

Namibia

Namibia Students Financial Assistance Fund Act, 2000

Act 26 of 2000

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Act 26 of 2000

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ACT

To provide for the establishment of the Namibia Students Financial Assistance Fund; to provide for the management and control of the said Fund by the Namibia Students Financial Assistance Fund Board; to provide for the constitution of the said Board; to define the powers, duties and functions of the said Board; to empower the Minister to establish by regulation a policy framework for the granting of financial assistance to eligible students at approved institutions of higher education; and to provide for matters incidental thereto.

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

Part I – PRELIMINARY

1. Definitions

In this Act, unless the context otherwise indicates -

“**additional member of the Board**” means an additional member of the Board appointed under section 6(2)(a);

“**agreement**” means a written agreement referred to in section 18(1);

“**approved institution of higher education**” means an institution of higher education approved by the Minister under section 2;

“**banking institution**” means a banking institution authorised under the Banking Institutions Act, 1998 (Act [No. 2 of 1998](#)), to conduct business as such;

“**Board**” means the Namibia Students Financial Assistance Fund Board referred to in section 5;

“financial assistance” means financial assistance provided to a student under an agreement in order to enable such student to defray, either wholly or in part, costs connected with his or her education within the meaning of this Act;

“financial year” means the financial year of the Fund referred to in section 14(1);

“Fund” means the Namibia Students Financial Assistance Fund established by section 3(1);

“higher education” means all learning programmes leading to qualifications higher than grade 12 or its equivalent, and includes tertiary education as contemplated in Article 20(4) of the Namibian Constitution;

“Minister” means the Minister responsible for Higher Education;

“prescribed” means prescribed by regulation made under section 20;

“student” means a person who -

- (a) is a Namibian citizen; and
- (b) is eligible for admission or is admitted for a course of study at an approved institution of higher education;

“this Act” includes the regulations made under section 20.

2. Approval of institutions of higher education

The Minister may from time to time by notice in the Gazette approve one or more institutions of higher education in respect of which students can, for the purposes of this Act, qualify for consideration for financial assistance.

Part II – ESTABLISHMENT AND MANAGEMENT OF FUND

3. Establishment of Fund

- (1) There is hereby established a fund to be known as the Namibia Students Financial Assistance Fund, which shall consist of -
 - (a) moneys appropriated by Parliament for the Fund for the achievement of its object;
 - (b) moneys borrowed under section 10(d);
 - (c) domestic and foreign grants, donations or bequests made to the benefit of the Fund;
 - (d) interest derived from the investment of moneys referred to in section 10(f); and
 - (e) moneys accruing to the Fund from any other source (including repayments of financial assistance).
- (2) The Fund shall be a juristic person.

4. Object of Fund

The object of the Fund is to provide financial assistance, subject to this Act, to students in order -

- (a) to enable students to study or to do research; and
 - (b) more specifically, but without limiting the foregoing, to facilitate the training of students in prescribed courses or fields of study,
- at approved institutions of higher education.

5. Management and control of Fund

The affairs of the Fund shall be managed and controlled by a board to be known as the Namibia Students Financial Assistance Fund Board, which shall exercise the powers and perform the duties and functions conferred or imposed upon the Board by or under this Act.

6. Constitution of Board

- (1) The Board shall, subject to subsection (2)(a), consist of five members appointed by the Minister, and who shall -
 - (a) be Namibian citizens permanently resident in Namibia; and
 - (b) be persons who, in the opinion of the Minister, are of high standing and merit and are suited to serve on the Board by virtue of their qualifications, expertise and experience.
- (2) The Minister may -
 - (a) if he or she deems it expedient, for a particular purpose and on such terms and conditions and for such period as he or she may determine, but subject to subsection (5), appoint one other fit person as an additional member of the Board, but such additional member shall not have the right to vote at meetings of the Board;
 - (b) having regard to subsection (1), appoint an alternate member to every member of the Board appointed under that subsection.
- (3) An alternate member appointed under subsection (2)(b) shall act as member of the Board only when the member to whom he or she is alternate is for any reason absent or unable to perform his or her functions on the Board.
- (4) The Minister shall designate a member of the Board appointed under subsection (1) as chairperson and another such member as vice-chairperson of the Board.
- (5) A member or an alternate member of the Board (including an additional member of the Board) who is not in the full-time employment of the State shall be paid from the Fund such remuneration and allowances, if any, as the Minister with the concurrence of the Minister responsible for Finance may from time to time determine.

