

Namibia

Military Pensions Act, 1976

Act 84 of 1976

Legislation as at 1 October 1986

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Republic of Namibia
Annotated Statutes

Military Pensions Act, 1976

Act 84 of 1976

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Commenced on 30 June 1976

[This is the version of this document from 1 October 1986
and includes any amendments published up to 5 July 2024.]

[Amended by [Pension Laws Amendment Act, 1977 \(Act 26 of 1977\)](#) on 30 June 1976]

[Amended by [General Pensions Act, 1979 \(Act 29 of 1979\)](#) on 5 April 1979]

[Amended by [Pension Laws Amendment Act, 1979 \(Act 100 of 1979\)](#) on 4 July 1979]

[Amended by [Pension Laws Amendment Act, 1980 \(Act 97 of 1980\)](#) on 1 April 1980]

[Amended by [Pension Laws Amendment Act, 1982 \(Act 81 of 1982\)](#) on 9 June 1982]

[Amended by [Pension Laws Amendment Act, 1983 \(Act 96 of 1983\)](#) on 13 July 1983]

[Amended by [Pension Laws Amendment Act, 1984 \(Act 123 of 1984\)](#) on 29 August 1984]

[Amended by [Pension Laws Amendment Act, 1986 \(Act 106 of 1986\)](#) on 1 October 1986]

[Amended by [Pension Laws Amendment Act, 1987 \(Act 88 of 1987\)](#) on 1 October 1986]

[APPLICABILITY TO SOUTH WEST AFRICA: Section 1 defines “Republic” to include “the territory of South West Africa”. Section 25 states “This Act and any amendment thereof shall apply also in the territory of South West Africa, including the Eastern Caprivi Zipfel.”]

[TRANSFER TO SOUTH WEST AFRICA: The relevant transfer proclamation is the Executive Powers (Social Welfare and Pensions) Transfer Proclamation (AG 11/1977), dated 30 November 1977. However, section 3(b) of this Transfer Proclamation explicitly excluded this Act from section 3(1) of the Executive Powers Transfer (General Provisions) Proclamation, AG 7 of 1977. Therefore, the administration of the Act was not transferred to South West Africa, and amendments to the Act in South Africa prior to Namibian independence continued to apply to South West Africa by virtue of section 25 of the Act.]

ACT

To provide for the payment of pensions and gratuities to or in respect of certain persons in respect of disablement caused or aggravated by military service; for the medical treatment of such persons; and for the consolidation of benefits which are paid in terms of the Special War Pensions Act, 1962, the War Pensions Act, 1967, and section 15(1) of the Pension Laws Amendment Act, 1968; and to provide for matters connected therewith.

(Afrikaans text signed by the State President)

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

[Act 96 of 1983 amends the Act throughout to substitute “Director-General” for “Secretary” and “Health and Welfare” for “Social Welfare and Pensions”.]

1. Definitions

(1) In this Act, unless the context otherwise indicates --

“**appeal tribunal**” means the military pensions appeal tribunal mentioned in section 16(1);

“**child**”, in relation to any member, means an unmarried child under the age of eighteen years -

- (a) who is a child for whose maintenance such member is legally responsible;
- (b) who is a stepchild of such member;
- (c) who has been legally adopted by such member;
- (d) any such unmarried child over the age of eighteen years who is a full-time student at any university or other educational institution or who, on account of any physical or mental disability, is not able to provide for his own maintenance and is regularly maintained by such member;

[definition of “consolidated pension” deleted by Act 97 of 1980]

“**deceased member**” means any member who is killed during the performance of military service or who dies as a result of the performance of military service or who, during or after the performance of military service dies and suffered from a pensionable disability immediately prior to his death;

“**Defence Act**” means the Defence Act, 1957 (Act No. 44 of 1957);

[The Defence Act 44 of 1957 has been replaced by the Defence Act 1 of 2002.]

“**dependant**”, in relation to any member, means his wife or child;

“**Director-General**” means the Director-General: Health and Welfare;

[definition of “Director-General” inserted by Act 96 of 1983]

“**fixed date**” means, subject to the provisions of section 26(1), the date on which this Act comes into operation;

“**formula I**”, in relation to a specified member and any matter to be calculated in accordance with formula I, means -

$A \times B$

in which formula -

- (a) A represents the amount which the Minister, subject to the provisions of subsection (2), may with the concurrence of the Minister of Finance determine from time to time; and
- (b) B represents the percentage at which the pensionable disability of a member may have been determined;

“**formula II**”, in relation to any matter to be calculated in accordance with formula II, means -

$C \times D \times E$

in which formula -

- (a) C represents the amount which the Minister, subject to the provisions of subsection (2), may with the concurrence of the Minister of Finance determine from time to time;

- (b) D represents the percentage at which the pensionable disability of a specified member may have been determined; and
- (c) E represents the number of dependants of the member;

[definition of “formula III” deleted by Act 97 of 1980]

[definition of “formula IV” deleted by Act 97 of 1980]

“**gratuity**” means the gratuity mentioned in section 5;

“**medical appeal board**” means a medical appeal board mentioned in section 15;

“**medical pensions officer**” means any medical practitioner designated by the Director-General as a medical pensions officer;

“**medical practitioner**” means a person registered as such in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

[Medical practitioners in Namibia are now registered under the Medical and Dental Act 10 of 2004.]

