



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 132

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 99

1990

PROMULGATION OF ACT OF THE NATIONAL ASSEMBLY

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

~~No. 30 of 1990. Motor Vehicle Accidents Act, 1990.~~

MOTOR VEHICLE ACCIDENTS ACT, 1990

"lift club" means any club of which -

- (a) every member shall have a turn to convey or cause to be conveyed by means of a motor car the members of such club or other persons designated by such members to or from or to and from specified places for a specified purpose; or
- (b) every member is the owner of a motor car and of which one or some of its members shall by means of a motor car of which he or she is the owner, or they are the owners, as the case may be, convey or cause to be conveyed the members of such lift club or other persons designated by such members to or from a specific place for a specific purpose;

"Minister" means the Minister of Finance;

"motor car" means a motor vehicle designed or adapted for the conveyance of not more than 11 persons, including the driver;

"motor vehicle" means any vehicle designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity and includes a trailer, a caravan, an agricultural or any other implement designed or adapted to be drawn by such other vehicle;

"owner", in relation to -

- (a) a motor vehicle which a motor dealer has in his or her possession during the course of his or her business and which may in terms of any law on the licensing of motor vehicles not be driven or used on a public road except under the authority of a motor dealer's licence of which the motor dealer concerned is the holder, means that motor dealer;
- (b) a motor vehicle which has been received for delivery by a motor transport licence holder in the course of his or her business of delivering new motor vehicles and which has not yet been delivered by him or her, means that motor transport licence holder;

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(3) The financial year of the Fund shall run from 1 April of any year to 31 March of the following year: Provided that the first financial year of the Fund shall run from 21 March 1990 to 31 March 1991.

(4) The income of the Fund shall be exempt from income tax.

Levy on fuel for the benefit of the Fund for utilization for purposes of payment of claims for damages in consequence of motor vehicle accidents.

3. (1) The Minister of Mines and Energy, in consultation with the Minister of Finance, may by notice in the *Gazette* impose a levy for the benefit of the Fund on every litre fuel, distillate fuel or residual oil sold in Namibia.

(2) The notice referred to in subsection (1) -

(a) shall state the amount of the levy;

(b) shall specify the person who shall be responsible for the payment of the levy;

(c) shall specify the product referred to in subsection (1) in respect of which the levy shall be payable;

(d) shall specify the person charged with the collection of the levy;

(e) shall state the times when and the manner in which the levy shall be payable to the person charged with the collection of the levy, and by that person to the Fund;

(f) may prescribe that interest shall be payable, at the rate specified in the notice, on any levy received after the date on which such levy was payable.

(3) The notice referred to in subsection (1) may exempt, in part or in full, any person from any provision thereof: Provided that any such notice shall not contain any exemption from the payment of the levy, except to the extent and on such conditions as the Minister of Mines and Energy, in consultation with the Minister of Finance, may determine in respect of -

(a) petroleum products manufactured from raw materials produced in Namibia;

(d) shall, within 60 days after each audit, submit to the Minister audited balance sheets and the report of the auditor in respect of such audit together with a report on the Fund's activities during the financial year to which the audit relates; and

(e) shall exercise or perform the other powers, duties and functions conferred or imposed upon the Director or the Fund in terms of this Act and do all such other things as are incidental or conducive thereto.

(2) The accounts of the Fund shall be audited annually by a person registered as an accountant and auditor under the provisions of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), who shall annually be nominated by the Minister.

(3) The Director shall be assisted by officers in the Ministry of Finance designated by the Permanent Secretary for that purpose.

(4) The Fund shall reimburse the Government for services rendered to the Fund by persons in the service of the Government.

(5) The Minister shall lay upon the Table of the National Assembly a copy of the report referred to in paragraph (d) of subsection (1) within 30 days after the receipt thereof if the National Assembly is then in session or, if the National Assembly is not then in session, within 30 days after the commencement of its next ensuing session.

