



Republic of Namibia
Annotated Statutes

Witness Protection Act 11 of 2017

(GG 6451)

**This Act has been passed by Parliament, but it has not yet been brought into force.
It will come into force on a date set by the Minister in the *Government Gazette*.**

ACT

To provide for the establishment of a Witness Protection Unit to protect and assist witnesses and related persons; to provide for the establishment of a Witness Protection Advisory Committee; to provide for the establishment of a Witness Protection Programme and for admission of witnesses and related persons to the Programme; to provide for measures or action to be taken to protect witnesses and related persons; to provide for the establishment of a Witness Protection Review Tribunal to review certain decisions; to provide for authorisation to enter into national and international agreements on witness protection; to create offences in relation to witness protection; to amend section 158A and repeal section 185 of the Criminal Procedure Act, 1977, so as to effectively cater for protection of witnesses; and to deal with incidental matters.

(Signed by the President on 6 October 2017)

ARRANGEMENT OF SECTIONS

PART 1 PRELIMINARY

1. Definitions

PART 2 WITNESS PROTECTION UNIT

2. Establishment of Unit
3. Object of Unit
4. Composition of Unit
5. Appointment of Director and Deputy Director
6. Functions and powers of Director, Permanent Secretary and Minister
7. Other staff of Unit

8. Determination of conditions of service of staff of Unit
9. Witness protection officers
10. Security officers
11. Independence of Unit
12. Funding of Unit

PART 3
WITNESS PROTECTION ADVISORY COMMITTEE

13. Establishment of Committee
14. Object of Committee
15. Functions and powers of Committee
16. Meetings and procedure
17. Disclosure of interest
18. Other matters to be prescribed

PART 4
FUNDS OF UNIT AND ANNUAL REPORT

19. Funds of Unit
20. Utilisation of funds
21. Accountability and administration of funds
22. Estimates of expenditure
23. Investment of balances
24. Unexpended balances
25. Accounts and audit
26. Annual reports
27. Restrictions on audits, investigations and inspections
28. Acquisition of certain property or services not to be disclosed
29. Exemption from taxes, duties and fees

PART 5
WITNESS PROTECTION PROGRAMME

30. Establishment of Programme
31. Admission to Programme
32. Admission to Programme not reward for giving evidence
33. Application for admission to Programme
34. Duty to disclose certain matters before admission
35. Interim protection measures
36. Report by witness protection officer
37. Consideration of application and decision of Director
38. Protection agreement
39. Special provisions for minors
40. Admission of witnesses from other countries
41. Admission of witnesses at request of international court, tribunal, institution or organisation
42. Register of protected persons
43. Access to register of protected persons
44. Suspension from Programme
45. Termination of protection

PART 6
WITNESS PROTECTION MEASURES

46. Witness protection measures
47. Change of identity
48. Restrictions on qualification documents
49. Provisions in case of marriage
50. Commercial arrangements by Director
51. Protection of third party rights
52. Avoidance of obligations by protected person
53. Payments made under Programme
54. Non-disclosure of original identity
55. Non-disclosure of identity in legal proceedings
56. Non-disclosure by protected persons
57. Non-disclosure of information by other persons
58. Protection from threats, legal action or disciplinary action
59. Non-compellability to give evidence
60. Restoration of original identity

PART 7

WITNESS PROTECTION REVIEW TRIBUNAL

61. Establishment of Tribunal
62. Secretarial work of Tribunal
63. Seat of Tribunal and jurisdiction
64. Costs
65. Contempt of Tribunal
66. Rules of Tribunal
67. Expenses of Tribunal
68. Proceedings of Tribunal
69. Review proceedings
70. Appeals from Tribunal

PART 8

MISCELLANEOUS PROVISIONS

71. Agreements by Permanent Secretary
72. International agreements by Minister
73. Donations
74. Limitation of liability
75. Oath or affirmation by staff members of Unit
76. Security clearance certificate
77. Offences relating to false representation
78. Offences relating to staff members of Unit
79. Obstruction of staff members of Unit
80. Restrictions on access to premises of Unit
81. Regulations, directives and staff rules
82. Delegation of powers and assignment of functions
83. Amendment of section 158A of Criminal Procedure Act, 1977
84. Repeal of section 185 of Criminal Procedure Act, 1977
85. Short title and commencement

Schedule

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia, as follows:

PART 1
PRELIMINARY

Definitions

1. (1) In this Act, unless the context indicates otherwise -

[The subsection number (1) has been omitted. There is a subsection (2) below, so the subsection number (1) has been inserted here as indicated to prevent confusion.]

“Committee” means the Witness Protection Advisory Committee established by section 13;

“Deputy Director” means a person appointed as such under section 5(2);

“designated position” means a position occupied by a staff member of the Unit, which entails the performance of duties on behalf of the Programme that have been determined in writing by the Director to be a designated position for the purposes of this Act;

“Director” means the Director: Witness Protection appointed in terms of section 5(1);

“former protected person” means a person whose participation in the Programme has been terminated;

“Inspector-General” means the Inspector-General of Police referred to in Article 119 of the Namibian Constitution;

“Minister” means the Minister responsible for justice;

“Ministry” means the Ministry responsible for the administration of justice;

“minor” means a person who is below the age of 18 years;

“Intelligence Service” means the Namibian Central Intelligence Service established by the Intelligence Service Act, 1997;

“Intelligence Service Act, 1997” means the Namibia Central Intelligence Service Act, 1997 (Act No. 10 of 1997);

“Permanent Secretary” means the Permanent Secretary of the Ministry;

“prescribed” means prescribed by regulation made under this Act;

“proceedings” means any -

- (a) criminal proceedings in respect of any offence listed in the Schedule;
- (b) proceedings before a commission established under the Namibian Constitution, the Commissions Act, 1947 (Act No. 8 of 1947) or under any law of Namibia;
- (c) proceedings under the Inquests Act, 1993 (Act No. 6 of 1993);
- (d) proceedings referred to in Chapters 5 and 6 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004);

- (e) proceedings before a tribunal established by law and which the Minister has by notice under subsection (2) declared to be a tribunal for the purposes this Act; and
- (f) proceedings before any prescribed body;

“Programme” means the Witness Protection Programme established by section 30;

“protected identity” means an identity of a protected person or former protected person that he or she has assumed under the Programme and which is different from his or her original identity;

“protected person” means a witness or related person who has been admitted to the Programme in terms of this Act;

“protection agreement” means an agreement referred to in section 38;

“protection measures” means any of the witness protection measures or actions contemplated in Part 6;

“public body” includes -

- (a) any office, ministry or agency as defined in the Public Services Act, 1995;

[The correct name of the Act is “Public Service Act” (with “Service” being singular).]

- (b) any local authority as defined in the Local Authorities Act, 1992 (Act No. 23 of 1992).;

[The full stop before the semicolon is in error.]

- (c) any regional council as defined in the Regional Councils Act, 1992 (Act No. 22 of 1992);
- (d) any other functionary or institution exercising a power or performing a function in terms of the Namibian Constitution, or exercising a public power or performing a public function in terms of any law;
- (e) any other functionary, entity or institution which the Minister has by notice under subsection (2) declared to be a public body for the purposes of this Act,

but does not include a court or a judicial officer;

“Public Service Act, 1995” means the Public Services Act, 1995 (Act No. 13 of 1995);

[The correct name of the Act is “Public Service Act” (with “Service” being singular), as in the first usage of the name in the definition.]

“related person” means any member of the family or household of a witness, or any other person in a close relationship to, or association with, that witness and who may require protection under the Programme;

“register” means the register of protected persons contemplated in section 42;

“relevant functionary” -

- (a) in relation to criminal proceedings in respect of any offence referred to in the Schedule in respect of which a witness is or may be required to give evidence or has given evidence

on behalf of the State or proceedings under Chapters 5 and 6 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004), means the Prosecutor-General; or

- (b) means any person designated in writing by the person presiding at proceedings, other than the proceedings referred to in paragraph (a), to be a relevant functionary;

“security clearance certificate” means a security clearance certificate issued pursuant to section 76;

“security officer” means any security officer seconded under section 10;

“staff member of the Unit” or “staff member” means the Director, a Deputy Director, a witness protection officer and any other person referred to or contemplated in section 7;

“this Act” includes regulations made, and directives or staff rules issued, under section 81;

“Tribunal” means the Witness Protection Review Tribunal established by section 61;

“Unit” means the Witness Protection Unit established by section 2;

“Whistleblower Protection Act, 2017” means the Whistleblower Protection Act, 2017 (Act No. 10 of 2017);

“witness” means -

- (a) a person who has given, agreed to give or is required to give evidence in any proceedings;
- (b) a person who has made a statement in connection with any proceedings;
- (c) a person against whom an offence listed in the Schedule has been committed whether or not that person has given, agreed to give or is required to give evidence in any proceedings as contemplated in paragraph (a), or has made a statement in connection with any proceeding as contemplated in paragraph (b);
- (d) a person who has made a disclosure of improper conduct pursuant to the Whistleblower Protection Act, 2017;
- (e) any other person who might be in need of protection as determined by the Director; and

“witness protection officer” means a witness protection officer appointed or designated in terms of section 9.

(2) The Minister may, for the purposes of paragraph (e) of the definitions of -

- (a) “proceedings” in subsection (1), by notice in the *Gazette*, declare any functionary, entity or institution conducting an investigation, inquiry or a hearing to be a tribunal; and
- (b) “public body” in subsection (1), by notice in the *Gazette*, declare any functionary, entity or institution to be a public body.

PART 2 WITNESS PROTECTION UNIT

Establishment of Unit

2. There is established within the Ministry a component to be known as the Witness Protection Unit which must perform the functions entrusted to, and exercise the powers conferred on, the Unit by this Act.

Object of Unit

3. (1) The object and purpose of the Unit is to provide the framework and procedures for protection measures, on behalf of the State, to witnesses and related persons who face potential risk or intimidation due to their being witnesses or related persons.

(2) Despite the provisions of any law, the nature of the protection measures referred to in subsection (1) entail the power of the Unit to acquire, store, maintain and control firearms and ammunition and electronic or other necessary equipment.

Composition of Unit

4. (1) The Unit consists of -

- (a) the Director who is the head of the Unit;
- (b) one or more Deputy Directors;
- (c) such other staff as may be appointed, designated or seconded under section 7.

(2) Despite the provisions of any law to the contrary -

- (a) the Director, a Deputy Director and any staff member of the Unit appointed in terms of section 7(1)(a) and (b) are deemed to be staff members of the public service; and
- (b) where any matter relating to the Unit or to the conditions of service of staff members of the Unit is not specifically provided for in this Act, the Public Service Act, 1995, the regulations and directives made thereunder, do apply in respect of the administration of the Unit and to staff members, only in so far as such provisions, regulations and directives are not inconsistent with the provisions of this Act.

[The word “and” should appear between the phrases “the Public Service Act, 1995” and “the regulations and directives made thereunder”.]

(3) Every staff member of the Unit, a staff member assigned to perform the secretarial work of the Committee or the Tribunal, a member of the Tribunal and any other person rendering a service to the Unit or the Programme, or performing any function under this Act as determined by the Director, may not perform such work or function or render such service unless that staff member, member or person has been vetted and obtained a security clearance certificate.

(4) Subsection (3) does not apply to a member of the Intelligence Service who is seconded to the Unit as contemplated in section 10(1).

Appointment of Director and Deputy Director

5. (1) There must be appointed, in accordance with the Public Service Act, 1995, a person who holds an appropriate qualification in law and has not less than 10 years' experience in the field of the administration of justice in general or criminal justice in particular as Director:

Witness Protection, but pending appointment of the Director, the Minister may designate a staff member in the public service who is suitably qualified to act as Director.

(2) There may be appointed in accordance with the Public Service Act, 1995, one or more persons who possess or possess such qualifications and experience as may be prescribed as Deputy Director or Deputy Directors of the Unit who must, subject to the control and directions of the Director, exercise the powers conferred on him or her or them or perform the functions assigned to him or her or them by the Director.

[The word “possesses” is misspelt in the *Government Gazette*, as reproduced above.]

(3) A person is not eligible to be appointed and remain as Director or a Deputy Director if that person -

- (a) is a member of the National Assembly or National Council, unless after his or her appointment the person ceases to be such a member;
- (b) is a member of a regional council or a local authority council, unless after his or her appointment the person ceases to be such a member;
- (c) is an unrehabilitated insolvent; or
- (d) has, during the period of 10 years preceding the date of appointment, been convicted of -
 - (i) theft, fraud, forgery or uttering a forged document, perjury or any other offence involving dishonesty; or
 - (ii) any other offence for which a sentence of imprisonment without the option of a fine has been imposed.

(4) If the Director is for any reason unable to exercise his or her powers or perform his or her functions, a Deputy Director must act as Director, but there may be appointed in accordance with the Public Service Act, 1995, another person to act temporarily as Director.

(5) If the positions of both the Director and Deputy Director are vacant, or if both the Director and Deputy Director are absent or unable for any reason to perform the functions of their offices, there must be appointed in accordance with the Public Service Act, 1995, but subject to subsections (1), (2) and (3), another person to act as Director during such vacancy or temporary absence.

(6) A person acting as Director in terms of subsection (4) or (5) may not act for a period of more than 12 months.

(7) A person appointed as acting Director while the position of the Director is vacant is entitled to the salary attached to that office for the period that he or she so acts.

(8) The Director and a Deputy Director hold office for a period of 10 years and they are eligible for re-appointment at the expiry of their terms of office.

