

Employees' Compensation Amendment Act, 1995



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Amends [Employees' Compensation Act, 1941](#)



GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

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WINDHOEK — 1 March 1995

No. 103

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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.

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;";

* Commission means the Social Security Commission established by section 7 of the Social Security Act, 1993.
(b) by the substitution for the definition of "accident fund" of the following definition:
" 'accident fund' means the fund established by section 64 and includes, for the purposes of sections 64(1)(d) and 67, the accident pension fund established by section 65bis;";
(c) 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;";
(d) 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;";

(c) by the deletion of the definition of "fixed date";
(d) by the deletion of the definition of "government service";
(e) by the insertion after the definition of "medical practitioner" of the following definition:
"Minister" means the Minister of Labour and Human Resources Development;
(f) by the substitution for the definition of "natural resources" of the following definition:

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"fixed date" means the fixed date, referred to in section 1 of the Territorial Sea and Exclusive Economic Zone of Namibia Act, 1992;
(e) by the insertion after the definition of "principal" of the following definition:
"public officer" means a public officer as defined in section 1 of the Public Service Act, 1988 (Act 108 of 1988);
(f) by the deletion of the definition of "trade union";
(g) by the substitution for the definition of "trade union" of the following definition:
"trade union" means a trade union registered under section 1 of the Labour Act, 1992;
3. Section 1 of the principal Act is hereby amended:
(a) by the substitution for paragraph (b) of subsection (1) of the following paragraph:
"No person is liable of personal liability from the scope of this Act in the performance of his or her duties as an employee of the Government of Namibia or any institution or body established or created by or on behalf of the Government of Namibia or any institution or body established or created by or on behalf of the Government of Namibia";
(b) by the substitution for paragraph (c) of subsection (1) of the following paragraph:
"No director of the South West African Broadcasting Corporation, or any institution or body established or created by or on behalf of the Government of Namibia, is liable of personal liability from the scope of this Act in the performance of his or her duties as an employee of the Government of Namibia or any institution or body established or created by or on behalf of the Government of Namibia";

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(d) paragraph (d) of the definition of "employee" is hereby amended to read as follows:
(d) by the deletion of paragraph (d) of subsection (1) of the following paragraph:
"No person is liable of personal liability from the scope of this Act in the performance of his or her duties as an employee of the Government of Namibia or any institution or body established or created by or on behalf of the Government of Namibia";
(e) by the deletion of paragraph (e) of subsection (1) of the following paragraph:
"No director of the South West African Broadcasting Corporation, or any institution or body established or created by or on behalf of the Government of Namibia, is liable of personal liability from the scope of this Act in the performance of his or her duties as an employee of the Government of Namibia or any institution or body established or created by or on behalf of the Government of Namibia";
(f) if there is an employer, the employer shall be liable for the compensation payable to the employee in the event of his or her death or permanent disability, as if the employer were the employer of the employee at the time of the death or permanent disability;

- (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.”.

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;

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.

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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).

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 necessities 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 necessities 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.”

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.

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**EMPLOYEES COMPENSATION
AMENDMENT ACT, 1995**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 amended
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;

(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."

Substitution of section 23
of Act 30 of 1941.

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

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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 ~~it~~ it has adopted in relation to those facts.

(3) Whenever the ~~[commissioner]~~ [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, ~~it~~ 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]~~ [commissioner] Commission may in ~~[its]~~ 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]~~ [workman] employee, and where the compensation is payable out of the accident fund the ~~[commissioner]~~ [commissioner] Commission may reduce the assessment payable by the employer.”

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 NS1 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.”.

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Amendment of section 43 of Act 30 of 1941, as amended by section 22 of Act 27 of 1945, section 19 of Act 36 of 1949, section 16 of Act 51 of 1956, section 5 of Act 9 of 1970, section 2 of Act 8 of 1979, section 16 of Act 29 of 1984 and section 19 of Proclamation 45 of 1990.

27. Section 43 of the principal Act is hereby amended by the deletion of subsections (3) *bis* and (4).

Amendment of section 46 of Act 30 of 1941, as amended by section 21 of Act 36 of 1949.

28. Section 46 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) paid to [a] the Master of the [Supreme] High Court of Namibia, a trustee or other person to be used subject to such conditions as may be imposed by the [commissioner] Commission;”.