(6) Notwithstanding the provisions of subsection (1) and section 5(1), the Director may refer any claim contemplated in subsection (1) to any appointed agent to handle such claim subject to such general or special directions as the Director may give.

Appointment of agents.

5. (1) The Director shall, subject to the approval of the Minister, appoint as many agents as may apply for appointment, on such conditions as may be determined by mutual agreement, to investigate or settle, subject to the provisions of this Act, on behalf of the Fund claims

referred to in section 6 arising from the driving of a motor vehicle in the case where the identity of either the owner or the driver thereof has been established or to commence, conduct, defend or abandon legal proceedings in connection with such claims.

(2) The Director shall, upon approval by the Minister, cause the names of the said agents and the claims in respect of which those agents shall be liable, to be published in the *Gazette*.

Liability of Fund and appointed agent in respect of loss or damage unlawfully caused by the driving of motor vehicles.

(1) The Fund or its appointed agent, as the case may be, shall, subject to the provisions of this Act and on the prescribed conditions, be obliged to compensate any person for any loss or damage which he or she has suffered as a result of -

- (a) any bodily injury to himself or herself;
- (b) the death of or any bodily injury to any person,

in either case caused by or arising out of the driving of a motor vehicle by any person whomsoever on or after the commencement of this Act at any place within Namibia, if the injury or death is due to the negligence or other unlawful act of the person who drove the motor vehicle or the owner of the motor vehicle or his or her servant in the execution of his or her duties as such a servant.

(2) The provisions of subsection (1) shall not apply in respect of any loss or damage -

- (a) for which neither the driver nor the owner of the motor vehicle in question would have been liable if section 8 had not been enacted; or
- (b) suffered as a result of bodily injury to or the death of any person who, at the time of the occurrence which caused that injury or death -
 - (i) was being conveyed for reward on a motor vehicle which is a motor cycle; or
 - (ii) is a person referred to in section 7(1)(b) and a member of the household, or responsible in law for the maintenance, of the driver of

UNLAWFUL NEGLIGENCE

- (A) Med. exp.
- (B) Hosp. exp.
- (C) Loss of earnings
- (D) Loss of support
- (E) Future medical exp.
- (F) Loss of damages

Compensation is full for your loss or damage provided that you prove with negligence on the part of the driver

The Govt. employees, med, hosp. exp. loss of earnings are being covered by insurance with a liability assumed by product As
 The fund and exp. however are borne by govt.

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the motor vehicle in question, and was being conveyed in or upon the motor vehicle in question; or

- (c) if the claim in question has not been instituted and prosecuted by the claimant, or on behalf of the claimant by any person entitled to practise as an attorney in Namibia; or
- (d) where the claimant has entered into an agreement with any person other than the one referred to in paragraph (c) in accordance with which the claimant has undertaken to pay such person after settlement of the claim -
 - (i) a portion of the compensation of the claim; or
 - (ii) any amount in respect of an investigation or of a service rendered in respect of the handling of the claim otherwise than on instruction from a person mentioned in paragraph (c); or
- (e) suffered as a result of bodily injury to any person who -
 - (i) unreasonably refuses or fails to subject himself or herself, at the request of the appointed agent and at the cost of that agent to any medical examination or examinations by medical practitioners designated by the said agent; or
 - (ii) refuses or fails to furnish the appointed agent, at the agent's request and cost, with copies of all medical reports in his or her possession that relate to the relevant claim for compensation; or
 - (iii) refuses or fails to allow the appointed agent, at the agent's request, to inspect all records relating to himself or herself that are in the possession of any hospital or his or her medical practitioner; or
- (f) if the claimant concerned refuses or fails -

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(i) to submit to the appointed agent together with the prescribed claim form, or within a reasonable period thereafter and if he or she is in a position to do so, an affidavit in which particulars of the accident that gave rise to the claim in question are fully set out; or

(ii) to furnish the appointed agent with copies of all statements and documents relating to the accident that gave rise to the claim in question within a reasonable period after having come into possession thereof.

