

Namibia

## Affirmative Action (Employment) Act, 1998

Act 29 of 1998

Legislation as at 1 November 2008

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# Affirmative Action (Employment) Act, 1998

## Contents

1. Definitions .....	1
2. Application of Act .....	3
Part I – ADMINISTRATION OF ACT .....	3
3. Establishment of the Employment Equity Commission .....	3
4. Objects of Commission .....	3
5. Powers, duties and functions of Commission .....	4
6. Constitution of Commission .....	4
7. Terms of office of members of Commission .....	5
8. Disqualifications for appointment as Commissioner or member of Commission .....	5
9. Vacation of office by members other than Commissioner .....	6
10. Functions of Commissioner and vacation of office .....	6
11. Designation and functions of Deputy Commissioner .....	7
12. Meetings .....	7
13. Committees .....	8
14. Remuneration and expenditure .....	8
15. Administrative functions .....	9
16. Reports by Commission .....	9
Part II – AFFIRMATIVE ACTION .....	9
17. Definition of “affirmative action” and determination of equitable representation .....	9
18. Designated groups .....	10
19. Preferential treatment of designated group .....	10
20. Relevant employers .....	11
21. Employers treated as single employer .....	11
22. Voluntary affirmative action .....	12
23. Affirmative action plans .....	12
24. Consultation and assistance of employees .....	13
25. Analysis, review and statistical report .....	13
26. Records .....	13
27. Submission of affirmative action reports .....	14
28. Contents of affirmative action reports .....	14
29. Public inspection of affirmative action reports .....	15
30. Review officers .....	15
31. Powers, duties and functions of review officer .....	16
32. Functions of Commission with regard to recommendations by review officers .....	17

33. Amendment of affirmative action plans .....	18
34. Affirmative action reports deemed to be approved .....	18
35. Review panel and its functions .....	19
36. Procedure at hearings and powers of review panels .....	19
37. Joinder of parties at hearings .....	21
38. Hearings to be public .....	21
39. Mediation and final orders by review panel .....	21
40. Certified records of proceedings .....	22
41. Affirmative action compliance certificate .....	22
42. Restrictions on certain contracts, guarantees, loans, licences, permits, grants, or concessions .....	22
43. Further provisions regarding application of Act .....	23
Part III – MISCELLANEOUS .....	23
44. Indemnity .....	23
45. Disputes brought to attention of the Commission .....	23
46. Legal assistance .....	23
47. Offences and penalties .....	24
48. Regulations .....	24
49. Amendment of laws .....	25
50. Short title and commencement .....	25
Schedule .....	25





Republic of Namibia  
Annotated Statutes

# Affirmative Action (Employment) Act, 1998

## Act 29 of 1998

[Published in Government Gazette 1962 on 24 September 1998](#)

**Assented to on 3 September 1998**

**There are multiple commencements**

Provisions	Status
Section 1; Part I (section 3–16); Part II, section 17–18; Part III, section 44, section 49–50	commenced on 18 November 1998 by <a href="#">Government Notice 278 of 1998</a> .
Section 2; Part II, section 19–43; Part III, section 45–48	commenced on 6 August 1999 by <a href="#">Government Notice 156 of 1999</a> .

**[This is the version of this document from 1 November 2008 and includes any amendments published up to 8 May 2024.]**

**[Amended by [Affirmative Action \(Employment\) Amendment Act, 2007 \(Act 6 of 2007\)](#) on 27 December 2007]  
[Amended by [Labour Act, 2007 \(Act 11 of 2007\)](#) on 1 November 2008]**

## ACT

To achieve equal opportunity in employment in accordance with Article 10 and Article 23 of the Namibian Constitution; to provide for the establishment of the Employment Equity Commission; to redress through appropriate affirmative action plans the conditions of disadvantage in employment experienced by persons in designated groups arising from past discriminatory laws and practices; to institute procedures to contribute towards the elimination of discrimination in employment; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of Namibia as follows:-

### 1. Definitions

In this Act, unless the context otherwise indicates -

“**affirmative action**” means affirmative action as defined in section 17;

**“affirmative action compliance certificate”** means an affirmative action compliance certificate referred to in section 41;

**“affirmative action measures”** means the affirmative action measures contemplated in section 17;

**“affirmative action plan”** means an affirmative action plan referred to in section 23;

**“affirmative action report”** means an affirmative action report referred to in section 27;

**“Commission”** means the Employment Equity Commission established by section 3, and includes, for the purposes of section 17(3), a review officer and a review panel;

[definition of “Commission” amended by Act 6 of 2007 to correct a cross-reference]

**“Commissioner”** means the Commissioner appointed under section 6(l)(a);

**“designated group”** means any one of the groups of persons referred to in section 18(1);

**“employed”** means employed as defined in section 1 of the Labour Act, 1992;

**“employee”** means an employee as defined in section 1 of the Labour Act, 1992;

**“employer”** means an employer as defined in section 1 of the Labour Act, 1992;

**“employers’ organisation”** means an employers’ organisation as defined in section 1 of the Labour Act, 1992;

**“employment barrier”** means any rule, practice or condition, other than a legitimate job requirement, which adversely affects persons who are members of a designated group more than it affects persons who are not members of such designated group;

**“employment decision”** includes decisions on matters concerning employment and occupation relating to -

- (a) access to vocational guidance, training and placement services;
- (b) access to employment and to a particular occupation or work, including -
  - (i) any advertisement relating thereto;
  - (ii) recruitment procedures;
  - (iii) selection procedures; and
  - (iv) appointments and the appointment process;
- (c) the promotion, demotion and transfer of employees;
- (d) security of tenure of employment;
- (e) remuneration and other terms and conditions of employment;
- (f) discipline, suspension or termination of employment or any other decision which adversely affects the employee concerned; and
- (g) access to any other benefits, facilities or services; and
- (h) collective termination as contemplated in section 50 of the Labour Act, 1992;

**“Labour Act, 1992,”** means the Labour Act, 1992 (Act [No. 6 of 1992](#));

[The Labour Act 6 of 1992 has been replaced by the Labour Act 11 of 2007. Section 16 of Act 11 of 2007 provides that “any reference to a provision of the previous Act must be read as if it were a reference to the corresponding provision of this Act, in so far as possible”.]

**“Labour Advisory Council”** means the Labour Advisory Council established by section 7 of the Labour Act, 1992;

“**Minister**” means the Minister of Labour;

“**Ministry**” means the Ministry of Labour;

“**Permanent Secretary**” means the Permanent Secretary: Labour;

“**prescribe**” means prescribe by regulation;

“**registered employers’ organisation**” means an employers’ organisation registered as such under the provisions of Part VII of the Labour Act, 1992;

“**registered trade union**” means a trade union registered as such under the provisions of Part VII of the Labour Act, 1992;

“**relevant employer**” means an employer identified as a relevant employer under section 20;

“**review officer**” means the person appointed by the Commission under section 30

“**review panel**” means the review panel appointed under section 35;

“**scale of salary**” means a minimum and a maximum salary, with determined rates of progression in between, attached to a position of employment and includes a salary at a fixed rate;

“**suitably qualified person**” means a person who has the abilities, formal qualifications or relevant experience for a position of employment;

“**this Act**” includes the regulations made thereunder;

“**trade union**” means a trade union as defined in section 1 of the Labour Act, 1992.

