



Republic of Namibia  
Annotated Statutes

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## Crown Liabilities Act 1 of 1910 (SA)

(SA GG 72)

applied to South West Africa by Proc. 70/1920 (OG 46),  
which came into force on its date of publication: 23 December 1920

**APPLICABILITY TO SOUTH WEST AFRICA:** This Act was extended to South West Africa by section 1(1)(b) of the Railway Management Proclamation 70 of 1920 (OG 46). That section states “(1) The control and management of the Railways and Harbours within the Protectorate of South West Africa and of all subsidiary undertakings connected therewith hitherto controlled and managed by the Railways and Harbours Administration of the Union of South Africa (hereinafter called the Railway Administration) shall continue to be vested in and to be exercised by the Railway Administration, and for that purpose... (b) the following acts of the Union Parliament together with any regulations now or hereafter existing thereunder shall, mutatis mutandis and so far as capable of application, have force and effect within the Protectorate:-...”. One of the laws listed in paragraph (b) is the Crown Liabilities Act 1 of 1910.

According to *Mwandingi v Minister of Defence* 1990 NR 363 (HC) at 377C-D (approved of on appeal in *Minister of Defence v Mwandingi* 1993 NR 63 (SC) at 77C-F), “the Crown Liabilities Act 1 of 1910 was extended by the Railway Management Proclamation 20 of 1920 to the territory. [This reference is in error; the correct citation for this Proclamation is Proclamation 70 of 1920.] It is true that it was so extended for purposes of that proclamation, but the act applied in its entirety and it seems to me, once it was extended, it was accepted by our courts as also binding on all other, at that stage, departments (see *Hwedhanga v Cabinet for the Territory of South West Africa* 1988 (2) SA 746 (SWA); *Binga v Cabinet for South West Africa & Others* 1988 (3) SA 155 (A)).”

The Act was repealed in South Africa by the *State Liability Act 20 of 1957* (SA GG 5850), which was not made expressly applicable to South West Africa.

**TRANSFER TO SOUTH WEST AFRICA:** The administration of this Act was not transferred to South West Africa.

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## ACT

TO IMPOSE LIABILITIES UPON THE CROWN IN RESPECT OF ACTS OF ITS SERVANTS.

[The long title appears in upper case in the *Government Gazette*.]

(Assented to 20th December, 1910)

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## ARRANGEMENT OF SECTIONS

[The provisions in this Act have no headings.]

BE it enacted by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:-

[The Republic of South Africa Constitution Act 32 of 1961 provided in Article 3 that, as from 31 May 1961, any reference to the Union of South Africa in any law in force in the Union of South Africa or in any other territory in respect of which Parliament is competent to legislate shall be construed as a reference to the Republic, and any reference to the Crown or the King shall be construed as a reference to the Republic or the State President as the circumstances may require.]

1. The laws mentioned in the Schedule to this Act shall be and are hereby repealed to the extent set out in the fourth column of that Schedule.

2. Any claim against His Majesty in His Government of the Union which would, if that claim had arisen against a subject, be the ground of an action in any competent court, shall be cognizable by any such court, whether the claim arises or has arisen out of any contract lawfully entered into on behalf of the Crown or out of any wrong committed by any servant of the Crown acting in his capacity and within the scope of his authority as such servant;

Provided that nothing herein contained shall be construed as affecting the provisions of any law which limits the liability of the Crown or the Government or any department thereof in respect of any act or omission of its servants or which prescribes specified periods within which a claim shall be made in respect of any such liability or imposes conditions on the institution of any action.

[Section 1(2) of the Railway Management Proclamation 70 of 1920 provides as follows:

"Wherever in any Act or Regulation extended to the Protectorate by this Section the words 'within the Union' or words to the like effect appear, there shall, in the application of the Act or Regulation to the Protectorate, unless inconsistent with the context be read for those words the words 'within the Protectorate' or words to the like effect."

This would presumably mean that the phrase "Any claim against His Majesty in His Government of the Union..." in section 2 must be read as "Any claim against His Majesty in His Government of the Protectorate...".]

3. In any action or other proceedings which are instituted by virtue of section *two*, the plaintiff, the applicant, or the petitioner (as the case may be) may make the Minister of the department concerned nominal defendant or respondent.

4. No execution or attachment or process in the nature thereof shall be issued against the defendant or respondent in any such action or proceedings aforesaid or against any property of His Majesty, but the nominal defendant or respondent may cause to be paid out of the Consolidated Revenue Fund or, if the action or proceedings be instituted against the Minister of Railways and Harbours, out of the Railway and Harbour Fund such sum of money as may, by a judgment or order of the court, be awarded to the plaintiff, the applicant, or the petitioner (as the case may be).

5. This Act may be cited for all purposes as the Crown Liabilities Act, 1910.

**Crown Liabilities Act 1 of 1910 (SA)**

SCHEDULE

LAWS REPEALED

| Province.         | No. and Year of Law.     | Title or Subject of Law.          | Extent of Repeal. |
|-------------------|--------------------------|-----------------------------------|-------------------|
| Cape of Good Hope | Act No. 37 of 1888       | Crown Liabilities Act, 1888       | The whole.        |
| Natal             | Act No. 14 of 1894       | Crown Suits Act, 1894             | The whole.        |
| Transvaal         | Ordinance No. 51 of 1903 | Crown Liabilities Ordinance, 1903 | The whole.        |
| Orange Free State | Ordinance No. 44 of 1903 | Crown Liabilities Ordinance, 1903 | The whole.        |