

Namibia

Motor Vehicle Accident Fund Act, 2007

Act 10 of 2007

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Republic of Namibia
Annotated Statutes

Motor Vehicle Accident Fund Act, 2007

Act 10 of 2007

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ACT

To provide for the establishment, administration and management of the Motor Vehicle Accident Fund as an administrative body to provide assistance and benefits to persons injured in motor vehicle accidents and to dependents of persons killed in such accidents; and to provide for incidental matters.

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

Part I – PRELIMINARY PROVISIONS

1. Definitions

In this Act unless the context otherwise indicates -

“**Board**” means the Board established by section 10;

“**Chief Executive Officer**” means the Chief Executive Officer appointed in terms of section 20;

“**claimant**” means a person who, under sections 24 and 25, is entitled to claim for benefits from the Fund;

“**committee**” means a committee established under section 17;

“**defect**”, when related to a vehicle, means a fault in a tyre, steering, brakes or a seat belt rendering the use of the vehicle unsafe or in breach of any law regulating road traffic and transportation, and “defective” has that meaning;

“**dependent**”, in relation to a person involved in a motor vehicle accident, means any person being a spouse or a minor child of such person or a disabled or indigent person legally entitled, other than in terms of contract, to monetary maintenance from such person and includes a spouse in a customary law union and child of such union;

“**driver**” means the person who was driving the motor vehicle;

“**financial year**” means the financial year referred to in section 5;

“**Fund**” means the Motor Vehicle Accident Fund established by section 2;

“**Immigration Control Act**” means the Immigration Control Act, 1993 (Act [No. 7 of 1993](#));

“**injury**” means injury to a natural person, and includes all forms of physical, emotional, psychological and behavioural abnormality and all forms of impairment caused or induced by a motor vehicle accident;

“**injury management**”, includes any treatment or program, scheme, course, or process intended to restore and relieve physical, mental, emotional, behavioural health and function and redress all forms of impairment;

“**life enhancement assistance**” means home alteration and the provision of care giving, transport and artificial aids;

“**medical treatment**”, includes any treatment or program, scheme, course, or process intended to restore physical, mental, emotional, behavioural health and function, infirmity of mind and body and redress all forms of impairment and includes hospitalization;

“**member**” means a member of the Board;

“**Minister**” means the Minister responsible for transport;

“**motor vehicle**” means a vehicle which is designed or adapted for propulsion or haulage on a road by means of fuel, gas or electricity and includes a trailer, caravan, an agricultural or other implement designed or adapted to be drawn by that vehicle and any other vehicle that may be prescribed;

“**motor vehicle accident**” means an event in which injury or death of a person occurs on account of the involvement of a motor vehicle being driven and includes an event where an unoccupied vehicle moves from one place to another, other than falling, on account of gravity;

“**Namibia Refugees (Recognition and Control) Act**” means the Namibia Refugees (Recognition and Control) Act, 1999 (Act [No. 2 of 1999](#));

“**prescribe**” means prescribe by regulation made under section 35;

“**rehabilitation**”, includes the restoration of bodily function, any treatment or program, scheme, course, schooling, training, or process intended to improve or restore physical, mental, emotional and behavioural health and function and restore all forms of infirmity of mind and body, and includes hospitalization;

“**repealed law**” means the Motor Vehicle Accidents Fund Act repealed by section 37;

“**State-owned Enterprises Governance Act**” means the State-owned Enterprises Governance Act, 2006 (Act [No. 2 of 2006](#)); and

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

“**this Act**,” includes regulations made under section 35.

[The comma after “this Act” is superfluous.]

Part II – MOTOR VEHICLE ACCIDENT FUND

2. Establishment, purpose and functions of Fund

- (1) There is established a fund to be known as the Motor Vehicle Accident Fund, and which for all purposes is a juristic person.

- (2) The purpose and functions of the Fund are to -
- (a) design, develop, promote and implement motor vehicle accident and injury prevention measures;
 - (b) fairly and reasonably provide assistance and benefits to a person who is injured in a motor vehicle accident;
 - (c) fairly and reasonably provide assistance and benefits to a person who suffers loss as a dependent of a person killed in a motor vehicle accident;
 - (d) reasonably indemnify the driver and owner of a vehicle involved in motor vehicle accident from claims for loss or damage arising on account of injury or death caused by the motor vehicle accident; and
 - (e) attend to any matter that is incidental to any function mentioned in this section.

3. Powers of Fund

In order to fulfil the functions imposed on the Fund by section 2, the Fund, where applicable subject to section 27 of the State-owned Enterprises Governance Act, may -