(9) The provisions of the Public Service Act, 1995 in relation to suspension or dismissal from office and to other matters not covered in this Act do apply to the Director and a Deputy Director in so far as they are not inconsistent with the provisions of this Act.

Functions and powers of Director, Permanent Secretary and Minister

6. (1) The Director, subject to the overall supervision and direction of the Minister, must, on behalf of the Unit, perform the functions and exercise the powers entrusted to him or her by or under this Act, including the following:

- (a) administer and implement the programme;
- (b) subject to the direction of the Permanent Secretary, conduct the day to day administration and management of the Unit, and control, supervise and exercise discipline over staff members of the Unit, including seconded staff, in a manner and for such purposes as may be necessary for the promotion of the purpose and the object for which the Unit is established;
- (c) determine whether or not a person may be admitted to the Programme, the terms and conditions for participating in the Programme and suspension or removal of persons from the Programme;
- (d) determine the type of protection measures that may be applied to a witness or related person who has been admitted to the Programme;
- (e) apply protection measures to witnesses or related persons, including interim protection measures, and render assistance to that protected person in accordance with this Act;
- (f) carry out the administrative duties relating to the protection of witnesses or related persons, including interim protection, and related services;
- (g) with the approval of the Permanent Secretary, take such measures as are necessary to ensure the safety, security and wellbeing of protected persons and staff members of the Unit, which measures may include, but are not limited, to, the acquisition of places to be utilised as places of safety for protected persons or staff members, acquisition of assets that are necessary for the performance of the functions of the Unit or where, necessary, conducting of searches on protected persons or their property;

**[There is a superfluous comma in the phrase “but are not limited to”.
The comma is misplaced in the phrase “or where, necessary”,
which should appear as “or, where necessary”.]**
- (h) ensure that, in conducting its affairs, the Unit is guided by the laws of Namibia and international best practices which may include, but not limited to, the development and implementation of information security measures, technical and administrative competences, and the principles of impartiality, confidentiality, objectivity and integrity;

**[The word “are” appears to have been omitted in the phrase which
was probably intended to read “but are not limited to”.]**
- (i) with the approval of the Permanent Secretary, establish a branch office or branch offices for the Unit in any part or parts of Namibia;
- (j) establish procedures and determine the manner in which the provisions of this Act may be carried out by any branch office established pursuant to paragraph (i);
- (k) advise any public body or any other person on the adoption of strategies and measures on witness protection; and

Witness Protection Act 10 of 2017

(1) perform such other functions as may be assigned to him or her by this Act or under any law or as may be necessary for the better carrying out of the purposes of this Act.

(2) The Director has all the powers necessary or expedient for the performance of his or her functions under this Act.

(3) The Director must, at such times or intervals of time as may be agreed between the Director and the Committee, or at the request of the Committee, report to the Committee generally on any matter relating to or arising from the performance of functions or exercise of powers by the Director under subsection (1) or (2), or under any other provision of this Act.

(4) The Permanent Secretary must, on behalf of the Unit, perform the functions and exercise the powers entrusted to him or her by or under this Act, including the following:

- (a) administer the funds of the Unit;
- (b) administer the assets of the Unit;
- (c) request the Intelligence Service to -
 - (i) gather ministerial intelligence on behalf of the Unit as contemplated in section 5(1)(b) of the Intelligence Service Act; or
 - (ii) assist with the carrying out of security vetting investigations as contemplated in section 5(1)(d) of the Intelligence Service Act, for persons who are required to obtain a security clearance certificate under this Act;

[The references to the "Intelligence Service Act" refer to the "Intelligence Service Act, 1997" which is defined in section 1.]

- (d) enter into agreements as contemplated in section 71;
- (e) receive donations as contemplated in section 73;
- (f) exercise any power conferred on him or her by or under this Act or any other law or that is necessary to attain the objectives of this Act.

(5) The Minister is responsible for the overall policy direction of the Unit and witness protection policies and without derogating from the functions or powers entrusted to him or her by or under this Act, the Minister may -

- (a) in accordance with the law relating to the establishment of corporate bodies in Namibia, establish or cause to be established such corporate bodies as may be necessary to enable the Unit to perform the functions assigned to, or exercise the powers conferred on it, by or under this Act or to attain its objectives as provided for in this Act;
- (b) by notice in the *Gazette*, issue one or more codes of conduct regulating the conduct of staff members of the Unit in the performance of their functions or exercise of powers under this Act, which code of conduct may prescribe penalties for any contravention thereof or failure to comply therewith not exceeding a fine of N\$10 000 or imprisonment for a period not exceeding 12 months, or both the fine and imprisonment.

[The full stop at the end of paragraph (b) should be a semicolon.]

- (c) where reasonably necessary for him or her to carry out his or her functions, request for information from the Committee or any member of the Committee, the Permanent Secretary or the Director; or
- (d) where necessary, consult with any Minister or functionary who, for the time being, is the political head of any office, ministry or agency or other functionary that is represented on the Committee or any other Minister or functionary as may be necessary.

(6) All public bodies and, where appropriate other persons, must render such assistance as may be reasonably required in the exercise, performance or carrying out of the powers, functions and duties conferred upon, assigned to or imposed upon the Minister, the Permanent Secretary, the Director or any staff member of the Unit by or under this Act.

[There should be a comma after the phrase “where appropriate”.]

Other staff of Unit

7. (1) The Permanent Secretary, in consultation with the Director and subject to the provisions of this Act, may appoint or engage, as appropriate, such professional and technical staff members and other staff members as may be necessary for the proper discharge of the functions of the Unit and such staff members may include -

- (a) persons appointed on a permanent or temporary basis;
- (b) witness protection officers;
- (c) staff members of the Ministry designated for that purpose by the Permanent Secretary;
- (d) security officers;
- (e) staff members in the public service transferred or seconded in terms of subsection (3); and
- (f) persons in the service of any other public body, private body, institution or organisation, who can render a service in respect of any matter provided for by or under this Act and who are, by arrangement with the body, institution or organisation concerned, seconded with their consent to the service of the Unit.

(2) A staff member of the Unit appointed under subsection (1)(a) or (b) may be retired, promoted, discharged, reduced in rank or grade or transferred in accordance with the provisions of this Act.

(3) The Public Service Commission may, subject to the laws governing the public service, at the request of the Permanent Secretary transfer or second staff members in the public service to the Unit for specified periods of time and on such terms and conditions as may be agreed upon between the Permanent Secretary and the Public Service Commission.

(4) The persons appointed or engaged in terms of subsection (1) must, subject to the control and directions of the Director, assist the Director in the exercise of the powers conferred on, or performance of the functions assigned to, the Director by or under this Act.

Witness Protection Act 10 of 2017

- (5) For the purposes paragraph (f) of subsection (1) -
- (a) any body, institution or organisation which made an arrangement with the Permanent Secretary as contemplated in that paragraph, must from time to time, if requested by the Director in writing to do so, furnish the Director with a list of the names of persons, in the employ or under the control of that body, institution or organisation, who are fit and available to assist the Unit as contemplated in the said paragraph;
 - (b) such a body, institution or organisation must, at the request of the Director, designate a person or persons mentioned in the list concerned to assist the Director; and
 - (c) the Director may refuse to accept the services of a person so designated and in that case he or she may request the body, institution or organisation concerned to designate another person.

(6) Despite any other law, any security officer, staff member or person seconded to the service of the Unit in terms of subsection (1)(e) or (f), may exercise the powers and must perform the functions assigned to or imposed on him or her from time to time by the Director and must, in the exercise, performance or carrying out of such powers, functions or duties, act in terms of this Act.

(7) Any person referred to in subsection (1)(e) or (f), who is not subject to the laws governing the public service, is entitled to such remuneration, including allowances for travelling and subsistence expenses incurred by him or her in the exercise of the powers conferred on him or her or the performance of the functions assigned to him or her by the Director, as the Minister with the concurrence of the Minister responsible for finance may determine.

Determination of conditions of service of staff of Unit

8. (1) The conditions of service of the Director, a Deputy Director and staff members of the Unit appointed under section 7(1)(a) or (b) are determined in accordance with the regulations made or directives and staff rules issued under section 81.

- (2) When determining the remuneration and conditions of service of staff members of the Unit -
- (a) the concurrence of the Minister responsible for finance must be obtained whenever there are financial implications; and
 - (b) due regard must be paid to the following principles -
 - (i) that witness protection falls in a strategic sector in the administration of justice process of the country and the nature of the service entailed requires commensurate compensation; and
 - (ii) that the nature of the operations of the Unit requires probity, integrity and incorruptibility.

Witness protection officers

9. (1) The Director must assign a witness protection officer to be the head of each branch office established in terms of section 6(1)(i).

(2) Whenever a witness protection officer is for any reason unable to exercise, perform or carry out his or her powers or functions or when the appointment of a person as witness protection officer is pending, the Director may appoint a person as acting witness protection officer to exercise the powers or perform the functions of the witness protection officer concerned.

(3) In order to achieve the objects of this Act and subject to the control and directions of the Director, a witness protection officer may exercise the powers and must perform the functions conferred on, or assigned to, him or her by the Director or under this Act.

(4) The Director may designate other staff members of the Unit to assist a witness protection officer in the exercise of the powers or performance of the functions conferred on or assigned to him or her by the Director or under this Act.

(5) A witness protection officer must at all times control and supervise the activities of security officers and other staff members of the Unit in his or her area and must as often as the Director requires, but at least once every three months, submit a written report to the Director on such activities or on any other matter relating to this Act which the Director requests the witness protection officer to deal with in such report.

Security officers

10. (1) The Permanent Secretary may request -
- (a) the Permanent Secretary of the ministry responsible for defence;
 - (b) the Permanent Secretary of the ministry responsible for safety and security; or
 - (c) the Director of the Intelligence Service referred to in section 3(b) of the Intelligence Service Act,

to second any member of the defence force, police force, correctional service or intelligence service, as the case maybe, as a security officer to the service of the Unit in terms of the laws regulating such secondment.

[The word “maybe” should be the two words “may be”.]

(2) In order to achieve the objects of this Act and subject to the control and directions of the Director, a security officer seconded in terms of subsection (1) may exercise the powers and must perform the functions conferred on, or assigned to him or her by the Director or a witness protection officer in terms of this Act and must, in the exercise or performance of those powers or functions, act in terms of this Act.

[There should be a comma after the phrase “or assigned to”.]

Independence of Unit

11. (1) In performing its functions under this Act, the Unit -
- (a) must be impartial and must perform its functions without fear, favour or prejudice; and
 - (b) has all the powers necessary or expedient for the performance of its functions under this Act without interference from any person or authority.

(2) The Director must for the purposes of accountability, at such times that as may be agreed between the Minister and the Director and through the Permanent Secretary, report to the Minister on the overall fulfilment of the objects and purposes of the Unit and the performance of its functions under this Act.

(3) A person who has a personal or financial interest in a matter for consideration by the Unit must disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Unit in respect of that matter unless the Director decides otherwise.

(4) The Director or a staff member of the Unit may not personally or through another person or entity transact any business or trade with the Unit.

(5) A person who -

(a) interferes with any staff member of the Unit in contravention of subsection (1)(b);
or

(b) contravenes or fails to comply with subsection (3) or (4),

commits an offence and, on conviction, is liable to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or both the fine and imprisonment.

Funding of Unit

12. (1) The Unit derives its funds from money made available to the Unit pursuant to section 20(b).

(2) Funds utilised by the Unit for its administrative and operational needs form an integral part of the funds of the Unit and must be administered and accounted for in the manner provided for in Part 4.

PART 3

WITNESS PROTECTION ADVISORY COMMITTEE

Establishment of Committee

13. (1) There is established a committee to be known as the Witness Protection Advisory Committee.

(2) The Committee consists of -

(a) the Permanent Secretary who is the chairperson of the Committee; and

(b) the following members appointed by the Minister:

(i) one staff member of at least director level in the public service nominated by the relevant Minister for each of the Ministries responsible for -

(aa) finance;

(bb) international relations;

(cc) home affairs

Witness Protection Act 10 of 2017

(dd) safety and security;

- (ii) one staff member of at least director level in the public service nominated by the Head of the Intelligence Service referred to in Article 120A of the Namibian Constitution;
- (iii) one staff member of at least director level in the public service nominated by the Prosecutor-General referred to in Article 88 of the Namibian Constitution; and
- (iv) one member of the Namibian Police of at least the rank of Commissioner in the Namibian Police nominated by the Inspector-General of Police referred to in Article 119 of the Namibian Constitution.

(3) Subject to subsection (2), a member of the Committee, other than the chairperson, holds office for a period of five years, but a member is eligible for reappointment at the end of his or her term of office.

(4) A member of the Committee vacates office if he or she -

- (a) ceases to hold the office by virtue of which he or she became a member;
- (b) in the case of a member referred to in -
 - (i) subsection 2(b)(i), the nomination of the member is withdrawn by the relevant Minister who nominated him or her;
 - (ii) subsection (2)(b)(ii), (iii) or (iv), the nomination of the member is withdrawn by the Head of the Intelligence Service, the Prosecutor-General or the Inspector-General of Police, as the case maybe;
- (c) has, without reasonable excuse, absented himself or herself from three consecutive meetings of the Committee; or
- (d) in writing, resigns from office.

(5) Despite subsection (4), the Minister may, after affording a member an opportunity to make representations on the matter, remove a member from office if the Minister has reasonable cause to believe that the member is no longer fit or able to discharge the functions of his or her office.