Substitution of section 56 of Act 30 of 1941.

29. The following section is hereby substituted for section 56 of the principal Act:

“Formal hearing.

56. (1) Upon receipt of any claim under section 54, the Commission shall, after making such enquiries as it may deem necessary, consider and determine such claim in the prescribed manner: Provided that if the Commission considers a formal hearing necessary, it shall conduct such hearing in terms of the provisions of this section.

(2) The proceedings at such hearing shall, in so far as is practicable, be minuted verbatim and the minutes of such hearing shall be certified by the members of the Commission present at such meeting as being a true and accurate account of the evidence given at such hearing, the exhibits presented and the decision of the Commission.

(3) The minutes referred to in subsection (2) shall be kept for a period of at least five years in safe-custody by the executive officer and shall for the purposes of an appeal in terms of section 25 be *prima facie* proof of the proceedings at such hearing and the decisions taken by the Commission as a result of such hearing.

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(4) Any person in respect of whom a hearing is to be held shall be notified in writing of such hearing at least 21 days before the date of commencement of such hearing by the delivery to such person of a notice in the prescribed form informing such person of the intended formal hearing and the subject-matter thereof and obtaining from him or her an acknowledgement stating the place, date and time of receipt of the notice.

(5) Service of a notice in terms of subsection (4) shall be performed by -

- (a) any person designated for such purpose by the executive officer; or
- (b) any member of the Namibian Police Force designated for that purpose by the Inspector-General of the Namibian Police Force.

(6) In the event of the person designated in terms of subsection (5) certifying that the person upon whom the notice is to be served -

- (a) cannot be traced;
- (b) refuses to accept such notice; or
- (c) refuses to sign the required acknowledgement of receipt,

the executive officer may send such notice by registered letter to such person at his or her address as it appears in the records of the Commission.

(7) A notice sent by registered post shall be sent not less than 14 days prior to the date of the intended formal hearing.

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(8) If the person served with a notice in terms of subsection (4) or to whom a notice has been sent in terms of subsection (6) is not present at the commencement of the formal hearing, the Commission may conduct such hearing in the absence of such person.

(9) For the purpose of a formal hearing the Commission may summon witnesses to appear at the specified place, date and time to give evidence before and to submit to the Commission any document, book, record or thing relevant to such hearing.

(10) A summons contemplated in subsection (9) shall be substantially in the prescribed form and signed by the executive officer and shall be served either by registered letter or in the same manner as it would have been served if it were a subpoena issued by a magistrate's court.

(11) Any person who, having been duly summoned -

- (a) refuses, or without sufficient cause fails, to attend the formal hearing in question at the place, date and time specified in the summons;
- (b) refuses to take the prescribed oath or to make an affirmation when required to do so by the person presiding at such hearing;
- (c) leaves such hearing without the permission of the person presiding at such hearing, whether or not such person has given evidence;
- (d) refuses to give evidence at the enquiry or refuses to answer

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fully and satisfactorily to the best of his or her knowledge and belief any question lawfully put to him or her or refuses to produce any document, book, record or thing which such person has in terms of the summons been required to produce,

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$2 000 or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(12) Every person summoned in terms of subsection (9) shall be entitled to all the privileges to which a witness subpoenaed to give evidence before the High Court is entitled.

(13) Any member, person or employer referred to in subsection (1) and who has been notified of a formal hearing shall, if he or she is present at such hearing, have the right, by himself or herself or through a representative referred to in section 59, to be heard at such hearing, and for such purpose -

- (a) to give evidence under oath or affirmation;
- (b) to call witnesses to testify on his or her behalf;
- (c) to submit any document, book, record or any other thing relevant to the inquiry;
- (d) to examine any witness testifying against him or her.

(14) The Commission may appoint a person with adequate experience in the practice of law to be present at any

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formal hearing and to advise the Commission on matters of law, procedure or evidence.

(15) For the purpose of the computation of any period referred to in subsections (4) and (7), no Saturday, Sunday or public holiday referred to in, or declared under, section 1 of the Public Holidays Act, 1991 (Act 26 of 1991), shall be regarded as a day contemplated in those subsections.