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

- (a) conduct or invest in research, design, development, promotion and implementation of motor vehicle accident and injury prevention measures;
- (b) conduct or invest in research, programs and projects designed to address issues of motor vehicle accident response, medical treatment, management of injury, rehabilitation and life enhancement assistance to persons injured in motor vehicle accidents;
- (c) stipulate the terms and conditions on which claims for benefits made under this Act are made;
- (d) stipulate the terms and conditions on which assistance and benefits provided under this Act are made and administered;
- (e) investigate claims made on the Fund and any matter incidental to the exercise of its functions;
- (f) acquire movable or immovable property, shares, debentures, stocks or other securities;
- (g) sell, mortgage, lease, exchange, encumber in any way, or develop property of the Fund;
- (h) borrow money from any person or institution and provide where required security for repayment of the loan;
- (i) invest money of the Fund which is not immediately required for use by the Fund;
- (j) do any act which can be done in relation to a negotiable or transferable instrument;
- (k) give a study loan or bursary to any person for the purpose of pursuing studies or research in connection with the discharge of its functions, conducting operations or ensuring development;
- (l) provide training for the purposes of better discharge of its functions, conducting operations or ensuring its development;
- (m) enter into a contract or partnership for the purpose of providing indemnity not provided herein to the drivers and owners of motor vehicles as may be reasonably required;
- (n) enter into a contract or partnership for the purposes of the discharge of its functions, conducting operations or ensuring its development;
- (o) receive a donation or funding for the fulfilment of any purpose under this Act;
- (p) procure reinsurance for any risk or liability undertaken by the Fund; or

- (q) do any other act that is necessary in order to achieve the purpose of this Act.

4. Moneys of Fund

The moneys of the Fund consists of -

[The verb “consists” should be “consist” to be grammatically correct.]

- (a) money derived from the fund established under the Petroleum Products and Energy Act, 1990 (Act [No. 13 of 1990](#)) and made available to the Fund under that Act as agreed between the Minister and the Minister of Mines and Energy;
- (b) money derived from an investment under section 3(1)(i) and money borrowed under section 3(1)(h);
- (c) money derived in terms of any law;
- (d) money appropriated by Parliament for the purpose of the Fund; and
- (e) any money that accrues to the Fund.

5. Financial year and evaluation of liability of Fund

- (1) The financial year of the Fund ends on 31 March of each year.
- (2) The Fund’s liability is established annually by actuarial evaluation and revenue must be set to match such liability.

6. Exemption from tax

The income or money of the Fund is exempt from any form of taxation or duty under any law governing tax or duty and such exemption extends to all transactions conducted by the Fund.

7. Accounts and audit

- (1) The Fund must, in accordance with generally accepted accounting practice and procedure, cause proper books and records of accounts to be kept of all financial transactions, assets and liabilities of the Fund.
- (2) As soon as possible after the end of each financial year, the Fund must have financial statements prepared for that year, consisting of a statement of income and expenditure and a balance sheet which must reflect the Fund’s financial position as at the end of the financial year.
- (3) The Fund must, not later than three months after the end of each financial year, submit records of accounts and financial statements to the Auditor-General for audit.
- (4) The Auditor-General must submit the audited accounts, his or her certificate and a report in connection with any investigation, examination and auditing carried out by him or her under this Act and the State Finance Act to the Minister for tabling in accordance with section 8(3) and furnish a copy thereof to the Fund.

8. Annual report of Fund

- (1) The Fund must at the end of each financial year compile an annual report that includes -
 - (a) a response to a report of the Auditor-General issued in terms of section 7(4);
 - (b) a report on the activities of the Fund and the performance of the Chief Executive Officer during the year to which the audit relates; and
 - (c) a summary of the actuarial evaluation of liability as required in terms of section 5(2) and whether or not income has been matched to liability.

- (2) The Fund must, within six months after the end of each financial year, submit the annual report referred to in subsection (1) to the Minister.
- (3) On receipt of the annual report referred to in subsection (2) the Minister must table the report together with the report of the Auditor-General referred to in section 7(4) in the National Assembly within 30 days of receipt, or if the National Assembly is not in session, within 30 days after the commencement of the next session.

Part III – ADMINISTRATION OF FUND

9. Powers of Minister

- (1) The powers of the Minister in regard to the administration of the Fund are as set out in this Act.
- (2) The Minister may, if he or she considers it necessary, by notice in writing, give direction to the Board on any matter regarding -
 - (a) substantive and operational policy;
 - (b) functional and operational objectives; or
 - (c) reporting on the Fund activities.

10. Establishment of Board

For the purposes of administering the affairs of the Fund there is established a Board of the Fund.

11. Powers and functions of Board

- (1) The powers and functions of the Board are -
 - (a) to exercise and perform the powers and functions of the Fund;
 - (b) subject to section 9, to formulate the policy of the Fund; and
 - (c) to manage the financial and administrative affairs of the Fund.
- (2) The Board -
 - (a) having due regard to principles of corporate governance, may in writing delegate any power or assign any functions referred to in subsection (1) to the Chief Executive Officer, its committee or any staff member of the Fund;
 - (b) is not divested of any power or functions delegated or assigned under paragraph (a), and it may, without prejudice of a right, change or rescind any decision made under a power so delegated;
 - (c) having due regard to speciality, expertise and skills required, may appoint or engage any person to advise it on any matter that is relevant to the exercise of its powers or performance of its functions under this Act.

12. Constitution of Board

- (1) The Board consists of five members, who are persons with appropriate knowledge, skills and personal attributes to properly ensure the functional integrity of the Fund, appointed by the Minister, subject to section 15 of the State-owned Enterprises Governance Act, as follows -

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

- (a) a person from the Ministry administering transport affairs;

- (b) a person nominated by the Minister responsible for finance;
- (c) a medical practitioner from the medical fraternity who, the Minister appoints after consultation with the association or associations which represents or represent medical practitioners in Namibia;
- (d) a legal practitioner who, the Minister appoints after consultation with the association or associations which represent legal practitioners in Namibia; or
- (e) a person who, the Minister appoints after consultation with the association or associations which represents or represent persons who are engaged in the business of transportation of persons.

