

PUBLIC SERVICE

Indemnity Proclamation 8 of 1923

Summary: This Proclamation ([OG 103](#)) indemnifies members of the public service for acts committed after 15 May 1922 and prior to the date on which this Proclamation took effect:

The Proclamation was triggered by government concerns about liability for the extreme measures taken by the South West Africa Administration to suppress the Bondelswarts Rebellion in 1922. The Bondelswarts, a nomadic Nama group, resisted the imposition of an increased dog tax and refused to turn over five men whom police were trying to arrest for failure to comply with the tax – along with other grievances. With assistance from the South African Government, the South West African Administration countered this rebellion on 29 May 1922 by means of military response that included ground troops, cannon, machine-guns and aerial bombing. It has been estimated that fatalities numbered 100, including some women and children. This Indemnity Proclamation was an attempt to shield the government officials involved in this brutal response from liability.²¹⁰

The Proclamation is not included in the database of annotated statutes as it has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.²¹¹

Post Office Service Act 66 of 1974, as amended in South Africa to April 1978

Summary: This Act ([RSA GG 4470](#)) governs employment in the Department of Posts and Telecommunications. It is not included in the database of annotated statutes as it appears to have been superseded by the Public Service Act 13 of 1995.

Applicability to SWA: Section 1 defines “Republic” to include “the territory”, which is defined as “the territory of South West Africa”.

Transfer of administration to SWA: The administration of this Act was transferred to SWA by the Executive Powers (Post and Telecommunications) Transfer Proclamation (AG 12/1978) which came into force on **1 April 1978**, as amended. None of the amendments to the Act in South Africa after the date of transfer were made expressly applicable to SWA.

Amendments: Sections 55 and 56 are repealed by the Posts and Telecommunications Companies Establishment Act 17 of 1992 ([GG 447](#)).

Regulations: A single regulation concerning membership of the Staff Management Board is contained in RSA GN R.2013/1974 ([RSA GG 4478](#)).

Extensive **Post Office Service Regulations** relating to the conditions of service of post office employees are contained in RSA GN R.1373/1976 ([RSA GG 5252](#)), as amended prior to the date of transfer by RSA GN R.2002/1976 ([RSA GG 5324](#)), RSA GN R.839/1977 ([RSA GG 5549](#)), RSA GN R.1387/1977 ([RSA GG 5680](#)) and RSA GN R.2248/1977 ([RSA GG 5795](#)). In South Africa, these regulations were substantially amended after the date of transfer and prior to Namibian independence, but none of these amendments were made explicitly applicable to SWA.²¹² These regulations have not yet been processed for the database.

²¹⁰ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, page 40.

²¹¹ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 40-ff.

²¹² RSA GN R.2145/1978 ([RSA GG 6195](#)), RSA GN R.2259/1978 ([RSA GG 6217](#)), RSA GN R.250/1979 ([RSA GG 6299](#)), RSA GN R.801/1979 ([RSA GG 6409](#)), RSA GN R.333/1980 ([RSA GG 6862](#)), RSA GN R.1445/1980

There are no post-independence regulations.

Travelling Privileges Ordinance 14 of 1980

Summary: This Ordinance ([OG 4164](#)) authorises the Executive Committee to determine travelling privileges for public servants. It is not included in the database of annotated statutes as it has been earmarked for repeal as an obsolete law by the Law Reform and Development Commission.²¹³

Public Service Commission Act 2 of 1990

Summary: This Act ([GG 27](#)) provides for the establishment of a Public Service Commission in accordance with Chapter 13 of the Namibian Constitution.

Amendments: This Act is amended by the Public Service Act 13 of 1995 ([GG 1121](#)), brought into force on 1 November 1995 (GN 210/1995, [GG 1185](#)).

Regulations: The Act makes no provision for regulations.

Public Service Act 13 of 1995

Summary: This Act ([GG 1121](#)) governs employment in the public service. It was brought into force on 1 November 1995 by GN 210/1995 ([GG 1185](#)). It repeals the Public Service Act 2 of 1980, originally named the Government Service Act 2 of 1980 ([OG 4116](#)). (Note that transitional provisions in section 37 of the current Act provide for the continued application of sections 10(A) and 14 of the Public Service Act 2 of 1980 to permanent secretaries, regional councils and chief regional officers under certain circumstances.)

Before the enactment of the the Government Service Act 2 of 1980, the South African *Public Service Act 54 of 1957* applied to the public service in in SWA. However, the “Administration of South West Africa” and the “Secretary for South West Africa” were removed from the coverage of the *Public Service Act 54 of 1957* by RSA Proc. R.112/1980 ([RSA GG 7097](#)).

