

# DISABILITIES

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## National Disability Council Act 26 of 2004

**Summary:** This Act ([GG 3360](#)) establishes a National Disability Council and provides for its functions and powers. The Schedule to the Act contains the National Policy on Disability. The Act was brought into force on 30 October 2009 by GN 211/2009 ([GG 4371](#)).

**Amendments:** The State-owned Enterprises Governance Act 2 of 2006 ([GG 3698](#)), which was brought into force on 1 November 2006 by Proc. 13/2006 ([GG 3733](#)) and later re-named the Public Enterprises Governance Act 2 of 2006, amends section 5 and 7.

**Regulations:** Regulations are authorised by section 23 of the Act, but none have yet been promulgated.

## SELECTED CASES

*Visser v Minister of Finance & Others* (I 3178/2007) [2014] NAHCMD 321 (29 October 2014) (Constitutional challenge to MVA scheme on grounds of discrimination on the basis of disability; disability not “social status” for purposes of Art 10(2) of Namibian Constitution) (discussed in Y Dauseb and K Pinkosky, “*Visser v Minister of Finance: A Missed Opportunity to Clarify the Equality Provision within a Namibian Disability Rights Paradigm*” in Dunia P Zongwe & Yvonne Dauseb, eds, *The Law Reform and Development Commission of Namibia at 25: A Quarter Century of Social Carpentry*, Ministry of Justice, LRDC: 2017, available at <https://namiblii.org/system/files/other/lrdc-25-years/lrdc-25-years.pdf>); upheld on appeal in *Visser v Minister of Finance & Others* 2017 (2) NR 359 (SC) (there is no unfair discrimination under the law, since caps on compensation are applied in the same way to all, so no need to reach issue of whether “social status” in Art 10 of Constitution includes disability)

As pointed out above, the special features relevant to disabled persons are taken cognisance of when his/her claim for damages is assessed. Insofar as the disabled person's claim falls within the caps it is paid out in full. Whether a driver, eg unlawfully or negligently drives over the leg of a blind person or a person with full sight they are equally placed when it comes to a claim against the Fund. There is simply no question of the unequal being treated equally or equal persons being treated unequally. Similarly situated persons are treated similarly. There is simply no discrimination when it comes to claimants against the Fund. They are entitled to claim the damages in common law which take into account all the individual idiosyncrasies of such claimants as far as the amount of damages is concerned. Insofar as the damages exceed the cap they are entitled to the cap and, insofar as it does not, they are entitled to compensation equal to their damages. There is no positive obligation on the state to do more than this even if the disability amounts to a social status. Without such obligation they are, like all other affected persons, only entitled to equal treatment which, as indicated above, is what the Act and regulations provide for.

It is thus irrelevant whether disability amounts to “social status” for even if it does, there is no basis for the submission that the Act and/or the regulations treat equally positioned persons differently or conversely treat persons unequally positioned equally. In fact, in view of what is stated above equally positioned persons are treated equally and the issue of differentiation does not even arise. Never mind discrimination in its pejorative sense. (paras 26-27).

## COMMENTARY

*South African Journal of Human Rights*, Volume 30, Issue 2, 2014 (special issue on disability).

## **INTERNATIONAL LAW**

*Agreement for the Establishment of the African Rehabilitation Institute (ARI), 1981*

*Convention on the Rights of Persons with Disabilities, 2006*

*\*\*Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, 2013*

See also Child Care and Protection Act 3 of 2015 (grants and other protections for children with disabilities) (**CHILDREN**).

See also *Employees' Compensation Act 30 of 1941*, Affirmative Action (Employment) Act 29 of 1998 and Labour Act 11 of 2007 (section 5) (**LABOUR**).

See also **MENTAL HEALTH AND MENTAL DISORDERS**.

See also National Pensions Act 10 of 1992 (pensions for blind persons and persons with other disabilities) (**PENSIONS**).

See also **SOCIAL WELFARE**.