“**medical treatment**” means medical, surgical or hospital treatment, skilled nursing services and the supply and repair of any artificial part of the body or any device necessitated by a pensionable disability or a previous pensionable disability;

“**member**” means, subject to the provisions of section 21, any member of the Citizen Force or any Commando or the Reserve mentioned in section 5 or 6 of the Defence Act;

[The definition of “member” is amended by Act 97 of 1980. A comma is removed without being indicated by amendment markings.]

“**military service**” includes naval, air or military service or training being performed or undergone by a member in terms of the Defence Act;

“**Minister**” means the Minister of Health and Welfare;

“**parent**”, in relation to a member, means his lawful parent or step-parent who, in the opinion of the Director-General was immediately prior to the member's death dependent mainly or partly on such member for his maintenance;

[definition of “parent” substituted by Act 26 of 1977 and amended by Act 96 of 1983]

“**pension**” means a pension mentioned in section 4;

“**pensionable disability**”, in relation to a member, means a disability which was caused or aggravated by military service within the meaning of section 2, provided it was in the opinion of the Director-General not caused or aggravated by the member's own misconduct, and which has been determined or redetermined in terms of section 7;

“**period of service**” means any period of actual service or training with the Citizen Force, a Commando or the Reserve mentioned in section 5 or 6 of the Defence Act;

“**prescribed**” means prescribed by regulation under section 23;

“**previous pensionable disability**” means a pensionable disability determined in terms of any law which is repealed by this Act;

“**Republic**” includes the territory of South West Africa;

[definition of “Secretary” deleted by Act 96 of 1983]

“**this Act**” includes the regulations made under section 23;

“**widow**”, in relation to a member, means any person who was a wife of the member at the time of his death;

“wife”, in relation to a member, means the lawful wife of the member and includes a woman who is legally entitled to maintenance for herself from the member, and a woman who is the natural mother of a child under the age of eighteen years who is regularly maintained by the member, and a woman with whom the member lived together as man and wife for a period of at least five years immediately prior to the commencement of his military service within the meaning of section 2(3).

- (2) (a) Any amount or number which is permitted or required to be determined by the Minister in terms of the definition of formula I or formula II shall be determined by notice in the Gazette and different amounts or numbers may so be determined in respect of different population groups or categories of persons.

[paragraph (a) amended by Act 97 of 1980; not all changes of punctuation are indicated by amendment markings]

- (b) Any notice in terms of paragraph (a), other than a notice by virtue of which the amount of any pension is reduced, may be issued with retrospective effect.

[paragraph (b) amended by Act 97 of 1980]

2. How a disability is caused or aggravated by military service

- (1) For the purposes of this Act -

- (a) a disability shall be deemed also to have been caused by military service -

- (i) if it arose or became manifest during the performance of military service outside the Republic;
- (ii) if it arose or became manifest during the performance of military service inside the Republic unless in the opinion of the Director-General there are reasonable grounds to presume the contrary;
- (iii) if it is the result of an injury sustained by a member within the confines of the camp or barracks where the member was stationed, or, within the confines of any accommodation outside such camp or barracks, where the member was required to reside because of the exigencies of military service, or while proceeding on authorized leave to or from his home or place of destination over the direct route or the route which the Director-General may in the circumstances deem reasonable;
- (iv) if it is the result of an injury sustained by a member while undergoing vocational training and as a result of such training or which was sustained in an unprovoked assault occasioned by his membership of the South African Defence Force;

- (b) a disability shall be deemed to have been aggravated by military service -

- (i) if, having manifested itself prior to the member's departure from the Republic, it progressed during military service outside the Republic;
- (ii) if, having manifested itself prior to the commencement of the military service of the member, it progressed during military service in the Republic, unless the Director-General is satisfied for sound reasons that the conditions under which the member served and the nature of his military duties were such as could not have been factors in the development of the disability or that the disability is one that is progressive and probably would have developed to the same extent as that in which it did develop if the member did not perform military service.

- (2) For the purposes of subsection (1)(a)(iii), “authorized leave” does not include permission to live regularly outside the confines of the camp or barracks where the member was stationed, unless the member was required to live outside such camp or barracks on account of the exigencies of military service.

- (3) For the purposes of subsection (1)(b) -
- (a) a disability which is not recorded in the report on the medical examination of a member at the time of commencement of his military service, shall be deemed not to have manifested itself at that time, unless the contrary is proved to the satisfaction of the Director-General;
 - (b) a constitutional or latent weakness which a member had prior to the commencement of his military service, shall not be deemed to be a disability which manifested itself prior to such commencement, unless it is proved to the satisfaction of the Director-General that the condition had progressed beyond the latent stage and caused actual disablement at the time of commencement of his military service;
 - (c) the military service of a member shall be deemed to have commenced on the date on which he departed from his home or usual residence to report for military service in terms of the provisions of the Defence Act.