[The word “who” in paragraphs (c), (d) and (e) should be “whom” to be grammatically correct, and it should not be followed by a comma.]

- (2) The Minister must appoint two members as chairperson and deputy chairperson of the Board, respectively.

13. Governance and performance agreements

- (1) The Minister must, within one month of the Board being constituted, and with due regard to any directives laid down by the Council under section 4 of the State-owned Enterprises Governance Act, enter into a written governance agreement with the Board in compliance with section 17 of that Act.
- (2) The Minister, within one month of appointing a person as a member, and with due regard to any directives laid down by the Council under section 4 of the State-owned Enterprises Governance Act, must enter into a performance agreement with such member in compliance with section 18 of that Act.

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

14. Term of office of member

Subject to section 16, a member holds office for a term of three years, and is eligible for reappointment at the end of that term.

15. Disqualification for appointment as member

- (1) A person is not eligible for appointment as member, if such person -
 - (a) is not a Namibian citizen or lawfully admitted to Namibia for permanent residence and resident in Namibia;
 - (b) has been at any time convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
 - (c) is an unrehabilitated insolvent;
 - (d) has been removed from an office of trust on account of misconduct;
 - (e) has been disqualified from being a director by an order made under the Companies Act, 1973 (Act [No. 61 of 1973](#)); or

[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]

- (f) is certified as mentally disordered.

16. Vacation of office and filling of vacancies

- (1) The office of a member becomes vacant if he or she -
 - (a) becomes subject to a disqualification mentioned in section 15;
 - (b) resigns by notice in writing to the Minister;
 - (c) is absent from two consecutive Board meetings without permission of the Board; or
 - (d) is removed from office under subsection (2).
- (2) The Minister, by notice in writing, may remove a member from office if the Minister, after affording the member an opportunity to be heard, is satisfied that the member -
 - (a) is incapacitated by physical or mental illness; or
 - (b) is, for any valid reason, unable or unfit to properly, efficiently and effectively discharge the functions of a member.
- (3) Whenever the Minister acts under subsection (2), the Minister may first suspend the member concerned from his or her office pending a final decision on whether or not the member should be removed.
- (4) If a member dies or vacates office before the expiration of his or her term of office, the Minister must, as soon as reasonable possibly after receiving notice of the vacancy, appoint a person in accordance with section 12 to fill the vacancy for the remaining portion of that member's term of office.

17. Committees of Board

- (1) The Board may establish committees -
 - (a) to advise the Board on any matter which the Board refers to it; or
 - (b) to exercise any of the powers or perform any of the functions of the Board which the Board delegates or assigns to it.
- (2) A committee established under subsection (1) -
 - (a) consists of at least one member of the Board and such other members of the Board or other persons as the Board may appoint as members of the committee on such terms and conditions as the Board may determine; and
 - (b) meets at the time and place and on such terms and conditions as the Board may determine.
- (3) The Board must establish a Medical Review Committee in accordance with subsection (1) consisting of three persons with knowledge, skills, understanding and experience in medical treatment, injury management, rehabilitation and long term care of injured persons.
- (4) A member of the Board or a committee, a person appointed under section 11(2)(c) or any person who has done anything which, under this Act, is required to be done on behalf of the Fund, is entitled -
 - (a) to be paid for services rendered to the Fund at a level that is commensurate with the responsibilities involved in the discharge of his or her functions; and
 - (b) to be refunded for expenses incurred whilst doing work on behalf of the Fund,
unless the person has been or is entitled to be paid for rendering those services or to be refunded for the incurred expenses by any other person or entity.
- (5) The money payable under subsection (4) is paid from the Fund.

18. Disclosure of interests by members

- (1) A member must at all times act in the interest of the Fund.
- (2) If a member or his or her spouse, or any company, close corporation or partnership of which the member or his or her spouse is a director, shareholder, member or partner, is in any way directly or indirectly interested in a matter which is the subject of consideration by the Board or a committee, and which may cause a conflict of interests in the performance of his or her functions as member, the member must -
 - (a) forthwith fully disclose the nature of such interest at the meeting of the Board or committee at which such matter is the subject of consideration; and
 - (b) withdraw from the meeting so as to enable the remaining members to discuss the matter and determine whether the member is precluded from participating in such meeting by reason of a conflict of interests.
- (3) A disclosure by a member in accordance with subsection (2), and the decision taken by the remaining members in connection with the disclosure, must be recorded in the minutes of the meeting.
- (4) A member who refuses or fails to comply with subsection (2) commits an offence and is liable to a fine not exceeding N\$8 000 or to imprisonment not exceeding a period of two years, or to both such fine and such imprisonment.