(6) If a member of the Committee vacates office under the circumstances referred to in subsection (4) or (5) or dies, the vacancy must be filled by -

- (a) the new Permanent Secretary, if the member is the chairperson;
- (b) a staff member nominated by the Minister who originally nominated the member for appointment, if that member was appointed under subsection (2)(b)(i); or
- (c) a staff member or member of the police nominated by the Head of the Intelligence Service, the Prosecutor-General or the Inspector-General of Police, as the case maybe, if the staff member or member of the police was appointed under subsection (2)(b)(ii), (iii) or (iv).

[The word “maybe” should be the two words “may be”.]

(7) A member who is appointed under subsection (6) holds office for the remainder of the period for which his or her predecessor was entitled to hold office.

Object of Committee

- 14.** The main object of the Committee is to advise -
- (a) the Minister on high level policy matters relating to witness protection in Namibia; and
 - (b) the Unit generally on the exercise of its powers and performance of its functions under this Act.

Functions and powers of Committee

15. (1) Without derogating from the generality of the object of the Committee mentioned in section 14, the functions of the Committee are to -

- (a) make recommendations to the Minister regarding policy matters, including amendments to this Act and the making of regulations and issuing of directives and staff rules under section 81;
- (b) advise the Minister on the formulation of witness protection policies in accordance with the current law and international best practices;
- (c) give advice to the Unit generally on the performance of its functions and exercise of its powers in terms of this Act;
- (d) make recommendations to the Minister on the budgetary estimates of the Unit; and
- (e) perform any other functions as may be conferred by or under this Act or any other law.

(2) The Committee may establish one or more subcommittee or subcommittees consisting of members of the Committee to carry out any of its functions.

Meetings and procedure

16. (1) The first meeting of the Committee must be held at such time and place as the Minister may determine, and thereafter meetings of the Committee are held at such times and places as the Committee may determine, but the Committee must hold at least three meetings every year.

(2) The members of the Committee must, at the first meeting of the Committee, elect from among themselves a vice-chairperson of the Committee.

- (3) The chairperson of the Committee -
- (a) may convene a special meeting of the Committee when he or she considers that it is necessary to hold such special meeting; or
 - (b) must convene a special meeting of the Committee when the Minister or at least four members request the chairperson to do so.

Witness Protection Act 10 of 2017

(4) The chairperson, or in his or her absence, the vice-chairperson or in the absence of both the chairperson and the vice-chairperson, such member as the members present have elected must preside at a meeting of the Committee.

(5) Four members form a quorum at a meeting of the Committee.

(6) A decision of a majority of the members present at a meeting of the Committee is the decision of the Committee and, in the event of an equality of votes, the person presiding has a casting vote in addition to his or her deliberative vote.

(7) A decision of the Committee, or an act performed under the authority of such a decision, may not be rendered invalid by reason only of a vacancy on the Committee or the fact that a person who is not entitled to sit as a member of the Committee did so sit when the decision was taken, if such decision was taken by the requisite majority of the members of the Committee who were present at the time and entitled to vote.

(8) The Committee may permit a staff member of the Unit whose input may be necessary on any matter to be considered at any meeting to attend and to take part in such discussions of the Committee as in the opinion of the Committee relate to such matter, but that staff member is not entitled to vote.

(9) The chairperson of the Committee must cause a record to be kept of the proceedings of its meetings, and must cause that record to be submitted to the Minister as soon as possible after a meeting of the Committee.

(10) The Committee may make rules relating to procedure at its meetings and at meetings of a subcommittee or subcommittees established under section 15(2).

Disclosure of interest

17. (1) A member of the Committee or a person present at a meeting of the Committee who has a personal or financial interest in a matter for consideration by the Committee must disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Committee in respect of that matter, unless the Committee decides otherwise.

(2) A member of the Committee may not personally or through another person or entity transact any business or trade with the Unit.

(3) A member or a person who contravenes or fails to comply with subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or to both the fine and imprisonment.

Other matters to be prescribed

18. The Minister may prescribe other matters relating to the Committee that may be necessary to ensure that the objectives of this Act are achieved.

PART 4
FUNDS OF UNIT AND ANNUAL REPORT

Funds of Unit

19. The funds of the Unit consist of -

Witness Protection Act 10 of 2017

- (a) money appropriated by Parliament and made available to the Ministry for the purposes of attaining the objects of the Unit and the Programme;
- (b) money allocated to the Unit pursuant to section 76(1)(b) of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) for purposes of attaining the objects of the Unit and the Programme;
- (c) donations made to the Unit in terms of section 73;
- (d) interest derived from an investment made under section 23; and
- (e) any unexpended money from the previous financial year carried over to the next financial year pursuant to section 24.

Utilisation of funds

20. (1) Money allocated to or standing to the credit of the Unit must be utilised for -

- (a) funding the activities of the Programme;
- (b) funding the administrative and operational needs of the Unit as contemplated in section 12;
- (c) defraying any expenses incurred by members of the Committee or subcommittees of the Committee;
- (d) paying the allowances and remuneration of members of, and meeting other expenses of, the Tribunal; and
- (e) payment for such other expenses or matters that the Minister with the approval of the Minister responsible for finance may in writing determine.

(2) The Minister, on the recommendation of the Director and with the approval of the Minister responsible for finance may, when he or she considers that it is just and proper in any particular case, pay out an appropriate sum of money to prescribed dependants of a protected person who dies or is incapacitated while participating in the Programme.

Accountability and administration of funds

21. The Permanent Secretary is, for the purposes of the State Finance Act, 1991 (Act No. 31 of 1991), the accounting officer of the Unit and any funds of the Unit.

Estimates of expenditure

22. (1) The financial year of the Unit is the same as that of the Ministry.

(2) The Permanent Secretary must within three months before the commencement of the financial year, prepare annual estimates of the expenditure of the Unit for that financial year.

(3) The annual estimates of expenditure referred to in subsection (2) must separately specify the amounts required for -

- (a) the activities of the Programme;
- (b) the administrative and operational needs of the Unit;

- (c) the expenses of the Committee and the Tribunal; and
- (d) payment of other expenses as contemplated in section 20(1)(e) and compensation as contemplated in section 20(2).

(4) The annual estimate must make provision for all estimated expenditure of the Unit and the Programme for the financial year to which they relate, including a reserve fund to provide for contingency in the event of an unforeseen increase in expenditure and other emergencies not contemplated at the time of making the estimates.

(5) The Committee must make recommendations on the annual estimates before the commencement of the financial year to which they relate and, once the recommendations are made, the amount of money provided in the estimates must be submitted to the Permanent Secretary for approval.

(6) The Unit may not incur expenditure except in accordance with the annual estimates provided under subsection (2), or with prior written approval of the Permanent Secretary.

Investment of balances

23. The Permanent Secretary may, with the prior written approval of the Minister and the Minister responsible for finance, despite the provisions of section 20, invest money referred to in section 19(b) and (c) which is not required for immediate use or as a reasonable working balance.

Unexpended balances

24. Despite anything to the contrary contained in any law, any unexpended balance of money referred to in section 19(b) and (c) at the close of any financial year, including accrued interest on investment balances and other receipts, must be carried forward as a credit in the funds of the Unit to the next succeeding financial year.

Accounts and audit

25. (1) The Director must keep books, and other records of accounts of the expenditure of monies allocated to the Unit and the assets and liabilities of the Unit, which records must be classified in accordance with the information and security policy of the Unit and must be preserved or disposed of in accordance with that policy.

(2) The Permanent Secretary must prepare the annual accounts of the funds of the Unit and the Auditor-General must, subject to section 25(3) of the State Finance Act, 1991 (Act No. 31 of 1991), and without compromising the integrity or security of the Unit's operations, audit and report on those annual accounts in accordance with the provisions of the said State Finance Act.

Annual reports

26. (1) The Director must within four months after the end of each financial year, make a report to the Minister generally on the operations and functioning of the Unit during that financial year.

(2) The Minister must, with due regard to the confidential nature of the operations of the Unit and the Programme -

- (a) within 14 days of receipt of the report from the Director or within such extended period as the Cabinet may allow but which period must not exceed 30 days submit the report to the Cabinet; and
- (b) within 30 days of receipt of the report from the Director, submit the report to the National Assembly or, if the National Assembly is not then in session, within 30 days after commencement of its next session.

Restrictions on audits, investigations and inspections

27. Despite anything to the contrary contained in any law, a person may not carry out any inspection, investigation, revision or audit which in terms of any law has to be or may be done in connection with any matter or document concerning the Unit or the Programme, unless that person has obtained a security clearance certificate.

Acquisition of certain property or services not to be disclosed

28. Despite the provisions to the contrary contained in any law, when acquiring any property or service or the use of any property or service the Unit is not obliged to disclose its identity or the identity of any of its staff members and the Unit may, for the purposes of acquiring such property or service, use the name or names of a corporate body established under section 6(5)(a) or of any other person.

Exemption from taxes, duties and fees

29. No tax or charge on income or transfer or stamp duty imposed by or under any law is payable by the Unit.

PART 5 WITNESS PROTECTION PROGRAMME

Establishment of Programme

30. (1) There is established a programme to be known as the Witness Protection Programme to be administered by the Unit.

(2) The main purpose of the Programme is to facilitate and provide protection and other assistance as contemplated in Part 6 to witnesses and related persons whose safety or well-being may be at risk because of their being witnesses or their involvement in proceedings or their being related persons.

Admission to Programme

31. (1) Subject to any review or appeal under section 69 or 70, the Director has the sole responsibility of deciding whether or not to admit a witness or related person to the Programme.

- (2) A witness or related person may be admitted to the Programme only if -
 - (a) the Director having regard to the factors mentioned in section 37, has decided that the witness or related person be admitted;
 - (b) the witness or related person agrees to be admitted to the Programme; and

Witness Protection Act 10 of 2017

- (c) the witness or related person signs a protection agreement in accordance with section 38, or -
 - (i) if the witness or related person is a minor, a parent or guardian of the witness or related person signs the agreement; or
 - (ii) if the witness or related person otherwise lacks legal capacity to sign the agreement, a guardian or other person who is usually responsible for the care and control of the witness or related person signs the agreement.

Admission to Programme not reward for giving evidence

32. The admission of a witness or related person to the Programme may not be done and may not be construed as a reward or means of persuading or encouraging the witness to give evidence or to make a statement.

Application for admission to Programme

33. (1) Any witness or related person who has reason to believe that his or her safety or wellbeing is or may be threatened by any person or group or class of persons, whether known to him or her or not, because of his or her being a witness or related person, may in the prescribed manner -

- (a) report such belief -
 - (i) to the investigating officer in the proceedings concerned;
 - (ii) to any person in charge of a police station;
 - (iii) if he or she is in prison, to the person in charge of the prison where he or she is being detained or to any person registered as a social worker under the Social Work Act and Psychology, 2004 (Act No. 6 of 2004), or regarded to be so registered and who is in the service of a government office, ministry or agency;
 - (iv) to a public prosecutor or any prosecutor in the Prosecutor-General's Office;
 - (v) to any staff member of the Unit;
 - (vi) to any relevant functionary;
 - (vii) to an authorised person referred to in section 1 of the Whistleblower Protection Act, 2017; or
 - (viii) to any other prescribed person; and
- (b) apply to the Director that he or she be admitted to the Programme.

(2) An application referred to in subsection (1)(b) must contain such information and documents as may be prescribed.

(3) If a witness or related person is for any reason unable to make a report as contemplated in subsection (1)(a), or to make an application for admission to the Programme as contemplated in subsection (1)(b), any interested person or the investigating officer concerned, who has reason to believe that the safety of the witness or related person is or may be threatened

Witness Protection Act 10 of 2017

as contemplated in subsection (1), may make such a report or application on behalf of the witness or related person.

(4) Subject to section 39, an application for protection of a minor may be made by or on behalf of the minor without the consent of his or her parent or guardian.

(5) Any person to whom a report is made as contemplated in subsection (1)(a) must assist the applicant in the making of an application for admission and, unless he or she is the Director, must without delay -

- (a) inform the Director of the application; and
- (b) submit the application to the Director or a witness protection officer.

(6) The Director may, whenever he or she considers it necessary, refer an application for admission submitted to him or her to a witness protection officer for evaluation and the submission of a report as contemplated in section 36.

(7) If a witness or related person whose safety or wellbeing is being threatened as contemplated in subsection (1), after having been advised to make an application for admission to the Programme by a person referred to in paragraph (a) of that subsection or by any interested person, refuses to make such application the person referred to in that paragraph or the interested person must record and keep a record of that refusal in the manner prescribed.

Duty to disclose certain matters before admission

34. (1) The Director may not admit a witness or related person to the Programme unless the Director is satisfied that the witness or related person has provided the Director with -

- (a) all information that the Director considers is necessary to decide whether or not the witness or related person should be admitted; and
- (b) with all such other information as may be prescribed.

(2) In addition to subsection (1), the Director may -

- (a) require a witness or related person to undergo -
 - (i) medical tests or examinations; or
 - (ii) psychological or psychiatric examinations, and make the results available to the Director; or
- (b) make such other inquiries and investigations as the Director considers necessary, for the purposes of assessing whether or not the witness should be admitted to the Programme or as may be prescribed.