(3) The provisions of paragraph (a) of subsection (2) shall not be construed so as to exclude the liability of an appointed agent under subsection (1) in a case where the driver or owner of the vehicle is exonerated from liability merely by virtue of the provisions of section 7(a) of the Workmen's Compensation Act, 1941 (Act 30 of 1941).

(4) Where a claim for compensation under subsection (1) -

undertaking

(a) includes a claim for the costs of the future accommodation of any person in a hospital or nursing home or treatment of or rendering of a service or supplying of goods to such person, the Fund or the appointed agent, as the case may be, shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the appointed agent, as the case may be, to furnish such undertaking, to compensate the third party in respect of the said costs after the costs have been incurred and on proof thereof.

(b) includes a claim for future loss of income or support, the Fund or the appointed agent, as the case may be, shall be entitled, after furnishing the third party concerned with an undertaking to that effect or a competent court has directed the Fund or the appointed agent to furnish such an undertaking, to pay the amount payable in respect of the said loss, by instalments as agreed or ordered by such court.

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(5) Where a third party is entitled to compensation in terms of this section and has incurred costs in respect of accommodation of himself or herself or any other person in a hospital or nursing home or the treatment of or any service rendered or goods supplied to himself or herself or any other person, the person who provided the accommodation or treatment or rendered the service or supplied the goods may claim the amount direct from the Fund or the appointed agent, as the case may be, on a prescribed form, and such claim shall be subject, *mutatis mutandis*, to the provisions applicable to the claim of the third party concerned, and may not exceed the amount which the third party could, but for the provisions of this subsection, have recovered.

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(6) The Fund or, with the Permanent Secretary's approval, the appointed agent, as the case may be, may make an advance payment to the claimant out of the amount to be awarded in terms of subsection (1) to the claimant in respect of medical costs, loss of income and loss of support.

Limitation of liability.

7. (1) The liability of the Fund or the appointed agent, as the case may be, in connection with any one occurrence to compensate a third party for any loss or damage contemplated in section 6(1) which is the result of any bodily injury to or the death of any person who, at the time of the occurrence which caused that injury or death, was being conveyed in or on the motor vehicle concerned, shall be limited -

(a) to the sum of R25 000 in respect of any bodily injury to or death of any one such person who, at the time of the occurrence which caused that injury or death, was being conveyed in the motor vehicle in question -

(i) for reward; or

(ii) in the course of the business of the owner of that motor vehicle; or

(iii) in the case of an employee of the driver or owner of that motor vehicle, in respect of whom the provisions of subsection (2) do not apply, in the course of his or her employment as such an employee; or

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(iv) for the purposes of a lift club where that motor vehicle is a motor car; or

(b) in the case of a person who was being conveyed in the motor vehicle concerned under circumstances other than the circumstances referred to in paragraph (a), to the sum of R25 000 in respect of loss of income or of support and the costs of accommodation in a hospital or nursing home, treatment, the rendering of a service and the supplying of goods resulting from bodily injury to or the death of one such person, excluding the payment of compensation in respect of any other loss or damage,

but exclusive of the cost of recovering the said compensation.

(2) (a) Where the loss or damage contemplated in section 6(1) is suffered as a result of the bodily injury to or the death of an employee of the driver or owner of the motor vehicle in question and the third party is entitled to compensation under the Workmen's Compensation Act, 1941 (Act 30 of 1941), in respect of such bodily injury or death, the liability of the Fund or the appointed agent, as the case may be, in respect of the bodily injury to or the death of any one such employee shall be limited in total to the sum representing the difference between the amount which that third party could, but for the provisions of this paragraph, have claimed from the appointed agent or the amount of R25 000, whichever is the lesser, and any lesser amount to which that third party is entitled by way of compensation in terms of the said Workmen's Compensation Act, 1941.

