



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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No. 328

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 152

1991

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. 26 of 1991: Racial Discrimination Prohibition Act, 1991.

**RACIAL DISCRIMINATION
PROHIBITION AMENDMENT ACT, 1991**

ACT

To render criminally punishable, in pursuance of the provisions of Article 23 of the Namibian Constitution, certain acts and practices of racial discrimination and apartheid in relation to public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services, and involving the incitement of racial disharmony and victimisation; to amend the Liquor Ordinance, 1969 and the Admission of Persons to Namibia Regulation Act, 1972; and to provide for matters incidental thereto.

(Signed by the President on 12 December 1991)

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

Definitions.

1. In this Act -

“racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origin.

Access to and use of public amenities and facilities.

2. (1) No person shall -

- (a) deny any other person access to or the use of any public amenity or any facility in a public amenity;
- (b) permit any other person such access or use on less favourable terms or conditions than those upon which he or she would otherwise permit such access or use; or
- (c) require any other person to leave or cease to use any such amenity or facility,

because such other person is a member of a particular racial group.

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(2) No person shall in respect of any public amenity apply any practice or policy whereby any facility or service available at such public amenity is provided to members of the public on a segregated basis according to colour, race, nationality or ethnic or national origin.

(3) For the purposes of subsections (1) and (2), "public amenity" means -

- (a) any public accommodation establishment, including any hotel, guest-house, pension, rest camp, guest farm, holiday farm, caravan park or any other premises in or upon which accommodation is normally available for and provided to members of the public;
- (b) any public recreation area, including any game park, nature reserve, tourist recreation area, holiday resort or any other similar area to which members of the public normally have access or may obtain admission either free of charge or against payment of a fee;
- (c) any public restaurant, including any refreshment room, tea room or other premises in or upon which food or drink (whether alcoholic or not) for consumption on the premises is normally provided to members of the public;
- (d) any public conveyance which members of the public are normally entitled or allowed to use for travelling, whether by air, rail, road or sea;
- (e) any theatre or other premises where a dramatic performance, play, concert or film is presented or shown to members of the public;
- (f) any premises where an exhibition, sports meeting or any function is held or any event takes place which members of the public have been invited or are normally allowed to attend.

Provision of goods and services.

3. No person engaged in any business, trade or profession for the provision of goods or services to the public, or any person employed by a person so engaged, shall -

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- (a) refuse or fail on demand to provide such goods or services to any other person; or
- (b) provide any other person with such goods or services on less favourable terms or conditions than those upon which he or she would otherwise provide such goods or services,

because such other person is a member of a particular racial group.

Immovable property.

- 4. No person who, whether as principal or agent -**
- (a) intends to sell or otherwise dispose of any immovable property or any right therein, shall -
 - (i) refuse or fail to sell or so dispose of such property or right to any other person; or
 - (ii) sell or so dispose of, or offer to sell or so dispose of, such property or right to any other person on less favourable terms and conditions than have been or are or would be offered to other persons,

because such other person is a member of a particular racial group;

- (b) intends to let or in any other manner grant any right to occupy any immovable property or any part thereof, shall -
 - (i) refuse or fail to let or grant such right to any other person; or
 - (ii) let or grant such right, or offer to let or grant such right, to any other person on less favourable terms and conditions than have been or are or would be offered to other persons,

because such other person is a member of a particular racial group;

- (c) has entered into an agreement with any other person for the sale or disposal otherwise of immovable property or any right therein, or for the lease or grant of any other right of occupation

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of such property or any part thereof, shall terminate such agreement because such other person is a member of a particular racial group.

Educational institutions.

5. (1) No person responsible for the management of, or employed at, an educational institution, shall -

- (a) deny any other person admission to such educational institution as a pupil or student;
- (b) permit any other person such admission on less favourable terms or conditions than those upon which he or she would otherwise permit such admission; or
- (c) where any other person has been admitted to an educational institution, deny or restrict the use by such other person of any facility or service available at or provided by such institution, or in any other manner treat such other person less favourably than he or she would otherwise treat any other pupils or students of that educational institution,

on the ground of that other person's race, colour or creed.

(2) For the purposes of subsection (1) "educational institution" means any school or institution at which education is provided and includes any university, technikon or college or any other establishment where vocational or technical training or instruction is provided.

Medical institutions.

6. (1) No person responsible for the management of, or employed at, a medical institution shall -

- (a) deny any other person admission to such medical institution as a patient for the purpose of receiving treatment or for visiting any patient of the institution;
- (b) permit any other person such admission on less favourable terms or conditions than those upon which he or she would otherwise permit such admission; or
- (c) where any other person has been so admitted, deny or restrict the use by such other person of

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any facility or service available at or provided by such institution or in any other manner treat such other person less favourably than he or she would otherwise treat other patients of the institution or other visitors calling at such institution,

because such person is a member of a particular racial group.