3. Payment of pensions and gratuities

- (1) The Minister may, subject to the provisions of this Act, with the concurrence of the Minister of Finance and out of moneys appropriated by Parliament for the purpose -
- (a) pay pensions, gratuities or allowances to members who suffer from a pensionable disability;
[paragraph (a) substituted by Act 26 of 1977]
 - (b) pay pensions to the widows, parents or children of deceased members;
 - (c) defray the cost of any medical treatment or investigation in terms of this Act;
 - (d) defray the cost of any training authorized under this Act;
 - (dA) defray funeral expenses in the case of members who die as a result of a pensionable disability or while undergoing treatment in respect of such a disability in terms of this Act;
[Paragraph (dA) is inserted by Act 26 of 1977. This paragraph should end with a full stop now that it is the last paragraph in subsection (1).]
 - (e) **[paragraph (e) deleted by Act 97 of 1980]**

- (2) Different amounts may be so paid in respect of different population groups or categories of persons.

4. Persons who are entitled to pensions

Subject to the provisions of this Act -

- (a) a member who suffers from a pensionable disability which has been determined at at least twenty per cent in terms of the provisions of this Act, shall be entitled to an annual pension which shall be calculated in accordance with formula I;
- (b) a member to whom a pension has been awarded in terms of paragraph (a), shall be entitled to an annual pension in respect of his dependants, which shall be calculated in accordance with formula II;
- (c) the widow of a deceased member who, immediately prior to his death, was in receipt of a pension in terms of paragraph (b), shall be entitled to such pension with effect from the first day of the month following immediately on the month in which the member died, and such pension shall with effect from the said date be supplemented -
 - (i) in the case of a widow of a deceased member who has died as a result of his pensionable disability, by an amount which shall be equal to half of the amount of the annual pension to which he would have been entitled in terms of paragraph (a) if the degree of his pensionable disability had been determined at one hundred per cent; and

- (ii) in the case of a widow of a deceased member who has died of a cause other than his pensionable disability, by an amount which shall be equal to half of the amount of the annual pension which was payable to the member in terms of paragraph (a) immediately prior to his death;

[paragraph (c) substituted by Act 26 of 1977]

- (d) the widow of a deceased member who, on the date of his death, was not in receipt of a pension in terms of paragraph (b), shall be entitled to the pension to which the member would have been entitled in terms of that paragraph if he had not died, and the latter pension shall be supplemented

- (i) in the case of a widow of a deceased member who has died as a result of his pensionable disability, by an amount which shall be equal to half of the amount of the annual pension to which he would have been entitled in terms of paragraph (a) if the degree of his pensionable disability had been determined at one hundred per cent; and
- (ii) in the case of a widow of a deceased member who has died of a cause other than his pensionable disability, by an amount which shall be equal to half of the amount of the annual pension which was payable to the member in terms of paragraph (a) immediately prior to his death or to which he would have been entitled in terms of that paragraph if he had not died;

[paragraph (d) substituted by Act 26 of 1977]

- (e) the children of a deceased member who immediately prior to his death was in receipt of a pension in terms of paragraph (a) or who would have been entitled to such pension if he had not died and who is not survived by a widow or whose widow dies after his death, shall be entitled to an annual pension which shall be calculated in accordance with formula II;

[paragraph (e) amended by Act 123 of 1984]

- (f) each parent of a deceased member who is not survived by a dependant, shall be entitled to an annual pension which shall be equal to twenty per cent of the amount of any pension which was payable to the member in terms of paragraph (a) immediately prior to his death, or to which he would have been entitled in terms of the said paragraph, if he had not died.

4A. Payment of pensions instead of consolidated pensions

The payment to any person of a consolidated pension within the meaning of this Act prior to the amendment thereof by the Pension Laws Amendment Act, 1980, shall with effect from 1 April 1980 be discontinued and in its stead there shall be paid to such a person such pension contemplated in section 4 as may be designated by the Minister: Provided that the pension payable to such a person shall amount to not less than the consolidated pension that would otherwise have been payable to him on that date.

[section 4A inserted by Act 97 of 1980]

5. Persons entitled to a gratuity

- (1) If any member suffers from a pensionable disability which has in terms of the provisions of this Act been determined at less than 20 per cent, there shall be paid to him such gratuity as the Minister may with the concurrence of the Minister of Finance determine from time to time by notice in the Gazette.

[subsection (1) amended by Act 81 of 1982]

- (2) If any person to whom a gratuity has been paid in terms of paragraph (a), becomes entitled to a gratuity in terms of paragraph (b) after such payment, the amount of the gratuity which was paid to him in terms of paragraph (a) shall be set off against the amount of the gratuity to which he is entitled in terms of paragraph (b).

- (3) If a pension is awarded to any member in terms of section 4(a) within a period of 40 months after a gratuity has been paid to him in terms of subsection (1) of this section, any pension or pensions paid to him in terms of paragraph (a) or paragraphs (a) and (b) of section 4 shall be reduced by one fortieth of the amount of the gratuity which was so paid to him up to and including the last day of the fortieth month after the member became entitled to the said gratuity or until the date on which such pension or pensions is or are discontinued, whichever date is the earlier.

[subsection (3) amended by Act 97 of 1980; not all of the changes are indicated by amendment markings]

6. Application for pension or gratuity

- (1) Any person who claims a pension or gratuity shall apply for it to the Director-General on such form as may be determined by the Director-General and shall furnish such details, documents and information as may be prescribed or as the Director-General may require in support of the application.
- (2) If the Director-General is satisfied that there are good reasons therefor, he may allow any person to make an application in terms of subsection (1) on behalf of the person who claims a pension or gratuity.
- (3) After considering the application and all the details, documents, and information which he may have obtained in relation to the application, the Director-General shall determine the amount of any pension or gratuity to which the applicant may be entitled.