## 2. Application of Act

This Act shall apply to every employer who has under section 20 been identified as a relevant employer.

## Part I – ADMINISTRATION OF ACT

### 3. Establishment of the Employment Equity Commission

There is hereby established a body to be known as the Employment Equity Commission.

### 4. Objects of Commission

The objects of the Commission are -

- (a) to inquire into whether a relevant employer has adopted and is implementing an affirmative action plan and whether any particular affirmative action plan or affirmative action measure meets the objects of this Act, and to take the actions prescribed by or under this Act in regard thereto;
- (b) to collect and compile information for the purposes of the administration of the provisions of this Act;
- (c) to advise any person, body, institution, organisation, or interest group on matters pertaining to the objects of this Act, including whether an existing or proposed affirmative action measure or employment practice is consistent with the objects of this Act;
- (d) to advise the Minister on making regulations in order to achieve the objects of this Act and on any other matter which the Minister may refer to the Commission;
- (e) to undertake or sponsor research and publications relating to the objects of this Act and the Commission’s functions; and

- (f) to exercise such other powers or perform such other duties and functions as may or is required to be performed or exercised by the Commission under this Act.

## 5. Powers, duties and functions of Commission

For the purposes of achieving its objects the Commission may -

- (a) establish awards recognising achievements in furthering the objects of this Act;
- (b) in consultation with the Permanent Secretary -
  - (i) obtain the services of such persons to advise it in connection with the performance of its functions, on such conditions as may be mutually agreed upon between the Commission and any such person; and
  - (ii) acquire such operational equipment,  
as it may consider necessary;
- (c) establish committees;
- (d) facilitate training programmes, technical or other assistance, expert or specialised advice and information and guidance on implementing affirmative action in the work place;
- (e) issue guidelines in relation to the application of any provision of this Act -
  - (i) to assist relevant employers in fulfilling their obligations under this Act; and
  - (ii) in order to effect the proper administration of the provisions of this Act; and
- (f) perform such other functions in furtherance of the objects of this Act as the Minister may assign to it.

## 6. Constitution of Commission

- (1) The Commission shall comprise the following members, appointed by the Minister with the approval of the National Assembly:
  - (a) The Commissioner, who shall be the chairperson;  
**[The word “the” at the beginning of paragraph (a) should not be capitalised.]**
  - (b) four persons who shall represent the interests of the State;
  - (c) two persons selected by the Minister from persons nominated by registered trade unions in accordance with the provisions of subsection (2);
  - (d) two person selected by the Minister from persons nominated by registered employers’ organisations in accordance with the provisions of subsection (2);
  - (e) two persons who, in the opinion of the Minister, represent the interest of the designated group referred to in section 18(1)(a) and who are suitably qualified having regard to the functions of the Commission;
  - (f) two persons, of whom one shall be a woman, who, in the opinion of the Minister, represent the interest of the designated group referred to in section 18(1)(b) and who are suitably qualified having regard to the functions of the Commission; and
  - (g) two persons who, in the opinion of the Minister, represent the interest of the designated group referred to in section 18(1)(c) and who are suitably qualified having regard to the functions of the Commission.



- (2) For the purposes of the nomination of the person referred to in subsection (1)(c) or (d), the Minister shall in writing request such -
- (a) registered trade unions; or
  - (b) registered employers' organisations,
- as he or she may consider necessary, to nominate for appointment as members of the Commission such number of persons as may be specified in such request and to submit such nominations to the Minister within such period as may be so specified.
- (3) If no nomination for a member of the Commission referred to in subsection (1)(c) or (d) is submitted to the Minister within the period specified by the relevant requests made in terms of subsection (2), he or she may appoint, with the approval of the National Assembly, such person as he or she may deem fit, and a person so appointed shall be deemed to have been appointed in terms of the provisions of the said subsection (1)(c) or (d), as the case may be.
- (4) For the purposes of the appointment of persons referred to in subsections (1)(e), (f) and (g), the Minister shall consult with such organisations representing the interests of the designated group concerned or any other person as he or she may consider necessary.
- (5) (a) The Minister shall with due regard to the provisions of subsections (2), (3) and (4) appoint for each member of the Commission, other than the Commissioner, an alternate member, and may terminate the appointment at any time.
- [The word "provisions" is misspelt in the Government Gazette, as reproduced above.]**
- (b) Any alternate member appointed under paragraph (a) may -
- (i) during the absence of the member with respect to whom he or she has been appointed, or such member's inability to act as member, act as member of the Commission in the place of that member;
  - (ii) resign from his or her office as alternate member by written notice to the Minister.

## 7. Terms of office of members of Commission

- (1) The Commissioner shall hold office for a period of five years, but shall at the expiration of such period of office be eligible for re appointment as member of the Commission
- (2) Subject to subsection (3), a member of the Commission referred to in section 6(1)(b), (c), (d), (e), (f) and (g) shall hold office for a period of three years, but shall at the expiration of such period of office be eligible for reappointment as member of the Commission.
- (3) Where the period of office of a member referred to in subsection (2) expires during a period when the National Assembly is not in session, the Minister may extend the period of office of such member until such time as a member is appointed for that office in terms of the relevant provisions of section 6, but in no case longer than the end of the next ensuing session of the National Assembly.

**[The word "ensuing" is misspelt in the Government Gazette, as reproduced above.]**

## 8. Disqualifications for appointment as Commissioner or member of Commission

- (1) No person shall be appointed as Commissioner or as a member of the Commission, if that person -
- (a) has at any time been found guilty, whether in Namibia or elsewhere, of an offence of racial discrimination or sexual harassment or involving dishonesty; or
  - (b) has been convicted of an offence, other than a political offence committed before the date of Namibia's Independence, for which he or she has been sentenced to imprisonment without

the option of a fine, unless the period of such imprisonment has expired at least ten years before the date of his or her appointment as a member of the Commission;

- (c) is an unrehabilitated insolvent;
  - (d) is detained under law as a mentally ill person; or
  - (e) is not a Namibian citizen.
- (2) The Commissioner shall not be appointed from among persons representing registered trade unions' or registered employers' organisations' interests.

## 9. Vacation of office by members other than Commissioner

- (1) Notwithstanding the provisions of section 7(2), a member of the Commission referred to in section 6(1)(b), (c), (d), (e), (f), or (g) shall vacate his or her office, if he or she -
- (a) has, without sufficient reasons or the leave of the Commission, been absent from three consecutive meetings of the Commission;
  - (b) resigns from office by written notice to the Minister;
  - (c) becomes subject to a disqualification referred to in section 8; or
  - (d) is removed from office by the Minister, with the approval of the National Assembly and after having had the opportunity to be heard, if the Minister is reasonably satisfied that such member -
    - (i) is physically or mentally incapable of performing his or her duties,
    - (ii) has conducted himself or herself dishonestly; or
    - (iii) has neglected his or her duty.
- (2) A vacancy on the Commission arising from any circumstance referred to in subsection (1), or caused by death of any member of the Commission referred to in that subsection, shall be filled by appointment of another person in the same manner in which the person who has vacated his or her office or has died was appointed, and such member shall hold office for the unexpired portion of the period of office of the member who has vacated his or her office or who has died, as the case may be.

