘executive officer’ means the executive officer as defined in section 1 of the Social Security Act, 1994;”;

- (i) by the deletion of the definition of “fixed date”;

- (j) by the deletion of the definition of “government service”;

- (k) by the insertion after the definition of “medical practitioner” of the following definition:

“ ‘Minister’ means the Minister of Labour and Human Resources Development;”;

- (l) by the substitution for the definition of “natural resources” of the following definition:

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“‘natural resources’ means the natural resources referred to in section 6 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1990;”;

- (m) by the insertion after the definition of “principal” of the following definition:

“‘public service’ means the public service referred to in section 2 of the Public Service Act, 1980 (Act 2 of 1980);”;

- (n) by the deletion of the definition of “revision board”; and

- (o) by the substitution for the definition of “trade union” of the following definition:

“‘trade union’ means a trade union registered under section 54 of the Labour Act, 1992.”.

Amendment of section 3 of Act 30 of 1941, as substituted by section 1 of Act 21 of 1964 and amended by section 1 of Act 58 of 1967, section 2 of Act 9 of 1970, section 2 of Act 11 of 1974, section 1 of Act 28 of 1977, section 1 of Act 24 of 1981, section 2 of Act 29 of 1984, sections 46 and 47 of Act 97 of 1986, section 1 of Act 35 of 1987 and section 4 of Proclamation 45 of 1990.

2. Section 3 of the principal Act is hereby amended -

- (a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) any person or class of persons excluded from the scope of this Act by the provisions of subsection (2)(b) [~~(f)(ii)~~] or (g), if the employer of such person or class of persons has made special arrangements with the [~~com-~~missioner] Commission to that effect and complied with the conditions prescribed by the [~~com-~~missioner] Commission in regard thereto;”;

- (b) by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(a) (i) members of the [~~South West African~~] Namibian Police Force while employed in a war or other emergency to assist in the defence of [~~the territory~~] Namibia;

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(ii) members of the Namibian Defence Force while employed in a war or other emergency to assist in the defence of Namibia or any international peace-keeping operation;; and

(c) by the deletion of paragraph (f) of subsection (2).

Amendment of section 4 of Act 30 of 1944, as amended by section 3 of Act 27 of 1945, section 3 of Act 51 of 1956, section 3 of Act 11 of 1974, section 2 of Act 28 of 1977 and section 5 of Proclamation 45 of 1990.

3. Section 4 of the principal Act is hereby amended -

(a) by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

“(a) the [**widow or invalid widower**] surviving spouse, if married to the [**workman**] employee at the time of the accident;

(b) if there is no [**widow**] surviving spouse who, at the time of the accident, was wholly or partly dependant upon the [**workman**] employee for the necessaries of life, any [**woman**] person with whom the [**workman**] employee was in the opinion of the [**commissioner**] Commission living as man and wife at the time of the accident;”;

(b) by the substitution for paragraph (iii) of the proviso to subsection (1) of the following paragraph:

“(iii) unless the contrary is proved, the [**widow**] surviving spouse or child of [**a workman**] an employee or a person referred to in the second proviso to section 40(1)(c) who would, if under eighteen years of age, be the child of the [**workman**] employee, shall be deemed to be dependent for the necessaries of life upon such [**workman**] employee.”; and

(c) by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of this section, “surviving spouse” includes a surviving partner in a marriage by customary law.”

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Amendment of section 5  
of Act 30 of 1941.

4. Section 5 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) For the purposes of the giving or receiving of statements, notices or other documents under this Act, the term “employer” shall include the manager, secretary, accountant, treasurer, duly authorized agent or other responsible person or, in the case of the employer of a domestic employee, the owner or occupier of the premises where he or she is so employed.”.

Repeal of section 6 of Act  
30 of 1941.

5. Section 6 of the principal Act is hereby repealed.

Amendment of section 7  
of Act 30 of 1941, as  
amended by section 4 of  
Act 27 of 1945.

6. The following section is hereby substituted for section 7 of the principal Act:

“Substitution of  
compensation  
for other legal  
remedy.

7. [**From and after the fixed date**] -

(a) No action at law shall lie by [**a workman**] an employee or any dependent of [**a workman**] an employee against such [**workman's**] employee's employer to recover any damages in respect of an injury due to an accident resulting in the disablement or the death of such [**workman**] employee. [**and**]

(b) No liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of any such disablement or death.”.