19. Meetings and decisions of Board

- (1) The Minister must convene the first meeting of the Board and thereafter, subject to subsection (2), meetings are held at such times and places as the Board determines.
- (2) The chairperson may at any time, and must if so requested in writing by the Minister or by at least three members, convene a special meeting of the Board.
- (3) The chairperson presides at meetings of the Board, but -
 - (a) in his or her absence the deputy chairperson presides; or
 - (b) in the absence of both, the chairperson and deputy chairperson, the members present at a meeting must elect a member from amongst their number to act as chairperson.
- (4) The majority of all members forms a quorum at a meeting of the Board.
- (5) The Board must hold meetings as often as the business of the Board requires, but it must meet at least four times during each financial year.
- (6) A decision of the majority of the members present at a meeting constitutes the decision of the Board and in the event of an equality of votes the member presiding at the meeting has a casting vote in addition to his or her deliberative vote.
- (7) A decision of the Board or an act performed on authority of the Board is not invalid -
 - (a) by reason of a vacancy on the Board;
 - (b) by reason of the fact that a person who is not entitled to be present as a member was present when the decision was taken or the act was authorized,if that decision was taken or the act was authorized, by a majority of the members who were present and entitled to vote at the meeting.
- (8) The Board must cause proper minutes of proceedings of its meetings to be kept.
- (9) The Board may make rules governing the manner in which its meetings are held and the procedures at its meetings.

20. Chief Executive Officer

- (1) The Board, with the concurrence of the Minister, must appoint a person who has the knowledge and experience relevant to the functions of the Fund to be the Chief Executive Officer of the Fund.
- (2) A person is not eligible for appointment to the post of Chief Executive Officer if he or she -
 - (a) is a minor;
 - (b) has been convicted of an offence and sentenced to a term of imprisonment without the option of a fine;
 - (c) is an unrehabilitated insolvent;
 - (d) has been removed from an office of trust on account of misconduct;
 - (e) has been disqualified from being a director by an order made under the Companies Act, 1973 (Act [No. 61 of 1973](#)); or
[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]
 - (f) has been certified as mentally disordered.
- (3) The Chief Executive Officer ceases to hold office if he or she -
 - (a) becomes disqualified for appointment in terms of subsection (2); or
 - (b) resigns from office; or
 - (c) is removed from office on account of misconduct.
- (4) Subject to subsection (3), the Chief Executive Officer -
 - (a) is appointed for a term of five years;
 - (b) is eligible for reappointment at the end of his or her term, but this may not be construed to mean that -
 - (i) his or her term is automatically extended after the expiry thereof; or
 - (ii) his or her reappointment is guaranteed.
- (5) The Chief Executive Officer, by virtue of his or her office, may attend meetings of the Board and participate in deliberations of the Board, but has no right to vote.
- (6) Subject to the directions and control of the Board, the Chief Executive Officer -
 - (a) is responsible for conducting the day to day business and administrative affairs of the Fund, including the exercise or performance of any power or function the Board delegates or assigns to him or her;
 - (b) may appoint such employees as are necessary to enable the Fund to properly carry out its functions.
- (7) Whenever the office of the Chief Executive Officer is vacant, or the Chief Executive Officer is for any reason unable to perform the functions of the office, the Board, may appoint -
 - (a) a staff member of the Fund; or
 - (b) any other eligible person,to act as Chief Executive Officer during the vacancy or during the period that the Chief Executive Officer is unable to perform those functions.

21. Performance agreements of management staff of Fund

- (1) The Board must require the Chief Executive Officer, and such other senior management staff of the Fund as the Board may determine, to enter into a performance agreement with the Board, with due regard to any directive laid down by the Council under section 4 of the State-owned Enterprises Governance Act, setting out, among others -

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

- (a) the terms and conditions of appointment;
 - (b) objectives to be achieved and the time frame for achievement thereof; and
 - (c) measures necessary to evidence such achievement.
- (2) Failure on the part of the Chief Executive Officer or other senior management staff member to comply with any provision of a performance agreement which he or she entered into with the Board, constitutes a ground for his or her dismissal from the service of the Fund, subject to the rules of natural justice.

22. Remuneration of management and other staff of Fund

Subject to section 22(3) of the State-owned Enterprises Governance Act, the Board -

[The State-owned Enterprises Governance Act 2 of 2006 was re-named the Public Enterprises Governance Act 2 of 2006 by Act 8 of 2015 (GG 5835).]

- (a) with the concurrence of the Minister, determines the conditions of service, remuneration and other benefits of the Chief Executive Officer and other management staff of the Fund; and
- (b) determines the conditions of service, remuneration and other benefits of other staff members of the Fund below management level.

Part IV – ACCIDENT RESPONSE

23. Accident response

- (1) Even though the Fund has not received a claim in respect of injury or death suffered in a motor vehicle accident, the Fund may take reasonable steps to ensure that -
 - (a) a motor vehicle accident is attended without avoidable delay; and
 - (b) an injured person requiring medical treatment is conveyed to a hospital and, if a hospital is not accessible, to such other medical treatment facility as is accessible;
 - (c) an injured person's condition is stabilized before it makes a determination of liability in terms of sections 24 and 25; or
 - (d) the body of a person killed is conveyed to a mortuary.
- (2) In discharging its responsibilities in terms of this section the Fund is entitled to incur fair and reasonable costs and to contract with relevant service providers accordingly.