(16) Any person notified or summoned to appear before the Commission may, if the Commission is satisfied that he or she has by reason of such appearance suffered pecuniary loss or been put to any expense, be paid out of the fund concerned the prescribed allowances, or the amount of such loss and expense, whichever is the lesser.

(17) The person in respect of whom a formal hearing was held shall, within 30 days after the completion of such hearing, be notified of the Commission's finding in the matter and of the steps (if any) which the Commission intends to take.

(18) Any person who gives false evidence under oath or affirmation at a formal hearing in terms of this section knowing such evidence to be false, shall be guilty of an offence and on conviction be liable to the penalties prescribed by law for the crime of perjury.

Repeal of section 57 of
Act 30 of 1941.

30. Section 57 of the principal Act is hereby repealed.

Repeal of section 58 of
Act 30 of 1941.

31. Section 58 of the principal Act is hereby repealed.

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Substitution of section 59 of Act 30 of 1941, as amended by section 25 of Act 27 of 1945 and section 21 of Proclamation 45 of 1990.

32. The following section is hereby substituted for section 59 of the principal Act:

"Representa-
tion.

59. (1) Every party to a formal hearing shall be entitled to appear before the Commission in person and to represent himself or herself or to be represented by -

- (a) any member of his or her family;
- (b) any person in his or her regular employ;
- (c) a legal practitioner;
- (d) if such person is an employee, an officer of the trade union of which he or she is a member;
- (e) if such person is an employer, an officer of the employers' organization of which he or she is a member;
- (f) any other prescribed person; or
- (g) with the written approval of the Commission, any other person.

(2) No person other than a legal practitioner may, subject to subsection (3), recover from any person any fees or disbursements in respect of a representation in terms of subsection (1).

(3) Notwithstanding subsection (2), any person representing any other person before the Commission other than a legal practitioner may, with the approval of the Commission, recover from the person on whose behalf he or she so appears, the reasonable expenses incurred by such person relating to such representation.

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(4) The fees and disbursement which may be recovered in terms of subsection (2) or (3) and the taxation of such fees and expenses by the Commission, shall be as may be prescribed.

(5) No person shall recover or attempt to recover any fees or expenses from any other person unless such fees or expenses have been taxed by the Commission.

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

(7) Subsection (5) shall not be so construed as to prohibit a legal practitioner who is an attorney to receive from or on behalf of any person which he or she, or a legal practitioner who is an advocate instructed by him or her, has to represent, an amount of money being an estimate of the fees and disbursements to be incurred relating to such representation, and to retain such money in trust pending the taxation of the fees and expenses actually incurred.

(8) For the purposes of this section "legal practitioner" means any person enroled as an advocate in terms of the Admission of Advocates Act, 1964 (Act 74 of 1964), or admitted to practise as an attorney in terms of the Attorneys Act, 1979 (Act 53 of 1979)."

Amendment of section 63 of Act 30 of 1941, as amended by section 10 of Act 28 of 1977 and section 22 of Proclamation 45 of 1990.

33. Section 63 of the principal Act is hereby amended by the substitution for the proviso to subsection (2) of the following proviso:

"Provided that the [**Commissioner**] Commission is satisfied [**after consultation with the assessors concerned (if any)**] that the benefits under such scheme are more favourable to the [**workman**] employee than the benefits under this Act."

Amendment of section 64 of Act 30 of 1941, as amended by section 23 of Proclamation 45 of 1990.

34. Section 64 of the principal Act is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"(2) The Fund shall be a juristic person."

Amendment of section 65 of Act 30 of 1941, as amended by section 2 of Act 5 of 1951.

35. Section 65 of the principal Act is hereby amended -

(a) by the insertion of the following paragraph after paragraph (a) of subsection (1):

"(aA) the payment of expenses referred to in section 20(6);"

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

"(b) the creation and maintenance of a reserve fund and accident pension fund in cash or investments, or both;"; and

(c) by the deletion of paragraphs (e) and (f) of subsection (1).

Insertion of section 65 *bis* in Act 30 of 1941.

36. The following section is hereby inserted after section 65 of the principal Act:

"Establishment of accident pension fund.

65bis. (1) On the date of commencement of the Employees' Compensation Amendment Act, 1994, a fund, to be known as the accident pension fund, shall be established.