Amendment of section 8  
of Act 30 of 1941, as  
amended by section 5 of  
Act 27 of 1945, section 3 of  
Act 36 of 1949 and section  
4 of Act 51 of 1956 and  
substituted by section 2 of  
Act 21 of 1964 and amen-  
ded by section 3 of Act 28  
of 1977 and section 3 of  
Act 29 of 1984.

7. Section 8 of the principal Act is hereby amended by the substitution for subsection (6) of the following subsection:

“(6) Notwithstanding anything to the contrary contained in any law and without derogating from the provisions of subsection (1)(a), the [**commissioner**] Commission may enter into an agreement with the [**manager of the Motor Vehicle Assurance Fund**] Director: Motor

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Vehicle Accidents Fund referred to in section [5] 4 of the [Compulsory Motor Vehicle Insurance Act, 1972 (Act No. 56 of 1972)] Motor Vehicle Accidents Act, 1990 (Act 30 of 1990), for the payment, in respect of a term mutually agreed upon between the [commissioner] Commission and the said [manager] Director: Motor Vehicle Accidents Fund, of a global sum, similarly agreed upon between the [commissioner] Commission and the said [manager] Director: Motor Vehicle Accidents Fund, by the [said Fund] Motor Vehicle Accidents Fund established by section 2 of that Act to the [commissioner] Commission in lieu of all such compensation as the [commissioner] Commission might, in terms of subsection (1)(b), otherwise have recovered from the said Fund or the [authorized insurers] appointed agents contemplated in section [10] 5 of [the said Compulsory Motor Vehicle Insurance Act, 1972] that Act in respect of claims arising during such term.”.

Amendment of section 9 of Act 30 of 1941, as amended by section 2 of Act 7 of 1961.

8. Section 9 of the principal Act is hereby amended by the insertion of the following subsection after subsection (1):

“(1)*bis* The Commission may, on the request of the principal, issue the principal with a prescribed certificate in which shall be stated whether the contractor -

- (a) is being assessed as an employer;
- (b) has paid all assessments due by him or her to the accident fund,

in respect of the work contemplated in subsection (1) and any employee concerned.”.

Substitution of section 12 of Act 30 of 1941, as amended by section 6 of Act 27 of 1945, section 5 of Act 36 of 1949 and section 46 of Act 97 of 1986.

9. (1) The following section is hereby substituted for section 12 of the principal Act:

“Administra-  
tion of Act.

12. Subject to the provisions of section 58(6) of the Employees’ Compensation Amendment Act, 1994, the provisions of this Act shall, with effect from the date of commencement of the Employees’ Compensation Amendment Act, 1994, be administered by the Commission.”.

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(2) Any reference in any law, register, deed or any other document to the Workmen's Compensation Commissioner, shall be deemed to be a reference to the Commission.

Repeal of section 13 of Act 30 of 1941, as amended by section 8 of Act 27 of 1945, section 6 of Act 36 of 1949 and section 7 of Proclamation 45 of 1990.

**10.** Section 13 of the principal Act is hereby repealed.

Substitution of section 14 of Act 30 of 1941, as amended by section 1 of Act 5 of 1951, section 5 of Act 51 of 1956, section 4 of Act 11 of 1974, section 5 of Act 29 of 1984 and section 8 of Proclamation 45 of 1990.

**11.** The following section is hereby substituted for section 14 of the principal Act:

"Powers, duties and functions of Commission.

**14. (1)** Subject to the provisions of this Act, the **[commissioner]** Commission shall -

- (a) receive notices of accidents and claims for compensation;
- (b) enquire into or cause enquiry to be made into accidents;
- (c) adjudicate upon all claims and other matters coming before **[him]** the Commission for decision;
- (d) issue an order in the prescribed form for the payment of compensation in respect of any award made by **[him]** the Commission;
- (e) determine whether any person is **[a workman]** an employee, employer, principal or contractor for the purposes of this Act;
- (f) decide any question relating to -
  - (i) the right to compensation;