(2) For the purposes of subsection (1) "medical institution" means any hospital, nursing home, clinic and any other place where patients receive treatment and includes a maternity home.

Employment.

7. (1) No employer, or any person acting on behalf of an employer, shall, when seeking to employ a person on work of any description -

- (a) refuse or fail to appoint a person who has applied for such work and has the required skills or qualifications;
- (b) appoint or offer to appoint a person with the required skills or qualifications on terms and conditions, including conditions in relation to access to benefits, facilities or services, which differ from those which apply to other employees of the employer with the same or substantially similar skills or qualifications and who perform the same or substantially similar duties,

on the ground of that person's race, colour or ethnic origin.

(2) No employer or any person acting on behalf of an employer, shall dismiss any employee or subject him or her to any other detriment in circumstances in which other employees of that employer performing similar work are not or would not be dismissed or are not or would not be subjected to such detriment, on the ground of that employee's race, colour or ethnic origin.

Associations.

8. No association of persons shall, whether by any provision in its constitution, or in accordance with any policy or practice -

- (a) deny any person admission to membership of that association;

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- (b) permit any person such membership on less favourable terms or conditions than those upon which such association would otherwise permit such admission; or
- (c) where any person has been admitted to membership of that association, deny or restrict the use by such person of any facility or service provided by the association or in any other manner treat such person less favourably than such association would otherwise treat any other member of that association.

because such other person is a member of a particular racial group.

Religious services.

9. No person shall deny any other person access to any organised religious service conducted by a religious institution because such other person is a member of a particular racial group and not a member of that institution.

Advertisements.

10. No person shall publish or display, or cause or permit to be published or displayed, any advertisement or notice that indicates an intention to perform any act prohibited in terms of sections 2 to 9, both inclusive.

Inciting racial disharmony.

11. (1) No person shall publicly use any language or publish or distribute any written matter or display any article or do any act or thing with intent to -

- (a) threaten, ridicule or insult any person or group of persons on the ground that such person belongs or such persons belong to a particular racial group; or
- (b) cause, encourage or incite disharmony or feelings of hostility, hatred or ill-will between different racial groups or persons belonging to different racial groups;
- (c) disseminate ideas based on racial superiority.

(2) For the purposes of subsection (1) "article" shall include any flag, insignia or emblem.

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(3) No person shall establish, support or be a member of or participate in the activities of an organization or movement of which the aim is to engage in acts of violence against members of any particular racial group or in activities aimed at causing, bringing about, promoting or contributing towards any such acts.

Victimisation.

12. No person shall perform or cause to be performed any act to the detriment of any other person, or treat such other person less favourably than in those circumstances he or she treats or would treat other persons, on account of the fact, or because he or she suspects or believes, whether or not the suspicion or belief is justified or correct, that that other person -

- (a) has laid, or intends to lay, a criminal charge against the first-mentioned person or any other person pursuant to any provision of this Act; or
- (b) has furnished, or intends to furnish any information or document relating to the institution of criminal proceedings against the first-mentioned person or any other person in terms of this Act or has given, or intends to give, evidence before a court in connection with such proceedings.

Exemptions.

13. Nothing in this Act contained shall be construed as prohibiting the preferential treatment of any person pursuant to a policy or program contemplated in Article 23(2) of the Namibian Constitution which is aimed at the advancement of persons who have been socially, economically or educationally disadvantaged by discriminatory laws or practices which have been enacted or practised before the independence of Namibia.

Offences and penalties.

14. Any person who contravenes any provision of sections 2 to 12, both inclusive, shall be guilty of an offence and on conviction be liable -

- (a) in the case of an offence in terms of any of those sections, except section 11, to a fine not exceeding R50 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and
- (b) in the case of an offence in terms of section 11, to a fine not exceeding R80 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.

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Competent orders in relation to licences, registration certificates and other authorizations.

15. (1) Where any person who is convicted of an offence in terms of this Act is the holder of a licence, registration certificate or other authorization for or in respect of the public amenity, business, trade or profession, or educational institution or medical institution in connection with which the offence was committed, the court convicting such person may, notwithstanding the provisions of any other law, in addition to any penalty which it imposes under this Act -

- (a) declare such licence, registration certificate or authorization cancelled;
- (b) suspend such licence, registration certificate or other authorization for such period as the court deems just; or
- (c) make such other order in relation to such licence, registration certificate or other authorization, including the imposition of conditions, as may seem to the court appropriate in the circumstances.

(2) Whenever any licence, registration certificate or other authorization is cancelled or suspended, or any other order is made in relation thereto, in terms of subsection (1), the clerk of the court concerned shall inform the authority which issued such licence, registration certificate or other authorization in writing of such cancellation, suspension or order, as the case may be.

(3) Where a person who is convicted of an offence in terms of this Act is not or is believed not to be a Namibian citizen, the court convicting such person shall cause a written notification to be furnished to the Minister of Home Affairs with particulars of the person so convicted and the offence for which he or she was convicted.