(2) The Fund shall be a juristic person.

(3) The Fund shall consist of moneys transferred from the accident fund, being the capitalized value of any pension payable in terms of sections 39 and 40 as determined from time to time by the Commission on the advice of an actuary appointed by the Commission.

(4) The Fund shall be applied by the Commission for the payment of any pension referred to in subsection (3)."

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AMENDMENT ACT, 1995**Amendment of section 66
of Act 30 of 1941.

37. Section 66 of the principal Act is hereby amended by the addition of the following subsection:

“(3) The Fund shall be a juristic person.”.

Substitution of section 67
of Act 30 of 1941.

38. The following section is hereby substituted for section 67 of the principal Act:

“Valuation of
funds.

67. The assets of the accident fund shall be valued and its liabilities determined -

(a) during the first three financial years after the commencement of the Employees' Compensation Amendment Act, 1994, once in every such financial year;

(b) thereafter, at such times as may be considered necessary by the Commission but not less than once every three years,

by an actuary appointed by the Minister in order to determine the sufficiency of such fund.”.

Amendment of section 68
of Act 30 of 1941, as
amended by section 11 of
Act 7 of 1961 and section 7
of Act 9 of 1970.

39. Section 68 of the principal Act is hereby amended by the insertion of the following subsection after subsection (1):

“(1)bis Notwithstanding the provisions of subsection (1), the Commission may exempt any class of employers from the provisions of this section.”.

Amendment of section 69
of Act 30 of 1941, as
amended by section 26 of
Act 27 of 1945, section 12
of Act 7 of 1961 and section 8
of Act 9 of 1970.

40. Section 69 of the principal Act is hereby amended -

(a) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that the [commissioner] Commission may, and, in the case of an employer exempted in terms of section 68(1)bis, shall -

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- (i) in respect of any employer or class of employers adopt such alternative method of assessment as [he] it may deem necessary; or
- (ii) levy a minimum assessment on any employer.”;

- (b) by the substitution for subsection (3) of the following subsection:

“(3) In estimating the rates of assessments deemed to be necessary for the requirements of the accident fund, the [commissioner] Commission shall make provision for the capitalized value of pensions to be transferred to the accident pension fund in terms of section 65 bis (3), and any other liabilities due or likely to become due in respect of accidents during the year of assessment.”.

Substitution of section 70 of Act 30 of 1941, as amended by section 13 of Act 7 of 1961, section 2 of Act 27 of 1970, section 11 of Act 11 of 1974 and section 20 of Act 29 of 1984 and substituted by section 24 of Proclamation 45 of 1990.

- 41. The following section is hereby substituted for section 70 of the principal Act:

“State exempted from assessment.

70. No assessment for the benefit of the accident fund shall be payable by the State [including a **Representative Authority as defined in section 1 of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980)**] in respect of [workmen] employees in the employ of [any department established under section 3(1) of the Government Service Act, 1980 (Act 2 of 1980)] the public service.”.

Amendment of section 72 of Act 30 of 1941.

- 42. Section 72 of the principal Act is hereby amended by the addition of the following subsection:

“(3) Notwithstanding the provisions of subsection (1), the Commission may in respect of any class of employers adopt such alternative method of payment of assessments as it may deem necessary.”.

Amendment of section 73 of Act 30 of 1941, as amended by section 27 of Act 27 of 1945 and section 11 of Act 28 of 1977.

- 43. Section 73 of the principal Act is hereby amended by the substitution for subsection (5) of the following subsection:

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“(5) For the purpose of this section “compensation” includes the cost of medical aid and any amount paid or payable in terms of section 40(2), 44 or 76(2), and in the case of a continuing liability, also the capitalized value, as determined by the **[commissioner]** Commission from time to time on the advice of an actuary appointed by it, of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.”.

Amendment of section 74 of Act 30 of 1941, as amended by section 28 of Act 27 of 1945, section 20 of Act 51 of 1956, section 12 of Act 28 of 1977 and section 25 of Proclamation 45 of 1990.

44. Section 74 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) For the purpose of this section “compensation” includes the cost of medical aid and any amount paid or payable in terms of section 40(2), 44 or 76(2), and in the case of a continuing liability, also the capitalized value, as determined by the **[commissioner]** Commission from time to time on the advice of an actuary referred to in section 73(5), of the pension (irrespective of whether a lump sum is at any time paid in lieu of the whole or a portion of such pension in terms of section 49), periodical payment or allowance, as the case may be, which constitutes the liability.”.