Interim protection measures

35. (1) The Director or a witness protection officer -

- (a) to whom a report referred to in section 33(1)(a)(v) has been made;
- (b) who has been informed of an application for admission or to whom a written application for protection has been submitted as contemplated in section 33(5); or

Witness Protection Act 10 of 2017

- (c) if he or she is aware that a report or an application referred to in section 33 is to be made,

may, pending the finalisation of an application for admission of the witness or related person, place the witness or related person concerned under interim protection for a period not exceeding 14 days or for a period that may be prescribed, if the Director or a witness protection officer considers it necessary for the safety of the witness or related person.

- (2) Despite subsection (1) -
 - (a) if a report or an application has been made as contemplated in section 33(3), the witness or related person may only be placed under interim protection if he or she has consented thereto; and
 - (b) a minor may not be placed under interim protection without the consent of his or her parent or guardian,

unless the Director is of the opinion that exceptional circumstances exist which do not warrant such consent.

(3) If a witness protection officer places a witness or related person under interim protection as contemplated in subsection (1), the witness protection officer must report such placement within 48 hours to the Director.

(4) The Director may require a witness or related person who has been placed under interim protection pursuant to subsection (1) to enter into an interim protection agreement.

Report by witness protection officer

36. (1) A witness protection officer must consider the merits of an application for admission to the Programme submitted or referred to him or her in terms of section 33 and must -

- (a) as soon as possible after the receipt of such application, but not more than 14 days thereafter; or
- (b) if the person has been placed under interim protection as contemplated in section 35, before the expiry of such interim protection,

report thereon to the Director.

- (2) A report referred to in subsection (1) must be in writing and must include -
 - (a) a written indication by the relevant functionary concerned whether the person concerned is a witness or not;
 - (b) a recommendation by the witness protection officer whether the person concerned qualifies for admission to the Programme;
 - (c) particulars relating to the factors referred to in section 37(3); and
 - (d) any other matter which in the opinion of the witness protection officer should be taken into account.

Witness Protection Act 10 of 2017

(3) If a witness protection officer recommends that a person be admitted to the Programme, the witness protection officer may make recommendations with regard to the nature of the protection measures, the expected duration of the protection and any particular circumstances that ought to be taken into account in the admission to the Programme.

(4) If a witness protection officer recommends that an application for admission to the Programme be refused, he or she must inform the Director of the reasons for such recommendation.

Consideration of application and decision of Director

37. (1) When deciding an application made under section 33 by a witness or related person to be admitted to the Programme, the Director must have due regard to the report and recommendations of the witness protection officer concerned as to whether the applicant concerned should be admitted to the Programme or not, if the application was referred to a witness protection officer in terms of section 33(6).

(2) When deciding an application made under section 33 by a witness or related person to be admitted to the Programme, the Director must have due regard to any written recommendations by the relevant functionary concerned as to whether the applicant concerned should be admitted to the Programme or not, if the application was not referred to a witness protection officer in terms of section 33(6).

(3) Without derogating from the provisions of subsection (1) or (2), the Director must, in deciding whether the application for admission should be granted or not, take into account -

[The word “from” is misspelt in the *Government Gazette*, as reproduced above.]

- (a) the nature and extent of the perceived threat, danger or risk to the safety or wellbeing of the witness or related person;
- (b) any danger that the interests of the community might be affected if the witness or related person is not admitted to the Programme;
- (c) the nature of witness’s or related person’s relationship with any other persons on the Programme or being considered for admission;
- (d) if the witness or related person has a criminal record, the potential risk he or she may pose to the public by admission to the Programme;
- (e) the nature of the proceedings in which the witness has given evidence or is or may be required to give evidence or has made a statement;
- (f) if applicable, the nature of the improper conduct that has been disclosed by the witness under the Whistleblower Protection Act, 2017 and the likelihood that the safety or wellbeing of the witness is or maybe threatened as a result of the disclosure;

[The word “maybe” should be the two words “may be”.]

- (g) the importance, relevance and nature of the evidence given or to be given by the witness in the proceedings concerned;

Witness Protection Act 10 of 2017

- (h) the probability that the witness or related person will be able to adjust to participating in the Programme, having regard to the personal characteristics, circumstances and family or other relationships of the witness or related person;
- (i) the cost likely to be involved in the protection of the witness or related person;
- (j) the availability of any other means of protecting the witness or related person without invoking the provisions of this Act; and
- (k) any other factor that the Director considers relevant.

(4) In order to enable him or her to make a proper evaluation of an application for protection, the Director must be afforded immediate and full access to -

- (a) any police docket and statements of witnesses;
- (b) any evidence given in any proceedings; and
- (c) any disclosure made in terms of the Whistleblower Protection Act, 2017,

and he or she is entitled to obtain copies of any such statements, or disclosure evidence or any part thereof.

[The phrase “any such statements, or disclosure evidence” may have been intended to be “any such statements, evidence or disclosure”.]

- (5) After having considered an application for protection, the Director may -
 - (a) pending the approval or refusal of an application in terms of paragraph (b) or (c), make any interim arrangements with the witness or related person relating to his or her protection in terms of this Act;
 - (b) approve the application and thereupon admit the witness or related person to the Programme in accordance with the protection agreement entered into by or on behalf of the witness or related person and the Director; or
 - (c) refuse the application and, where applicable, by written notice to the witness or related person revoke any interim protection under which he or she has been placed in terms of section 35(1).

(6) If the Director refuses to approve an application under subsection (5)(c), he or she must as soon as is practicable, take reasonable steps to notify the witness or related person of the refusal and the reasons for the refusal, and inform the witness or related person of his or her right to have the Director’s decision reviewed by the Tribunal in terms of section 69.

- (7) The Director must make the decision referred to in subsection (5)(b) or (c) within -
 - (a) 30 days after receipt of an application as contemplated in section 33(1) (a)(v) or (5); or
 - (b) 15 days after receipt of a report contemplated in section 36,

but in exceptional cases the period may be extended in which case the period may not exceed 60 days.

Protection agreement

38. (1) Before admitting a witness or related person to the Programme, the Director must enter into a written protection agreement with such witness or where applicable, with each related person setting out the respective obligations of the Director and the witness or related person in respect of his or her admission to the Programme.

(2) For the purposes of subsection (1), the Director must -

(a) enter into a protection agreement with the parent or guardian of -

(i) a minor; or

(ii) a person who is otherwise not competent to enter into a legally binding agreement; or

(b) enter into a draft protection agreement with a minor referred to in section 39(2).

(3) If the Director has entered into a protection agreement as contemplated in subsection (2) he or she may, as soon as possible after the protected person concerned becomes competent to enter into a legally binding agreement, require the protected person to enter into a new protection agreement.

(4) An agreement referred to in subsection (1) or (2) must -

(a) set out the basis on which the witness or related person is to be admitted to the Programme and details of the protection and assistance that is to be provided; and

(b) contain a provision to the effect that protection under the Programme may be terminated if the protected person breaches a term of the agreement.

(5) Without derogating from the generality of subsection (1), (2) or (4) the terms and conditions of a protection agreement include -

(a) an obligation on the Director -

(i) to take such reasonable steps as are necessary to provide the protected person with the protection and related assistance, as set out to in the protection agreement concerned; and

(ii) not to keep a protected person under protection in any prison or police cell, unless otherwise agreed upon;

(b) an obligation on the witness or related person -

(i) where applicable, to give the evidence as required in the proceedings to which the protection relates;

(ii) to meet all financial obligations incurred by him or her that are not payable by the Director in terms of the protection agreement;

(iii) to meet all legal obligations incurred by him or her, including any obligations regarding the custody and maintenance of children and taxation obligations;

Witness Protection Act 10 of 2017

- (iv) to refrain from activities that constitute a criminal offence;
 - (v) to refrain from activities that might endanger his or her safety or that of any other protected person or staff or staff member of the Unit;
 - (vi) to accept and give effect to all reasonable requests and directions made or given by any staff member of the Unit in relation to the protection provided to him or her and his or her obligations;
 - (vii) to inform the Director of any legal proceedings which have or may be instituted by or against him or her or in which he or she is otherwise involved;
 - (viii) to inform the Director of any proceedings in which he or she was or may be involved, either as a witness or accused or otherwise; and
 - (ix) not to endanger the security of the Programme or any other aspect of the protection of witnesses or related persons or any other matter relating to the Programme;
- (c) the procedure in accordance with which the protection agreement may, if necessary, be terminated or amended; and
 - (d) any other prescribed terms and conditions or matters agreed between the witness or related person and the Director.

Special provisions for minors

39. (1) The Director may not admit a minor to the Programme unless the consent of the parent or guardian of the minor has been obtained.

- (2) Despite subsection (1), the Director may admit a minor -
 - (a) who, as a witness, applies to be admitted to the Programme in respect of proceedings against his or her parent or guardian or in which his or her parent or guardian is a suspect;
 - (b) who has no parent or guardian;
 - (c) whose parent or guardian cannot be identified or found, despite reasonable efforts to do so; or
 - (d) whose parent or guardian is unreasonably withholding or is unable to give his or her consent,

to the Programme without the consent of his or her parent or guardian if the Director is of the opinion that it is necessary to do so for the safety of that minor.

(3) If the Director admits a minor to the Programme in the circumstances referred to in subsection (2), the Director must -

- (a) within seven days of such admission; or

- (b) within such further period as a judge of the High Court within whose area of jurisdiction the minor is domiciled or ordinarily resident, may determine in an application made to him or her in chambers by the Director,

submit to that judge -

- (i) a report setting out his or her reasons for the admission; and
- (ii) the draft protection agreement referred to in section 38(2)(b),

for consideration by that judge in chambers.

(4) The Director must also furnish to the minor concerned and, where applicable, to his or her parent or guardian, a copy of the report and the draft protection agreement referred to in subsection (3).

(5) After consideration of the report and draft protection agreement referred to in subsection (3), the judge may by order -

- (a) set aside the admission to the Programme;
- (b) confirm the admission and thereupon ratify the draft protection agreement; or
- (c) confirm the admission and thereupon amend the draft protection agreement in the manner which he or she considers -
 - (i) to be in the best interests of the minor; and
 - (ii) necessary to ensure the safety of the minor.

(6) If the admission to the Programme of a minor is set aside in terms of subsection (5)(a), the Director must without delay terminate the participation of the minor in the Programme.

(7) Any draft protection agreement ratified or amended in terms of subsection (5)(b) or (c), constitutes a binding protection agreement.

(8) The Director must be regarded as the *curator ad litem* of a minor who, without the consent of his or her parent or guardian, has been placed under interim protection as contemplated in section 35(1), or admitted to the Programme as contemplated in subsection (2).

Admission of witnesses from other countries

40. (1) If -

- (a) the Minister receives a request from an appropriate authority of a foreign country with whom the Minister has entered into an agreement or made arrangements in terms of section 72(1) for the admission of a person who is a national or a resident of that country to the Programme; and
- (b) the Minister, after consultation with the Minister or functionary who, for the time being, is the political head of any office, ministry or agency or other functionary that is represented on the Committee or any other Minister or functionary as may be necessary, is satisfied that -

Witness Protection Act 10 of 2017

- (i) the appropriate authority has provided all material information that is necessary to support the request; and
- (ii) it is appropriate to do so in all the circumstances,

the Minister must refer the request to the Director.

(2) The request referred to in subsection (1) must be accompanied by such documents and information that are or is necessary for the Director to make a decision or that may be prescribed.

(3) The Director must consider admitting the person whose admission has been requested to the Programme in the same way as the Director would consider admitting any other person to the Programme in terms of section 37.

(4) The Director or, where appropriate, the Minister may, if he or she thinks it appropriate to do so, seek further information about the person whose admission has been requested from the appropriate authority.

(5) If the Director decides that the person whose admission has been requested is suitable for admission to the Programme, the Director must make a recommendation to that effect and submit a report to the Minister.

(6) If the Minister, after considering the report from the Director, decides that it is appropriate in all the circumstances that the person be admitted to the Programme, the Minister must inform the Director accordingly.

(7) The Director or, where appropriate, the Minister must -

- (a) enter into an agreement or arrangement with the appropriate authority for the purpose of making services under the Programme available to the appropriate authority; and
- (b) if the person whose admission has been requested is not a national or permanent resident of Namibia -
 - (i) the consent of the Minister responsible for immigration has been obtained for entry of that person into Namibia; and
 - (ii) that person has been granted a visa, if required, for entry into Namibia,

admit that person to the Programme.

[There is a problem with the structure of this subsection, as the separate components do not form a logical sentence. It is not clear what was intended.]

(8) An agreement or arrangement referred to in subsection (7)(a) may include procedures under which the appropriate authority pays the costs associated with providing protection for the person whose admission has been requested, including -

- (a) the costs of travel by that person and the costs associated with travel by the person;
- (b) any costs that will be incurred if protection under the Programme to the person whose admission has been requested is terminated; and

- (c) such other costs as the Director determines.

Admission of witnesses at request of international court, tribunal, institution or organisation

41. (1) If -

- (a) the Minister receives a request from an international court, tribunal, institution or organisation with whom the Minister has entered into an agreement or made arrangements in terms of section 72(2) for the admission of any person to the Programme; and
- (b) the Minister, after consultation with the Minister or functionary who, for the time being, is the political head of any office, ministry or agency or other functionary that is represented on the Committee or any other Minister or functionary as may be necessary, is satisfied that -
- (i) the international court, tribunal, institution or organisation has provided all material information that is necessary to support the request; and
- (ii) it is appropriate to do so in all the circumstances,

the Minister must refer the request to the Director.