## 10. Functions of Commissioner and vacation of office

- (1) The Commissioner shall, in addition to such powers, duties and functions as this Act may confer upon or assign to him or her and such other functions as the Minister may impose upon him or her, be responsible for the efficient administration of the functions of the Commission.
- (2) (a) The Commissioner may delegate or assign any of his or her powers, duties or functions under this Act to the Deputy Commissioner or any other member of the Commission or any person employed by the Ministry, but shall not be divested of any power so delegated and may amend or withdraw any decision made by the Deputy Commissioner or such other member or person, as the case may be, in the exercise of any power so delegated.

[paragraph (a) amended by Act 6 of 2007]

- (b) A delegation or assignment under paragraph (a) may be made subject to such conditions and restrictions as may be determined by the Commissioner, and any such condition or restriction may be withdrawn or amended by him or her.
- (3) The Minister may, with the approval of the National Assembly and after having afforded the Commissioner an opportunity to be heard, remove the Commissioner from his or her office before

the expiration of his or her term of office, if the Minister is of the opinion that there are reasonable grounds for doing so, including -

- (a) continued ill health;
  - (b) misconduct;
  - (c) inability to efficiently carry out the functions of that office;
  - (d) where the Commissioner becomes subject to a disqualification referred to in section 8; or
  - (e) if such removal is in the public interest.
- (4) The Commissioner may resign from his or her office by written notice to the Minister.
- (5) Where the office of the Commissioner has become vacant in terms of subsection (3) or (4), or where the Commissioner has died, and the National Assembly is not in session, the Minister may designate the Deputy Commissioner or any other member of the Commission to act as Commissioner until such time as a Commissioner is appointed under section 6(1), but in no case shall the period of such designation be longer than the end of the next ensuing session of the National Assembly.

[The word “Commissioner” is misspelt in the Government Gazette in its first usage in subsection (5), as reproduced above.]

## 11. Designation and functions of Deputy Commissioner

- (1) The Minister shall designate, for such period as he or she may determine, one of the members of the Commission as Deputy Commissioner.
- (2) The Deputy Commissioner shall not be designated from among persons representing registered trade unions’ or registered employers’ organisations’ interests.
- (3) The Deputy Commissioner shall -
  - (a) generally assist the Commissioner in the performance of his or her functions under this Act, subject to the Commissioner’s direction and control;
  - (b) during the absence or incapacity of the Commissioner exercise or perform the Commissioner’s powers, duties and functions; and
  - (c) exercise such powers or perform such duties and functions of the Commissioner as the Commissioner may delegate or assign to him or her.

## 12. Meetings

- (1) The Commission shall meet at such times and places as the Commissioner may determine, but in no case less than once every three months.
- (2) The Commissioner shall -
  - (a) on request of the Minister; or
  - (b) on the written request of at least one-third of the members of the Commission, convene a special meeting of the Commission.
- (3) The Commissioner shall cause reasonable prior notice of every meeting of the Commission to be given to the members of the Commission.
- (4) A majority of the members of the Commission shall constitute a quorum for a meeting of the Commission.
- (5) The decision of the majority of the members of the Commission present and entitled to vote at a meeting thereof shall constitute a decision of the Commission, and, in the event of an equality

of votes relating to any matter, the member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

- (6) No decision taken by the Commission or an act performed under the authority of the Commission shall be invalid by reason only of a vacancy on the Commission, or by reason only of the fact that a person who is not entitled to sit as a member of the Commission sat as a member of the Commission when the decision was taken or the act was authorised, if the decision was taken or the act was authorised by the requisite majority of the members of the Commission present at the time and entitled to sit as members.
- (7) The Commission shall cause written records to be kept of the proceedings of its meetings.
- (8) The Commission may make rules relating to the holding of, and procedure at, the meetings of the Commission.

### **13. Committees**

- (1) The Commission may from time to time establish one or more committees to advise it on such matters as the Commission may refer to it, or to assist the Commission in the exercise of such of its powers or the performance of such of its duties and functions under this Act as the Commission may delegate or assign to it, and the Commission may give such directives in connection with such delegation or assignment as it may deem expedient.
- (2) A committee referred to in subsection (1) may consist of two or more members of the Commission or so many members of the Commission and other persons as the Commission deems necessary, and the Commission may at any time dissolve or reconstitute a committee.
- (3) The Commission may appoint as a temporary member of a committee, for such period as it may determine, any person who in its opinion has expert knowledge of any matter for which such committee has been appointed, and any such member shall hold office during the period for which he or she has been appointed as if he or she were a member of the committee in question, but may not vote in respect of any decision of such committee.
- (4) The Commission may designate one of the members of a committee as the chairperson of that committee.
- (5) If consensus cannot be reached on any matter by a committee the matter shall be referred to the Commission.
- (6) The Commissioner may attend any meeting of a committee and shall be entitled to take part in the proceedings and vote on any matter.

### **14. Remuneration and expenditure**

- (1) The Commissioner shall be paid such remuneration, allowances, benefits and privileges as the Minister may determine, with the concurrence of the Minister of Finance.
- (2) A member of the Commission referred to in section 6(1)(b), (c), (d), (e), (f) or (g), or a member of a committee referred to in section 13, who is not in the full-time employment of the Public Service shall be paid such remuneration, allowances, benefits or privileges as the Minister may determine, with the concurrence of the Minister of Finance.
- (3) The remuneration, allowances, benefits or privileges of members referred to in subsection (2) may differ according to -
  - (a) the different offices held by such members in the Commission; or
  - (b) the different functions performed, whether in a part-time or full time capacity, by such members from time to time.

- (4) The expenditure in connection with the application and administration of this Act and the exercise and performance of the powers, duties and functions of the Commission shall be paid out of moneys appropriated by Parliament for such purpose.

## **15. Administrative functions**

The administrative and clerical work involved in the performance of the functions of the Commission shall be performed by staff members in the Ministry, made available for that purpose by the Permanent Secretary.

## **16. Reports by Commission**

- (1) The Commission shall compile and submit annually not later than 31 March a report to the Minister on its activities for the past year.
- (2) The report referred to in subsection (1) shall comprise -
  - (a) a full description of the work performed and achievements made towards fulfilling the objects of this Act; and
  - (b) recommendations for legislation or other form of action which, in the view of the Commission, will further the objects of this Act.
- (3) The report referred to in subsection (2) shall be laid upon the Table of the National Assembly by the Minister within 14 days after receiving it, if the National Assembly is then in session, or, if the National Assembly is not then in session, within 14 days after the commencement of its next ensuing session.
- (4) The Commission may, in addition to the report referred to in subsection (1), submit to the Speaker of the National Assembly a report on any matter which the Commission is desirous to bring to the attention of the National Assembly.
- (5) The Permanent Secretary may make available for sale to the public, for a fee determined by him or her in consultation with the Commission, copies of a report referred to in subsection (1).

