



Republic of Namibia
Annotated Statutes

Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 (RSA)

(RSA GG 2902)

brought into force in South Africa and South West Africa
on 1 December 1970 by RSA Proc. R.286/1970 (RSA GG 2922)
(see section 7 of Act)

APPLICABILITY TO SOUTH WEST AFRICA: Section 7 states "This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel."

TRANSFER TO SOUTH WEST AFRICA: Although this Act makes no reference to any minister, because of its subject matter it probably fell under the Executive Powers (Justice) Transfer Proclamation, AG 33 of 1979, dated 12 November 1979. Support for this assumption can be found in the fact that this Act is one of the laws listed in the South African *Justice Laws Rationalisation Act 18 of 1996* (RSA GG 17129). However, the issue of transfer is not relevant to the content of the Act since there were no amendments to the Act in South Africa prior to Namibian independence.

as amended by

Limitation of Legal Proceedings Amendment Act 25 of 1985 (OG 5145)

came into force on date of publication: 18 December 1985

Local Authorities Act 23 of 1992 (GG 470)

brought into force on 31 August 1992 by GN 118/1992 (GG 472)

ACT

To prescribe limitations of time in connection with, and other requirements for, the institution of legal proceedings in respect of certain debts against provincial administrations, the administrations of representative authorities, local authorities and officers of any such body, and to provide for matters incidental thereto.

[long title amended by Act 25 of 1985]

(Afrikaans text signed by the State President)

(Assented to 2nd October, 1970)

ARRANGEMENT OF SECTIONS

Limitation of Legal Proceedings (Provincial and Local Authorities) Act 94 of 1970 (RSA)

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:-

Definitions

1. In this Act, unless inconsistent with the context -

“administration” means the administration of a province or any representative authority as defined in section 1 of the Representative Authorities Proclamation, 1980 (Proclamation AG. 8 of 1980);

**[The definition of “administration” is amended by Act 25 of 1985.
AG 8 of 1980 was repealed by the Namibian Constitution.]**

“debt” means any debt arising from delict and, in relation to an officer, means any such debt of such officer for which the administration or local authority in whose service such officer is, is in law also liable;

“local authority” means any institution or body contemplated in section 84(1)(f) of the Republic of South Africa Constitution Act, 1961 (Act No. 32 of 1961), which has been established or constituted by or under any ordinance of a provincial council or in relation to which a provincial council may make ordinances, and any municipality or village management board established or constituted or deemed to be established or constituted under the Municipal Ordinance, 1963 (Ordinance No. 13 of 1963, of the territory of South-West Africa), or the Village Management Boards Ordinance, 1963 (Ordinance No. 14 of 1963, of the territory of South-West Africa);

[The Republic of South Africa Constitution Act 32 of 1961 was South Africa's constitution from 1961 to 1984. Although this Act had implications for South-West Africa, it does not appear to have been directly applicable as a law of South West Africa. It was repealed on 3 September 1984 by the Republic of South Africa Constitution Act, 1983, although some provisions relating to provincial government were retained under the new name of the Provincial Government Act 32 of 1961. Local authorities in Namibia are governed by the Local Authorities Act 23 of 1992, which repealed the Municipal Ordinance 13 of 1963 and the Village Management Boards Ordinance 14 of 1963.]

“officer” means any person in the service of an administration or local authority.

Limitations of time in connection with, and other requirements for, the institution of legal proceedings against an administration, local authority or officer

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2. (1) Subject to the provisions of this Act, no legal proceedings in respect of any debt shall be instituted against an administration, local authority or officer (hereinafter referred to as the debtor) -

- (a) unless the creditor has within ninety days as from the day on which the debt became due, served a written notice of such proceedings, in which are set out the facts from which the debt arose and such particulars of such debt as are within the knowledge of the creditor, on the debtor by delivering it to him or by sending it to him by registered post;
- (b) before the expiration of a period of ninety days as from the day on which the notice contemplated in paragraph (a) was served on the debtor, unless the debtor has in writing denied liability for the debt before the expiration of such period;
- (c) after the lapse of a period of twenty-four months as from the day on which the debt became due.

(2) For the purposes of subsection (1) -

- (a) legal proceedings shall be deemed to be instituted by service on the debtor of any process (including a notice of any application to court and any other document by which legal proceedings are commenced) in which the creditor claims payment of the debt;
- (b) a debt shall, if the debtor intentionally prevents the creditor from coming to know of the existence thereof, not be regarded as due before the day on which the creditor comes to know of the existence thereof;
- (c) a debt shall not be regarded as due before the first day on which the creditor has knowledge of the identity of the debtor and the facts from which the debt arose, or the first day on which the creditor can acquire such knowledge by the exercise of reasonable care, whichever is the earlier day;
- (d) a period prescribed in paragraph (a) or (c) of that subsection shall, in the case of a debt of which the due date is postponed by agreement between the creditor and the debtor, be calculated afresh as from the day on which the debt again becomes due.