(2) The request referred to in subsection (1) must be accompanied by such documents and information that are or is necessary for the Director to make a decision or that may be prescribed.

(3) The Director must consider admitting the person whose admission has been requested the Programme in the same way as the Director would consider admitting any other person to the Programme in terms of section 37.

[The word “to” appears to have been omitted in the phrase “The Director must consider admitting the persons whose admission has been requested to the Programme...”.]

(4) The Director, or where appropriate the Minister, may if he or she thinks it appropriate to do so, seek further information about the person whose admission has been requested from the international court, tribunal, institution or organisation.

(5) If the Director decides that the person whose admission has been requested is suitable for admission to the Programme, the Director must make a recommendation to that effect and submit a report to the Minister.

(6) If the Minister, after considering the report from the Director, decides that it is appropriate in all the circumstances that the person be admitted to the Programme the Minister must inform the Director accordingly.

(7) The Director, or where appropriate the Minister, must -

- (a) enter into an agreement or arrangement with the international court, tribunal, institution or organisation for the purpose of making services under the Programme available to that international court, tribunal, institution or organisation; and
- (b) if the person whose admission has been requested is not a national or permanent resident of Namibia -

Witness Protection Act 10 of 2017

- (i) the consent of the Minister responsible for immigration has been obtained for entry of that person into Namibia; and
- (ii) that person has been granted a visa, if required, for entry into Namibia,

admit that person to the Programme.

[There is a problem with the structure of this subsection, as the separate components do not form a logical sentence. It is not clear what was intended.]

(8) An agreement or arrangement referred to in subsection (7)(a) may include procedures under which the international court, tribunal, institution or organisation pays the costs associated with providing protection for the person whose admission has been requested, including -

- (a) the costs of travel by that persons and the costs associated with travel by that person;

[The phrase “that persons” should be “that person”.]

- (b) any costs that will be incurred if protection under the Programme to the person whose admission has been requested is terminated; and
- (c) such other costs as the Director determines.

Register of protected persons

42. (1) The Director must, subject to section 43, open and maintain a register of protected persons and a witness protection officer must open and maintain a register for the branch office for which he or she is responsible.

- (2) The register may be maintained by electronic means.
- (3) The Director or the witness protection officer must -
 - (a) include in the register such particulars and information about a protected person or former protected person and particulars or information of any other matters as may be prescribed; and
 - (b) keep such other records and documents relating to a protected person or former protected person as may be necessary or as may be prescribed.

Access to register of protected persons

43. (1) A person may not have access to the register or a branch office register referred to in section 44 and to records and documents kept together with that register unless -

- (a) that person holds or occupies a designated position within the Unit;
- (b) the Minister has, in the public interest, authorised that person to have access to the register;
- (c) that person has obtained a court order granting him or her access to the register; or

Witness Protection Act 10 of 2017

(d) the Director has, pursuant to subsection (2), authorised that person to have access to the register.

(2) Despite subsection (1), the Director may -

(a) if he or she considers that it is necessary to facilitate the investigation of crime or that it is in the interests of the due administration of justice to do so; or

(b) for any other reason that the Director considers sufficient,

but subject to such conditions that he or she considers necessary, authorise any other person to have access to the register or part of the register or a branch office register or to some or all of the records and documents kept together with the register.

(3) If the Minister has authorised a person to have access to the register pursuant to subsection (1)(b), the court has granted a person access to the register pursuant to subsection (1)(c) or the Director has authorised a person to have access to the register under subsection (2), the Director must notify the relevant witness protection officer of -

(a) the name of the person to whom the access was allowed;

(b) the information the person was allowed access to; and

(c) the reasons for allowing access.

(4) A person who accesses the register, records or documents in contravention of subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years or to both the fine and imprisonment.

Suspension from Programme

44. (1) The Director may suspend protection provided under the Programme to a protected person for a reasonable period determined by the Director, if the Director is satisfied that the protected person has done or intends to do something that limits the ability of the Director to provide adequate protection to that person.

(2) After the suspension of protection as contemplated in subsection (1), the Director must inform the relevant functionary that has an interest in the matter of the decision to suspend.

Termination of protection

45. (1) The Director must terminate protection provided under the Programme to a protected person, if the protected person requests in writing that the protection be terminated.

(2) The Director may, subject to subsections (5) and (6) and after consideration of any representations made in terms of subsection (6), terminate protection provided under the Programme if -

(a) the circumstances that gave rise to the need for protection for the protected person cease to exist;

(b) satisfactory alternative arrangements have been made for the protection of the protected person;

Witness Protection Act 10 of 2017

- (c) the protected person, in making application for admission to the Programme, intentionally furnished false or misleading information or particulars or made a statement which is false or misleading in any material respect, or intentionally failed to disclose any information or particulars material to his or her application;
- (d) the protected person refuses or fails to enter into a protection agreement when he or she is required to do so in terms of section 38(1) or (3) or 47(5) or (6);
- (e) the protected person deliberately breaches a term of the protection agreement or a requirement or undertaking relating to the Programme;
- (f) the protected person's conduct or threatened conduct is, in the opinion of the Director, likely to threaten the security or compromise the integrity of the Programme;
- (g) the protected person has wilfully caused serious damage to the place of safety where he or she is protected or to any property in or at such place of safety; or
- (h) there is, in the opinion of the Director, no reasonable justification for the protected person to remain on the Programme;

and the Director is satisfied that in the circumstances of the case that participation in the Programme should be terminated.

(3) The Director may, subject to subsections (5) and (6) and after consideration of any representations made in terms of subsection (6), on receipt of a written notice given by the relevant functionary concerned that the evidence of a witness is no longer required in the proceedings concerned or that such proceedings have been concluded, by written notice, terminate the protection of that witness.

- (4) If a witness protection officer has reasonable grounds to believe or to suspect that -
 - (a) any of the circumstances for termination referred to in subsection (1)(a), (b) or (c) exist; or
 - (b) a protected person is performing or has performed any act referred to in subsection (1)(d) to (g),

he or she must without delay report the matter to the Director.

- (5) The Director may, on an application by -
 - (a) a protected person;
 - (b) the parent or guardian of a minor; or
 - (c) a minor referred to in section 39(2),

whose participation in the Programme has been terminated in terms of subsection (2) or (3), and the Director is of the opinion that the safety of that protected person is still being threatened after the conclusion of the proceedings concerned, extend the protection of such person for as long as it may in the opinion of the Director be necessary, except that the protection of a minor referred to in section 39(2), may not be so extended without the prior approval of a judge in chambers.

Witness Protection Act 10 of 2017

(6) The Director must, before he or she terminates the participation of a protected person in the Programme, take reasonable steps to notify in the prescribed manner -

- (a) the protected person and, if he or she is a minor, his or her parent or guardian and the relevant functionary concerned of the contemplated termination under subsection (2); or
- (b) the protected person and, if he or she is a minor, his or her parent or guardian of the contemplated termination under subsection (3),

and the Director must allow the protected person, and, where applicable, his or her parent or guardian, and the relevant functionary concerned to make written representations to the Director within the prescribed period and in the prescribed manner in relation to any matter regarding such termination.

(7) Any protected person remains under the Programme until his or her protection is terminated in terms of subsection (1), (2) or (3), or in accordance with an agreement referred to in section 40(7)(a) or 41(7)(a).

- (8) The Director may not terminate the participation in the Programme of -
 - (a) a minor referred to in section 39(2) in terms of this section without the prior approval of a judge in chambers; or
 - (b) a protected person referred to in section 40(7)(a) or 41(7)(a) in terms of this section without the prior approval of the Minister.

PART 6
WITNESS PROTECTION MEASURES

Witness protection measures

46. (1) Where a person is admitted to the Programme, or is being assessed for admission to the Programme, the Director must take such action or measures as the Director considers necessary and reasonable to protect that person's safety and wellbeing while also protecting the safety of the Director and all other staff members of the Unit as well as persons rendering services to the Programme in terms of this Act.

- (2) The action or measures referred to in subsection (1) may include -
 - (a) applying for any documents necessary -
 - (i) to allow the protected person to establish a new identity; or
 - (ii) otherwise to protect the protected person; and
 - (b) permitting persons who hold or occupy designated positions in the Unit to acquire and use assumed identities to enable them to effectively perform their functions;
 - (c) relocating the protected person within or outside Namibia;
 - (d) providing financial and other assistance to the protected person for the purpose of meeting the reasonable living expenses of the protected person including, where appropriate, living expenses of the protected person's family and providing,

whether directly or indirectly, and other reasonable assistance as may be prescribed;

[The word “and” before the phrase “other reasonable assistance” is superfluous.]

- (e) providing assistance to the protected person in obtaining employment or access to education;
- (f) providing other assistance to the protected person with a view to ensuring that the protected person becomes self-sustaining, including financial and other assistance upon termination of participation in the Programme; and
- (g) doing other things that the Director considers to be necessary to ensure the personal safety and wellbeing of the protected person.

(3) The Director may take the actions or measures referred to in subsections (1) and (2) in respect of a former protected person, or any other person whose relationship with the former protected person is such that the Director is satisfied that it is appropriate to take those actions or measures, as if the former protected person or other person were a witness admitted to the Programme, if -

- (a) the Director considers the actions or measures are necessary and reasonable for the protection of the former protected person or the other person; and
- (b) the Director has assessed the suitability of taking the actions or measures in respect of the former protected person or the other person.

(4) If the Director takes action or measures under subsection (3) in respect of a person other than a former protected person, this Act applies to the person as if the person were a former protected person.

(5) When the Director first takes action or measures under subsection (3) in respect of a former protected person who was a protected person under section 40 or 41, the Director must give the Minister responsible for immigration matters, or a staff member designated in writing by that Minister, written notice that he or she has taken that action or measure.

Change of identity

47. (1) In this section and section 48(2), “registrar” means the chief registrar as defined in section 1 of the Birth, Marriages and Deaths Act, 1963 (Act No. 18 of 1963), and any registrar or assistant registrar as defined in section 1 of that Act, who has been designated by the chief registrar to perform any function in terms of this Act.

[The correct citation for the Birth, Marriages and Deaths Act, 1963 is “Act No. 81 of 1963”.]

(2) A registrar may not prepare documentation relating to the establishment of a new identity for a protected person or perform any function in terms of this Act unless that registrar has been issued with a security clearance certificate.

(3) The Director may, with the approval of the Minister and subject to section 48, establish a new identity for a protected person.

(4) If the Director is requested by a protected person to establish a new identity for that protected person and the Director decides not to establish a new identity as requested, the Director must take reasonable steps to notify the protected person in writing of the decision.

Witness Protection Act 10 of 2017

(5) Where a decision has been taken to establish a new identity for a protected person after the person has been admitted to the Programme, the Director must prepare a new protection agreement which must be entered into by the protected person and the Director before the new identity is created.

(6) If the protected person is a minor or otherwise lacks legal capacity to sign the agreement, it must be entered into in the manner as provided for in section 38(2) and if the protected person remains a protected person on or after attaining majority age or having legal capacity, as the case may be, the Director may require the protected person to enter into another agreement at that time.

(7) Despite the provisions of any other law, where approval has been given to establish a new identity for a protected person -

- (a) the Director must notify the relevant registrar giving particulars of the new identity to be established and the documents that must be issued; and
- (b) on receiving such notification, the registrar must take such steps as are necessary to issue those documents to the Director.

(8) A protected person for whom a new identity is being established must, on request, attend before the registrar and sign such documents or records or take such other steps as may be necessary to facilitate the establishment of the new identity.

(9) A document issued under the authority of this section must be considered to have been lawfully issued by the relevant registrar in accordance with the requirements of the law relating to the registration of births, marriages and deaths.

Restrictions on qualification documents

48. Despite the provisions of sections 46 and 47, the Director may not obtain documentation for a protected person that represents that the protected person -

- (a) has a qualification that he or she does not have; or
- (b) is entitled to a benefit that he or she is not entitled to.

Provisions in case of marriage

49. (1) A protected person who has been provided with a new identity under the Programme who wishes to marry may not do so unless the protected person has given to the Director -

- (a) evidence that satisfies the Director -
 - (i) that the protected person is of marriageable age; and
 - (ii) of the original identity of the protected person;
- (b) evidence that satisfies the Director that the person's previous spouse has died or that the protected person is divorced, if the protected person has been married previously; and

- (c) a statutory declaration to the effect that there is no legal impediment to the marriage and the Director is not aware of any legal impediment to the marriage.

(2) If the Director is satisfied that the protected person has complied with subsection (1), the Director must give a certificate to a registrar stating that the Director has received the evidence referred to in paragraphs (a) and (b) of subsection (1) and the statutory declaration referred to in paragraph (c) of that subsection.

(3) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding two years, or both the fine and imprisonment.

Commercial arrangements by Director

50. The Director may make commercial arrangements with any person under which a protected person is able to obtain a benefit under a contract or arrangement without revealing the protected person's former identity.

Protection of third party rights

51. (1) If a protected person has any outstanding rights or obligations or is subject to any restrictions, the Director must take such steps as are reasonably practicable to ensure that -

- (a) those rights or obligations are dealt with according to law; or
 - (b) the protected person complies with those restrictions.
- (2) The steps referred to in subsection (1) may include -
- (a) providing protection for the protected person while the protected person is attending court; or
 - (b) notifying a party or possible party to any legal proceedings that the Director will, on behalf of the protected person, accept process issued by a court, tribunal or commission of inquiry and nominating a staff member of the Unit for that purpose.

