



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 1038

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Government Notice

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.

**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 [**commissioner**] Commission to that effect and complied with the conditions prescribed by the [**commissioner**] 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;

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- (b) question any employer, employee or other person who is present on any such premises in connection with -
 - (i) the payment of assessments in respect of any employee;
 - (ii) any claim lodged or the payment of compensation to any employee; or
 - (iii) any other matter to which this Act relates;
- (c) direct that such premises or any part thereof or anything therein be left undisturbed, whether generally or in any particular respects, for as long as it is reasonably necessary to search such premises for any book, record, statement, other document or thing prepared or used in connection with any matter to which this Act relates;
- (d) by notice in writing addressed and delivered to any person who has control over or custody of any such book, record, statement, other document or thing which has been prepared or used in connection with any matter to which this Act relates, require such person to produce such book, record, statement, other document or thing to him or her forthwith or at such place, date and time as such authorized person may determine;
- (e) examine any book, record, statement, other document or thing and require from any

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employer, employee or other person who is present on such premises or exercises control or custody as contemplated in paragraph (d), an explanation regarding an entry in such book, record, statement, other document or thing;

- (f) require a member of the Namibian Police Force, or request any other person, to assist him or her as an interpreter or otherwise in the exercise or performance of his or her powers, duties or functions under this Act.

(5) When an authorized person exercises or performs a power or duty under this Act in the presence of any person affected thereby, the authorized person shall on demand by such person produce to him or her the certificate issued to such authorized person in terms of subsection (2).

(6) A member of the Namibian Police Force required, or any other person requested, by an authorized person to assist him or her as provided in subsection (4)(f) may accompany such authorized person in the exercise or performance of his or her powers, duties or functions as if such member or person were an authorized person.

(7) Any employer, employee or other person in charge of any premises on which persons are employed, shall at all times furnish such assistance as are reasonably required by an authorized person in order to enable him or her to exercise or perform his or her powers, duties or functions effectively on or in any premises occupied or used by such employer, employee or other person.

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(8) Whenever any work has been given out on contract to any person by a principal or contractor, any authorized person may exercise in relation to that principal or contractor all the powers in relation to an employer conferred upon an authorized person by this section.

(9) No person shall -

- (a) hinder or obstruct an authorized person in the exercise or performance of his or her powers, duties or functions;
- (b) refuse or fail to comply to the best of his or her ability with any requirement made by an authorized person in the exercise or performance of his or her powers, duties or functions;
- (c) subject to Article 12(1)(f) of the Namibian Constitution, refuse or fail to answer to the best of his or her ability any question which an authorized person has lawfully put to him or her in the exercise or performance of his or her powers, duties or functions;
- (d) wilfully furnish information to an authorized person which is false or misleading;
- (e) falsely give himself or herself out as an authorized person.

(10) For the purpose of this section, "premises" include any building or structure, or part thereof, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

(11) Any person who contravenes or fails to comply with subsection (5) or (9) shall be guilty of an offence.

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(12) A member of the Commission may, subject to the provisions of this section, exercise any powers which are conferred under this section on an authorized person."

Substitution of section 18
of Act 30 of 1941.

15. The following section is hereby substituted for section 18 of the principal Act:

"Preservation
of secrecy.

18. (1) Every person engaged in carrying out any provision of this Act shall preserve and aid in preserving secrecy in relation to all matters that may come to his or her knowledge in the exercise of the powers or the performance of the duties and functions conferred or imposed upon him or her in terms of any provision of this Act, and shall not communicate any such matter to any other person or permit any other person to have access to any documents in his or her possession or custody, except in so far as any such communication -

(a) is made in the ordinary course of the exercise of his or her powers or the performance of his or her duties under this Act or any other law, or is required by an order of a competent court;

(b) is effected with the prior written permission of the person concerned.

(2) Any person who contravenes or fails to comply with the provisions of subsection (1) shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months or to both such fine and such imprisonment."

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Substitution of section 20 of Act 30 of 1941, as amended by section 6 of Act 29 of 1984 and section 11 of Proclamation 45 of 1990.

16. The following section is hereby substituted for section 20 of the principal Act:

*Administra-
tion of funds.