7. Determination of pensionable disability

- (1) In considering an application for a pension or gratuity or in reviewing a pension in terms of this Act, the pensionable disability of a member or deceased member and the degree of such disability shall be determined or redetermined by the Director-General from time to time after consultation with a medical pensions officer.
- (2)
 - (a) For the purposes of subsection (1), the Director-General may require that the member whose pensionable disability is under consideration, be examined by a medical practitioner designated by the Director-General.
 - (b) The medical practitioner who examines the member, shall furnish the Director-General with a report on the physical and mental condition of the member.
- (3) The medical pensions officer mentioned in subsection (1) may inspect all the documents relating to the state of health of such member.
- (4) A disease contracted or an injury sustained by a member as a direct result of a pensionable disability or as a direct result of medical treatment authorized by the Director-General for a pensionable disability, shall for the purposes of this section be deemed to be a pensionable disability, unless the Director-General is satisfied that the disease or injury is due to the refusal of the member to undergo medical treatment or to any act of negligence or misconduct on the part of the member, and that the member has not exercised the special care which it was reasonably proper for him to take having regard to his pensionable disability, or that the disease was contracted or the injury sustained in circumstances entitling the member to compensation in terms of any other law or at common law.
- (5) Subject to the provisions of subsection (6), the degree of the pensionable disability of any member shall be determined by comparison of his physical and mental condition with that of a normal and healthy person of the same age and sex and by determining as nearly as possible the percentage by which his physical and mental condition differ in accordance with the Schedule from that of such a normal and healthy person as a result of his disability.

- (6) For the purposes of this section and the Schedule -
- (a) the degree of a disability which corresponds with a disability specified in the second column of the Schedule, shall be determined at the percentage of disability specified in the third column of the Schedule opposite the disability concerned;
 - (b) the degree of the disability of a member who suffers from more than one disability, shall be determined by taking the cumulative effect of all the pensionable disabilities from which he suffers, determined in terms of paragraph (a), into consideration, and the total percentage of all such disabilities shall be assessed at not more than one hundred per cent;
 - (c) the degree of the disability of a member who has lost the total function of one of a pair of limbs or organs before he became a member and thereafter loses the total function of the other limb or organ as a result of military service, shall be determined as if he had lost both such limbs or organs as a result of military service;
 - (d) the degree of the disability of any member who is killed or dies while performing military service, shall be deemed to be one hundred per cent;
 - (e) the degree of the disability of a member shall be determined without regard to his earning capacity in any particular occupation;
 - (g) the degree of the disability of a member which was not caused by military service but aggravated thereby, shall be determined only in respect of that aggravation of such pensionable disability.

[This paragraph is mis-lettered in the Government Gazette; there is no paragraph (f).]

8. ***

[section 8 amended by Act 26 of 1977 and deleted by Act 97 of 1980]

9. Temporary pensions to dependants of missing members

- (1) If a member who performs military service is reported to be missing or to be presumably dead, the Director-General may, with effect from a date not earlier than the date of that report, award to any person who would be entitled to a pension if the member had, on the date of such report during the performance of military service, died, a pension as if the member had died on the said date during the performance of military service.
- (2) Notwithstanding the provisions of subsection (1), no pension shall be awarded in terms of that subsection -
 - (a) in respect of any period during which the person who is claiming the pension, received compensation in terms of the provisions of the Defence Act by virtue of the military service of the member;
 - (b) for a period longer than twelve months, unless the Minister otherwise directs.

10. Payment of pensions

- (1) A pension shall be payable with effect from the first day of the month in which an application for such pension is received by the Director-General in terms of section 6: Provided that the Director-General may, if there are good reasons for doing so, direct that the pension shall be payable with effect from a date not more than twelve months prior to the date on which such application is so received.

[subsection (1) is amended by Act 100 of 1979 to insert the proviso; a colon has been added accordingly]

- (2) Notwithstanding the provisions of subsection (1), no pension shall be payable -
- (a) in the case of a member referred to in section 4(a), with effect from a date prior to the first day of the month during which the period of service of the member in which his pensionable disability manifested itself, was completed;

[paragraph (a) substituted by Act 26 of 1977]
 - (b) in the case of a widow referred to in section 4(d), prior to the first day of the month in which the member concerned died;

[paragraph (b) substituted by Act 26 of 1977]
 - (c) in the case of the dependants of a deceased member referred to in section 4(e), prior to the first day of the month following immediately on the month in which the member concerned died or prior to the first day of the month following immediately on the month in which the widow of that member died;

[paragraph (c) amended by Act 123 of 1984]
 - (d) in the case of a parent referred to in section 4(f), prior to the first day of the month following immediately on the month in which the member died.