(b) The provisions of paragraph (a) shall not be so construed -

(i) that the right of a person who is entitled to damages in terms of section 6 to recover any costs awarded to him or her in any judicial proceedings is affected;

(ii) that the Fund or its appointed agent is responsible in terms of the Workmen's Com-

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compensation Act, 1941, for the amount of the compensation to which any such person is entitled thereunder.

Claim lies against Fund or appointed agent only.

8. When a third party is entitled under section 6 to claim from the Fund or its appointed agent any compensation in respect of any loss or damage resulting from any bodily injury to or the death of any person caused by or arising out of the driving of a motor vehicle by the owner thereof or by any other person with the consent of the owner, that third party shall not be entitled to claim compensation in respect of that loss or damage from the owner or from the person who so drove the vehicle, or if that person drove the vehicle as a servant in the execution of his or her duty, from his or her employer, unless the Fund or its appointed agent is unable to pay the compensation.

Submission of information regarding motor accidents by owner or driver of motor vehicle.

9. (1) When, as the result of the driving of a motor vehicle, any person other than the driver of that motor vehicle has been killed or injured, the owner and the driver, if he or she is not the owner, of the motor vehicle shall (if reasonably possible, within 14 days after the occurrence) furnish the Director or an appointed agent on the prescribed form with particulars of the occurrence and also the prescribed statements.

(2) Any person who fails to comply with any provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine not exceeding R2 000 or, in default of payment, to imprisonment not exceeding 6 months, unless such person is unable to comply with that provision and his or her inability is not due to his or her own action or default.

(3) The appointed agent shall within 14 days after the third party has complied with the provisions of section 6(2)(f)(i), furnish that person or the representative of that person with a copy of the information and statements which the said owner or driver furnished in terms of subsection (1), as well as all statements which were obtained from witnesses to the occurrence.

Presumptions regarding driving of motor vehicles.

10. (1) For the purposes of this Act -

(a) a motor vehicle which is being propelled by any mechanical, animal or human power or by gravity or momentum shall be deemed to be driven by the person in control of the vehicle;

Covers not the ordinary passenger when it comes to general damages but etc

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(b) a person who has placed or left a motor vehicle at any place shall be deemed to be driving that motor vehicle while it moves from that place as a result of gravity, or while it is stationary at that place or at a place to which it moved from the first-mentioned place as a result of gravity;

(2) Whenever any motor vehicle has been placed or left at any place, it shall, for the purposes of this Act, be presumed, until the contrary is proved, that such vehicle was placed or left at such place by the owner of such vehicle.

Prescription of claims.

11. (1) Notwithstanding the provisions of any other law relating to prescription, but subject to the provisions of subsections (2) and (3), the right to claim compensation under section 6 from an appointed agent in respect of claims referred to in section 5(1) shall become prescribed upon the expiration of three years from the date upon which the claim arose.

(2) If a claim has been lodged in terms of section 12 before the expiry of the period referred to in subsection (1), such claim shall not become prescribed before the expiry of a period of five years from the date upon which the claim arose.

(3) Prescription of a claim instituted under sections 5(1) and 6 shall not run against -

(a) a minor;

(b) any person detained as a patient in terms of the provisions of the Mental Health Act, 1973 (Act 18 of 1973);

(c) a person under curatorship.

not legal unless because you are unable to appear.

(4) Notwithstanding the provisions of section 8 of the Workmen's Compensation Act, 1941 (Act 30 of 1941), any right under subsection (1)(b) of that section to recover an amount which under that Act is required to be paid to a third party in circumstances other than those mentioned in section 7(2) of this Act, shall for the purpose of subsections (1) and (2) be deemed to be a right to claim compensation under section 6 arising on the same date as the claim of such third party under the said section 6: Provided that if the recovery of any such amount has been debarred under

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Min: claim does not prescribe until 3 years after no time 21 years

this section, any compensation thereafter awarded to the third party under this Act shall be reduced by the amount concerned.