Part V – LIABILITY AND LIMITATIONS

24. Liability and limitations of liability of Fund

- (1) A person who has suffered loss or damage as a result of injury to himself or herself, or as a result of the death or injury of any person, in either case caused by or arising out of the driving of a motor vehicle by any person, including the person himself or herself, in Namibia, is, subject to the conditions, limitations and exclusions imposed by this Act, entitled to the benefits prescribed by this Act.
- (2) Subject to this Act, the Fund, in the case of a claim for benefits under this section, must award the benefits prescribed in section 25 to a person who has suffered loss or damage -
 - (a) as a result of injury to himself or herself; or
 - (b) as a result of the death or injury of any person,
caused by or arising out of the driving of a motor vehicle by any person, including the person himself or herself, in Namibia.
- (3) A person or entity providing services and goods to a person who is entitled to benefits in terms of subsection (1) read with section 25 may claim payment directly from the Fund for such services and goods and in such event the provision of such services and goods, and their value, is included as being part of an award made to such person in terms of section 25.
- (4) The liability of the Fund may not exceed -
 - (a) a value of N\$1 500 000 as regards medical treatment, injury management, rehabilitation and life enhancement as specified in section 25(1)(d), (e), (f) (g) and (i) in respect of any one injured person regardless of whether or not such person receives one or a combination of the benefits;

[There is a comma missing between (f) and (g).]
 - (b) a value of N\$100 000 regarding the cash grant as compensation for injury as specified in section 25(1)(c) in respect of any one injured person;
 - (c) a value of N\$100 000 per annum -
 - (i) in the case of loss of income as specified in section 25(1)(a) in respect of any one injured person where there is proof that the person paid tax on income for the tax year preceding the injury or for most of a five year period immediately preceding the injury; and
 - (ii) in all other cases the value is the amount per annum specified in laws relating to income tax as the maximum amount at which income is non taxable;

[The word “non-taxable” is written as two words in the Government Gazette.]
 - (d) where the benefit is for loss of support in terms of section 25(1)(b) such amount as a dependent is otherwise entitled to in law is limited -
 - (i) in the case where there is proof that the deceased paid tax on income for the tax year preceding the injury or for most of a five year period immediately preceding death, to a share calculated on income assumed to be no more than N\$100 000 per annum; and
 - (ii) in all other cases, to a share calculated on income assumed to be no more than the amount per annum specified in laws relating to income tax as the maximum amount at which income is non taxable;

[The word “non-taxable” is written as two words in the Government Gazette.]

- (e) a value of N\$7 000 as regards the funeral benefit as specified in section 25(1)(h) in respect of any one person killed in a motor vehicle accident;
 - (f) such value as is prescribed regarding any other benefits contemplated in section 25(1)(j).
- (5) For the purposes of applying the limitations set out in subsection (4) -
- (a) the value of the award is calculated at the date of determination thereof;
 - (b) interest accrues to any unpaid or unexpended portion thereof at the rate applying to unpaid judgement debts of the High Court of Namibia;
 - (c) the limitation applies only to the capital sum as at date of determination and does not apply to an aggregate of such sum and any interest accruing thereafter.
- (6) An award in terms of section 25 -
- (a) to any person who is in Namibia in accordance with -
 - (i) a visitors permit under the Immigration Control Act;
 - (ii) section 14 of the Namibia Refugees (Recognition and Control) Act,is limited to providing medical treatment and injury management for the period such person is in Namibia; or
 - (b) in respect of a person killed in a motor vehicle accident and who -
 - (i) is not granted right of residence in Namibia;
 - (ii) has the right to remain in Namibia in accordance with section 14 of the Namibia Refugees (Recognition and Control) Act,is limited to providing the funeral benefit as specified in section 25(1)(h).
- (7) The liability of the Fund where an accident involves a motor vehicle and an aircraft, locomotive or carriages being drawn by such locomotive is limited to awarding benefits to occupants of the motor vehicle involved.
- (8) The Minister, by regulation, may amend any of the limitations of liability of the Fund prescribed by this section.

Part VI – BENEFITS

25. Benefits

- (1) The benefits to be provided by the Fund are confined to the following categories -
- (a) reimbursement of income lost as a result of being unable to secure employment or generate income on account of injuries sustained in a motor vehicle accident which benefit is the aggregate of a capital sum, together with interest accruing on any unpaid portion and where the benefit is to reimburse future income loss it is payable by instalments -
 - (i) subject to periodic assessment in terms of subsection (6), until the injured person attains the age of 60 years or dies, whichever occurs first;
 - (ii) which is calculated and paid as such portion of the benefit as can be paid over the period over which the injured party attains the age of 60 years and escalated annually by the rate of inflation as set by the Consumer Price Index at the time of the accident;
 - (iii) in the event of the injured person dying before attaining the age of 60 years payment by instalment ceases and the Fund is not liable to make any further payments in respect of the benefit;