11. Review of pensions

- (1) The Director-General may at any time review a pension if he has reasonable grounds to believe -
- (a) that there has been a substantial change in the degree of the pensionable disability of the member concerned;
 - (b) that, after the pension has been awarded, a change in the marital state of the member concerned or of any dependant of him or in the number of his dependants or, in the case of a widow, a change in her marital state has occurred;
 - (c) that a dependant of the member concerned has died or is no longer a dependant of him;
 - (d) that the pension was obtained by fraud or in any other improper manner;
 - (e) that the person in receipt of the pension or in respect of whom the pension is paid, is not entitled thereto.
- (2) If the degree of the pensionable disability of a member is increased or decreased by the medical appeal board in terms of section 15, or if the appeal tribunal gives a decision in terms of section 16 which renders the review of the pension concerned necessary or desirable, the Director-General shall review such pension.
- (3) If the Director-General, on reviewing a pension and, in a case mentioned in paragraph (a), after consultation with a medical pensions officer, is satisfied -
- (a) that the degree of the pensionable disability of the member concerned has increased or decreased substantially; or
 - (b) that the degree of the pensionable disability of the member concerned has been increased or reduced by the medical appeal board in terms of section 15; or
 - (c) that the belief referred to in paragraph (b) or (c) of subsection (1) has been confirmed; or
 - (d) that the belief referred to in paragraph (d) or (e) of subsection (1) has been confirmed, then -
 - (i) in any case referred to in paragraph (a), the degree of the pensionable disability of the member concerned shall be redetermined in accordance with the finding of the Director-General and the pension of the member concerned shall be recalculated forthwith in accordance with formula I and the pension so recalculated shall, with

effect from the first day of the month in which the pension has been so reviewed, be paid as a pension;

[subparagraph (i) amended by Act 97 of 1980]

- (ii) in any case referred to in paragraph (b), the pension of the member concerned shall forthwith be recalculated in accordance with formula I and the pension so recalculated shall, with effect from the first day of the month in which the pensionable disability of the member was increased or reduced as contemplated in that paragraph, be paid as a pension;

[subparagraph (ii) amended by Act 97 of 1980]

- (iii) in any case referred to in paragraph (c), the pension shall be recalculated in accordance with the provisions of this Act which then apply to the case concerned, and the pension so recalculated, shall, with effect from the first day of the month following immediately on the month in which the event contemplated in paragraph (b) or (c) of subsection (1) took place, be paid as a pension;
- (iv) in any case referred to in paragraph (d), the pension shall be discontinued with effect from such date as the Director-General may determine.

12. Cessation date of pensions

- (1) A pension shall be payable -

[introductory phrase of subsection (1) amended by Act 97 of 1980]

- (a) in the case of the death of a member receiving a pension, up to and including the last day of the month in which such member dies;

[paragraph (a) amended by Act 97 of 1980]

- (b) in the case of a widow of a member, up to and including the last day of the month in which she dies;

[paragraph (b) amended by Act 123 of 1984]

- (c) [paragraph (c) deleted by Act 97 of 1980]

- (d) in the case of a child of a member, up to and including the last day of the month in which the provisions of paragraphs (a) and (d) of the definition of "child" no longer apply to him;

[paragraph (d) substituted by Act 26 of 1977]

- (e) in the case of a parent of a deceased member, up to and including the last day of the month in which he dies or in which his financial circumstances change to such an extent that he, in the discretion of the Director-General, would no longer have been dependent on the deceased member if the said member was then still alive;

- (f) [paragraph (f) deleted by Act 97 of 1980]

- (g) in the case where the degree of the pensionable disability of a member is reduced to less than twenty per cent in terms of the provisions of this Act, up to and including the last day of the month in which the Director-General notifies the person to whom the pension is payable in writing of the discontinuance of the pension.

- (2) If any person in terms of this Act received any sum of money to which he was not entitled, he or, if he dies, his estate, shall be liable to repay that sum to the Director-General unless the Director-General is satisfied that he received it without knowing that he was not entitled thereto.
- (3) The Treasury or any person authorized thereto by the Treasury may at its or his discretion write off the whole or any portion of any sum repayable in terms of this section, if the Treasury or such

person is satisfied that it would be uneconomical to recover such sum or that recovery thereof would cause undue hardship.

- (4) (a) If any person who is in receipt of a pension and has no dependants is admitted for an indefinite period to an institution controlled by the State and makes no contribution towards his sojourn or care in such institution, the Director-General may in his discretion and with effect from such date as he may determine, reduce or discontinue the pension being paid to such person.

[paragraph (a) amended by Act 97 of 1980]

- (b) Any pension reduced or discontinued under paragraph (a) shall, if the person concerned is discharged from such institution aforesaid, be restored with effect from the first day of the month in which he has been so discharged.

13. Medical treatment of members

- (1) If the Director-General, after consultation with a medical pensions officer, is of the opinion that it is necessary or desirable that a member -
- (a) undergo medical treatment for his pensionable disability;
 - (b) be admitted to a hospital or other institution in order to -
 - (i) undergo a medical or psychological examination for the purpose of determining the degree of his pensionable disability for the purposes of this Act;
 - (ii) undergo psychiatric or medical treatment for his pensionable disability;
 - (iii) receive any training whereby he may possibly benefit, in the opinion of the Director-General, the Director-General may -
 - (aa) authorize that the member undergo at the expense of the State the medical treatment referred to in paragraph (a);
 - (bb) direct that the member be examined as contemplated in paragraph (b)(i) and authorize that the member be admitted at the expense of the State to a hospital or other institution for the purposes of paragraph (b)(i), (ii) or (iii).