## **Part II – AFFIRMATIVE ACTION**

### **17. Definition of “affirmative action” and determination of equitable representation**

- (1) For the purposes of this Act “affirmative action” means a set of affirmative action measures designed to ensure that persons in designated groups enjoy equal employment opportunities at all levels of employment and are equitably represented in the workforce of a relevant employer.
- (2) Without limiting the generality of the definition in subsection (1), an affirmative action measure referred to in that subsection includes, but is not limited to -
  - (a) identification and elimination of employment barriers against persons in designated groups;
  - (b) making reasonable efforts in the workplace to accommodate, physically or otherwise, persons with disabilities; and
  - (c) instituting positive measures to further the employment opportunities for persons in designated groups, which may include measures such as -
    - (i) ensuring that existing training programmes contribute to furthering the objects of this Act;
    - (ii) establishing new training programmes aimed at furthering the objects of this Act; and

- (iii) giving preferential treatment in employment decisions to suitably qualified persons from designated groups to ensure that such persons are equitably represented in the workforce of a relevant employer.
- (3) To determine whether a designated group is equitably represented in the various positions of employment offered by a relevant employer, the Commission shall take into account, in addition to such other factors as it may determine -
  - (a) the availability of suitably qualified persons in that designated group for such positions of employment; and
  - (b) the availability of persons in designated groups who are able and willing, through appropriate training programmes, to acquire the necessary skills and qualifications for such positions of employment.

## 18. Designated groups

- (1) For the purposes of this Act there shall be three designated groups, namely -
  - (a) racially disadvantaged persons;
  - (b) women; and
  - (c) persons with disabilities.
- (2) For the purposes of subsection (1) -
  - (a) “racially disadvantaged persons” mean all persons who belong to a racial or ethnic group which was or is, directly or indirectly, disadvantaged in the labour field as a consequence of social, economic, or educational imbalances arising out of racially discriminatory laws or practices before the Independence of Namibia; and
  - (b) “disabilities,” in relation to a person, includes any persistent physical or mental limitation which restricts such person’s preparation for, entry into or participation or advancement in, employment or occupation.

## 19. Preferential treatment of designated group

- (1) In filling positions of employment a relevant employer shall give preferential treatment to suitably qualified persons of designated groups.
- (2) Where two or more suitably qualified candidates from designated groups qualify for a position of employment, the employer shall give priority -
  - (a) to a candidate who is a Namibian citizen; or
  - (b) if all such candidates are Namibian citizens, to the candidate who belongs to more than one designated group.
- (3) Subject to subsection (4), a relevant employer shall, with due regard to the purposes of this Act, train a Namibian citizen as the under study of every non-Namibian citizen employed by him or her or it.
- (4) The Minister may, upon application in writing by a relevant employer referred to in subsection (3), and after consultation with the Minister of Higher Education, Vocational Training, Science and Technology and the Labour Advisory Council, exempt such relevant employer in writing from the provisions of that subsection -
  - (a) upon proof by that relevant employer that the trade or profession of the non-Namibian citizen contemplated in that subsection is of such a specialised nature that it is not reasonably possible for the relevant employer to train in the workplace a Namibian citizen as the under study of such non-Namibian citizen; or

- (b) where the Minister is for any other reason satisfied that it is impractical for such relevant employer to train in the workplace a Namibian citizen as the under study of such non-Namibian citizen.

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

## 20. Relevant employers

- (1) The Minister shall by notice in the Gazette identify the employers who, as relevant employers, shall comply with this Act.
- (2) The Minister shall in the notice referred to in subsection (1) identify an employer as relevant employer -

[The phrase “relevant employer” should be “a relevant employer” to be grammatically correct.]

- (a) by naming -
    - (i) such employer either individually or by category as relevant employer; or
- [The phrase “relevant employer” should be “a relevant employer” to be grammatically correct.]
- (ii) in the case of the Public Service, any Office, Ministry, or Agency as set out in Schedule 1, 2 or 3 of the Public Service Act, 1995 (Act [No. 13 of 1995](#)) as relevant employer; or
  - (b) by setting out in such notice -
    - (i) the criteria; or
    - (ii) the numerical base for calculating the number of employees employed by an employer, by which such employer shall be so identified.
  - (2) Different criteria and numerical bases may be set out under subsection (1)(b) for different industries or sectors of the economy.

## 21. Employers treated as single employer

- (1) The Commission may of its own accord or on application made to it by a relevant employer or a registered trade union representing the interest of the employees of such employer or any other representative of such employees, make an order that such relevant employer and any or all of its subsidiaries, branches or any other subdivision, as the case may be, constitute a single relevant employer for the purposes of this Act.
- (2)
  - (a) A relevant employer may in writing apply to the Commission, in such form as the Commission may determine, to make an order that such employer and any other relevant employer named in such application constitute a single relevant employer for the purposes of this Act.
  - (b) A registered trade union representing the interest of the employees of a relevant employer or any other representative of such employer's employees, may in writing apply to the Commission, in such form as the Commission may determine, to make an order that such employer and any other relevant employer named in such application constitute a single relevant employer for purposes of this Act.
- (3) The Commission shall in writing inform the relevant employer and the registered trade union or other representative, as the case may be, of any order made under subsection (1) or (2).
- (4) A relevant employer, registered trade union or other representative referred to in subsection (1) or (2), or an employee who is aggrieved by an order of the Commission made under any of those

subsections may, within a period of 30 days from the date upon which he or she has received the notice referred to in subsection (3), in writing appeal against such order to the Labour Court.

- (5) The Labour Court may, on good cause shown, allow an appeal to be noted in terms of subsection (3), notwithstanding the expiry of the period of 30 days referred to in that subsection.
- (6) An appeal to the Labour Court in terms of this section shall be subject to the provisions of the Labour Act, 1992, and its regulations, and such appeal shall, for the purposes of that Act, be deemed to be an appeal from a district labour court established by section 15(1)(b) of that Act.
- (7) The Labour Court may in respect of an appeal lodged in terms of subsection (3) -
  - (a) confirm the order appealed against;
  - (b) set aside such order; or
  - (c) make such order as it deems fit.

## 22. Voluntary affirmative action

Any employer who is not a relevant employer may adopt and implement an affirmative action plan consistent with this Act.

## 23. Affirmative action plans

- (1) Subject to section 24, every relevant employer shall prepare and implement a three year affirmative action plan -
  - (a) specifying the affirmative action measures to be instituted in order to -
    - (i) eliminate employment barriers against persons in designated groups;
    - (ii) make available positions of employment to such persons, provided that it is reasonably possible; and
    - (iii) ensure that such persons are equitably represented in the various positions of employment;
  - (b) setting out the affirmative action objectives which he or she or it expects to achieve, by setting out, where appropriate, numerical goals for increasing the representation of persons in designated groups in each job category and grade or equivalent thereof in his or her or its employment;
  - (c) establishing a timetable for the achievement of the objectives referred to in paragraph (b);
  - (d) setting out an internal procedure to monitor and evaluate the affirmative action plan, and identify a senior employee in his or her or its employ who will have overall responsibilities for the implementation of such affirmative action plan.
- (2) For the purposes of subsection (1), the Office of the Prime Minister shall, on the recommendation of the Public Service Commission established by section 2 of the Public Service Commission Act, 1990 (Act [No. 2 of 1990](#)), and after consultation with the relevant Permanent Secretary, prepare an affirmative action plan for every Office, Ministry or Agency in the Public Service identified as a relevant employer.
- (3) An affirmative action plan, referred to in subsection (1), shall, unless exemption is obtained from the Commission, be prepared every three years after the first submission of such affirmative action plan.

[Subsection (3) is inserted by Act 6 of 2007. The comma after “affirmative action plan” is superfluous.]