- (b) reimbursement of financial support lost by a dependent as a result of the death of a person caused by a motor vehicle accident which benefit is an aggregate of a capital sum, together with interest accruing on any unpaid portion, and if -
 - (i) the dependent is a spouse and the benefit is to reimburse future support lost, it is payable by instalments until the dependent attains the age of 60 years or dies, whichever occurs first, which instalments are -
 - (aa) calculated and paid as such portion of the benefit as can be paid over the period over which the dependent attains the age of 60 years; and
 - (bb) escalated annually by the rate of inflation as set by the Consumer Price Index at the time of the accident;
 - (ii) the dependent is a minor and the benefit is to reimburse future support lost, it is payable by instalments until the dependent attains the age of majority or completes his or her course of education after attainment of the age of majority, becomes financially self sufficient or dies, whichever occurs first, which instalments are -
 - [The word “self-sufficient” is normally spelt with a hyphen.]**
 - (aa) calculated and paid as such portion of the benefit as can be paid over the period over which the dependent attains the age of majority; and
 - (bb) escalated annually by the rate of inflation as set by the Consumer Price Index at the time of the accident;
 - (iii) the dependent dies before attaining the stipulated age of majority, payment by instalment ceases and the Fund is not liable to make any further payments in respect of the benefit;
- (c) a cash grant as compensation for injury, including loss of earning capacity, as a result of physical injury suffered in a motor vehicle accident, which is determined in accordance with the prescribed procedure;
- (d) reimbursement of the costs of medical treatment for physical injury suffered in a motor vehicle accident, calculated in accordance with the prescribed tariff;
- (e) an undertaking to pay for medical treatment or injury management in accordance with a treatment plan as prescribed subject to periodic assessment in terms of subsection (6);
- (f) an undertaking to pay for rehabilitation of a person injured in a motor vehicle accident in accordance with a rehabilitation plan as prescribed subject to periodic assessment in terms of subsection (6);
- (g) an undertaking to pay for life enhancement assistance in accordance with a life enhancement plan as prescribed where the injured person has suffered permanent physical or mental incapacity subject to periodic assessment in terms of subsection (6);
- (h) a cash grant for funeral benefit in respect of the burial of a person killed in a motor vehicle accident as specified by section 24(4)(e);
- (i) reimbursement of any costs reasonably incurred in the provision of a service to a person entitled to an award of a benefit other than costs that may be reimbursed in terms of the other subsections hereof; and
- (j) such other benefits as the Minister, on the recommendation of the Board, may prescribe.

- (2) Subject to the limits prescribed by this Act, monetary awards in terms of subsection (1) (a) and (b) must reasonably equate to the loss suffered or to be suffered taking into account the employment history and situation of the injured party or deceased as the case may be;

[The word “suffered” is misspelt in the Government Gazette the second time it appears in subsection (2), as reproduced above.]

- (3) For the purposes of determining loss under subsection (1)(a) or (b) the income of the person or the deceased, as the case may be, is considered exclusive of tax payable on such income.
- (4) The negligence of the driver or owner is not considered for the purposes of determining an award under subsection (1) (b).
- (5) If an award of a benefit is made, any costs incurred in respect of the claimant under section 24 are deducted.
- (6) If any undertaking has been awarded as a benefit in terms of either or all of subsection (1)(a), (e), (f), (g) or (i) -
- (a) the condition of the person is thereafter assessed at least once annually by a medical practitioner or practitioners appointed by the Fund having relevant expertise regarding the person’s condition; and
 - (b) after having received written reports from such medical practitioners under paragraph (a), the Fund must review the appropriateness of continuing the benefit, and must determine whether to -
 - (i) continue provide the benefit with or without changes; or
 - (ii) discontinue providing the benefit,and inform the person of such determination in terms of a notice as prescribed.
- (7) When an undertaking to pay for a benefit in terms of a plan is provided as an award and where a claimant accepts such medical treatment, injury management or rehabilitation that requires changes thereto, which changes may not be unreasonably refused, further expenses not included in the award must be paid by the claimant.
- (8) If a person is dissatisfied with a plan offered as an award in terms of subsection (1)(e), (f) or (g), or with a determination to change or discontinue a benefit made in terms of subsection (6), the person may, within 30 days of receiving the offer or notice of the determination, deliver a written notice to the Fund setting out reasons for such dissatisfaction, and -
- (a) the Fund, within 21 days of receiving the notice, may -
 - (i) deliver an amended offer of an award or determination to the person; or
 - (ii) refer the matter to the Medical Review Committee for its consideration and, in writing, inform the person of the date, time and venue set for the matter to be considered by the Committee,but the Fund may, at its own cost, require the person to undergo further examination by a medical practitioner before making such decision.
 - (b) the Medical Review Committee, after having afforded the person and the Fund opportunity to make representations, if any, must consider the matter, and may -
 - (i) uphold the award or determination and give reasons in summary;
 - (ii) remit the matter to the Fund with a directive for action to be taken; or
 - (iii) amend the award or determination and give reasons in summary,and, within 21 days, inform the person of its decision by notice as prescribed.

- (9) A decision by the Medical Review Committee -
 - (a) is subject to the exclusions and limitations provided in this Act; and
 - (b) is binding on the Fund and section 32(4), (5) and (6) apply thereto with the necessary changes.

Part VII – EXCLUSIONS AND LIMITATIONS

26. Exclusions

The Fund may not award benefits to a person injured in a motor vehicle accident or claiming under section 25 -