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- (ii) the submission, consideration and determination of claims for compensation;
- (iii) the computation of earnings;
- (iv) the degree of disablement of any [**workman**] employee;
- (v) the amount and method of payment of any compensation;
- (vi) the award, withholding, revision, discontinuance, suspension, increase or reduction of any compensation;
- (g) determine whether any person is a dependant under this Act and, if so, the degree of dependency, and, where there is more than one dependant, which shall receive compensation and the allocation of compensation among them;
- (h) consider and decide upon applications in terms of section [**sixty-three**] 63;
- (i) determine any question arising in respect of the necessity for or the character or sufficiency of any medical aid;
- (j) determine any question relating to liability for assessment, rates of assessment, amount of assessment, method of payment of assessment and any other matter falling within [**his**]

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the Commission's purview under Parts (B) and (C) of Chapter VII;

(k) determine any other question falling within **[his]** the Commission's purview in connection with the application of this Act to or in respect of any employer or **[workman]** employee;

**[(l) administer the accident and reserve funds as provided in Chapter VII;]**

(m) to make recommendations to the Minister regarding the application of this Act, amendments thereto, and the making of regulations;

(mA) to advise the Minister on any power, duty or function which may or is required to be exercised or performed in terms of this Act;

(mB) to acquire, hire, improve and, with the approval of the Minister and the Minister of Finance, dispose of property;

(mC) with the approval of the Minister, to borrow money on the security of the assets of the Commission, or accept and administer any trust or donation;

**[(n) as soon as practicable after every audit in terms of section 22 submit to the Administrator-General a copy of the audited balance sheets and the report of the Auditor-General in connection with such audit,**

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**together with a report upon the administration of this Act during the year to which such audit relates;]**

(o) collect, and record statistics and information relating to the occurrence or cause of accidents and scheduled diseases and the grant of benefits to persons under this Act;

(p) make any investigation and perform such other functions as may be prescribed, or as **[he]** the Commission deems necessary for the administration of this Act.

(2) The **[commissioner]** Commission may -

(a) promote, establish or subsidize, or assist in the promotion, establishment or maintenance of any body, organization or scheme whose objects consist of or include one or more of the following:

(i) the prevention of accidents or of any disease which is due to the nature of any occupation;

(ii) the promotion of the health or safety of **[workmen]** employees;

(iii) the provision of facilities designed to assist injured **[workmen]** employees to return to work or to reduce or remove any handicap resulting from their injuries; or

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(iv) the carrying out of any activity conducive to the attainment of any of the objects referred to in paragraphs (i), (ii) and (iii);

(b) purchase or otherwise acquire shares in any body referred to in paragraph (a), and alienate any shares so acquired; and

(c) in the prescribed manner, apply unclaimed moneys for the general welfare of [workmen] employees.

Repeal of section 15 of Act 30 of 1941, as amended by section 8 of Act 27 of 1945.

**12.** Section 15 of the principal Act is hereby repealed.

Repeal of section 16 of Act 30 of 1941.

**13.** Section 16 of the principal Act is hereby repealed.

Substitution of section 17 of Act 30 of 1941, as amended by section 9 of Proclamation 45 of 1990.

**14.** The following section is hereby substituted for section 17 of the principal Act:

"Authorized persons and investigations.

17. (1) This section, in so far as it provides for a limitation on the fundamental rights contemplated in Subarticle (1) of Article 13 of the Namibian Constitution by authorizing interference with the privacy of any person's home, correspondence or communications, is enacted upon the authority conferred by that Subarticle.

(2) The Commission may, for purposes of the effective application of this Act, at any time authorize any one or more members of its staff or, on such terms and conditions as may be determined by mutual agreement, any other person, who shall, subject to the direction and control of the Commission, exercise and perform the powers, duties and functions conferred or imposed upon an authorized person

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by or under this Act and perform such other functions as the Minister may determine.

(3) An authorized person shall at the time of his or her authorization be furnished with a certificate of authorization in the prescribed form.

(4) Subject to subsection (5), an authorized person may, for the purposes of the application of this Act -

(a) *mutatis mutandis* in accordance with chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), at any reasonable time and without prior notice -

(i) enter any premises which he or she has reason to believe is occupied or used by an employer in connection with any matter to which this Act relates or where any employee is employed;

(ii) search for any book, record, statement, other document or thing used by any employer or which concerns any employee;

(iii) seize or make any copy of or extract from such book, record, statement, other document or thing,

as if such authorized person were a police official referred to in that Act and such book, record, statement, document or thing were concerned in the commission of any offence;