Avoidance of obligations by protected person

52. (1) If the Director is satisfied that a protected person who has been provided with a new identity under the Programme is using that new identity to avoid -

- (a) obligations that were incurred before the new identity was established; or
- (b) complying with restrictions that were imposed on the person before the new identity was established,

the Director must give notice in writing to the protected person stating that the Director is so satisfied.

(2) The notice referred to in subsection (1) must state that, unless the protected person satisfies the Director that the obligations will be dealt with according to law or the restrictions will be complied with, the Director will take such action as he or she considers reasonably necessary to ensure that they are dealt with according to law or complied with.

(3) That action referred to in subsection (2) may include informing a person who is seeking to enforce rights against the protected person of the details of any property owned by the protected person under his or her former identity.

Payments made under Programme

53. (1) The Director may, if he or she considers it necessary, certify in writing that the whole or part of an amount held by a protected person represents payments made to the protected person under the Programme.

(2) An amount so certified cannot be confiscated, forfeited or restrained, and cannot be applied in payment of pecuniary penalties, under any law.

Non-disclosure of original identity

54. (1) A protected person who has been provided with a new identity under the Programme and who would, apart from this section, be required by or under a law of Namibia to disclose his or her original identity or a former protected identity for a particular purpose is not obliged to disclose his or her original identity or the former protected identity to any person, if the Director has prohibited the protected person, in the prescribed manner, from disclosing the original identity or the former protected identity for that purpose.

(2) If the Director has, under subsection (1), prohibited a protected person from disclosing his or her original identity or any former protected identity for a particular purpose, that protected person is entitled, in any proceedings, or for any purpose, under or in relation to the relevant law of Namibia, to claim that his or her current protected identity is his or her only identity.

Non-disclosure of identity in legal proceedings

55. (1) If, in any proceedings in a court, tribunal or commission of inquiry, the identity of a protected person is in issue or may be disclosed, the court, tribunal or commission must, unless it considers that the interests of justice require otherwise -

- (a) hold that part of the proceedings which relates to the identity of that protected person *in camera*; and
- (b) make such order relating to the suppression of publication of evidence given before the court, tribunal or commission as, in its opinion, will ensure that the identity of the protected person is not disclosed.

(2) If in any proceedings in a court, tribunal or commission of inquiry, a protected person or former protected person who has been provided with a new identity under the Programme is giving evidence, the court, tribunal or commission may hold that part of the proceedings *in camera*.

(3) The court, tribunal or commission before which any proceedings referred to in subsection (1) or (2) are conducted, may if it considers it necessary, by order direct -

- (a) that no question may be asked in the proceedings which might lead to the disclosure of the protected identity of a protected person or former protected person or of his or her place of residence;
- (b) that a witness in the proceedings, including a protected person or former protected person, is not required to answer a question, give any evidence, or provide any

Witness Protection Act 10 of 2017

information, which may lead to the disclosure of a protected identity of the protected person or former protected person or of his or her place of residence; and

- (c) that a person involved in the proceedings may not, in the proceedings, make a statement which discloses or could disclose a protected identity of the protected person or former protected person or his or her place of residence.

(4) This section applies despite any provision to the contrary in any law or any other law or rule of evidence.

Non-disclosure by protected persons

56. (1) Subject to subsection (2), a protected person, a former protected person or a person who has been or is being considered for admission to the Programme may not, either directly or indirectly, disclose or communicate to another person -

- (a) the fact that he or she is a protected person, a former protected person or has undergone assessment for admission to the Programme;
- (b) information as to the way in which the Programme operates;
- (c) the fact that the protected person has signed a protection agreement;
- (d) details of the protection agreement that the protected person has signed;
- (e) information about the Director or any staff member of the Unit or other person who is or has been involved in the Programme; or
- (f) information relating to anything done by the Director or any staff member of the Unit under this Act.

(2) Subsection (1) does not apply to a disclosure or communication which -

- (a) has been authorised by the Director;
- (b) is necessary for the purposes of the investigation of a criminal offence under the law of Namibia; or
- (c) that is necessary to comply with an order of a competent court.

(3) A person is a witness or a related person considered for admission to the Programme if that person -

- (a) is the subject of consideration under Part 5 for admission to the Programme, even if the Director subsequently decides not to admit that person; or
- (b) has been admitted to the Programme on an interim basis under section 35, even if the person does not go on to be admitted to the Programme.

(4) A person who contravenes or fails to comply with subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 10 years, or both the fine and imprisonment.

Non-disclosure of information by other persons

Witness Protection Act 10 of 2017

57. (1) A person who has in whatever way obtained access to information or a document relevant to the Programme may not disclose or communicate information -

- (a) about the Programme;
- (b) about the identity or location of a protected person, a former protected person or a person who has been or is being considered for admission to the Programme; or
- (c) that compromises or may compromise the security of any staff member of the Unit or any person who has performed a function for or on behalf of the Unit, or the integrity of the Programme,

to another person except in the circumstances mentioned in subsection (2).

(2) A person referred to in subsection (1) may disclose or communicate information -

- (a) for the purpose of giving effect to the provisions of this Act;
- (b) when required to do so by any competent court; or
- (c) in terms of subsection (3).

(3) The Director may, subject to subsection (4), and after consideration of any representations referred to in that subsection, on such conditions as he or she considers fit, disclose or communicate or authorise the disclosure or communication of any information in respect of a protected person -

- (a) with the consent of -
 - (i) the protected person concerned; or
 - (ii) his or her parent or guardian, if he or she is a minor;
- (b) if the protected person has previously disclosed or communicated such information or acted in a manner which resulted in such disclosure or communication;
- (c) if the disclosure or communication -
 - (i) is required for the exercise or protection of any rights;
 - (ii) is required for the purpose of compliance with any law; or
 - (iii) is in the public interest; or
- (d) in any criminal proceedings, if the disclosure or communication is necessary to establish the guilt or the innocence of a person.

(4) Despite subsection (3), the Director may not disclose or communicate any information in respect of a minor referred to in section 39(2) without the prior approval of a judge in chambers.

(5) The Director must, before he or she discloses or communicates or authorises the disclosure or communication of any information in respect of a protected person in the circumstances referred to in subsection (3)(b), (c) or (d), take reasonable steps to notify -

Witness Protection Act 10 of 2017

- (a) the protected person; or
- (b) the parent or guardian of the protected person, if he or she is a minor,

in the prescribed manner of the contemplated disclosure or communication and must allow the protected person or, where applicable, his or her parent or guardian, to make written representations to the Director within the prescribed period and in the prescribed manner in relation to any matter regarding such disclosure or communication.

(6) The provisions of subsection (5) do not apply if the Director is of the opinion that such notification may jeopardise the purpose for which the information is to be disclosed or communicated.

(7) The Director must, in determining whether information in respect of a protected person should be disclosed or communicated as contemplated in subsection (3), take into account -

- (a) the reasons for the disclosure or communication;
- (b) the probability that the disclosure or communication may endanger the safety or wellbeing of the protected person concerned or that of any other protected person or the integrity of the Programme;
- (c) whether the need for the disclosure can effectively be met by any other means;
- (d) whether there are effective means available to prevent any further disclosure or communication of the information; and
- (e) any other factor which, in the opinion of the Director, should be taken into account.

(8) A person may not disclose or communicate any information referred to in subsection (1) -

- (a) which came -
 - (i) into his or her possession; or
 - (ii) to his or her knowledge was disclosed to him or her,
 in contravention of the provisions of that subsection; or

[There is a problem with the structure of paragraph (a). The word “came” should be part of subparagraph (i) instead of being part of the introductory phrase, as follows:

- “(a) which -
 - (i) came into his or her possession; or
 - (ii) to his or her knowledge was disclosed to him or her, in contravention of the provisions of that subsection; or”.]

- (b) if he or she ought to have reasonably suspected that such information was disclosed or communicated to him or her in contravention of the provisions of that subsection.

(9) A person who contravenes or fails to comply with subsection (1) or (8) commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 10 years, or to both the fine and imprisonment.

Protection from threats, legal action or disciplinary action

58. (1) A person may not in any way coerce or threaten a witness, related person or protected person for applying to participate in, or for participating in, the Programme or for cooperating with a court or any law enforcement agency.

(2) A person may not take any legal action, institute legal proceedings or take disciplinary action against a witness, related person or protected person in respect of -

- (a) any assistance given by the witness, related person or protected person to a court or to any law enforcement agency;
- (b) a disclosure of information made by the witness, related person or protected person to a court or law enforcement agency.

(3) A person is not obliged to identify, or provide information that might lead to the identification of, a witness, related person or protected person who assisted or disclosed information to a court or law enforcement agency.

(4) In any proceedings before a court, the court must ensure that information that identifies or might lead to the identification of a person who assisted or disclosed information to the court or law enforcement agency is removed or concealed from any documents to be produced or inspected in connection with the proceedings.

(5) Subsections (3) and (4) do not apply to the extent determined by the court to be necessary to ensure that justice is fully done.

(6) For the purposes of this section “law enforcement agency” means any person or authority responsible for enforcement of any law of Namibia relating to the prevention, detection or investigation of crime.

(7) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 10 years, or both the fine and imprisonment.

Non-compellability to give evidence

59. Except as otherwise provided by an order of the High Court, a person who acquires knowledge or information as a result of association or connection, duty or service with the Programme or the Unit is not compellable, in proceedings in a court, tribunal or commission of inquiry, to produce any document or to disclose or communicate a matter or a thing related to the exercise of functions under this Act or the protection of witnesses or related persons admitted to the Programme.

Restoration of original identity

60. (1) If -

- (a) a protected person has been provided with a new identity under the Programme; and
- (b) protection under the Programme to the protected person is terminated under section 45,

the Director may, with the approval of the Minister or without such approval if the consent of the former protected person is obtained, take such action as is necessary to restore the former protected person's original identity.

(2) The Director must take reasonable steps to notify the former protected person of a decision under subsection (1).

(3) If the Director -

- (a) takes action under this section to restore the original identity of a person who was a protected person; and
- (b) notifies the former protected person in writing that he or she is required to return to the Director all documents provided to the former protected person that relate to the new identity provided under the witness protection Programme,

[Each word in the phrase "Witness Protection Programme" is capitalised when it is written out in full elsewhere in the Act.]

the former protected person may not, without reasonable excuse, refuse or fail to return those documents to the Director within 30 days after receiving the notice.

(4) Where a former protected person's original identity is restored and he or she has outstanding legal rights or obligations or is subject to legal restrictions in respect of the identity that had been provided under the Programme, section 51 applies to such rights, obligations or restrictions, and the Director may take the same actions as he or she could have taken if they had occurred before the new identity was acquired.

(5) A person who contravenes or fails to comply with subsection (3) commits an offence and is liable on conviction to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years, or both the fine and imprisonment.

PART 7 WITNESS PROTECTION REVIEW TRIBUNAL

Establishment of Tribunal

61. (1) There is established a tribunal to be known as the Witness Protection Review Tribunal.

(2) The Tribunal consists of a person who holds the position of deputy chief magistrate, divisional magistrate or regional magistrate in the magistracy, or a person who has held the office of judge in the High or Supreme Court or the position of chief magistrate, deputy chief magistrate, divisional magistrate or regional magistrate in the magistracy, who is the chairperson of the Tribunal, and two other persons appointed by the Minister in accordance with subsection (4).

(3) The Minister, in consultation with the Chief Justice must -

- (a) from among members of the magistracy, appoint one deputy chief magistrate, divisional magistrate or regional magistrate; or
- (b) appoint a person who has held the office of judge of the High or Supreme Court or the position of chief magistrate, deputy chief magistrate, divisional magistrate or regional magistrate,

Witness Protection Act 10 of 2017

to be the chairperson of the Tribunal.

(4) The Minister, after consultation with the Chief Justice, must appoint as members of the Tribunal two other persons who have the necessary qualifications, skills or experience in the administration of criminal justice or justice in general.

(5) Members of the Tribunal are appointed on a part-time basis and the Tribunal sits only when the chairperson considers that it is necessary that the Tribunal sits to hear and determine an application or applications for review brought before it.

(6) The Minister must, as soon as is reasonably possible after making an appointment in terms of subsection (3) or (4), publish in the *Gazette* the names of members of the Tribunal appointed in terms of those subsections, but failure to so publish the names does not invalidate the appointments.

(7) Members of the Tribunal hold office for a period of five years starting from the date of appointment, but are eligible for re-appointment at the end of their terms of office.

(8) A member of the Tribunal appointed in terms of subsection (3)(b) or (4) may not perform any function as such a member unless he or she has taken an oath or made an affirmation, which must be subscribed to by him or her, in the form as is prescribed.

(9) A member of the Tribunal appointed in terms of subsection (3)(b) or (4) must vacate his or her office if the member -

- (a) is convicted of an offence and sentenced to imprisonment without the option of a fine;
- (b) resigns his or her office by giving the Minister one month's notice in writing of his or her intention to resign;
- (c) has been absent for three consecutive sittings of the Tribunal without leave of the chairperson of the Tribunal; or
- (d) is removed from office by the Minister under subsection (10).

(10) The Minister may at any time, after affording the member an opportunity to make representations and, after consultation with the Chief Justice, terminate the appointment of a member -

[The comma after the word "and" is misplaced and should appear before the word "and".]

- (a) on the ground of misconduct;
- (b) on account of continued ill-health;
- (c) on account of incapacity to perform the duties of his or her office efficiently; or
- (d) for any other reason that the Minister considers good and sufficient.