20. (1) The Commission shall, in accordance with sound business principles, administer every fund established by this Act.

(2) (a) The Commission shall in respect of every such fund, open a current account with a banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965), into which shall be deposited all moneys accruing to the fund concerned.

(b) No moneys shall be withdrawn from any such account except by means of cheques signed by the executive officer and one other employee of the Commission specially authorized thereto by the Commission, or by two such employees so authorized.

(3) The Commission may after consultation with the Minister, invest such moneys of any fund administered by it which are not required to meet administrative expenses or for the payment of compensation under this Act -

(a) with any financial institution;

(b) with the Post Office Savings Bank controlled and managed by Namibia Post Limited established by section 2 of the Posts and Telecommunications Companies Establishment Act, 1992 (Act 17 of 1992);

(c) with such other institution approved by the Minister;

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(d) in any shares, securities, stocks, property or commercial enterprise approved by the Minister.

(4) The Commission shall, in accordance with such equitable principles and accounting principles relating to the allocation of administrative expenses as it may determine after consultation with the Auditor-General, recover such expenses from every such fund.

(5) The Commission shall not apply any moneys accruing to a particular fund for the payment of compensation which is payable out of moneys accruing to another fund.

(6) For the purposes of this section -

(a) "administrative expenses" means all expenses incurred in the administration of any fund and includes -

(i) the payment of remuneration, allowances or fees due to members of the Commission and of any committee, the executive officer and other employees of the Commission and persons contemplated in section 12(7) of the Social Security Act, 1994;

(ii) the cost of property acquired and all other expenses incurred which are necessary and incidental to the exercise and performance of the powers, duties and functions of the Commission;

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(b) "financial institution" means -

- (i) any banking institution registered under section 4 of the Banks Act, 1965 (Act 23 of 1965);
- (ii) any building society registered under section 4 of the Building Societies Act, 1986 (Act 2 of 1986);
- (iii) any insurer registered under section 4 of the Insurance Act, 1943 (Act 27 of 1943)."

Substitution of section 21 of Act 30 of 1941.

17. The following section is hereby substituted for section 21 of the principal Act:

"Discharge from liability in respect of moneys due to accident fund.

21. (1) Subject to subsection (2), no person shall be discharged from liability in respect of any moneys due to the accident fund without the authorization of the Commission.

(2) If the moneys so due exceed the sum of N\$5 000, the Commission shall only authorize such discharge from liability with the prior approval of the Minister."

Substitution of section 22 of Act 30 of 1941, as amended by section 5 of Act 11 of 1974, section 7 of Act 29 of 1984 and section 12 of Proclamation 45 of 1990.

18. The following section is hereby substituted for section 22 of the principal Act:

"Accounting responsibility.

22. (1) The executive officer shall be the accounting officer of the Commission, and as such shall be charged with the responsibility of accounting for all moneys received, the utilization thereof and the use and care of the property of the Commission.

(2) The accounting officer shall cause such records of account to be kept as are necessary to represent fairly the state of affairs and business of the

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Commission and the funds established by this Act and to explain the transactions and financial position of the Commission and such fund.

(3) The Auditor-General shall audit the books of account, accounting statements and annual financial statements of the Commission and the said funds and shall submit a copy of his or her report on such audit to the Commission.

(4) The Commission shall furnish the Minister with such information as the Minister may call for from time to time in connection with the activities and financial position of the Commission and the said funds and shall as soon as practicable after the end of each financial year, submit to the Minister in respect of the financial year concerned, copies of -

- (a) the audited balance sheet and profit and loss accounts and the report of the Auditor-General; and
- (b) a report by the Commission on its activities during that financial year.

(5) The financial statements and reports submitted to the Minister in terms of subsection (1), shall be tabled in the National Assembly by the Minister within 30 days after receipt thereof, if Parliament is then in ordinary session, or, if Parliament is not then in ordinary session, within 14 days after the commencement of its next ordinary session.”

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“Exemption
from income
tax.”

23. No tax on income shall be payable by the Commission in respect of any fund established by this Act.”.

Substitution of section 24 of Act 30 of 1941, as amended by section 7 of Act 36 of 1949 and section 6 of Act 51 of 1956.