Amendment of section 77 of Act 30 of 1941, as amended by section 29 of Act 27 of 1945, section 27 of Act 36 of 1949, section 22 of Act 51 of 1956 and section 9 of Act 9 of 1970.

45. Section 77 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(a) notwithstanding anything to the contrary in this section contained, from time to time after consultation with the **Medical [Association of South Africa] Board** established by section 2 of the Medical and Dental Professions Act, 1993 (Act 21 of 1993), by notice in the *Gazette* issue instructions whereby it shall, in such cases and in such circumstances as may be specified in the instructions, be obligatory that medical aid referred to in this section shall be received in an institution to be determined in accordance with such directions and which is controlled by the **[commissioner]** Commission or by or under any body, organization or scheme referred to in section 14(2), to which the **[commissioner]** Commission grants or granted financial assistance.”.

Amendment of section 78 of Act 30 of 1941, as amended by section 28 of Act 36 of 1949.

46. Section 78 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The [commissioner] Minister may after consultation with the Commission and the Medical [Association of South Africa] Board referred to in section 77(6), make regulations for the submission to the [commissioner] Commission, without additional charge, of reports from time to time by medical practitioners who have attended or been consulted in respect of [workmen] employees injured by accident or who contracted a scheduled disease in the course of their employment.”

Amendment of section 79 of Act 30 of 1941, as amended by section 30 of Act 27 of 1945 and section 29 of Act 36 of 1949 and substituted by section 23 of Act 29 of 1984.

47. Section 79 of the principal Act is hereby amended by the substitution for the proviso to that section of the following proviso:

“Provided that the tariff of fees for medical aid affecting the Medical [Association of South Africa] Board referred to in section 77(6) and the Dental [Association of South Africa] Board established by section 2 of the Medical and Dental Professions Act, 1993, respectively, shall be fixed after consultation with those [associations] Boards.”

Substitution of section 81bis of Act 30 of 1941, as inserted by section 30 of Act 36 of 1949.

48. The following section is hereby substituted for section 81bis of the principal Act:

“Consultation with Medical Board and Dental Board.

81bis. The Commission may from time to time consult the Medical Board referred to in section 77(6) and the Dental Board referred to in the proviso to section 79 on questions connected with or arising out of the administration of the provisions of this Act relating to medical aid, and may for that purpose communicate to the said Boards any information in the Commission's possession relating to any matter in respect of which the views of those Boards are required.”

Amendment of section 96 of Act 30 of 1941, as amended by section 34 of Act 36 of 1949, section 10 of Act 9 of 1970 and section 28 of Act 29 of 1984.

49. Section 96 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Every person not resident in [the Republic] Namibia who, and every corporate body not registered in

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[the Republic] Namibia under the law relating to companies or closed corporations, as the case may be, which carries on business in [the Republic] Namibia or engages, in, on or above the continental shelf, in activities in connection with surveys, research, prospecting or exploitation of natural resources and in connection therewith employs [a workman] an employee, shall notify the [commissioner] Commission of the address of his or her or its chief office and of the name of his or her or its chief officer in [the Republic] Namibia, and such officer shall be authorized and required to perform the duties of an employer as provided by this Act, and shall accept service of any document issued under this Act which affects such person or body.”.

Substitution of section 102 of Act 30 of 1941, as amended by section 35 of Act 36 of 1949.

50. The following section is hereby substituted for section 102 of the principal Act:

“Restrictions in respect of compensation payable in terms of Act.

102. (1) Notwithstanding the provisions of any other law, but subject to the Maintenance Act, 1963 (Act 23 of 1963), and the Income Tax Act, 1981 (Act 24 of 1981), no compensation payable in terms of this Act, or any right to such compensation, shall be capable of being assigned, transferred, ceded, pledged or hypothecated, or be liable to attachment or any form of execution under any judgement or order of any court of law.

(2) If a person who is entitled to compensation in terms of this Act, assigns, transfers, cedes, pledges or hypothecates such benefit or any right to such benefit, or attempts to do so, the Commission may withhold, suspend or cancel payment of such compensation.