## 24. Consultation and assistance of employees

- (1) For the purposes of developing an affirmative action plan or an affirmative action report, a relevant employer shall carry out consultations with the representatives of his or her or its employees and, where there is a trade union representing the interest of such employees, also with such trade union, concerning -
- (a) the preparation, implementation and revision of that employer's affirmative action plan and affirmative action report;
  - (b) the assistance of such representatives or trade union in communicating matters relating to the affirmative action plan and affirmative action report to such employer's employees; and
  - (c) the participation of such representatives or trade union in monitoring the affirmative action plan and affirmative action report.
- [subsection (1) amended by Act 6 of 2007; not all of the changes are indicated by amendment markings]**
- (2) Representatives consulted in terms of subsection (1) shall reflect the interests of employees from across all occupational categories and levels of the employer's workforce, employees from designated groups and employees who are not from designated groups.

## 25. Analysis, review and statistical report

- (1) For the purpose of developing and implementing an affirmative action plan, a relevant employer shall -
- (a) analyse his or her or its workforce to determine whether persons in designated groups are equitably represented therein as contemplated in paragraphs (a) and (b) of subsection (3) of section 17;
  - (b) review and evaluate his or her or its employment practices; and
  - (c) prepare a statistical report, revised yearly, to correctly reflect the information required by subsection (2).
- (2) The statistical report referred to in subsection (1)(c) shall set out with regard to a relevant employer's workforce -
- (a) the job categories and grades or equivalents thereof of employment offered, and the representation of persons in designated groups in each such category and grade or equivalents thereof;
  - (b) the number of employees hired, promoted and whose services have been terminated in the preceding twelve months, and the representation of persons in designated groups among those employees;
  - (c) the scales of salary, the number of persons in designated groups in each such scale and the actual remuneration and other benefits of his or her or its employees; and
  - (d) such other information as may be required by the Commission.

## 26. Records

Every relevant employer shall keep a record of -

- (a) the affirmative action plan prepared in terms of section 23;
- (b) the minutes of the consultations carried out in terms of section 24; and
- (c) the analysis, review and statistical report prepared in terms of section 25.

## 27. Submission of affirmative action reports

- (1) Every relevant employer shall submit to the Commission, in such form as the Commission may determine and subject to section 28(1), a first affirmative action report -
  - (a) not later than 18 months from the date on which such employer has been identified as a relevant employer; or
  - (b) on such other date as the Minister may by notice in the Gazette determine, either specifically for such relevant employer or generally for a category of relevant employers, whichever date is the later date.
- (2)
  - (a) A relevant employer shall submit to the Commission, in such form as the Commission may determine and subject to section 28(2), a further affirmative action report not later than twelve months from the date of the submission of the first affirmative action report referred to in subsection (1), and thereafter once every twelve months from the date of submission of the immediately preceding affirmative action report.
  - (b) Notwithstanding paragraph (a), the Commission may, on application made to it in writing prior to the expiration of a period referred to in that paragraph, by notice in writing to the relevant employer concerned extend such period for such further period as it may determine.
- (3) An affirmative action report required in terms of this section for an Office, Ministry or Agency in the Public Service identified as a relevant employer shall be prepared and submitted to the Commission by the Office of the Prime Minister.

## 28. Contents of affirmative action reports

- (1) Subject to subsection (3), a first affirmative action report referred to in section 27(1) shall contain -
  - (a) the statistical report referred to in section 25(1)(c);
  - (b) the affirmative action plan prepared in terms of section 23;
  - (c) a summary of the affirmative action measures, including the numerical goals for the employment of persons in designated groups in the various job categories and grades or equivalents thereof in the employment offered by such employer, and any other objectives, if any, which that relevant employer intends to implement during the ensuing reporting period;
  - (d) the names of every non-Namibian citizen employed by such relevant employer and Namibian citizen trained as required by section 19(3);
  - (e) the records and documents used in the preparation of the report in question; and
  - (f) such other documents or information as the Commission may require.
- (2) Subject to subsection (3), a further affirmative action report referred to in section 27(2) shall contain -
  - (a) a statistical report referred to in subsection 25(1)(c), revised where necessary;
  - (b) one of the following:
    - (i) the affirmative action plan, approved as contemplated in section 32(5); or
    - (ii) an amended affirmative action plan referred to in paragraph (a) or (b) of subsection (1) of section 33; or
    - (iii) a proposed amended affirmative action plan referred to in paragraph (c) of subsection (1) of section 33;

- (c) an evaluation of the affirmative action plan implemented during the immediately preceding reporting period;
  - (d) where necessary, a statement of the specific affirmative action measures which the relevant employer proposes to implement to remedy any deficiency identified for the reporting period referred to in paragraph (c);
  - (e) a summary of the affirmative action measures, including the numerical goals for the employment of persons in designated groups in the various job categories and grades or equivalents thereof in the employment offered by such employer, and other objectives, if any, which that relevant employer intends to implement during the ensuing reporting period;
  - (f) the names of every non-Namibian citizen employed by such relevant employer and Namibian citizen trained as required by section 19(3);
  - (g) the records and documents used in the preparation of the report in question; and
  - (h) such other documents or information as the Commission may require.
- (3) The Minister may, on the recommendation of the Commission, prescribe -
- (a) such further requirements relating to affirmative action reports and its submission, as he or she may deem necessary; and
  - (b) under paragraph (a) different requirements for different categories of relevant employers.
- (4) Where an employer has in terms of subsection (4) of section 19 been exempted from the provisions of subsection (3) of that section, a copy of such exemption shall be submitted with an affirmative action report.

## 29. Public inspection of affirmative action reports

A relevant employer's affirmative action report shall lay open for public inspection at the Commission's head office.

## 30. Review officers

- (1) The Commission shall appoint for each affirmative action report submitted to it under section 27, from among the staff members in the Ministry made available for such purpose by the Permanent Secretary, a review officer or more than one review officer responsible for reviewing that report and making recommendations to the Commission in accordance with this Act.

[subsection (1) substituted by Act 6 of 2007]

- (2) (a) The Commission shall issue a review officer appointed under subsection (1) with a certificate of appointment as review officer.
- (b) The certificate referred to in paragraph (a) shall be in such form as the Commission may determine.
- (3) The Commission shall in writing inform the relevant employer of the name of the review officer appointed under subsection (1) to review that employer's affirmative action report and the date on which such review officer has been so appointed.
- (4) The Commissioner or any member of the Commission may exercise the powers or perform the functions of a review officer set out in terms of section 31 of this Act.