[subsection (1) substituted by Act 26 of 1977]

- (2) The cost of such admission or of any examination, treatment or training in terms of subsection (1) shall be defrayed from moneys appropriated by Parliament for the purpose.
- (3) If any member, after being directed thereto in terms of subsection (1)(b)(i), refuses to submit to an examination in terms of that subsection, the Director-General may direct that -

[introductory phrase of subsection (3) substituted by Act 26 of 1977]

- (a) if the application of the member concerned for a pension has not yet been finalized, the application be not finalized until such time as he submits to such examination; or
 - (b) if the member is already in receipt of a pension, the pension or such part thereof as the Director-General may determine, be withheld until he submits to such examination.
- (4) For the purposes of this section "member" includes a volunteer as defined in section 1 of the War Pensions Act, 1967 (Act 82 of 1967).

[Subsection (4) is inserted by Act 26 of 1977. The War Pensions Act 82 of 1967 is repealed by this Act.]

13A. Allowances payable to members suffering from serious disability

- (1) If the pensionable disability of any member who is entitled to a pension in terms of section 4 in the opinion of the Director-General is such that he from serious is entirely or mainly dependent on the assistance of another person for his physical care, the Director-General may approve that an allowance be paid to the member in addition to the said pension.
- (2) The amount of the allowance or the basis on which it is to be calculated and the conditions subject to which it is to be paid, shall be determined by the Minister with the concurrence of the Minister of Finance.

[Section 13A is inserted by Act 106 of 1986, with effect from 1 October 1986 (in terms of section 13(2) of Act 106 of 1986), and amended by Act 88 of 1987 with effect from 1 October 1986 (in terms of section 1(2) of Act 88 of 1987).]

14. Right of appeal

- (1) Subject to the provisions of this Act, any person who lays claim to a pension or gratuity and who -
 - (a) is aggrieved by a decision of the Director-General relating to the degree of his pensionable disability or previous pensionable disability, may note an appeal against such decision to a medical appeal board;
 - (b) is aggrieved by any other decision of the Director-General, may note an appeal to the appeal tribunal against such decision.

[subsection (1) amended by Act 97 of 1980]

- (2) An appeal in terms of subsection (1) shall be noted in writing, furnish the complete grounds of appeal, be accompanied by such documents as the appellant desires to submit and shall be lodged with the Director-General for submission to the medical appeal board or the appeal tribunal, as the case may be, within a period of three months after the appellant has been notified of the decision concerned: Provided that such period may on good cause shown be extended by the appeal tribunal or by the medical appeal board to which the appeal has been noted.

[subsection (2) substituted by Act 26 of 1977]

- (3) The Director-General shall as soon as practicable submit the particulars so required of an appeal which has been received by him in terms of this section -
 - (a) in the case of an appeal mentioned in subsection (1)(a), to a medical appeal board;
 - (b) in the case of an appeal mentioned in subsection (1)(b), to an appeal tribunal,for consideration.

15. Medical appeal board

- (1) The Minister shall, whenever necessary, appoint, on such conditions as he may determine, a medical appeal board consisting of not fewer than three medical practitioners, for the purpose of considering any appeal in terms of section 14(1)(a).
- (2) One of the members of a medical appeal board shall, if the appellant concerned so requests, be a medical practitioner nominated by him.
- (3) In considering an appeal referred to in subsection (1) -
 - (a) a medical appeal board may inspect all the documents in the possession or under the control of the Director-General relating to the pensionable disability or previous pensionable disability of the appellant or which the appellant submits to the board with regard to his said disability;

- (b) a medical appeal board or a member thereof may carry out a medical or psychological examination on the appellant and the board may take the findings at such examination into account in considering the appeal;
 - (c) a medical appeal board may direct that a medical or psychological examination be carried out on the appellant by a medical practitioner nominated by the board and that the board be furnished with a report on such examination, which shall be taken into account in considering the appeal;
 - (d) a medical appeal board may take such steps as it may think fit to determine the degree of the pensionable disability or previous pensionable disability of the appellant.
- (4) A medical appeal board considering an appeal in terms of this section may confirm, increase or reduce the degree of the pensionable disability or previous pensionable disability under appeal, and the decision of the board shall be final in any particular case.
- (5) Notwithstanding the provisions of subsection (4), the Director-General may review the degree of the pensionable disability or previous pensionable disability of any person after expiry of a period of six months after the date of a decision by a medical appeal board thereon in terms of that subsection, if it is proved to his satisfaction that after the date of such decision a substantial change in the degree of the said disability has occurred.
- (6) Any decision of the Director-General in terms of subsection (5) shall be subject to appeal in terms of this section.