(3) No compensation payable to or received by any person in terms of this Act shall -

(a) in any civil proceedings against him or her be included in his or her income or means;

- (b) in the event of the sequestration of his or her estate, form part of the assets of his or her insolvent estate.”.

Substitution of section 104 of Act 30 of 1941, as amended by section 36 of Act 36 of 1949 and section 9 of Act 24 of 1981.

51. The following section is hereby substituted for section 104 of the principal Act:

*Evidence.

104. (1) Every record of a decision or award made by the [commissioner] Commission and every copy or reproduction (whether obtained by micro-filming or any other process) of, or extract from, an entry in any book or record kept by the [commissioner] Commission, and of any document filed with the [commissioner] Commission, purporting to be certified by the [commissioner] executive officer to be a true copy or reproduction or extract shall upon production be received in any court as *prima facie* evidence of the matters so certified without proof of the [commissioner's] executive officer's signature.

(2) In any proceedings under this Act, or in any court, an affidavit purporting to be made by the [commissioner] executive officer, or by a person authorized under subsection [(1)] (2) of section [seventeen] 17 in respect of any matter investigated by him or her in terms of such authorization, in which it is stated -

- (a) that any person or body of persons is an employer, principal, contractor, [workman] employee or dependant under this Act;
- (b) that any person is or has been lawfully required under this Act to pay any amount to the [commissioner] Commission, or to [a workman] an employee or other person named in the affidavit; or

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(c) that any amount referred to in paragraph (b), or any portion thereof had or had not been paid on a date specified in the affidavit,

and an affidavit purporting to be made by the [commissioner] executive officer or a person to whom powers have been delegated under [subsection (3) of section *twelve*]section 108, and in which it is stated that any decision has been taken by the [commissioner] Commission or has been taken by such person in pursuance of the powers so delegated to him or her, as the case may be, shall on its mere production in those proceedings by person, but subject to the provisions of subsection (3), be *prima facie* proof of the facts stated therein.

(3) The person presiding over the proceedings in which any document referred to in subsection (1) or affidavit referred to in subsection (2) is adduced in evidence, may cause the [commissioner] executive officer or the person making the affidavit, as the case may be, to be subpoenaed to give oral evidence, or may cause written interrogatories to be submitted to him or her for reply and such interrogatories and any reply on oath purporting to be a reply from such person shall in like manner be admissible as evidence in such proceedings.”.

Substitution of section 105 of Act 30 of 1941, as amended by section 21 of Act 7 of 1961 and substituted by section 29 of Act 29 of 1984.

52. The following section is hereby substituted for section 105 of the principal Act:

“Penalties.

105. Any person found guilty of an offence under this Act shall, unless otherwise provided, on conviction be liable to a fine not exceeding NS4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.”.

Amendment of section 106 of Act 30 of 1941, as amended by section 37 of Act 36 of 1949, section 30 of Act 29 of 1984 and sections 46 and 47 of Act 97 of 1986.

53. Section 106 of the principal Act is hereby amended by the substitution for paragraph (c) of the following paragraph:

“(c) whereby compensation awarded in the territory of any such country to persons resident or becoming resident in **[the territory] Namibia**, may be transferred to and administered by the **[commissioner] Commission**, and whereby compensation awarded under this Act to persons resident or becoming resident in the territory of any such country may be transferred to and administered by a competent authority in that territory.”.

Amendment of section 107 of Act 30 of 1941, as amended by section 29 of Act 51 of 1956, section 31 of Act 29 of 1984, section 46 of Act 97 of 1986 and section 31 of Proclamation 45 of 1990.

54. Section 107 of the principal Act is hereby amended -

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

“(a) the place of meeting and the procedure to be followed at any meeting of the **[commissioner and assessors or at any proceeding under this Act with which assessors are concerned] Commission**, or at any investigation under this Act;”;

(b) by the repeal of paragraph (h) of subsection (1).

Insertion of section 108 in Act 30 of 1941.

