



LEGAL ASSISTANCE CENTRE  
*Fighting for human rights in Namibia since 1988*



# Pro Bono

## INFORMATION ABOUT NAMIBIA'S LAW

### WHAT DID PARLIAMENT DO IN 2022?

January is always a good time to reflect on the past year. What laws were passed by Parliament in 2022? Here is an overview. Parliament passed [16 statutes in 2022](#), with only three of these introducing new laws. The remainder were amendments or repeals of existing laws.

#### APPROPRIATIONS

Every year, parliament passes an “Appropriation Act” to implement the national budget. Budget allocations are often adjusted by an amending Act as the year proceeds, and last year was no exception. The [Appropriation Act 2 of 2022](#) was amended in December by the [Appropriation Amendment Act 7 of 2022](#).

#### NEW LAWS

Three brand-new laws were passed in 2022, none of which has yet been brought into force. Some delay between passage of a law and bringing it into force is normal, to allow time for drafting regulations or making other preparations for implementation – but this gap in Namibia is often excessively lengthy.

(The winner of the longest time lapse is the Namibia Film Commission Act, which has been left waiting in the wings for almost 23 years now. The runners-up, both passed in 2005 but not yet brought into force, are the Accreditation Board of Namibia Act and the National Arts Fund of Namibia Act.)

The [Metrology Act 5 of 2022](#) will replace a pre-independence law of the same name. “Metrology” refers to the scientific study of measurement. This law governs legal units of measurements and national measurement standards.

The [Access to Information Act 8 of 2022](#) is a long-anticipated law that provides for a right to public access to information held by public entities, as well as information from private entities that may assist in the exercise or protection of any fundamental human right or freedom. This law, once implemented, could be of great assistance in promoting transparency and accountability.

The [Abolition of Payment by Cheque Act 16 of 2022](#) will do just what its title says: it formalises the elimination of cheques as a method of payment in Namibia. Cheques were gradually phased in Namibia because they involved high bank fees and were more prone to fraud than other payment methods. Payment by cheques was ended in practice by banking institutions in 2019. This law formalises that step and amends other legislation to remove all references to cheque payments.

#### AMENDMENTS TO EXISTING LAWS

The main topics of the amendments to existing laws concern financial issues and some refinements of existing laws on gender-based violence.

The **State Finance Amendment Act 1 of 2022** made some technical amendments to the underlying State Finance Act.

The **Public Procurement Amendment Act 3 of 2022** makes improves the governance structure in the underlying law, by providing for a chief executive officer who is not a member of the Central Procurement Board, and by strengthening the rules aimed at preventing conflicts of interest. It also introduces joint and pooled procurement of goods and services, as well as providing for reconsideration of procurement decisions before they are subjected to formal review to make challenges to these decisions more accessible to aggrieved bidders. This Act has only been brought partially into force to date.

The [Combating of Rape Amendment Act 4 of 2022](#) broadens the list of coercive circumstances in respect of rape to cover abuse of power or authority. It also increases several minimum sentences, particularly in the case of rapes of persons with disabilities. The provisions aimed at making sure that rape complainants receive proper orientation to court procedures before the trial and information about bail proceedings have been strengthened.

The [Combating of Domestic Violence Amendment Act 6 of 2022](#) broadens the definition of “domestic relationship” to include the relationship between children (or persons with illnesses or disabilities) and their primary caretakers – regardless of whether the primary caretaker is a family member. It allows magistrates to issue temporary protection orders via police by telephone, email or fax in emergencies. It also strengthens monitoring provisions to check for intimidation if an applicant does not return to court after getting an interim protection order, and applies the special arrangements available for vulnerable witness in criminal cases to protection order proceedings. It also authorises courts to refer perpetrators of domestic violence to counselling or treatment programmes. Sadly, the proposal to amend the law to allow couples in same-sex relationships to access its protections did not make it to Parliament.

Neither of these amending acts on gender-based violence have been brought into force as yet. The refinements they contain are welcome, but they have been slow to reach fruition. Most of the rape law amendments were proposed back in 2008, and many of the domestic violence proposals date back to at least 2016. While legal change should not be overly rushed, the Namibian law reform system could certainly be more nimble.

Moving back to our survey of 2022 legislation, the [Administration of Estates Amendment Act 9 of 2022](#) repeals the controversial section of the underlying law which has since December 2018 required the payment of certain funds due to minors (defined in this Act as persons under age 21) and persons under curatorship into the guardian’s fund, even in cases where there was a will naming an executor. That requirement is now gone.