20. The following section is hereby substituted for section 24 of the principal Act:

“Review of
compensation
by Commis-
sion.”

24. (1) The Commission may at any time, but only after the person concerned has been notified and granted an opportunity to be heard, review any compensation granted and payable to any person in terms of this Act if -

- (a) upon the request of the Commission, he or she refuses or fails without sufficient cause to submit himself or herself to a medical examination;
- (b) he or she has become -
 - (i) addicted to intoxicating liquor or any dependence-producing substance or uses such liquor or substance excessively;
 - (ii) mentally or physically disabled to such extent that he or she is unable to care for himself or herself;
- (c) (i) he or she refuses or fails without sufficient cause to submit himself or herself to medical or surgical treatment when considered necessary by the Commission; and
 - (ii) in the opinion of the Commission, such refusal or failure is prolonging or aggravating the condition as a result of which the compensation has been granted to such person;

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(d) such compensation, if payable by way of instalments has, due to altered circumstances become either insufficient or excessive to meet the circumstances of the case;

(e) such compensation, due to mistake or misrepresentation, has been incorrectly granted or granted in a wrong amount.

(2) The proceedings relating to the review of compensation shall be in the form of a formal hearing conducted *mutatis mutandis* in accordance with section 56.

(3) The Commission may, at the conclusion of the review proceedings -

(a) confirm the compensation referred to in subsection (1) or increase, decrease, cancel, recover or substitute such compensation;

(b) pay the compensation to any other person to administer it on behalf of the person concerned; or

(c) take any such other steps as the Commission may deem fit."

Substitution of section 25 of Act 30 of 1941, as amended by section 9 of Act 27 of 1945, section 8 of Act 36 of 1949, section 7 of Act 51 of 1956 and substituted by section 13 of Proclamation 45 of 1990.

21. The following section is hereby substituted for section 25 of the principal Act:

"Appeals
against
decisions of
Commission.

25. (1) Any person aggrieved by any decision of the Commission taken in the performance of the Commission's functions in terms of this Act may, within a period of 60 days from the date upon which he or she was notified of such decision, appeal by notice in the prescribed form against such decision to the Labour Court established by section 15(1)(a) of the Labour Act, 1992 (Act 6 of 1992).

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(2) The Labour Court may, on good cause shown, allow an appeal to be noted in terms of subsection (1) notwithstanding the expiry of the said period of 60 days.

(3) An appeal to the Labour Court in terms of this section shall be subject to the provisions of the Labour Act, 1992, and its regulations and such appeal shall, for the purposes of that Act, be deemed to be an appeal from a district labour court established by section 15(1)(b) of that Act."

Substitution of section 26 of Act 30 of 1941, as substituted by section 14 of Proclamation 45 of 1990.

22. The following section is hereby substituted for section 26 of the principal Act.

"Commission may state a case for Labour Court.

26. (1) (a) The [**commissioner**] **Commission** [**or the chairman of a revision board**] may of [**his**] its own motion or at the request of an interested party to any proceedings in terms of this Act, state a special case on any question of law in connection with any matter arising in such proceedings, for the decision of the [**Supreme Court of South West Africa**] Labour Court established by section 15(1)(a) of the Labour Act, 1992.

(b) Every interested party shall have the right to appear in person or by counsel at the hearing of such special case.

(2) In any case so stated the [**commissioner or the chairman of the revision board**] Commission shall set forth -

(a) the facts which were established; and

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(b) the view of the law which **[he]** it has adopted in relation to those facts.

(3) Whenever the **[commissioner]** Commission **[or the chairman of a revision board]** has any doubt as to the correctness of any decision given by the **[Supreme Court]** Labour Court on any question of law in connection with this Act, **[he]** it may submit that decision to the **[Appellate Division of the]** Supreme Court of [South Africa] Namibia and cause the matter to be argued before it, in order that it may determine the said question for future guidance of all courts.”.

Substitution of section 30 of Act 30 of 1941, as substituted by section 2 of Act 98 of 1969 and amended by section 15 of Proclamation 45 of 1990.

23. The following section is hereby substituted for section 30 of the principal Act:

“Compensation of employee entitled to pension to which employer contributes.