- (a) if the person unreasonably refuses or fails -
 - (i) to submit a duly completed claim to the Fund in the prescribed form;
 - (ii) on request by the Fund, to give particulars of the occurrence that are required in order for the Fund to make a determination in terms of section 24(1) or (2);
 - (iii) on request by the Fund, to furnish a document or information relevant to the claim;
- (b) if the person who was injured unreasonably refuses or fails -
 - (i) to furnish the Fund with any medical report in his or her possession that is relevant to the claim;
 - (ii) permit the Fund, or a person authorised in writing by the Fund, to inspect medical records relating to the person; or
 - (iii) at the cost of the Fund, to undergo medical examination or assessment by a medical practitioner or expert appointed by the Fund regarding the injury and condition of the person;
- (c) if the person is guilty of driving the motor vehicle involved in the accident in contravention of section 82(1) of the Road Traffic and Transport Act, 1999 (Act [No. 22 of 1999](#));
- (d) if the person did not hold a license issued under the law governing the licensing of drivers of motor vehicles or he or she being the holder of a learner's license or other restricted license issued under that law, failed to comply with conditions or requirements of that learner's licence or restricted licence;
- (e) if the person is the owner of a motor vehicle involved in an accident being driven by a person who is not the holder of a licence issued under any law governing the licensing of drivers of motor vehicles or not in compliance with the terms and conditions of such licence;
- (f) if the person has wilfully driven the motor vehicle involved in the motor vehicle accident knowing that it has been stolen;
- (g) if the person has driven the motor vehicle or is being conveyed in the motor vehicle during the course of the commission of, or in furtherance of, a serious criminal offence referred to in Schedule 1 of the Criminal Procedure Act, 2004 (Act [No. 25 of 2004](#)), unless such person -
 - (i) has driven the vehicle or is being conveyed in the vehicle against his or her will; and
 - (ii) did not take part in the commission of such offence, or did take part in the commission of such offence by coercion;

[The Criminal Procedure Act 25 of 2004 has not yet been brought into force. The operative law on criminal procedure is the Criminal Procedure Act 51 of 1977.]

- (h) if the person is in Namibia in contravention of the Immigration Control Act, unless the person -
 - (i) wishes to remain in Namibia as a refugee in compliance with section 13 of the Namibia Refugees (Recognition and Control) Act, 1999 (Act [No. 2 of 1999](#)); or
 - (ii) is the person contemplated in section 14 of the Namibia Refugees (Recognition and Control) Act, 1999 (Act [No. 2 of 1999](#));
- (i) in respect of a claim for shock, nervous, emotional, psychological, neurological or other form or condition induced by that person witnessing, hearing or becoming aware of a motor vehicle accident;
- (j) if the claim in question has not been instituted or prosecuted -
 - (i) by the claimant;
 - (ii) on behalf of the claimant, by a person who is entitled to practise as legal practitioner in Namibia; or
 - (iii) on behalf of the claimant, by the claimant's legal representative if the claimant is under a legal disability,before the claim becomes prescribed in terms of section 34;
- (k) if the claimant in making the claim provides false information, or withholds information, calculated to mislead the Fund in making a determination on the claim;
- (l) if the claimant and another person who is not a legal practitioner referred to in paragraph (j) have entered into an agreement wherein that other person -
 - (i) receives payment for providing advice or assistance in making a claim; or
 - (ii) receives any money in respect of investigation of the claim or any expenses incurred in the handling of the claim.

27. Limitation of awards

- (1) If a person claiming benefits under section 25 -
 - (a) is wholly responsible for the accident giving rise to the claim, the benefits awarded are limited to reimbursement, medical treatment, rehabilitation, life enhancement or injury management in terms of section 25(1)(d), (e), (f), (g) and (i) as may be required;
 - (b) has contributed to the accident, injury or death giving rise to the claim, any monetary award in terms of section 25(1)(a) and (c) otherwise payable is reduced in proportion to such contribution;
 - (c) was a driver of a motor vehicle involved in the accident in contravention of section 82(2) of the Road Traffic and Transport Act, 1999 (Act [No. 22 of 1999](#)), the benefits awarded are limited to reimbursement, medical treatment, rehabilitation, life enhancement or injury management in terms of section 25(1)(d), (e), (f), (g) and (i) as may be required;
 - (d) was injured when he or she was not, at the time of the accident, utilising a seat belt fitted to the motor vehicle for use by a person in the position of the claimant, the monetary benefits in terms of section 25(1)(a) and (c) otherwise payable is reduced by 25%;
 - (e) was injured when he or she was being conveyed otherwise than in or on a seat properly constructed and affixed to the motor vehicle for the purpose of the conveyance of persons, the monetary benefits in terms of section 25(1)(a) and (c) otherwise payable is reduced by up to 50%;
 - (f) not being a minor was injured when he or she was being conveyed in a motor vehicle which was, to the knowledge of such person, unlawfully conveying passengers or goods, and such

person had a reasonable option to disembark from the vehicle, the monetary benefits in terms of section 25(1)(a) and (c) otherwise payable is reduced by up to 50%;

- (g) is entitled to an award in terms of section 25(1)(a) or (c) monetary benefits or payment, other than as a funeral benefit, under a public social security scheme, pension fund, workmans compensation or benefits, the award is limited to such sum as represents the difference as a loss between the amount payable in terms of such entitlement and the amount otherwise payable in terms of this Act;

[The phrase “workmen’s compensation” or “employees’ compensation” should have been used above. The Employees’ Compensation Act 30 of 1941 was known as the “Workmen’s Compensation Act” until 1995.]

- (h) has suffered an injury to the neck and there is no evidence of a fracture to, or displacement of the vertebrae of the spinal column, the benefits awarded are limited to reimbursement and medical treatment or injury management in terms of section 25(1)(d), (e) and (i) as may be required;
- (i) suffers post traumatic stress disorder or other problem or disorder primarily evidenced by statements by the person without proof of physical injury, the benefits awarded are limited to reimbursement and medical treatment or injury management in terms of section 25(1)(d), (e) and (i) as may be required;

[“Post-traumatic” is usually, although not invariably, written with a hyphen.]