16. Military pensions appeal tribunal

- (1) The Minister shall, on such conditions as he may determine with the concurrence of the Minister of Finance, appoint a military pensions appeal tribunal which shall consider appeals in terms of section 14(1)(b).
- (2) The appeal tribunal shall consist of -
- (a) an advocate of the Supreme Court of South Africa of at least five years' standing, who shall be the president; and
 - (b) two members who have had military service.
- (3) In considering an appeal in terms of section 14(1)(b)
- (a) the appeal tribunal may inspect all documents in the possession or under the control of the Director-General which may refer to the appeal;
 - (b) the procedure shall be as prescribed.
- (4) The appeal tribunal considering an appeal in terms of section 14(1)(b) may confirm or reverse any decision of the Director-General under appeal and substitute for it such decision as the Director-General, in the opinion of the appeal tribunal, should have given.
- (5) (a) Subject to the provisions of paragraph (b) of this subsection, a decision of the appeal tribunal under subsection (4) shall be final.
- [The word "provisions" is misspelt in the Government Gazette, as reproduced above.]**
- (b) The appeal tribunal may, on the production of fresh material evidence, set aside any decision which it gave in respect of an appeal and thereupon reconsider the appeal as if no decision thereon was previously given by the appeal tribunal.
- (6) (a) If a point of law arises in the consideration of an appeal, the appeal tribunal may on application by the appellant or the Director-General state a case for the determination of such question of law by the provincial division of the Supreme Court of South Africa having jurisdiction over the area within which the sitting of the appeal tribunal was held.

- (b) The decision of the said division of the Supreme Court on such point of law shall be final.

17. ***

[section 17 deleted by Act 29 of 1979]

18. ***

[section 18 deleted by Act 29 of 1979]

19. Control of payment of pensions

(1) [subsection (1) deleted by Act 29 of 1979]

- (2) On the death of any person in receipt of any pension in terms of this Act, the Director-General may in his discretion pay the whole or part of the unpaid balance of any such accrued pension to any person who, in the opinion of the Director-General, has incurred expenditure in respect of the maintenance, care or funeral of such deceased, and such unpaid balance or part thereof shall not form part of the estate of the deceased.

[section 19 amended by Act 26 of 1977 to insert subsection (2); subsection (2) amended by Act 97 of 1980]

20. Substitution of benefits under this Act for other legal remedy

No action of law shall lie against the State to recover damages in respect of the disablement or death of a member where provision is made in this Act for compensation in respect of such death or disablement, and no liability for compensation as aforesaid shall arise on the part of the State save under the provisions of this Act.

21. Operation of Act

(1) The provisions of this Act shall not apply -

- (a) to any person who is entitled under the provisions of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), to compensation in respect of his pensionable disability;

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

- (b) to a dependant or parent of any person referred to in paragraph (a);

- (c) to a member or any person who is entitled to a benefit under the regulations made under section 11(1) of the General Pensions Act, 1979 (Act No. 29 of 1979).

[Paragraph (c) is amended by Act 97 of 1980. The General Pensions Act 29 of 1979 was not applicable to South West Africa.]

(2) The provisions of this Act and any notice issued thereunder shall apply mutatis mutandis to or in respect of any person -

[introductory phrase of subsection (2) substituted by Act 26 of 1977]

- (a) who is not a person referred to in section 4A; and

[paragraph (a) amended by Act 97 of 1980]

- (b) who is a volunteer as defined in section 1 of the War Pensions Act, 1967 (Act No. 82 of 1967); or

[The War Pensions Act 82 of 1967 is repealed by this Act.]

(c) to or in respect of whom Chapter IV of the lastmentioned Act applies, as if such a person is a member and military service within the meaning of the War Pensions Act, 1967, which he may have performed, is military service as defined in section 1 of this Act.

22. Administration of Act

- (1) The Minister shall administer this Act.
- (2) The Minister may delegate to the Director-General or any other person in the Department of Health and Welfare any of the powers, except the powers conferred by sections 16 and 23, conferred upon him by this Act, and may authorize the Director-General or such a person to perform any of the functions or to carry out any of the duties which are assigned to or imposed on the Minister by this Act.
- (3) The Director-General may, with the approval of the Minister, delegate to any officer of his Department any of the powers conferred upon the Director-General by this Act and authorize any such officer to perform any of the functions and carry out any of the duties assigned to or imposed on the Director-General by this Act.
- (4) The Director-General may for sound reasons withdraw any decision of an officer under any power delegated to him under subsection (3).

23. Regulations

- (1) The Minister may make regulations as to -
 - (a) the constitution, venue and quorum of and the procedure to be followed by a medical appeal board and the appeal tribunal;
 - (b) the procedure to be followed and the forms to be used in connection with claims for benefits or any other matters dealt with by this Act;
 - (c) the summoning before a board mentioned in paragraph (a) of appellants or witnesses and the payment to them of personal expenses;
 - (d) the method by and the places at which payments of benefits under this Act shall be made;
 - (e) the payment of allowances to members who suffer from a pensionable disability and undergo treatment therefor or undergo training in a hospital or other institution in terms of this Act;
 - (eA) the payment of subsistence, transport and other allowances to persons in respect of their attendance for the purposes of any medical or psychological examination or any treatment or training in terms of this Act, and to their attendants;
- (2) Different regulations may be made under subsection (1) in respect of different population groups or categories of persons

[paragraph (eA) inserted by Act 26 of 1977]

- (f) the defrayal of funeral expenses in the case of a member who dies after the termination of his military service as a result of a pensionable disability or while undergoing authorized treatment in respect of such a disability in an institution;
- (g) any matter which is permitted or required to be prescribed by regulation under this section.

[subsection (2) inserted by Act 26 of 1977]

- (3) Regulations contemplated in subsection (1) may be made with retrospective effect.