30. If **[a workman]** an employee other than **[a workman in the government service]** a person who is an employee or officer as defined in section 1 of the Public Service Act, 1980 (Act 2 of 1980), who is entitled to compensation under this Act in respect of an accident, has received or will receive as compensation in respect of the same accident any pension or gratuity payable by the employer, or from a pension, superannuation or provident fund to which the employer has contributed, the **[commissioner]** Commission may in **[his]** its discretion, in determining the amount of the compensation to be awarded, have regard to any amount paid by the employer by way of such pension or gratuity or towards such fund in respect of such **[workman]** employee, and where the compensation is payable out of the accident fund the **[commissioner]** Commission may reduce the assessment payable by the employer.”.

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Amendment of section 33 of Act 30 of 1941, as amended by section 11 of Act 51 of 1956 and section 33 of Proclamation 45 of 1990.

24. Section 33 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A court convicting an employer under subsection (1) shall in addition to imposing any lawful criminal penalty upon him or her, order that, within a fixed period and in instalments or otherwise, as determined by the court, he or she [pay] pays to an officer of the [government] public service specified by the court any amount in respect of which he or she has been convicted.”.

Repeal of section 34 of Act 30 of 1941, as amended by section 11 of Act 36 of 1949, section 12 of Act 51 of 1956 and section 3 of Act 21 of 1964.

25. Section 34 of the principal Act is hereby repealed.

Amendment of section 40 of Act 30 of 1941, as amended by section 20 of Act 27 of 1945, section 16 of Act 36 of 1949, section 15 of Act 51 of 1956, section 6 of Act 7 of 1961, section 4 of Act 58 of 1967, section 8 of Act 11 of 1974, section 7 of Act 28 of 1977, section 5 of Act 24 of 1981, section 14 of Act 29 of 1984 and section 4 of Act 35 of 1987.

26. Section 40 of the principal Act is hereby amended -

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

“(a) If the [workman] employee leaves as a dependant a [widow or invalid widower] surviving spouse and no children, a lump sum not exceeding twice the [workman's] employee's monthly earnings of [R840] NS\$ 500, whichever is the lesser, or, as from a date fixed by the Minister by notice in the *Gazette*, such higher amount as the Minister may determine in such notice, but not exceeding twice the [workman's] employee's monthly earnings, whichever is the lesser, and a monthly pension equal to [forty] 40 per cent of the pension which would have been granted to the [workman] employee if totally and permanently disabled, under section 39(1)(c).

(b) If the [workman] employee leaves as dependants, a [widow or invalid widower] surviving spouse and one or more children, compensation to the [widow or invalid widow] surviving spouse calculated in terms of paragraph (a) and in respect of the children compensation calculated in terms of para-

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graph (c): Provided that the pensions payable under this paragraph shall not in all exceed the pension which would have been awarded to the **[workman]** employee, if totally and permanently disabled, under paragraph (c) of subsection (1) of section **[thirty-nine]** 39, and any reduction under this proviso shall be allocated in such manner as the **[commissioner]** Commission may from time to time determine.”;

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

“(iii) where **[a workman]** an employee does not leave as a dependant a **[widow or an invalid widower]** surviving spouse the aggregate amount of the pensions payable in terms of this paragraph may, in the discretion of the **[commissioner]** Commission, and subject to revision by **[him]** it from time to time, be increased by an amount not exceeding the pension which would have been payable to **[a widow or invalid widower]** a surviving spouse under paragraph (a);”;

- (c) by the substitution for subsection (4) of the following subsection:

“(4) (a) The pension payable to a **[widow or invalid widower]** surviving spouse under this section shall cease if he or she dies.

(b) The provisions of subparagraphs (iii), (iv), (v) and (vi) of the proviso to paragraph (c) of subsection (1) shall *mutatis mutandis* apply in the case of the death of a **[widow or invalid widower]** surviving spouse.”;

- (d) by the substitution for subsection (5) of the following subsection:

“(5) In this section **[“widow”]** “surviving spouse” includes a **[woman]** person referred to in paragraph (b) of subsection (1) of section **[four]** 4.”.