Exceptions

3. (1) The provisions of section 2 shall not apply in relation to -

- (a) a debt for which the debtor has expressly and in writing acknowledged liability to the creditor;
- (b) a claim in reconvention in any legal proceedings instituted by the debtor;
- (c) a claim under the provisions of the Motor Vehicle Insurance Act, 1942 (Act No. 29 of 1942);

[The Motor Vehicle Insurance Act 29 of 1942 (SA GG 3041) applied to South West Africa. It was repealed by the Compulsory Motor Vehicle Insurance Act 56 of 1972 (RSA GG 3532), which applied to South West Africa. Act 56 of 1972 was repealed by the Motor Vehicle Accidents Act 84 of 1986 (RSA GG 10419), which applied to South West Africa. After independence, Act 84 of 1956 was repealed by the Motor Vehicle Accidents Act 30 of 1990 (GG 132), which was repealed by the Motor Vehicle Accidents Fund Act 4 of 2001 (GG 2547), which was repealed in turn by the Motor Vehicle Accident Fund Act 10 of 2007 (GG 3970).]

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- (d) a claim in respect of which the provisions of section 8 of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), apply.

[Act 30 of 1941 has been re-named and is now the Employees' Compensation Act.]

- (2) The provisions of paragraph (a) of section 2 (1) shall not apply in relation to -
- (a) the joining of the debtor as a party to any legal proceedings by means of a third party notice provided for in any rules of court;
- (b) any urgent application made to court during the period referred to in that paragraph,

and shall not affect the issue of a rule *nisi* against the debtor during that period or pursuant to any such application.

Leave to serve notice after the lapse of the prescribed period

4. If a creditor has failed to comply with the provisions of paragraph (a) of subsection (1) of section 2 in relation to legal proceedings which he desires to institute and the debtor has not, within fourteen days after having been requested by the creditor to do so, in writing waived his right to invoke those provisions, the court having jurisdiction in respect of such legal proceedings may, notwithstanding those provisions but subject to the provisions of paragraphs (b) and (c) of that subsection, grant to the creditor on his application and on such conditions as the court may deem fit, leave to serve the notice contemplated in the said paragraph (a) on the debtor after the lapse of the period prescribed in that paragraph, if the court is satisfied -

- (a) that the debtor is not prejudiced by the failure; or
- (b) that by reason of special circumstances the creditor could not reasonably have been expected to serve the notice within that period.

Provisions of Act to be raised in pleadings

5. (1) A court shall not of its own motion take notice of a failure to comply with any provision of section 2 or with any condition imposed under section 4.

(2) A party to litigation who invokes any provision of section 2 or any leave granted under section 4 or a failure to comply with any condition imposed under the lastmentioned section, shall do so in the relevant document filed of record in the proceedings: Provided that the court may at any stage of the proceedings allow such party to invoke such provision, leave or failure.

State bound

6. This Act shall bind the State.

Application to South-West Africa

7. This Act and any amendment thereof shall apply also in the territory of South-West Africa, including the Eastern Caprivi Zipfel.

Transitional provisions

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8. The provisions of this Act shall not apply in relation to legal proceedings in respect of a debt which arose before the commencement of this Act and any such legal proceedings may be instituted as if this Act had not come into operation.

Repeal of laws

9. The laws referred to in the Schedule are hereby repealed to the extent set out in the third column thereof and any other law (except an Act of Parliament) which is inconsistent with the provisions of this Act is hereby repealed to the extent of the inconsistency.

[Section 9 is repealed insofar as it relates to Ordinance 13 of 1963 in the Schedule, by Act 23 of 1992.]

Short title and commencement

10. This Act shall be called the Limitation of Legal Proceedings (Provincial and Local Authorities) Act, 1970, and shall come into operation on a date to be fixed by the State President by proclamation in the *Gazette*.

Schedule

LAWS REPEALED

[Section 9 is repealed insofar as it relates to Ordinance 13 of 1963 in the Schedule, by Act 23 of 1992, which does not amend the Schedule. The item relevant to Ordinance 13 of 1963 is crossed out below to reflect this.]

No. and Year.	Title	Extent of Repeal
CAPE OF GOOD HOPE		
Ordinance No. 3 of 1936	Roads Ordinance, 1936	Section 10(1).
Ordinance No. 19 of 1951	Municipal Ordinance, 1951	Section 266.
Ordinance No. 15 of 1952	Divisional Councils Ordinance, 1952	Section 241(1).
Ordinance No. 28 of 1960	Trunk Roads Ordinance, 1960	Section 7 quin (1).
NATAL		
Ordinance No. 20 of 1941	Local Health Commission (Public Health Areas Control) Ordinance, 1941.	Section 19.
Ordinance No. 21 of 1942	Local Government Ordinance, 1942	Section 254.
Ordinance No. 13 of 1961	Provincial Hospitals Ordinance, 1961	Section 24.
ORANGE FREE STATE		
Ordinance No. 16 of 1954	Education Ordinance, 1954	Section 75.
Ordinance No. 5 of 1957	Hospital Officials' Pensions Ordinance, 1957	Section 31.
Ordinance No. 10 of 1959	Hospital Service Ordinance, 1959	Section 18.
Ordinance No. 8 of 1962	Local Government Ordinance, 1962	Section 170.

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Ordinance No. 4 of 1968	Roads Ordinance, 1968	Section 52(1).
	TRANSCAAL	
Ordinance No. 17 of 1939	Local Government Ordinance, 1939	Section 172.
Ordinance No. 20 of 1943	Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943.	Section 38.
Ordinance No. 22 of 1957	Roads Ordinance, 1957	Section 96.
	SOUTH-WEST AFRICA	
Ordinance No. 28 of 1962	Roads Ordinance, 1962	Section 60 (1).
Ordinance No. 13 of 1963	Municipal Ordinance, 1963	Section 270.