[subsection (4) inserted by Act 6 of 2007]

### 31. Powers, duties and functions of review officer

- (1) The functions of a review officer shall be -
  - (a) to review affirmative action reports in order to determine whether the relevant employers concerned have adopted and are implementing affirmative action plans;
  - (b) to ascertain during the review of a particular affirmative action report whether the relevant employer concerned has complied with sections 23, 24, 25, 26 and 28;
  - (c) to submit to the Commission a report in respect of every affirmative action report reviewed by him or her, together with his or her recommendation whether the Commission should approve or disapprove such affirmative action report.
- (2) To determine whether a relevant employer is implementing an affirmative action plan, the review officer concerned shall take into consideration -
  - (a) whether the specific affirmative action measures set out in the affirmative action report in question for the ensuing reporting period or, where applicable, to remedy any deficiency identified for the preceding reporting period meet the objects of this Act;
  - (b) the efforts in good faith of the relevant employer concerned to attain the goals and objectives of the affirmative action plan in question and the objects of this Act; and
  - (c) the prevailing economic conditions for such relevant employer or for the sector of industry in which such employer conducts his or her or its business.
- (3) The review officer shall -
  - (a) submit to the Commission, together with his or her report and recommendations referred to in subsection (1)(c), the affirmative action report under review and such other documents as he or she may deem necessary; and
  - (b) forward to the relevant employer concerned a copy of the report and recommendations referred to in subsection (1)(c).
- (4) In the execution of his or her functions under subsection (1), a review officer -
  - (a) may request the relevant employer to provide to him or her, for his or her examination or for the purpose of obtaining copies thereof, the records referred to in section 26 or any other document which the review officer believes, on reasonable grounds, to contain information relevant to his or her review of that employer's affirmative action report;
  - (b) may enter the business premises or land of the relevant employer at any reasonable time;
  - (c) may require any person apparently above the age of 16 years and in charge or control of the land or premises referred to in paragraph (b), to produce for his or her inspection or for the purpose of obtaining copies thereof, documents in such person's possession or under his or her control which the review officer believes, on reasonable grounds, to contain information relevant to the review;
  - (d) may make inquiries about any person which are relevant to the review;
  - (e) shall, on request of the relevant employer or person referred to in paragraph (c), produce his or her certificate of appointment as review officer issued to him or her under section 30(2); and
  - (f) subject to subsection (5), shall not enter into a place that is being used as a home without the consent of the occupier.
- (5) Where entry onto business premises or land referred to in subsection (4)(b) or into a home has been denied, the review officer shall apply to a magistrate for a warrant authorising such entry by the review officer or any other officer of the Commission named in the warrant.

- (6) The magistrate shall issue the warrant referred to in subsection (5) on evidence upon oath that there are reasonable grounds to believe that there is in such home or in or on such business premises or land, as the case may be, information relevant to the review in question.
- (7) An warrant issued under this section shall specify the time during which it may be executed and the date upon which it expires.

**[The phrase “An warrant” should be “A warrant” to be grammatically correct.]**

- (8) In so far as subsection (4) provides for a limitation of the fundamental rights contemplated in Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person's home, correspondence or communications, such limitation is enacted on authority of the said Article 13.

### **32. Functions of Commission with regard to recommendations by review officers**

- (1) The Commission may, upon consideration of the report, recommendation, affirmative action report and other documents submitted to it under subsections (1)(c) and (3)(a) of section 31, and taking into account any circumstances contemplated in subsection (2) of that section -
  - (a) approve the affirmative action report in question, and issue to the relevant employer concerned an affirmative action compliance certificate; or
  - (b) subject to subsection (5), disapprove such affirmative action report.
- (2) The Commission may disapprove a first affirmative action report referred to in section 27(1), if it finds that -
  - (a) the relevant employer has failed to comply with section 23, 24, 25, 26 or 28; or
  - (b) the affirmative action plan in question does not comply with the objects of this Act.
- (3) The Commission may disapprove a further affirmative action report referred to in section 27(2) if it finds that the relevant employer has -
  - (a) deviated substantially from the affirmative action measures, goals and objectives set out in the immediately preceding affirmative action report, without setting out a satisfactory explanation for such deviation in the affirmative action report under consideration;
  - (b) failed to implement any order made applicable to such relevant employer under section 39(3)(b);
  - (c) failed to set out in such report the necessary affirmative action measures which such relevant employer intends to implement in the ensuing reporting period, in order to give effect to his or her or its affirmative action plan; or
  - (d) where an affirmative action plan referred to in section 33(1)(b) has been submitted, failed to comply with section 23, 24, 25, 26 or 28, or the affirmative action plan in question does not comply with the objects of this Act.
- (4) Notwithstanding subsection (2) and (3), the Commission may approve an affirmative action report contemplated in that subsection, if the relevant employer concerned undertakes in writing to remedy any failure or deviation referred to in that subsection by implementing specific measures which, in the opinion of the Commission, are adequate to remedy such failure or deviation.
- (5) The Commission shall indicate its approval of an affirmative action plan or any amendment thereof under this Act by endorsing each page of such plan or amendment of such plan or amended plan, as the case may be, to the effect that such plan or amendment has been approved by the Commission, and return such plan to the relevant employer concerned.

- (6) Where the Commission disapproves an affirmative action report under subsection (1)(b), it shall -
  - (a) in writing notify \_ the relevant employer concerned of such disapproval, setting forth its findings of fact and reasons for such disapproval; and
  - (b) refer the matter to a review panel to be dealt with in accordance with this Act.

### **33. Amendment of affirmative action plans**

- (1) Notwithstanding the approval of an affirmative action plan under section 32, 34 or 39, as the case may be, such plan -
  - (a) shall be amended in accordance with any final order made in terms of section 39(3)(b)(i) in respect of such affirmative action plan subsequent to such approval;
  - (b) shall, subject to sections 23 and 24 and the approval of the Commission under section 32 or the review panel under section 39, as the case may be, be revised every three years by the relevant employer concerned to meet such circumstances as may be prevailing in the employment offered by such relevant employer; and
  - (c) may, subject to sections 23 and 24, at any time be amended in the discretion of the relevant employer concerned, but such amendment shall have no force and effect unless the relevant employer -
    - (i) submits a copy of such proposed amendment to the Commission for its approval; and
    - (ii) the Commission has in accordance with section 32(5) indicated its approval of such amendment.
- (2) The Commission may with regard to an amendment referred to in subsection (1)(c) cause such investigations to be made or hear such representations as it may deem necessary.

### **34. Affirmative action reports deemed to be approved**

- (1) A relevant employer's affirmative action report shall be deemed to have been approved by the Commission under section 32(1)(a), if -
  - (a) within 90 days from the day on which the relevant employer has under section 27 submitted such report to the Commission, the Commission has failed to appoint under section 30 a review officer to review such affirmative action report; or
  - (b) within 90 days from the date on which the review officer has been appointed under section 30, such review officer has failed -
    - (i) to forward under section 31(3)(b) to the relevant employer concerned a copy of the report and recommendation referred to in that section: Provided that an affirmative action plan shall not be deemed to have been approved under this subparagraph, unless the relevant employer concerned has notified the Commission, but not later than 60 days after such appointment, that he or she has not received from such review officer the copies in question; or
    - (ii) subject to subsection (2), to submit under section 31(3)(a) his or her report and recommendation in respect of such affirmative action plan to the Commission.
- (2) (a) Where the review of a relevant employer's affirmative report has not been finalised within the period of 90 days referred to in paragraph (b) of subsection (1), the Commission may, on reasonable grounds and by notice in writing to that relevant employer prior to the date on which that period expires, extend from such date the period for the submission of the review officer's report and recommendation referred to in section 31(3)(a), but in no case for a period longer than 90 days.

- (b) Where a review officer fails to submit the report and recommendations referred to in paragraph (a) to the Commission on or before the last day of any period extended in terms of that paragraph, the affirmative action report in question shall be deemed to have been approved by the Commission under section 32(1)(a).
- (3) The Commission shall issue an affirmative action compliance certificate in respect of an affirmative action report referred to in subsection (1) or (2)(b).