7. Tenure and vacation of office

- (1) Subject to subsection (2), a member or an alternate member of the Board (other than an additional member of the Board) shall hold office for a period of three years and shall, upon the expiry of his or her term of office, be eligible for reappointment.
- (2) A member or an alternate member of the Board shall cease to hold office -
 - (a) if his or her estate is sequestrated or he or she enters into a compromise with his or her creditors;
 - (b) if he or she, by notice in writing addressed and delivered to the Minister, resigns as a member or an alternate member of the Board;
 - (c) if he or she is in terms of any law detained as a mentally disordered person;
 - (d) if he or she is, whether in Namibia or elsewhere, convicted of any offence and sentenced to imprisonment without the option of a fine;
 - (e) if he or she is removed from office under subsection (3) by the Minister; or
 - (f) in the case of such member, if he or she is absent from three consecutive meetings of the Board without leave of the Board or, in the case of such alternate member, if he or she is so

absent during the absence or vacancy in the office of the member of the Board to whom he or she has been appointed as alternate member.

- (3) The Minister may at any time, after having afforded a member or an alternate member of the Board an opportunity to be heard, in writing remove such member or alternate member from office if the Minister is satisfied that such member or alternate member is for whatever reason unfit or unable to effectively perform his or her functions on the Board.
- (4) If a member or an alternate member of the Board for any reason ceases to hold office before the expiry of his or her term of office, the Minister may, having regard to the applicable provisions of section 6, appoint another person in his or her stead to hold office for the unexpired period of his or her term of office.
- (5) The provisions of this section, except subsection (1), shall apply (so far as relevant) to an additional member of the Board as if such additional member were a member of the Board appointed under section 6(1).

8. Disclosure of interest

- (1) A member of the Board who is in any way, whether directly or indirectly, materially or otherwise connected with a transaction which had been or is to be entered into by the Fund, or who is in any way related to a student in respect of whom the Board is called upon to consider granting financial assistance, shall declare the nature, extent and full particulars of his or her interest before or at the meeting of the Board at which such matter is considered.
- (2) A member of the Board shall not be present at or take part in any consideration or discussion of, or cast his or her vote on, a matter in which he or she has an interest as contemplated in subsection (1).
- (3) A declaration made in terms of subsection (1) shall be recorded in the minutes of the meeting of the Board at which such declaration is received or made.
- (4) Any member of the Board who contravenes or fails to comply with a provision of subsection (1) or (2) 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.
- (5) For the purposes of this section “member” includes an alternate member present at the relevant meeting of the Board during the absence or vacancy in the office of the member to whom he or she has been appointed as alternate member.

9. Meetings and decisions of Board

- (1)
 - (a) Meetings of the Board shall be held at such times, but not less than once every three months, and such places as the chairperson of the Board may from time to time determine.
 - (b) The chairperson shall in writing notify every member of the Board of the time when and place where a meeting of the Board is to be held.
- (2) Three voting members of the Board shall constitute a quorum for a meeting of the Board.
- (3) The chairperson of the Board or, in his or her absence, the vice-chairperson shall preside at the meetings of the Board, and if both the chairperson and the vicechairperson are absent from, or for any other reason are unable to preside at, any meeting of the Board, the members present thereat shall from among the voting members of the Board elect one member to preside at that meeting.
- (4) A decision of the majority of the voting members of the Board present at a meeting of the Board shall constitute a decision of the Board, and, in the event of an equality of votes relating to any matter, the chairperson or other member presiding at the meeting shall have a casting vote in addition to his or her deliberative vote.

- (5) No decision or act of the Board or act performed by authority of the Board shall be invalid by reason only -
 - (a) of the existence of a vacancy on the Board; or
 - (b) of the fact that a person who was not entitled to sit as member of the Board sat as such a member at the time when the decision was taken or the act was performed or authorised, if the decision was taken or the act was performed or authorised by the requisite majority of the voting members of the Board who were present at the time and entitled to sit as such members.
- (6) The Board shall cause proper record to be kept of the proceedings at its meetings, and the Minister may at any time request that such record be submitted to him or her by the Board for inspection.
- (7) For the purposes of this section -
 - “member” includes an alternate member present at the relevant meeting of the Board during the absence or vacancy in the office of the member of the Board to whom he or she has been appointed as alternate member;
 - “voting member” means a member other than an additional member of the Board.