Procedure

12. (1) A claim for compensation and accompanying medical report under section 6 shall -

- (a) be set out in the prescribed manner on a prescribed form which shall be completed in all its particulars;
 - (b) be sent by registered post to or delivered by hand at the registered office or local branch office of the appointed agent who in terms of section 5(2) must handle the claim, and who shall, in the case of delivery by hand, at the time of the delivery acknowledge receipt thereof and the date of such receipt in writing.
- (2) (a) The medical report on a prescribed form shall be completed by the medical practitioner who treated the deceased or injured person for the bodily injuries that he or she sustained in the accident from which the claim arises, or by the superintendent (or his or her representative) of the hospital where the deceased or injured person was treated for such bodily injuries: Provided that if the medical practitioner or superintendent (or his or her representative) concerned fails to complete the medical report on request within a reasonable time and it appears that as a result of the passage of time the claim in question may become prescribed, the medical report may be completed by another medical practitioner who has fully satisfied himself or herself regarding the cause of death or the nature and treatment of the bodily injuries in respect of which the claim is made.
- (b) Where the claim relates to a person who was killed instantaneously in a motor accident or has died before treatment by a medical practitioner for the bodily injuries that he or she sustained in such an accident, the completion of the said medical report shall not be a requirement, but in such an event the prescribed form in terms of paragraph (a) shall be accompanied by a copy of the inquest record or, in the case of a prosecution of the person who allegedly caused the deceased's

death, a copy of the relevant charge-sheet in which it is clearly indicated that such person's death resulted from the accident to which the claim relates.

(3) A claim by a supplier for the payment of incidental expenses in terms of section 6(5) shall be in the prescribed form, and the provisions of this section shall *mutatis mutandis* apply in connection with the completion of that form.

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(4) (a) Subject to the provisions of subsection (5) any form provided for in this section and not completed in all its particulars shall not be acceptable as a claim under this Act.

(b) A clear reply shall be given to each question contained in the prescribed form referred to in subsection (2) and if a question is not applicable the words "not applicable" shall be inserted.

(c) A form on which ticks, dashes, deletions and alterations have been made that are not confirmed by a signature shall not be regarded as properly completed.

(d) Precise details shall be given in respect of each item under the heading "Compensation claimed" and shall, where applicable, be accompanied by supporting vouchers.

(5) Unless the appointed agent with whom a claim has been lodged in accordance with the provisions of subsection (1)(b), by written notice, sent by registered post or delivered by hand to the claimant or the claimant's representative within 60 days from the date upon which the claim was so lodged, objects to the validity of the claim, such claim shall for all purposes be deemed to have been properly lodged in accordance with the provisions of this section.

(6) Upon acceptance of an amount offered as compensation in terms of section 6(1) the third party shall be entitled to the agreed party and party costs or taxed party and party costs in respect of the claim concerned.

Enforcement of claims.

13. (1) No claim shall be enforceable by legal proceedings commenced by a summons served on the appointed agent -

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(a) before the expiry of a period of 120 days as from the date on which the claim was sent or delivered by hand, as the case may be, to the appointed agent as provided for in section 12(1)(b); and

(b) before all requirements contemplated in section 6(2)(f) have been complied with:

Provided that if the appointed agent repudiates in writing liability for the claim before the expiry of the said period the claimant may at any time after such repudiation cause summons to be served on the appointed agent.

(2) No interest calculated on the amount of any compensation which a court awards to any third party by virtue of the provisions of section 6(1) shall be payable, unless 14 days have elapsed from the date of the court's relevant order.

(3) In issuing any order as to costs on making such award, the court may take into consideration any written offer in settlement, including a written offer without prejudice in the course of settlement negotiations of the claim concerned, made by the Fund or its appointed agent before the relevant summons was served on the Fund or the appointed agent, as the case may be.