Amendments: Schedule 2 to the Act is amended by Proclamation 3/1997 ([GG 1500](#)), which changes “Ministry of Labour and Human Resources Development” to “Ministry of Labour”.

Schedule 3 is amended by the Namibia Central Intelligence Service Act 10 of 1997 ([GG 1699](#)), which was brought into force on 5 June 1998 by Proc. 12/1998 ([GG 1876](#)) and changes “Namibia Security Intelligence Agency” to “Namibia Central Intelligence Service”.

([RSA GG 7119](#)), RSA GN R.1620/1980 ([RSA GG 7168](#)), RSA GN R.2052/1980 ([RSA GG 7249](#)), RSA GN R.2095/1980 ([RSA GG 7260](#)), RSA GN R.439/1981 ([RSA GG 7467](#)), RSA GN R.1955/1983 ([RSA GG 8879](#)), RSA GN R.538/1984 ([RSA GG 9135](#)), RSA GN R.2732/1985 ([RSA GG 10036](#)), RSA GN R.2182/1986 ([RSA GG 10494](#)), RSA GN R.896/1987 ([RSA GG 10714](#)), RSA GN R.945/1987 ([RSA GG 10723](#)), RSA GN R.1065/1987 ([RSA GG 10739](#)), RSA GN R.1470/1987 ([RSA GG 10818](#)), RSA GN R.1545/1988 ([RSA GG 11443](#)), RSA GN R.1919/1988 ([RSA GG 11512](#)), RSA GN R.2038/1988 ([RSA GG 11534](#)), RSA GN R.2129/1988 ([RSA GG 11548](#)), RSA GN R.2546/1988 ([RSA GG 11617](#)), RSA GN R.81/1989 ([RSA GG 11667](#)), RSA GN R.1272/1989 ([RSA GG 11954](#)), RSA GN R.2146/1989 ([RSA GG 12119](#)).

²¹³ Law Reform and Development Commission, *Report on Repeal of Obsolete Laws: Phase 2* (LRDC 42), March 2021, pages 83-ff.

Act 33/1998 ([GG 1995](#)), which was brought into force on 2 August 1999 by GN 152/1999 ([GG 2155](#)), amends section 3 and Schedule 3 to designate the Electoral Commission as an agency in terms of the Act.

Schedule 1 is amended by Proc. 19/1999 ([GG 2088](#)), which substitutes the expression “Secretary to the President” for the term “Deputy Secretary to the President”.

Schedule 2 is substituted in its entirety by Proc. 9/2000 ([GG 2366](#)).

Schedules 1 and 3 are amended by Proc. 4/2001 ([GG 2501](#)).

Schedule 3 to the Act is amended by the Anti-Corruption Act 8 of 2003 ([GG 3037](#)) which was brought into force on 15 April 2005 by GN 37/2005 ([GG 3411](#)), as subsequently amended by Act 10/2016 ([GG 6156](#)). As amended, this Act inserts the expression “Anti-Corruption Commission” into the first column and the expression “Director-General: Anti-Corruption Commission” into the second column.

Schedules 1 and 2 are substituted by Proc. 5/2005 ([GG 3436](#)), as part of a substantial reorganisation of ministries.

Schedule 2 is substituted in its entirety by Proc. 10/2009 ([GG 4331](#)).

Act 6/2012 ([GG 4972](#)), which came into force on the date of publication (25 June 2012), amends section 27.

The definition of “member of the services” in section 1 is amended by the Correctional Service Act 9 of 2012 ([GG 5008](#)), which was brought into force on 1 January 2014 by GN 330/2013 ([GG 5365](#)).

Schedule 3 is amended by the Electoral Act 5 of 2014 ([GG 5583](#)), which was brought into force in relevant part on 17 October 2014 by GN 208/2014 ([GG 5593](#)) and substitutes “Electoral Commission of Namibia” for “Electoral Commission”, and “Chief Electoral Officer” for “Director of Elections”.

Schedules 1 and 2 are substituted in their entirety by Proc. 35/2015 ([GG 5869](#)).

Schedules 1, 2 and 3 are substituted in their entirety by Proc. 17/2017 ([GG 6387](#)).

Act 18/2018 ([GG 6808](#)) makes several amendments to the Act to substitute the term “executive director” for the term “permanent secretary” and to provide for the appointment of executive directors on fixed-term contracts.

Schedules 1, 2 and 3 are substituted in their entirety by Proc. 3/2021 ([GG 7456](#)).

Savings: Section 37(1) of the Act contains a broad savings clause:

Anything done under the Public Service Act, 1980 (Act 2 of 1980), and which could have been done under a provision of this Act, shall be deemed to have been done under the corresponding provision of this Act.