(11) Members of the Tribunal, other than a chairperson appointed in terms of subsection (3)(a), who are not in full time service of the State are entitled to be paid out of the funds of the Unit such remuneration and allowances as may be determined by the Minister with the approval

of the Minister responsible for finance but, any member of the Tribunal may be reimbursed any reasonable costs or expenditure that are not recoverable by him or her from any other source.

[The comma after the word “but” is misplaced and should appear before the word “but”.]

Secretarial work of Tribunal

62. (1) The Permanent Secretary must, subject to the Public Service Act, 1995, designate a staff member in the Ministry to be the secretary of the Tribunal who is in charge of the administrative functions of the Tribunal.

(2) The Permanent Secretary may in like manner designate such other staff members in the Ministry as may be necessary to assist the secretary in the performance of his or her functions.

Seat of Tribunal and jurisdiction

63. (1) The seat of the Tribunal is Windhoek, but the functions of the Tribunal may be performed at any other place in Namibia as the chairperson of the Tribunal in consultation with the Permanent Secretary may determine.

(2) The Tribunal has jurisdiction to -

- (a) review the information and documents submitted to it under section 69(1) and must advise the Unit and the person who requested the review of its decision;
- (b) make any order or orders as may be necessary to ensure the effective implementation of the provisions of this Act; and
- (c) generally to inquire into and adjudicate upon any matter which is required or permitted to be referred to it under any provision of this Act or any other law.

(3) The Tribunal must exercise its jurisdiction under this Act as if it were a magistrates' court established in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) and the Tribunal has the same powers, privileges and immunities available to a magistrate's court in a civil matter.

Costs

64. The Tribunal may not make an order as to costs in any proceedings before it.

Contempt of Tribunal

65. A person who -

- (a) insults, disparages or belittles any member of the Tribunal in that capacity, or prejudices, influences or anticipates the proceedings or findings of the Tribunal;
- (b) intentionally interrupts the proceedings of the Tribunal or misconducts himself or herself in any manner during such proceedings; or
- (c) does anything in relation to the Tribunal which if done in relation to a court of law would have constituted contempt of court,

commits an offence and is liable on conviction to a fine not exceeding N\$10 000 or to imprisonment for a period not exceeding 12 months, or to both the fine and imprisonment.

Rules of Tribunal

66. (1) The chairperson of the Tribunal, after consultation with the Committee and the Director, may make rules of procedure governing the practice and procedure before the Tribunal, including, but not limited to, rules governing -

- (a) the giving of notices to parties;
- (b) the addition of parties and interested persons to the proceedings;
- (c) the summoning of witnesses;
- (d) the production and service of documents;
- (e) discovery proceedings;
- (f) pre-hearing conferences; and
- (g) the conduct of proceedings before the Tribunal.

(2) Rules made under subsection (1) or any amendment thereof have no force of law until the chairperson of the Tribunal publishes them in the *Gazette*.

(3) Any rules of procedure established by the Tribunal in terms of subsection (1) and any rules prescribing the procedures to be followed when appealing to the High Court pursuant to section 70 must take into consideration the confidential nature of witness protection and witness protection measures as well as the functions and operations of the Unit.

(4) A rule made under subsection (1) may prescribe a penalty, not exceeding a fine of N\$10 000 or imprisonment for a period not exceeding 12 months, or both the fine and imprisonment, for any contravention or failure to comply with the provisions thereof.

Expenses of Tribunal

67. (1) The expenditure incidental to the performance of functions of the Tribunal must be defrayed from the funds of the Unit as contemplated in section 20(1)(d).

(2) Any person summoned to attend a hearing is entitled, at the discretion of the chairperson of the Tribunal, to receive the same fees and allowances as those paid to persons summoned to attend before the High Court.

Proceedings of Tribunal

68. (1) Proceedings before the Tribunal are to be conducted as informally and expeditiously and in accordance with the rules of the Tribunal and the requirements of natural justice.

[The word “as” before “informally and expeditiously” is superfluous.]

(2) A hearing before the Tribunal may be held *in camera* at the request of any party, if the party establishes to the satisfaction of the Tribunal that the circumstances of the case so require.

(3) The decision of a majority of the members of the Tribunal is the decision of the Tribunal, but the presiding officer alone must decide any question of law, and whether any matter constitutes a question of law or a question of fact.

Review proceedings

69. (1) Any person who is aggrieved by any decision of or steps taken in relation to the protection of witnesses or related persons by the Unit or any person acting for or on behalf of the Unit under any provision of this Act, may within the prescribed period and in the prescribed manner, apply to the Tribunal to review the decision or steps taken.

(2) An application for review under subsection (1) must be accompanied by such information and documents as may be prescribed.

(3) If an application under subsection (1) is in respect of a decision of the Director not to admit a person to the Programme or not to establish a new identity for a protected person that application does not suspend the Director's decision, unless the Director decides otherwise.

(4) An application for review under this Act may be based on any valid ground, including any of the grounds on which an application for the review of decisions of lower courts, tribunals and other administrative bodies may be brought before the High Court.

(5) Where an application for review is made under this Act, the Tribunal must hear the parties and thereafter it may -

- (a) allow the application and set aside the decision of the Director;
- (b) refer the matter back to the Director for reconsideration;
- (c) dismiss the application and provide the parties with written reasons for the decision;
- (d) amend the decision being reviewed and provide the parties with written reasons for its decision; or
- (e) make any other order or determination which is appropriate in the circumstances.

(6) Where the Director's decision or a step is reversed or amended, the Director must amend his or her decision or steps taken accordingly.

Appeals from Tribunal

70. (1) A person who is aggrieved by the decision, order or determination of the Tribunal may appeal against that decision, order or determination to the High Court.

(2) An appeal lodged under subsection (1) must be lodged in the prescribed manner and must be prosecuted as if it were an appeal from a judgment or an order given in civil proceedings by a magistrates' court and, for the purposes of prosecuting any such an appeal the provisions relating to appeals from decisions of a magistrates' court to the High Court do, subject to such modifications as may be required by the context, apply

[There should be a full stop after the word "apply"; there is no additional text.]

MISCELLANEOUS PROVISIONS

Agreements by Permanent Secretary

71. (1) The Permanent Secretary may -
- (a) enter into an agreement to make use of the services of any person, body, institution or organisation;
 - (b) make an arrangement with any public body or enter into an agreement with any person, body, institution or organisation -
 - (i) in terms of which the Unit will be authorised to make use of the facilities or equipment belonging to or under the control of such person, public body, body, institution or organisation;
 - (ii) in order to obtain documents and other information that may be required for the protection of a protected person; or
 - (iii) regarding any matter for the purpose of giving effect to the provisions of this Act.

(2) All public bodies and other persons bodies, institutions or organisations with whom agreements have been entered into or arrangements have been made in terms of subsection (1) must render such assistance as may be reasonably required in the exercise of the powers or performance of functions conferred on or assigned to the Director by or under this Act.

International agreements by Minister

72. (1) The Minister may enter into an agreement or arrangement, either in general or on specific terms and conditions, with the government of a foreign State to enable -

- (a) a witness, related person or protected person who is in that State to be admitted to the Programme in terms of this Act; or
- (b) a witness, related person or protected person in Namibia to be admitted to a witness protection programme established in terms of the law of that State and administered by that State or by any person body, institution or organisation in that State,

but -

- (i) a person referred to in paragraph (a) may not be admitted to Namibia pursuant to any such agreement or arrangement without the consent of the Minister responsible for immigration matters or admitted to the Programme without the consent of the Minister; and
- (ii) a person referred to in paragraph (b) may not be admitted to a witness protection programme pursuant to any such agreement or arrangement without the consent of the Minister.

(2) The Minister may enter into an agreement or arrangement, either in general or on specific terms and conditions, with any international court, tribunal, body, institution or organisation to enable -

Witness Protection Act 10 of 2017

- (a) a witness, related person or person who is being protected under a witness protection programme administered by that court, tribunal, body, institution or organisation, to be admitted to the Programme in terms of this Act; or
- (b) a witness, related person or protected person in Namibia to be admitted to a witness protection programme established in terms of any law applicable to that court, tribunal, body, institution or organisation and administered by that court, tribunal, body, institution or organisation,

but -

- (i) a person referred to in paragraph (a) may not be admitted to Namibia pursuant to any such agreement or arrangement without the consent of the Minister responsible for immigration matters or admitted to the Programme without the consent of the Minister; and
- (ii) a person referred to in paragraph (b) may not be admitted to a witness protection programme pursuant to any such agreement or arrangement without the consent of the Minister.

(3) For the purpose of giving effect to the provisions of subsection (1) or (2), any other Minister may, in relation to a person in respect of whom an agreement or arrangement as contemplated in subsection (1) or (2) has been entered into or made, and on a recommendation by the Minister, exercise any power or perform any function conferred on or assigned to such Minister by or under any law.

Donations

73. (1) The Permanent Secretary may, with the approval of the Minister and the Minister responsible for finance, receive any donation, bequest or contribution, in money or otherwise on behalf of the Unit, from any source for the purpose of giving effect to the provisions of this Act, and the Permanent Secretary must notify the Minister of the receipt of any such donation, bequest or contribution.

(2) Donation, bequests or contributions made under subsection (1) must be paid into the funds of the Unit.

(3) Any donations, bequests or contributions contemplated in subsection (1) must be utilised as prescribed and in accordance with the conditions, if any, imposed by the donor, testator or contributor concerned, in so far as such conditions are not inconsistent with the provisions of this Act.

Limitation of liability

74. The Minister, the Permanent Secretary, the Director, a staff member of the Unit or any other person performing functions in relation to, or rendering any service to, the Unit or to the Programme is not liable to any action, suit or proceedings, including criminal proceedings, under a law in force in Namibia in respect of an act done or omitted to be done in good faith in the performance of a function under, or exercise of a power conferred by this Act.

Oath or affirmation by staff members of Unit

75. (1) The Director and every other staff member of the Unit must, on taking office, take an oath or make an affirmation in the form specified in subsection (4).

Witness Protection Act 10 of 2017

(2) The Director must take the oath or make the affirmation referred to in subsection (1) before the Minister or a person delegated by the Minister.

(3) Any other member of the Unit must take the oath or make the affirmation referred to in subsection (1) before the Director.

(4) For the purposes of this section the oath or affirmation must be in the following form:

“I, A B, hereby declare under oath/solemnly affirm that I understand and must honour the obligation of confidentiality imposed on me by or under the provisions of the Witness Protection Act, 2017 (Act No. 11 of 2017), and may not act in contravention thereof.”

Security clearance certificate

76. (1) Where a person is required to have a security clearance certificate in terms of this Act, that person must in the prescribed manner apply for such certificate to the Director.

(2) An application made under subsection (1) must be accompanied by such documents and information as may be prescribed by the Minister after consultation with the Minister or other functionary for the time being responsible for the Intelligence Service.

(3) On receipt of an application made under subsection (1), the Director must carry out or cause to be carried out such necessary investigations as may be prescribed for the purpose of ascertaining the suitability of the applicant to be involved in the activities of the Programme or whether the applicant’s involvement in the Programme does not pose or will not pose a risk to the security and integrity of the Programme or the Unit having regard to any criteria that may be prescribed.

Offence relating to false representation

77. (1) A person may not, without prior written approval of the Director, in connection with an activity carried on by him or her take, assume, use or in any manner publish a name, description, title or symbol conveying or purporting to indicate or convey or which is calculated or is likely to lead other persons to believe or infer that the activity is carried on under or by virtue of the provisions of this Act or on behalf of the Unit or the Programme.

(2) A person who contravenes or fails to comply with subsection (1) commits an offence and, is liable on conviction to a fine not exceeding N\$30 000 or to imprisonment for a period not exceeding three years or to both the fine and imprisonment.

[The comma after the word “and” is superfluous.]

Offences relating to staff members of Unit

78. A person, who -

- (a) not being the Director or a staff member of the Unit, by words, conduct or demeanour falsely represents himself or herself to be the Director or a staff member of the Unit;
- (b) exercises or attempts to exercise undue influence over the Director or a staff member of the Unit which is calculated to prevent the Director or staff member from carrying out their duties or encouraging them to perform an act which is in conflict with their duties; or

- (c) assists another person in the commission of an act whereby a lawful order given to a staff member of the Unit or a regulation or directive or other rule may be evaded,

commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding five years, or to both the fine and imprisonment.

Obstruction of staff members of Unit

79. A person who assaults, resists or obstructs the Director or a staff member of the Unit or a person acting under the direction of the Director or that staff member in the due execution of his or her duties under this Act, commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a period not exceeding five years, or both the fine and imprisonment.

Restrictions on access to premises of Unit

80. (1) The Minister after consultation with the Minister responsible for safety or security may, on the request of the Director, by notice in the *Gazette* or in any other manner that he or she considers necessary in the circumstances, prohibit or restrict access to any installation, land or premises under the control of the Unit.

(2) The Unit may take or cause to be taken measures as it may consider necessary for the security of, or the application of, a prohibition of or a restriction on access to the installation, land or premises referred to in subsection (1), and may in connection with measures taken cause notices to be published or warning notices to be erected as it may, in each particular case, consider necessary.

(3) A person who enters or is on any installation, land or premises in contravention of a prohibition or restriction under subsection (1) commits an offence and is liable on conviction to a fine not exceeding N\$50 000, or to imprisonment for a period not exceeding five years, or both the fine and imprisonment.