Compensation for damages.

16. (1) Whenever the court convicts any person of an offence under this Act, the court may, upon the application of the complainant, if he or she has suffered damage as a result of an act in respect of which that person was so convicted, award the complainant compensation for such damage.

(2) The provisions of paragraph (a) of subsection (1) and subsections (2), (3), (4) and (5) of section 300 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply to any application and award contemplated in subsection (1).

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Vicarious responsibility.

17. Where any person who does or omits to do any act which constitutes an offence in terms of this Act, acted in a capacity of agent or employee, the employer or principal of such agent or employee shall be deemed himself or herself to have done or omitted to do the act in question, unless the court is satisfied that -

- (a) he or she neither connived at nor permitted the act or omission by the agent or employee concerned;
- (b) he or she took all reasonable steps to prevent the act or omission; and
- (c) an act or omission, whether lawful or unlawful, of the nature charged on no condition or under no circumstances fell within the scope of the authority or employment of the agent or employee concerned,

and the fact that such employer or principal issued instructions whereby an act or omission of that nature is prohibited shall not in itself be sufficient to prove that he or she took all reasonable steps to prevent the act or omission.

Trial only at instance of Prosecutor-General.

18. No trial for an offence under this Act shall be instituted without the written authority given personally by the Prosecutor-General in each case.

Act binding on employees of State.

19. This Act shall bind all persons in the employment of the State.

Amendment of Ordinance 2 of 1969.

20. (1) The Liquor Ordinance, 1969 is hereby amended by the insertion after section 101 of the following section:

"Restriction of admission to restricted portion.

101A. (1) No holder of an accommodation establishment on-consumption licence shall maintain on the premises of the accommodation establishment any restricted portion to which admission is allowed by such licence holder only to guests of that accommodation establishment unless such restricted portion has been specially set apart for that purpose by virtue of a condition imposed under section

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81(1)(b) to the effect that only guests of the accommodation establishment concerned and their companions may be supplied with liquor in such restricted portion.

(2) A condition as contemplated in subsection (1) may only be imposed by a competent authority -

(a) upon a written application in the prescribed form of the holder of an accommodation establishment on-consumption licence or of a person applying for the issue to him or her of such a licence; and

(b) if the competent authority is satisfied that adequate facilities will be available on the premises of the accommodation establishment concerned for the supply of liquor to visitors to such establishment who will not ordinarily be entitled to access to such restricted portion.

(3) Where a restricted portion has been set apart in accordance with the provisions of subsections (1) and (2), no person shall be permitted to be in the restricted portion concerned unless he or she is a guest of the accommodation establishment or is a companion of such a guest who is present in such restricted portion.

(4) At every entrance to a restricted portion set apart in accordance with the provisions of subsections (1) and (2), a notice shall be affixed clearly indicating that the right of admission to such restricted portion is reserved for guests and their companions.

(5) Any holder of an accommodation establishment on-consumption li-

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cence who contravenes subsection (1) or who, whether personally or by his or her servant, agent or nominee, in any restricted portion set apart in accordance with the provisions of subsections (1) and (2), sells or supplies any liquor to any person who is not a guest or the companion of a guest who is present in such restricted portion, shall be guilty of an offence and on conviction be liable to a fine not exceeding R2 000 or imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(6) For the purposes of this section "guest" means any person to whom bedroom accommodation, with or without meals, for reward is provided in the accommodation establishment concerned and in respect of whom the prescribed particulars have been entered into the guest register required to be kept in terms of section 41 of the Ordinance."

(2) Subsection (1) shall in relation to any person who is the holder of an accommodation establishment on-consumption licence on the date of commencement of this Act, come into operation on 1 April 1992.

Amendment of Act 59 of 1972.

21. The Admission of Persons to Namibia Regulation Act, 1972 is hereby amended by the addition in Schedule 1A of the following:

"Contravention of any provision of the Racial Discrimination Prohibition Act, 1991 which constitutes an offence under that Act."

Repeal of Act 3 of 1979, Act 10 of 1980 and Act 21 of 1981.

22. (1) Subject to the provisions of subsection (2), the Abolition of Racial Discrimination (Urban Land and Public Amenities) Act, 1979, the Abolishment of Racial Discrimination (Urban Areas and Public Amenities) Amendment Act, 1980, and the Abolition of Racial Discrimination (Urban Land and Public Amenities) Amendment Act, 1981, are hereby repealed.

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(2) Notwithstanding the repeal of the Abolition of Racial Discrimination (Urban Land and Public Amenities) Act, 1979, by subsection (1), that Act shall, for the purposes of any charge in any criminal proceedings for any offence which a person has, before the commencement of this Act, committed, and the imposition of any penalty in relation thereto, remain in force as if the provisions of this Act had not been passed.

Short title.

23. This Act shall be called the Racial Discrimination Prohibition Act, 1991.