Regulations: Regulations issued under the previous Act which survive in terms of the savings clause are contained in AG GN 28/1981 ([OG 4429](#)), as amended by AG GN 75/1982 ([OG 4632](#)), GN 90/1986 ([OG 5210](#)), AG GN 14/1989 ([OG 5664](#)) and GN 1/1995 ([GG 1006](#)). These pre-independence regulations have not been added to the database because they appear to have been superseded by the regulations issued under the current Act.

Regulations are issued under the current Act in GN 211/1995 ([GG 1187](#)), as amended by GN 179/2001 ([GG 2607](#)) (amends Reg 12) and GN 233/2015 ([GG 5851](#)) (substitutes Reg 11). These regulations do not repeal any of the previous regulations.

Application of law: Section 10 of the Namibia Wildlife Resorts Company Act 3 of 1998 ([GG 1809](#)) deals with transfers of members of the public service to employment with the company established by the Act, and the status of existing public service employees who elect not to enter employment with the new company.

Cases:

Mwellie v Minister of Works, Transport and Communication & Another 1995 (9) BCLR 1118 (NmH) (constitutionality of prescription period upheld)

Du Toit v The Office of the Prime Minister 1996 NR 52 (LC) (Public Service Staff Code)

Kruger v Office of the Prime Minister & Another 1996 NR 321 (LC) (Public Service Staff Code)

Njathi v Permanent Secretary, Ministry of Home Affairs 1998 NR 167 (LC) (section 24(5))

Public Service Union of Namibia & Another v Prime Minister of Namibia & Others 2000 NR 82 (HC) (sections 5(1) and 19(a)).

Mostert v Minister of Justice 2002 NR 76 (HC); 2003 NR 11 (SC) (section 23(2) not applicable to magistrates)

Minister of Works Transport and Communication v Namupembe 2003 NR 90 (LC) (sections 13, 15, 31 and 33)

Tjivikua v The Minister of Works, Transport and Communication 2005 NR 403 (LC) (sections 24(5) and 26)

Elio & Another v Permanent Secretary of Education & Another 2008 (2) NR 532 (LC) (Rules pertaining to Recruitment for the Public Service of Namibia issued on 20 November 2002 and 17 February 2002)

Permanent Secretary of the Ministry of Finance & Others v Ward 2009 (1) NR 314 (SC) (section 34; rules and regulations pertaining to Public Service Employees' Medical Aid Scheme)

HN & Others v Government of the Republic of Namibia 2009 (2) NR 752 (HC) (section 33; GN 211/1995)

Onesmus v Permanent Secretary: Finance & Others 2010 (2) NR 460 (HC) (sections 5, 23(1) and 23(2)(a) and principles of administrative justice)

Dixon v Government of the Republic of Namibia (Ministry of Education) & Another 2011(1) NR 111 (HC) (section 33)

Gouws v Office of the Prime Minister 2011 (2) NR 433 (LC) (section 24(5)(a)(i))

Negonga & Another v Secretary to Cabinet & Others 2016 (3) NR 670 (HC) (transitional provisions in section 37(2))

Katjivena & Others v Prime Minister of the Republic of Namibia & Others 2016 (3) NR 903 (HC) (section 33)

Mwoombola v Simaata & Others 2020 (1) NR 113 (LC) (sections 26(19) and 27(5)).

Commentary:

Frederico Links and Ellison Tjirera, "Nothing to Disclose: Critiquing Namibia's passive approach to conflict of interest", Institute for Public Policy Research, 2011, available [here](#)

Dennis U Zaire, "Accountability (or the absence thereof) in the Namibian public sector: A look at legislation and policies in place", *Namibia Law Journal*, Volume 6, Issue 1, 2014

Law Reform and Development Commission, *Government Institutions Pension Fund (GIPF) Legal Framework Discussion Paper*, LRDC 26, 2013, available [here](#).

MISCELLANEOUS

"Administrative Directives: Certain Guidelines for Government Ministers and Public Servants" are contained in GN 171/1992 ([GG 529](#)), GN 182/1992 ([GG 550](#)), GN 16/1993 ([GG 583](#)) and GN 34/1993 ([GG 609](#)).

An administrative directive regarding effective communication was issued to all government ministers and public servants on 23 July 1996 (GN 194/1996, [GG 1362](#)).

INTERNATIONAL LAW

African Charter on Values and Principles of Public Service and Administration, 2011.

See also **CONSTITUTION**.

See also Anti-Corruption Act 8 of 2003 (prohibiting bribes to public officials) (**CRIMINAL LAW AND PROCEDURE**).

See also Namibia Institute of Public Administration and Management Act 10 of 2010 (**EDUCATION**).

See also **JUDGES**.

See also **LABOUR**.

See also laws on pensions for government employees (**PENSIONS**).

See also **PRESIDENT**.