10. Powers, duties and functions of Board

Subject to this Act, the Board shall be accountable and responsible for the proper management, administration and control of the financial and other affairs of the Fund, and may do or cause to be done all or any of such things that are necessary or reasonably required for or incidental to the carrying into effect of the object of the Fund, and more specifically (but without derogating from the generality of the foregoing) may -

- (a) initiate formulation of policy and provide a regulatory framework for the administration of the Fund and the granting of financial assistance;
- (b) enter into agreements (in the name of the Fund) with students on the terms and conditions under which financial assistance is provided in each case;
- (c) take such measures, including the engagement of governmental or nongovernmental institutions, as are appropriate to properly administer and control the affairs of the Fund;
- (d) borrow money on such terms and conditions as may be approved by the Minister with the concurrence of the Minister responsible for Finance;
- (e) accept grants, donations and bequests, and may recover any moneys due to the Fund;
- (f) invest in its discretion any moneys standing to the credit of the Fund not immediately required for use: Provided that such investments shall be made by placements in financial institutions of good standing;
- (g) pay all expenses incurred for or in connection with the establishment and administration of the Fund;
- (h) investigate or deal with or cause to be investigated or to be dealt with any matter related to the object of the Fund; and
- (i) determine the manner and forms and the periods to be observed with regard to applications for financial assistance and the consideration and processing of applications for financial assistance.

11. Committees of Board

- (1) The Board may establish one or more committees to perform, subject to the directions and control of the Board, such functions as may from time to time be assigned to any such committee by the Board.

- (2) The Board may appoint such number of persons as members of a committee as the Board may deem necessary.
- (3) A member of a committee appointed under subsection (2), who is not in the full-time employment of the State, shall be paid from the Fund such remuneration and allowances, if any, as the Minister with the concurrence of the Minister responsible for Finance may from time to time determine.
- (4) If the Board does not designate a chairperson for a committee, the members of the committee may, at its first meeting, elect a chairperson from among its members.
- (5) The Board may at any time dissolve or reconstitute a committee.
- (6) The Board may, subject to such conditions as it may determine, delegate any power or assign any duty conferred or imposed upon it by or under this Act to a committee established under subsection (1), but the Board shall not thereby be divested or relieved of the power or duty so delegated or assigned.

12. Secretariat to Board

- (1) The Board may, subject to such conditions (including conditions of service) as the Minister may approve in writing, establish a secretariat and employ such number of persons as are necessary or reasonably required to discharge, subject to the directions of the Board, the day-to-day administration of and control over the Fund.
- (2) A person employed by the Board under subsection (1) shall be paid from the Fund such remuneration and allowances as the Board in consultation with the Minister may from time to time determine.

Part III – FINANCIAL MATTERS OF FUND

13. Bank account

- (1) The Board shall open and maintain a bank account in the name of the Fund with a banking institution -
 - (a) into which shall be deposited all moneys accruing to or obtained for the benefit of the Fund; and
 - (b) from which shall be defrayed all expenditure in connection with the administration of the Fund (including expenditure in connection with the performance of the functions of the Board) and be paid any amounts with which the Fund is charged in terms of this Act.
- (2) No payment contemplated in paragraph (b) of subsection (1) shall be made as a charge to the Fund except by authority of the Board or of any person or persons generally or particularly authorised thereto in writing by the Board.
- (3) The Board shall apply any grant, donation or bequest contemplated in paragraph (c) of section 3(1) in accordance with the conditions, if any, imposed by the grantor, donor or bequeather concerned.

14. Financial year, bookkeeping and accounting, and unexpended balances

- (1) The financial year of the Fund shall end on 31 March in each year.
- (2) The Board shall keep or cause to be kept such accounts and records as are necessary to reflect accurately the state of affairs and business of the Fund and to at all times give a true reflection of all the financial and other transactions and the financial position of the Fund.
- (3) Any unexpended balance in the Fund at the close of each financial year, including accrued interest on investment balances and other receipts, shall be carried forward to the next ensuing financial year as a credit to the Fund.