The [Road Fund Administration Amendment Act 11 of 2022](#), which has not yet been brought into force, makes provision for exemption from payment of cross-border entry fees in certain circumstances. such as cross-border movements by the military and police. It also provides authority for officials to write off or waive certain fees, interest and penalties – such as accumulated fees for vehicles that have been scrapped or debts where the interest and penalties would otherwise exceed the original amount that was due.

Technical changes to existing laws on revenue were made by [the Stamp Duties Amendment Act 10 of 2022](#), the [Income Tax Amendment Act 13 of 2022](#) and the [Value-Added Tax Amendment Act 14 of 2022](#).

The **Income Tax Amendment Act 13 of 2022**, amongst other things, rather belatedly amends the underlying law to provide for electronic tax returns and notices of tax assessments.

The most interesting aspect of the **Value-Added Tax Amendment Act 14 of 2022** is that it exempts sanitary pads from VAT – while at the same time explicitly failing to exempt tampons, menstrual cups, feminine sanitary wipes, period or leak-proof underwear and incontinence towels or pads. This is an important step forward on gender rights which needs to be taken further.

Both the **Income Tax Amendment Act 13 of 2022** and the **Value-Added Tax Amendment Act 14 of 2022** amend the underlying laws to provide that any payments under those laws are applied first to the tax that is owing, then to the interest on the outstanding amount, and only then to any penalty for non-payment.

The [Property Valuers Profession Amendment Act 15 of 2022](#) amends the Property Valuers Act 7 of 2012 which has not yet come into force. This 2012 law, which provides for the registration of professional valuers and related professionals and trainees, has already been amended twice since it was first passed by Parliament – with some of the 2022 amendments reversing those made in 2018. The latest amendments provide for increased fines for improper conduct by registered property valuers, amongst other things. The aim of the underlying law is to regulate property valuation to help prevent over-valuations that contribute to inflated land prices or under-valuations that deprive the government of appropriate amounts of property-based revenue such as land taxes and property transfer fees.

## **REPEALS OF OLD LAWS**

The **Repeal of Obsolete Laws Act 12 of 2022**, which has not yet been brought into force, will repeal 20 statutes together with their amendments. The laws to be repealed are no longer of any relevance in independent Namibia. Some are race-based, such as the Natives Minimum Wage Proclamation 1 of 1944 and the Promotion of the Economic Development of National States Act 46 of 1968 which was an apartheid measure intended to bolster ethnic “homelands”. Others on the list were designed to support colonial control, such as the Indemnity Proclamation 8 of 1923 as enacted to avoid government liability for the extreme measures taken by the South West Africa Administration to suppress the Bondelswarts Rebellion in 1922, and the Promotion of the Density of Population in Designated Areas 18 of 1979 designed to provide loans to white farmers to encourage them to stay and farm in border areas during the struggle era. The laws to be repealed were identified on the basis of research by the Law Reform and Development Commission.

## **WHAT IS MISSING?**

A few laws were notably absent. New laws on marriage, divorce and marital property, long-awaited by the public, did not make it to Parliament last year. This means that marital property is still governed by race-based laws, almost 33 years after independence, while divorce still takes place under an antiquated system that considers one spouse to be guilty and the other one innocent even though that is not the way that relationships work in the real world.

Another notable absence was the new law on civil registration, which will set up a new system for records of birth, death, marriage, divorce and other civil events. Much of the groundwork for implementing the anticipated new law is already in place, with e-notices already being used in medical facilities to ensure the accuracy of reports of births and deaths, but the law is urgently needed to bring the new and improved system fully into action.

Cybercrime also did not make it to Parliament in 2022. Discussions of the draft bill led to proposals for more comprehensive approaches to some of the targeted harms, to make sure that online and offline manifestations are equally addressed. Draft bills on harassment, sexual exploitation and hate speech are on the table for discussion as potential companion laws to the Cybercrime Bill, in an effort to make sure that the remedies are victim-centred and effective no matter what medium is used to carry out the wrongdoing.

Movement on environmental laws, such as proposed legislation on wildlife management and water, was also lacking.

Controversial issues such as reproductive rights and equality for same-sex couples are not even in the starting blocks for legislative change as yet. Many more areas could be cited where law reforms are needed.

May 2023 be not just a year of revival, but also a year of increased momentum for making Namibia’s laws responsive to the needs of the people.