Regulations, directives and staff rules

81. (1) The Minister, on the recommendation of the Director, may make regulations relating to -

- (a) the admission of witnesses and related persons to the Programme;
- (b) the protection of the identity of protected persons;
- (c) the regulation of access to places of safety where persons are being kept or relocated in terms of this Act;
- (d) the utilisation of security officers or private security personnel for protection services in terms of this Act;
- (e) the assistance to be rendered or functions to be performed by any public body, person, body, institution or organisation for the purpose of giving effect to the provisions of this Act;
- (f) the information to be furnished by, or any steps to be taken in respect of, a witness or related person whose application for admission to the Programme is being considered;

Witness Protection Act 10 of 2017

- (g) the terms and conditions that must be included in protection agreements or in other agreements or arrangements entered into or made under this Act;
- (h) protection measures and assistance that may be rendered to protected persons or former protected persons including the procedure for the relocation or change of identity of a protected person;
- (i) the manner in which and the conditions where any decision of, or steps taken by, the Director or any person acting on behalf of the Director under a provision of this Act, may be subjected to review by the Tribunal;
- (j) the powers, functions and duties of witness protection officers and security officers;
- (k) mechanisms to be put in place in order to monitor the circumstances under which a person is kept on the Programme;
- (l) mechanisms or measures to conceal the identity or activities of protected persons, staff members of the Unit or other persons rendering any service to the Programme to ensure that the safety and security of those persons or that the operations of the Unit are not compromised;
- (m) the requirements and procedures for obtaining a security clearance certificate;
- (n) mechanisms for giving effect to any agreement or arrangement entered with any international court, tribunal, body, institution or organisation or foreign State;
- (o) specific offences in respect of which, in addition to the offences listed in the Schedule, a witness may be admitted to the Programme;
- (p) the acquisition of supplies, vehicles, other equipment and services;
- (q) any other matter that is required or permitted to be prescribed in terms of this Act; and
- (r) in general, any matter which the Minister deems necessary or expedient to prescribe in order to achieve the objects of this Act.

(2) Different regulations made under subsection (1) may be made in respect of different categories of witnesses or related persons or matters.

(3) The Minister, in consultation with the Prime Minister, may make regulations in relation to -

- (a) the retirement of staff members on account of age;
- (b) the discharge of staff members on account of continued ill health;
- (c) the discharge and reduction in rank or grade of staff members on account of inefficiency;
- (d) the transfer or discharge of staff members on account of public interest;
- (e) the discharge of staff members on account of absence without leave or valid cause;

Witness Protection Act 10 of 2017

- (f) the secondment of staff members;
 - (g) the procedure with respect to the investigation of alleged misconduct of staff members;
 - (h) the appointment and composition of boards of enquiry and the procedure at the proceedings of such boards;
 - (i) appeals against the findings of boards of enquiry;
 - (j) the attendance of witnesses at boards of enquiry and the representation of staff members thereat;
 - (k) the suspension of staff members, including the non-entitlement of staff members to any salary, allowance, privilege or benefit for any period of suspension;
 - (l) the manner in which notice may be given or by which a process may be served;
 - (m) the assignment or attachment of salaries and allowances of staff members;
 - (n) the establishment of decorations and medals, including offences in respect of such decorations and medals;
 - (o) the performance of remunerative work outside the Unit;
 - (p) the political rights of staff members and the taking part of staff members in personnel associations, other employee organisations and political organisations;
 - (q) the occupational health and safety of staff members at places of employment;
 - (r) missing staff members; and
 - (s) generally, all matters in respect of which the Minister considers it necessary or expedient to make regulations in order to achieve the objects of this Act.
- (4) Different regulations made under subsection (3) may be made with reference to different staff members and different categories of staff members.
- (5) The Minister -
- (a) in consultation with the Prime Minister may issue directives, not inconsistent with other provisions of this Act, in relation to -
 - (i) the dividing of the Unit into different components and the organisation of such components;
 - (ii) the determination of the amount, classes and grades of posts on the establishment of the Unit, the classification of such posts as posts for occupation by staff members and the determination of the different ranks, grades, designations, scales of salary and other measures and requirements incidental to such posts and the occupation thereof;
 - (iii) the recruitment, selection, appointment in full-time or part-time capacities, confirmation of probation, promotion, continued employment in addition to

Witness Protection Act 10 of 2017

the approved establishment, station, transfer, change-over, resignation, discharge, retirement, suspension or reduction in rank or grade of staff members;

- (iv) the obtaining of services pursuant to an agreement or arrangement contemplated in section 71;
 - (v) the standards of physical and mental fitness and the medical examination of staff members;
 - (vi) the hours of attendance, overtime-payment, leave, allowances, bonuses, salary increases and other conditions of service (excluding housing loans and pensions) of staff members and the conditions under which they are entitled thereto;
 - (vii) the special conditions under which any person may be transferred, seconded or appointed from an institution instituted by law to the Unit;
 - (viii) the granting to staff members of any financial or other reward or special increase or special promotion for extraordinary capability, excellent service or special qualifications;
 - (ix) the utilisation, evaluation, training, examination and development of staff members and the creation of the necessary training facilities;
 - (x) the granting to staff members of bursaries or other financial help for study purposes;
 - (xi) the granting of loans for purposes relating to the functions of the Unit and the conditions under which such loans may be granted;
 - (xii) the medical, dental and hospital treatment of staff members and their dependants and retired staff members and their dependants;
 - (xiii) the definition of offences against duty and discipline, the behaviour of staff members and, generally, the control and discipline of the Unit;
 - (xiv) the charging of staff members on account of misconduct;
 - (xv) the settlement of grievances of staff members;
 - (xvi) the administration of the Unit, the promotion of efficiency in the Unit and of the image of the Unit;
 - (xvii) the powers, duties and functions of staff members and the exercise of their powers and the performance of their duties and functions; and
 - (xviii) generally, all matters in respect of which the Minister considers it necessary or expedient to make directives in order to achieve the objects of this Act;
- (b) in consultation with the Minister responsible for finance, issue directives in relation to -
- (i) the incurring of expenditure and the regulation of the collection, receipt, custody, banking, investment, payment and control of the funds of the Unit;

Witness Protection Act 10 of 2017

- (ii) the receipt and making of donations by the Unit, the making of payments out of grace, the waiving of claims by the Unit and the writing-off of a loss of State moneys and other State property;
 - (iii) the payment of salaries and the deductions to be made from the salaries, wages or allowances of staff members;
 - (iv) the obtaining and provision of supplies, accessories, other equipment and means of transport required for the Unit, and the utilisation, care, safe custody, maintenance and control thereof;
 - (v) the recovery from a staff member of any deficiency, loss, damage or expense which he or she has unlawfully caused the State;
 - (vi) the control of moneys collected or received by staff members for the benefit of staff members or ex-staff members, or their dependants; and
 - (vii) generally, all matters in respect of which the Minister considers it necessary or expedient to make directives in order to achieve the objects of this Act;
- (c) in consultation with the Director, issue directives in relation to -
- (i) the gathering of information by the Unit;
 - (ii) the general security in the Unit and the security requirements to which staff members must conform;
 - (iii) returns, registers, records, books, forms, other documents and correspondence relating to the Unit, as well as the custody, care, filing of and the control and disposal of such returns, registers, records, books, forms, other documents and correspondence; and
 - (iv) generally, all matters in respect of which the Minister considers it necessary or expedient to make directives in order to achieve the objects of this Act; and
- (d) in consultation with the Prime Minister, make staff rules with which staff members must comply.

(6) Different directives or staff rules issued or made under subsection (5) may be made with reference to different staff members and different categories of staff members.

(7) A directive or staff rule made under this section need not be published in the *Gazette*, but must, in such manner as may be determined by the Minister, be made known to the staff members to whom it applies.

(8) The Minister may, in consultation with the Prime Minister, to such an extent as he or she may deem fit authorise or condone any deviation from or non-compliance with any directive or staff rule.

[There should be a comma after the phrase “to such an extent as he or she may deem fit”.]

(9) Any regulation made under subsection (1) or (3) and any directive issued under subsection (5) may provide that any person who contravenes a provision thereof or fails to

comply therewith commits an offence and be liable on conviction to a fine not exceeding N\$30 000, or to imprisonment for a period not exceeding three years, or both the fine and imprisonment.

[The phrase “be liable” should be “shall be liable” or “is liable”.]

(10) Any regulation, directive or staff rule made or issued under this section which may result in financial expenditure for the State must be made with the concurrence of the Minister responsible for finance.

Delegation of powers and assignment of functions

82. (1) The Minister may, subject to such conditions as he or she may determine, delegate any power or assign any function or duty, excluding any power conferred upon or function or duty entrusted to him or her by section 1(2), 5(1), 26(2), 61(3), (4), (6) and (10), 72(1) or (2), 80(1) or 81 to the Permanent Secretary or the Director or any senior staff member of the Ministry, and any power exercised or duty performed in terms of such a delegation or an assignment is deemed to have been exercised or performed by the Minister.

(2) The Permanent Secretary may, subject to such conditions as he or she may determine, delegate any power or assign any function or duty entrusted to him or her by or under this Act to the Director or any senior staff member of the Ministry, and any power exercised or duty performed in terms of such a delegation or an assignment is deemed to have been exercised or performed by the Permanent Secretary.

(3) The Director may, subject to such conditions as he or she may determine, delegate any power or assign any duty entrusted to him or her by or under this Act to any senior staff member of the Unit, and any power exercised or duty performed in terms of such a delegation or an assignment is deemed to have been exercised or performed by the Director.

(4) A delegation or an assignment under subsections (1), (2) and (3) does not divest or relieve the Minister, the Permanent Secretary or the Director, as the case may be, of the power or function or duty so delegated or assigned.

(5) Any person to whom any power or function or duty has been delegated or assigned under this section must exercise that power or perform that function or duty subject to the control and directions of the person who delegated the power or assigned the function or duty.

(6) The person who delegated the power or assigned the function or duty under this section may at any time in writing withdraw a delegation assignment.

Amendment of section 158A of Criminal Procedure Act, 1977

83. Section 158A of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) is amended in subsection (3) by the addition after paragraph (d) of the following paragraph:

“(e) who is a protected person within the meaning of section 1 of the Witness Protection Act, 2017 (Act No. of 2017).”

Repeal of section 185 of Criminal Procedure Act, 1977

84. (1) Section 185 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) is repealed.

(2) Despite the repeal of section 185 of the Criminal Procedure Act, 1977 -

Witness Protection Act 10 of 2017

- (a) any person who has been placed under protection under the said section immediately before the commencement of this Act, remains under such placement and is deemed to have been placed under protection in terms of this Act; and
- (b) any regulation made under the said section and in force immediately prior to the commencement of this Act remains in force, except in so far as it is inconsistent with this Act, until replaced by or in terms of a regulation made under section 81.

Short title and commencement

85. (1) This Act is called the Witness Protection Act, 2017, and it comes into operation on a date 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.

(3) Any reference in this Act to the commencement of this Act is construed as a reference to the date determined under subsection (1) or (2).

SCHEDULE

OFFENCES IN RESPECT OF WHICH A WITNESS MAY BE ADMITTED TO PROGRAMME

1. Treason.
2. Sedition.
3. Murder.
4. Culpable homicide.
5. Rape including the offence of rape referred to in section 2 of the Combating of Rape Act, 2000 (Act No. 2 of 2000).

[The correct citation for the Combating of Rape Act, 2000 is “Act No. 8 of 2000”.]

6. Public violence.
7. Robbery.
8. Kidnapping.
9. Defeating the ends of justice.
10. Perjury.
11. An offence under the Anti-Corruption Act, 2003 (Act No. 8 of 2003).
12. An offence under the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004).
13. An offence under the Prevention and Combating of Terrorist and Proliferation Activities, 2014 (Act No. 4 of 2014).
14. An offence in contravention of section 2 or 3 of the Abuse of Dependence-Producing Substances Act, 1971 (Act No. 41 of 1971).
15. A domestic violence offence as defined in section 1 of the Domestic Violence Act, 2003 (Act No. of 2003);

[The correct citation for the Combating of Domestic Violence Act, 2003 is “Act No. 4 of 2003”.]

16. Any offence relating to -
 - (a) the dealing in or smuggling of ammunition, firearms, explosives or armaments; or
 - (b) the possession of an automatic or semi-automatic firearm, explosives or armaments.
17. Any other offence in respect of which it is alleged that the offence was committed by -
 - (a) a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

Witness Protection Act 10 of 2017

(b) a law enforcement officer,

and in respect of which the Director is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings, warrants protection.

18. Any offence relating to exchange control, extortion, fraud, forgery, uttering or theft -

(a) involving amounts of more than N\$50 000; or

(b) involving amounts of more than N\$10 000, if it is alleged that the offence was committed by a person, group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy; or

(c) if it is alleged that the offence was committed by any law enforcement officer -

(i) involving amounts of more than N\$10 000 000; or

(ii) as a member of a group of persons, syndicate or any enterprise acting in the execution or furtherance of a common purpose or conspiracy.

19. Any offence under the Geneva Conventions Act, 2003 (Act No. 15 of 2003).

20. Any other offence that may be prescribed by the Minister.

21. Any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

22. Any other offence in respect of which the Director, after having considered the factors mentioned in section 37(1) and (2) and any information gained in terms of section 37(3), is of the opinion that the safety of a witness who is or may be required to give evidence, or who has given evidence in respect of such an offence in any proceedings or any related person, warrants protection.