### **35. Review panel and its functions**

- (1) Where the Commission has disapproved an affirmative action report under section 32(1)(b), it shall appoint a review panel to review such report, mediate between the interests of the parties having an interest therein, and make a final order in respect thereof.
- (2) A review panel shall comprise three persons, appointed by the Commission from among its members and such other persons as it may determine.
- (3) The Commission shall designate one of the members of the review panel as chairperson of that panel.
- (4) The review panel shall conduct a hearing in order to review and make a final order in respect of the affirmative action report for which it has been appointed.
- (5) The Commission shall submit to the review panel the affirmative action report for which it has been appointed, its reasons in writing for disapproval of that report, and such other documents as it may deem necessary.

### **36. Procedure at hearings and powers of review panels**

- (1) A review panel shall hold its hearing on such date and at such times and places as the chairperson may determine.
- (2) The review panel shall give at least fourteen days' written notice of its hearing to the relevant employer whose affirmative action report that panel is to review and the review officer who reviewed such report, and summon that employer and officer to appear before the review panel on the date and at the time and place set out in the notice to be examined.
- (3) The review panel may in writing summon any person who, in the opinion of the review panel, is able to furnish information material to the hearing referred to in subsection (1), or who that panel has reason to believe has in his or her possession or custody or under his or her control any book, document, or record relating to the subject of such hearing, to appear at a time and place specified in the summons to be examined or to produce such book, document, or record, and may retain for examination any book, document, or record so produced.
- (4) A summons referred to in subsection (3) shall -
  - (a) be issued under the hand of the Commissioner;
  - (b) state the name of the person required to appear before the review panel, the time and place at which he or she is required to so appear, and the description of the book, document, or record, if any, which such person is required to produce at such time and place; and
  - (c) shall be served on the person referred to in paragraph (b) by a person authorised by the Commission, by delivering a copy of such summons -
    - (i) to him or her in person; or
    - (ii) at his or her usual or last known place of residence or place of employment or business to a person apparently over the age of 16 years and apparently residing or employed there.

- (5) A return by the person who served the summons that service thereof has been effected in terms of paragraph (c) of subsection (4) shall be prima facie proof of such service.
- (6) The review panel may, through the chairperson, administer an oath to, or accept an solemn affirmation from, any person present at the hearing, and examine him or her, or instruct him or her to produce any book, document, or record in his or her possession or custody or under his or her control.
- (7) In conducting a hearing, a review panel -
  - (a) shall not be bound by the strict rules of the law of evidence and it may ascertain, subject to the principles of natural justice and fairness, any relevant fact in such manner as it may deem fit; and
  - (b) may admit in evidence any matter which is reasonably of probative value.
- (8) Evidence to prove or disprove any fact in issue may be submitted to the review panel in writing or orally.
- (9) A relevant employer summoned under subsection (2) shall in person or through his or her legal or other representative be entitled -
  - (a) before the hearing, to examine and make copies of any relevant document, including the report and recommendations made to the Commission by the review officer and the other documents referred to in section 31(3)(a); and
  - (b) at the hearing -
    - (i) to be heard;
    - (ii) to call witnesses;
    - (iii) to introduce documents and other evidence;
    - (iv) to cross-examine any person called as a witness; and
    - (v) to examine any book, document, or record produced in evidence.
- (9) A person who, having been summoned under subsection (2) or (3) to appear before the review panel at a hearing and to testify or to produce a book, document, record or other evidence relevant to the hearing, without reasonable cause -
  - (a) fails or refuses to appear before such panel at the specified time and place;
  - (b) having appeared before such panel, refuses or fails to answer any question put to him or her truthfully and to the best of his or her knowledge;
  - (c) knowingly makes a false statement or representation to such panel; or
  - (d) refuses or fails to produce or surrender to such panel any book, document, record, or other evidence in his or her possession,

shall be guilty of an offence, and on conviction be liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years, or to both such fine and such imprisonment.
- (10) The failure of a relevant employer referred to in subsection (2) to attend a hearing referred to in that subsection shall not invalidate the proceedings of such hearing.
- (11) The review panel shall keep a written record or cause a written record to be kept of the proceedings at such hearing and of all the evidence given.



### **37. Joinder of parties at hearings**

The review panel may, in its discretion, allow any person, groups of persons or organisations having a direct and substantial interest in the subject matter of the hearing to join, for such purposes as the review panel may determine, as a party to such hearing.

### **38. Hearings to be public**

- (1) Subject to subsection (2), the hearing of a review panel shall be open to the public.
- (2) The review panel may in any case, in the interest of national security or to prevent the public disclosure of information that would cause substantial damage to any relevant employer or person, direct that the hearing shall be held with closed doors or that the public generally shall not be permitted to be present thereat.

### **39. Mediation and final orders by review panel**

- (1) Subject to subsection (2) and (3), a review panel shall at the conclusion of its hearing under section 35(4) make a final order -
  - (a) approving the affirmative action report under its review; or
  - (b) disapproving such affirmative action report.
- (2) Where the review panel finds any deficiencies in the affirmative action report under its review with regard to the information, the affirmative action plan, or affirmative action measures set out therein, it shall, before issuing its final order, through mediation endeavour to persuade the relevant employer concerned to undertake to correct such deficiencies.
- (3) Where the mediation referred to in subsection (2) -
  - (a) succeeds, the review panel shall issue a final order approving the affirmative action report and set out in such order the undertaking made by the relevant employer in terms of that subsection; or
  - (b) fails, the review panel shall issue a final order disapproving such affirmative action report and set out in such order -
    - (i) the amendments to be made by the relevant employer to his or her or its affirmative action plan or affirmative action report, as the case may be;
    - (ii) the specific affirmative action measures which the relevant employer shall implement and the time frame within which such measures shall be so implemented.
- (4) A final order of a review panel shall be in writing and set out its findings, decision and the reasons for such decision.
- (5) No appeal shall lie against a final order referred to in subsection (4).
- (6) The Commission shall by hand, registered post, telex or fax send copies of the final order referred to in subsection (4) to -
  - (a) the relevant employer concerned;
  - (b) all parties to the hearing; and
  - (c) all persons having a direct and substantial interest in the matter.
- (7) The Commission shall issue an affirmative action compliance certificate in respect of a final order made in terms of subsection (1)(a) or (3)(a).

- (8) The Commission may, with the concurrence of the Minister, lay a final order of the review panel open for public inspection at its head office.

#### **40. Certified records of proceedings**

The chairperson of a review panel shall, for the purposes of any proceedings in terms of this Act or any other law, or the enforcement of such panel's final order, certify the records referred to in section 36(11) to be a true and correct reflection of that panel's proceedings.

#### **41. Affirmative action compliance certificate**

An affirmative action compliance certificate shall -

- (a) be in such form as the Commission may from time to time determine; and
- (b) be valid from the date of issue until the date -
  - (i) subject to subparagraph (iii), that the Commission under section 32(1)(a), 34(3) or 39(7), as the case may be, issues to the relevant employer concerned an affirmative action compliance certificate for the very next affirmative action report following on the affirmative action report for which such compliance certificate had been issued;
  - (ii) subject to subparagraph (iii), that the review panel makes under sections 39(1)(b) or (3)(b) a final order disapproving the very next affirmative action report following on the affirmative action report for which such compliance certificate had been issued; or
  - (iii) that the relevant employer concerned fails to submit a further affirmative action report under the provisions of section 27(2).