15. Annual statements and auditing

- (1) Subject to subsections (2) and (3), the Board shall as soon as possible, but not later than six months after the end of each financial year, prepare, or cause to be prepared, and submit to the Minister -
 - (a) annual financial statements in respect of the financial year in question, together with a report by the Auditor-General relating to such statements; and
 - (b) a report on its activities during that financial year.
- (2) The annual financial statements referred to in subsection (1)(a) shall be in such form as the Board may determine after consultation with the Auditor-General, and shall contain -
 - (a) detailed particulars of moneys received by the Fund and expenditure incurred by the Fund during the financial year in question; and
 - (b) such additional particulars as the Auditor-General may reasonably require.
- (3) The accounts and records and the annual financial statements referred to in section 14(2) and subsection (1)(a), respectively, shall be examined and audited by the Auditor-General.
- (4) The Board shall, not later than three months before the commencement of each financial year, submit to the Minister for his or her approval an annual budget reflecting the estimated income and expenditure of the Fund for the next ensuing financial year: Provided that the Board may at any time during any financial year submit to the Minister an additional budget reflecting any additional income and expenditure of the Fund for that financial year.
- (5) The Minister shall lay upon the Table of the National Assembly all the financial statements and reports (including the audit report) received by him or her in terms of subsection (1), within 30 days from the date of receipt thereof, if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within 14 days after the commencement of its next ensuing ordinary session.

16. Exemption of Fund from certain taxes, duties and levies

No income or any other tax or duty or levy imposed under any law shall be payable by the Fund.

Part IV – PROVISIONS RELATING TO FINANCIAL ASSISTANCE

17. Application for financial assistance

Any student may, subject to this Act, apply in writing to the Board for financial assistance in the manner and on an application form determined by the Board under section 10(i).

18. Conditions for granting of financial assistance

- (1) A written agreement shall be entered into between the Fund and every student to whom financial assistance is granted by the Board under this Act.
- (2) Financial assistance granted by the Board may be subject to such conditions (not being inconsistent with this Act) as it may determine, either generally or in respect of a particular case.
- (3) Financial assistance shall be granted in respect of a particular course of study, which shall be specified in the agreement in question, and may not be used for any other purpose.
- (4) Notwithstanding subsection (2), the Board shall impose a condition in respect of the granting of any financial assistance to the effect that if the student concerned does not perform satisfactorily in his or her studies, the Board may terminate the granting of financial assistance in terms of the

agreement and that the student shall comply with any obligation as a result of the granting of the financial assistance on or with effect from the date specified by the Board.

Part V – MISCELLANEOUS

19. Limitation of liability

No liability shall attach to the Fund, or, in his or her personal capacity, any member or alternate member of the Board (including an additional member of the Board), any member of a committee of the Board or any employee referred to in section 12(1) in respect of anything done or omitted in the bona fide performance of any function in terms of this Act.

20. Regulations

The Minister may make regulations not inconsistent with this Act with regard to any matter which the Minister may deem necessary or expedient to prescribe in order to achieve or promote the object of this Act or to effectively administer this Act, including, but not limited to -

- (a) the fields of study or courses which, for the purposes of financial assistance, shall be given priority;
- (b) the formulation of policy and the identification of national priorities and forecasts of labour power needs to be considered in connection with the granting of financial assistance;
- (c) the criteria for qualifying for financial assistance; and
- (d) guidelines with regard to procedural aspects of or for the recovery of any moneys due from students or otherwise to the Fund (including the payment of interest on any such moneys).

21. Rules of the Board

The Board may, with the approval of the Minister, make rules not inconsistent with this Act relating to -

- (a) the good management of the affairs of the Fund and the effective discharge of the functions of the Board in terms of this Act;
- (b) the holding of and procedure at meetings of the Board and committees of the Board; and
- (c) the establishment and constitution of, and reporting by, committees of the Board.

22. Short title and commencement

This Act shall be called the Namibia Students Financial Assistance Fund Act, 2001, and shall come into operation on a date to be fixed by the Minister by notice in the Gazette.