Appointed agent's right of recourse

14. (1) When an appointed agent has paid any compensation under section 6 such agent may without having obtained a formal cession of the right of action, recover from the owner of the motor vehicle concerned or from any person whose negligence or other unlawful act caused the loss or damage concerned, so much of the amount paid by way of compensation as the third party concerned could, but for the provisions of section 8, have recovered from the owner or from the person whose negligence or other unlawful act caused the loss or damage, as the case may be, if the appointed agent had not paid any such compensation.

(2) An appointed agent's right of recourse against the owner of a motor vehicle under subsection (1) shall only be applicable -

(a) in any case where the motor vehicle was being driven at the time of the accident which gave rise to the payment of compensation by a person other than the owner and -

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- (i) the said person was under the influence of intoxicating liquor or of a drug to such a degree that his or her condition was the sole cause of such accident and the owner allowed him or her to drive the motor vehicle knowing that he or she was under the influence of intoxicating liquor or of a drug; or
 - (ii) the said person was driving the motor vehicle without holding a licence issued under any law relating to the licensing of drivers of motor vehicles, which he or she was required to hold, or the said person, being the holder of a learner's or other restricted licence issued under such law, failed, while he or she was driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence, and the owner allowed him or her to drive the motor vehicle knowing that he or she did not hold such a licence or that he or she failed to comply with the requirements or conditions of a learner's or restricted licence, as the case may be; or
- (b) in any case where, at the time of such accident, the motor vehicle was being driven by the owner and -
- (i) he or she was under the influence of intoxicating liquor or of a drug to such a degree that his or her condition was the sole cause of such accident; or
 - (ii) he or she was driving the motor vehicle without holding a licence issued under any law relating to the licensing of drivers of motor vehicles, which he or she was required to hold, or being the holder of a learner's or other restricted licence issued under such law, failed, while he or she was driving the motor vehicle, to comply with the requirements or conditions of such learner's or restricted licence; or
 - (iii) in the event of such owner having failed to comply with the requirements of section 9(1), he or she failed, at the request of the

Fund or the appointed agent, as the case may be, to furnish to the Fund or such appointed agent, the particulars referred to in section 9(1) with reference to the said accident within 14 days after such request or knowingly furnished the Fund or the appointed agent with false information relating to such accident and the Fund or the appointed agent was materially prejudiced by such failure or by the furnishing of such false information, as the case may be.

(3) The provisions of subsection (2)(b)(i), (ii) and (iii) shall *mutatis mutandis* apply in respect of any right of recourse by the appointed agent against any person who at the time of the accident which gave rise to the payment of the compensation, was driving the motor vehicle with or without the consent of its owner.

Regulations.

15. (1) The Minister may make regulations in relation to -

- (a) matters in respect of which statistics are to be kept by appointed agents, the manner in which such statistics shall be compiled and the furnishing of information in connection therewith;
- (b) any matter which in terms of this Act is required or permitted to be prescribed;
- (c) in general any matter which the Minister may consider necessary or expedient to prescribe in order to attain or promote the objects of this Act.

(2) A regulation made under subsection (1) may provide for penalties not exceeding a fine of R 1 000 or not exceeding imprisonment for a period of three months for any contravention of or failure to comply with its provisions.

State bound.

16. This Act binds the State.

Commencement of period of prescription in respect of certain claims.

17. In the application of the provisions of section 11 in respect of any claim which arose on or after 21 March 1990, but before the date of publication of this Act in the *Gazette* as a law, such claim shall be deemed to have arisen on the said date of publication.

Repeal and amendment
of laws, and savings.

18. The provisions of the Motor Vehicle Accidents Act, 1986 (Act 84 of 1986), and the Multilateral Motor Vehicle Accidents Fund Act, 1989 (Act 93 of 1989), are hereby repealed.

Short title and com-
mencement

19. This Act shall be called the Motor Vehicle Accidents Act, 1990 and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.