#### **42. Restrictions on certain contracts, guarantees, loans, licences, permits, grants, or concessions**

- (1) No -
  - (a) contract shall be entered into by or on behalf of the State and any relevant employer; or
  - (b) guarantee, loan, licence, permit, grant, or concession, including the right to the reconnaissance or prospecting for, or to mine, any mineral, shall be given, made, issued, granted or awarded to any relevant employer by or on behalf of the State,unless the relevant employer concerned is in possession of a valid affirmative action compliance certificate.
- (2)
  - (a) Where a relevant employer does not hold a valid affirmative action compliance certificate as required by subsection (1), such relevant employer may in writing apply to the Minister to be exempted from the requirement to hold such certificate for the purposes of that subsection.
  - (b) The Minister may, upon proof by a relevant employer referred to in paragraph (a) and upon being satisfied that the failure to hold the necessary valid affirmative action compliance certificate is not due to such relevant employer's fault, exempt, for the purposes of subsection (1), that relevant employer from the requirement to hold a valid affirmative action compliance certificate.
- (3) Notwithstanding anything to the contrary contained in any contract entered into by or on behalf of the State and any relevant employer, it shall be an implied condition of every such contract that it may, after reasonable notice in writing, be cancelled by the State where, during the continuance of that contract -
  - (a) a review panel has made a final order under the provisions of this Act disapproving an affirmative action report of that relevant employer; or

- (b) an affirmative action compliance certificate is no longer valid under the provisions of section 41(b)(iii).
- (4) For the purposes of this section “State” means the State as defined in section 1 of the Labour Act, 1992, whether or not any relevant Ministry, Office or Agency as set out in Schedule 1, 2 or 3 to in the Public Service Act, 1995 (Act [No. 13 of 1995](#)) or body contemplated in that definition, or regional council, itself has been identified as a relevant employer.

#### 43. Further provisions regarding application of Act

- (1) Without derogating from the provisions of sections 39 and subject to section 19(3), nothing in this Act shall require a relevant employer to -
  - (a) create new employment positions in the workplace;
  - (b) hire or promote an arbitrary or fixed number of persons during a given period;
  - (c) hire or promote persons who are not suitably qualified; and
  - (d) take employment decisions that act as an absolute bar on the recruitment or promotion prospects of a person who does not belong to a designated group.
- (2) In so far as the provisions of this Act provide for the implementation of a policy or practice which may diminish or derogate from the fundamental human rights contemplated in Article 10 of the Namibian Constitution of any relevant employer or employee, such provisions are enacted upon the authority of Article 23 of the Namibian Constitution.

### Part III – MISCELLANEOUS

#### 44. Indemnity

Any person exercising a power or performing a function in terms of this Act shall not personally be liable in respect of anything done in good faith under this Act.

[section 44 amended by Act [76 of 2007](#)]

#### 45. Disputes brought to attention of the Commission

- (1) Any person aggrieved by the application or implementation of this Act may bring such grievance to the attention of the Commission.

[subsection (1) amended by Act [6 of 2007](#); the amendment markings contain some errors in respect of the text marked for insertion and deletion]

- (2) The Commission may refer a complaint referred to in subsection (1) to the Labour Commissioner appointed in terms of the Labour Act, 2007 (Act [No. 11 of 2007](#)) as a complaint in terms of section 7(1) of that Act.

[subsection 2 amended by Act [11 of 2007](#)]

#### 46. Legal assistance

The Commission may, with the approval of the Minister, provide legal assistance to a person who, in the view of the Commission, is unable for financial reasons to bring an action before the Labour Court.

[The words “the” and “Commission” are misspelt in the Government Gazette in the second usage of the phrase “the Commission” in section 46, as reproduced above.]

## 47. Offences and penalties

- (1) Any person who -
- (a) discriminates in any manner against a person who has testified, assisted, or participated in any manner in any proceeding under this Act;
  - (b) obstructs or prevents a -
    - (i) member of the Commission,
    - (ii) a review officer; or
    - (iii) other representative of the Commission,
 from complying with the provisions of or an order issued under this Act;
  - (c) fails to comply with section 26; or
  - (c) wilfully makes a false statement in any affirmative action report referred to in section 27,

**[The paragraphs in this subsection are incorrectly lettered, with two paragraphs labelled (c) and no paragraph (d).]**

shall be guilty of an offence and on conviction be liable to a fine not exceeding N\$16 000 or to imprisonment for a period not exceeding 4 years, or to both such fine and such imprisonment.

- (2) Any relevant employer who contravenes or fails to comply with section 19(1), (2) and (3), 23, 24, 25, 27, 28, or section 39(3)(b) shall be guilty of an offence, and on conviction be liable -
- (a) for a first offence, to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and imprisonment; and
  - (b) for a second or subsequent offence, to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 5 years, or to both such fine and imprisonment.

**[Act 6 of 2007 indicates that it substitutes “paragraph (f) of subsection (2)” of section 47. However, there is no paragraph (f) in subsection (2). The substitution appears to have been intended to replace the words preceding paragraph (a) of subsection (2), and the annotation of this section has been done on that basis. The “(f)” at the beginning of the paragraph in the amending Act has accordingly been omitted here.]**

## 48. Regulations

The Minister may make regulations -

- (a) prescribing the requirements applicable to any particular industry or sector of the economy in the application of Part II; and
- (b) relating to any matter required or permitted to be prescribed under this Act,

and generally on any matter which the Minister considers necessary or expedient to prescribe in order to achieve the purposes of this Act.

- (2) A regulation made under subsection (1) may prescribe a penalty, not exceeding N\$8 000 or imprisonment for a period of two years, or to both such fine and imprisonment, for any contravention of or failure to comply with any provision thereof

**[There is no full stop at the end of subsection (2).]**

**49. Amendment of laws**

The laws specified in the Schedule are hereby amended to the extent indicated in the third column of that Schedule.

**50. Short title and commencement**

- (1) This Act shall be called the Affirmative Action (Employment) Act, 1998, and shall come into operation on a date to be determined by the Minister by notice in the Gazette.
- (2) Different dates may be determined under subsection (1) in respect of the different provisions of this Act.

**Schedule****Laws amended**

*(Section 49)*

No. and year of Law [ <b>“Law” should not be capitalised</b> ]	Short title	Extent of amendment
Act <a href="#">No. 6 of 1992</a> [ <b>Act 6 of 1992 has been repealed.</b> ]	Labour Act, 1992	<p>The amendment of section 106 by the substitution for subsection (1) of the following:</p> <p>“(1) Nothing contained in this Part or in any other provision of this Act shall be construed as prohibiting any employer or person from implementing any employment policies and practices - (a) aimed at the advancement of persons who have been disadvantaged in the labour field by discriminatory laws or practices which have been enacted or practised before the independence of Namibia; or (b) in terms of the Affirmative Action (Employment) Act, 1998.”.</p>
Act <a href="#">No. 6 of 1996</a>	Tender Board of Namibia Act, 1996	<p>The amendment of section 15 by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:</p> <p>“The Board shall, subject to section 42 of the Affirmative Action (Employment) Act, 1998, and with regard to subsection (2), not accept a tender if -”.</p>
Act <a href="#">No. 26 of 1991</a>	Racial Discrimination Prohibition Act, 1991	<p>The amendment of section 7 by the addition of the following subsection:</p> <p>“(3) The provisions of subsection (1) does not prohibit employment policies and practices consistent with the provisions of the Affirmative Action (Employment) Act, 1998.”.</p> <p><b>[The verb “does” should be “do” to be grammatically correct.]</b></p>