[Subsection (3) is inserted by Act 106 of 1986, with this insertion deemed by section 5(2) of Act 106 of 1986 to have come into force on the date of commencement of section 23.]

Section 23 came into operation generally on 30 June 1976, and on 1 July 1975 “as far as any disability caused or aggravated by military service on or after 1 July 1975 is concerned”.]

24. Repeal of laws

Section 145 of the Defence Act, 1957 (Act No. 44 of 1957), the Special War Pensions Act, 1962 (Act No. 35 of 1962), the War Pensions Act, 1967 (Act No. 82 of 1967) and section 15 of the Pension Laws Amendment Act, 1968 (Act No. 79 of 1968), are hereby repealed.

25. Application of Act to South West Africa

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

26. Short title and commencement

- (1) This Act shall be called the Military Pensions Act, 1976, and shall, as far as any disability caused or aggravated by military service on or after 1 July 1975 is concerned, be deemed to have come into operation on 1 July 1975.
- (2) **[subsection (2) deleted by Act 97 of 1980]**

Schedule

Item No.	Specific Injury or Disability	Percentage of Disablement	
	Upper Limbs		
	<p>Notes:</p> <p>(a) Stump measurements shall be taken as follows:-</p> <p>(i) Upper arm: With stump hanging down by the side, measure in a straight line from tip of acromion to the end of the bone which is palpable beneath the skin or scar tissue.</p> <p>(ii) Forearm: With stump flexed to a right angle, measure in a straight line from tip of olecranon to the end of the bone which is palpable beneath the skin or scar tissue.</p> <p>(b) In the case of volunteers who are certified to be left-handed the relevant determination shown below for right and left arms, respectively, shall be transposed.</p>		
1.	Loss of both hands or of all fingers and both thumbs	100	
		Right arm	Left arm
2.	Amputation of arm at shoulder joint	90	80

Item No.	Specific Injury or Disability	Percentage of Disablement	
3.	Amputation of arm with stump less than 20 centimetres from tip of acromion	80	70
4.	Amputation of arm anywhere between a point 20 centimetres from tip of acromion and a point less than 11 centimetres distal to tip of olecranon	70	60
5.	Amputation of arm at point 11 centimetres or more distal to tip of olecranon, or loss of all fingers and thumb of one hand	60	50
6.	Loss of all phalanges of thumb or four fingers of one hand	40	30
7.	Loss of all phalanges of three fingers	30	20
8.	Loss of all phalanges of two fingers	20	20

Item No.	Specific Injury or Disability	Percentage of Disablement	
	Lower Limbs		
	<p>Notes:</p> <p>(a) Stump measurements shall be taken as follows:-</p> <p>(i) Above knee: Measure from tip of great trochanter in a straight line over outer aspect of stump to end of bone which is palpable beneath the skin or scar tissue.</p> <p>(ii) Below knee: With knee flexed measure from anterior edge of upper articular surface of the tibia in a straight line over inner aspect of stump to the end of the tibia (not the fibula) which is palpable beneath the skin or scar tissue.</p> <p>(b) In order to determine middle thigh level in unilateral thigh amputations, the length of the sound femur shall be the criterion.</p>		
9.	Loss of both feet	100	
10.	Amputation at hip or below hip with stump not exceeding 13 centimetres measured from tip of great trochanter	80	

Item No.	Specific Injury or Disability	Percentage of Disablement
11.	Amputation below hip with stump exceeding 13 centimetres measured from tip of great trochanter but not beyond middle thigh	70
12.	Amputation anywhere between middle thigh and 10 centimetres below knee	60
13.	Amputation of leg with stump exceeding 10 centimetres below knee	50
14.	Modified Syme amputation	40
15.	Loss of all toes of both feet proximal to the proximal interphalangeal joint	30
16.	Loss of all toes of one foot proximal to the proximal interphalangeal joint or loss of all toes of both feet distal to the proximal interphalangeal joint	20
	Defective Vision	
17.	Total loss of sight	100
18.	Loss of one eye	50
19.	Total loss of vision in one eye N.B.:- In cases of partial loss of vision the visual acuity shall be determined after correction with glasses.	40

Item No.	Specific Injury or Disability	Percentage of Disablement
	Defective Hearing	
20.	Total deafness	100
21.	Total deafness in one ear	20
	Facial Disfigurement	
22.	Very severe facial disfigurement rendering the volunteer incapable of mixing with the public	100
23.	Severe facial disfigurement rendering employment in contact with the public impossible	80
	Other Disabilities	
24.	Wounds, injuries or diseases resulting in the volunteer being permanently bedridden or totally disabled	100
25.	Total loss of speech	80
26.	Loss of both testicles	70
27.	Loss of a kidney	30
28.	Loss of one testicle	20
	Combination of Certain Disabilities	
29.	Loss of any two limbs	100
30.	Loss of an arm and an eye	100

Item No.	Specific Injury or Disability	Percentage of Disablement
31.	Loss of a leg and an eye	100
32.	Loss of a hand and a foot	100

Notes:

- (a) The determination of the degree of disablement in respect of disabilities not specified in this Schedule shall be on the basis of physical or mental incapacitation only and shall be made by comparison with a normally healthy person of the same age and sex, without regard to loss of earning capacity in any particular occupation.
- (b) No combination of disabilities shall be deemed to exceed 100 per cent disablement.