55. The following section is hereby inserted after section 107 of the principal Act:

“Delegation. **108. (1) The Minister may, on such conditions as he or she considers appropriate, delegate in writing to the Commission or to the Permanent Secretary: Labour and Human Resources Development, any power conferred upon him or her, excluding the powers conferred by sections 78(2) and 107.**

(2) The said Permanent Secretary may, on such conditions as he or she considers appropriate and with the approval of the Minister, delegate to any officer in the Ministry of Labour

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and Human Resources Development any power conferred upon or delegated to him or her.

(3) The Commission may, on such conditions as it considers appropriate, delegate to any committee established in terms of section 11 of the Social Security Act, 1994, the executive officer or any other employee of the Commission or any authorised person referred to in section 17, if he or she is not such an employee, any power conferred upon or delegated to it.

(4) The executive officer may, on such conditions as he or she considers appropriate and with the approval of the Commission, delegate to any employee of the Commission, any power conferred upon or delegated to the executive officer.

(5) No delegation shall prevent the exercise of the relevant power by the Minister, Permanent Secretary Commission or executive officer, as the case may be."

Substitution of section 110 of Act 30 of 1941.

56. The following section is hereby substituted for section 110 of the principal Act:

"Short title. 110. This Act shall be called the Employees' Compensation Act, 1941."

Substitution of certain words and expressions in Act 30 of 1941.

57. (1) The principal Act is hereby amended -

- (a) by the substitution for the word "Administrator-General", wherever it occurs, of the word "Minister";
- (b) by the substitution for the word "commissioner", wherever it occurs, of the word "Commission";
- (c) by the substitution for the expression "government service", wherever it occurs, of the expression "public service";

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- (d) by the deletion in the expression "*Official Gazette*", wherever it occurs, of the word "*Official*";
- (e) by the substitution for the expression "the territory", wherever it occurs other than in paragraph (c) of section 106, of the word "Namibia";
- (f) by the substitution for the word "workman", wherever it occurs, of the word "employee".

(2) Every reference in the principal Act to an amount of money expressed in rand, shall be construed as a reference to an amount of money expressed in Namibia dollar.

Transitional provisions.

58. (1) The Minister may, on or after the date of commencement of this Act, and in consultation with the Minister of Finance, transfer any assets, liabilities, rights and obligations of the State which were used in relation to or in connection with the Directorate: Social Security of the Ministry of Labour and Human Resources Development, to the Commission.

- (2) The registrar of deeds shall, in the case of -
 - (a) any asset referred to in subsection (1) consisting of immovable property which vests by virtue of that subsection in the Commission;
 - (b) any immovable property being held before the date of commencement of this Act by the Workmen's Compensation Commissioner in trust for the accident fund,

upon production to him or her of the deed of any such immovable property, endorse such deed to the effect that the immovable property described therein so vests in the Commission or is so being held by the Commission in trust, as the case may be, and shall make the necessary entries in his or her registers, and thereupon that deed shall serve and avail for all purposes as proof of the title of the Commission.

(3) No transfer duty, stamp duty or any other fee or charge shall be payable in respect of any endorsement or entry referred to in subsection (2).

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(4) Every officer or employee in the said Directorate: Social Security, shall have the right to enter, in terms of the provisions of section 12 of the said Social Security Act, 1994, and within a period of 30 days from the date of commencement of this Act, into the employment of the Commission on conditions of employment as determined by the Commission which are not less favourable than the conditions of employment which applied to such person before the date on which he or she so enters into employment.

(5) A person referred to in subsection (4) shall, until he or she exercises the right contemplated in that section or the said period of 30 days expires, whichever is the earlier, be deemed to be seconded to the Commission in terms of section 13(6) of the Public Service Act, 1980 (Act 2 of 1980).

(6) (a) The Minister may, until such time as the Commission has been properly constituted under section 4 of the said Social Security Act, 1994, exercise any power and perform any duty or function conferred or imposed in terms of the principal Act or any other law upon the Commission.

(b) Any power exercised or any duty or function performed by the Minister by virtue of the provisions of this subsection, shall be deemed to have been so exercised or performed by the Commission.

(7) Anything done before the commencement of this Act under any provision of the Workmen's Compensation Act, 1941, shall, except in so far as it is obviously inappropriate, be deemed to have been done under that provision as amended by any provision of this Act.

Short title and commencement.

59. (1) This Act shall be called the Employees' Compensation Amendment Act, 1995, and shall come into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

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