- (j) claims in terms of section 25(1) the award does not reimburse any loss comprising or involving loss of profits, outlay, investment or expense, including expense involving the recruitment, hiring or replacement of any member of staff; or
- (k) was the owner or driver of the motor vehicle involved in the accident giving rise to the claim and at the time of driving, the vehicle was defective, and such defect -
- (i) contributed to the cause of the accident; or
- (ii) contributed to the death or injury of any person,

unless such person is able to show that the defect became manifest without knowledge of such person during the course of travel in which the accident giving rise to the claim occurred, the benefits awarded are limited to reimbursement, medical treatment, rehabilitation, life enhancement or injury management in terms of section 25(1)(d), (e), (f), (g) or (i) as may be required.

- (2) The liability of the Fund to the driver of a motor vehicle in terms of this Act must, in respect of claims arising out of a motor vehicle accident in which cause is ascribed to the negligence of the driver of an unidentified motor vehicle, exclude the award of benefits in terms of section 25(1)(a), (c) or (i), unless there is -
- (a) proof, involving physical evidence, of a collision between the unidentified motor vehicle and the injured party or the deceased, or the vehicle in which either was travelling or being conveyed at the time of the accident;
- (b) proof of reasonable steps taken to identify the motor vehicle in question; or
- (c) proof that the motor vehicle accident in question was reported to the police as soon as was reasonably possible.

Part VIII – CLAIM PROCEDURE

28. Procedure for making claims

- (1) A claimant for benefits and a person or entity claiming in terms of section 24(3) must do so in the manner and on the form, as prescribed.

- (2) If the Fund, within 60 days of receipt of a claim which was sent or delivered to it as prescribed, does not object to the validity of the claim, the claim is, for all purposes, deemed to be valid in law.
- (3) If the Fund becomes aware that a person is injured as a result of a motor vehicle accident, it is entitled to serve on such person a notice to submit a claim within 30 days of receipt of the notice, whereupon section 34(4) applies, but the notice -
 - (a) is served on the injured person personally by the Fund investigator, subject to paragraph (b); and
 - (b) may not be served on an injured person who, on account of injury or mental incapacity, is unable to understand the contents thereof.
- (4) Despite any provision of any other law to the contrary, the Fund is entitled -
 - (a) to request that the claimant give further particulars of the occurrence in order to make a determination in terms of this Act;
 - (b) to request that the claimant furnish a document in his or her possession or further information known by the claimant and relevant to the claim; or
 - (c) where the claim is to compensate for lost income, to have access to, and copies of, all records relating to the claimant or deceased as maintained under the Income Tax Act.
- (5) If a claim relates to injury, the Fund may require the claimant to -
 - (a) furnish the Fund with any medical report in his or her possession that is relevant to the claim;
 - (b) permit the Fund, or a person authorised in writing by the Fund, to inspect medical and medical aid or insurance records relating to the claimant; or
 - (c) undergo medical examination or assessment by a medical practitioner or expert appointed by the Fund regarding the injury and condition of the claimant, at the cost of the Fund.
- (6) When making a claim, a person who provides information knowing it to be false or withholds information required in terms of this Act commits an offence and is liable to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.

Part IX – INVESTIGATIONS AND FURNISHING OF INFORMATION

29. Investigations

- (1) The Fund may appoint investigators to investigate -
 - (a) the causes of accidents giving rise to claims made on the Fund;
 - (b) the causes of motor vehicle accidents generally;
 - (c) matters of fact arising in claims made on the Fund;
 - (d) matters relevant to the detection of and prevention of fraud perpetrated in claims on the Fund;
 - (e) matters relevant to the prevention of motor vehicle accidents; or
 - (f) matters relevant to the promotion of motor vehicle accident and injury prevention.
- (2) The Fund must issue each appointed investigator with a certificate confirming the appointment and a card identifying such person as a Fund investigator.
- (3) The Fund may suspend or withdraw an appointment made in terms of subsection (1).

- (4) When conducting investigations an investigator must carry the card identifying him or her as a Fund investigator, and on production thereof must -
 - (a) be accorded full access to any motor vehicle accident scene;
 - (b) be granted access to any person injured in a motor vehicle accident;
 - (c) be granted access to any person who witnessed a motor vehicle accident; and
 - (d) on request, be provided with a written statement and other relevant information and documentation by any person who has made a claim on the Fund.
- (5) If asked by any person reasonably requiring such information, a Fund investigator must produce to such person the identity card contemplated in subsection (2).
- (6) A person commits an offence, if such person -
 - (a) hinders, obstructs, handicaps or disturbs an investigator in the conduct of investigation under this section;
 - (b) refuses or fails without just excuse to answer to the best of his or her ability any question put to him or her by an investigator in terms of this section;
 - (c) refuses or fails to provide any book, document, data or object requested in terms of this section;
 - (d) refuses to give information or intentionally gives false and misleading information to an investigator;
 - (e) refuses or fails to allow an investigator to enter any premises for investigation in terms of this section; or
 - (f) falsely claims or pretends to be an investigator appointed under this section.
- (7) A person convicted of an offence referred to in subsection (6) is liable to a fine not exceeding N \$10 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

30. Furnishing of information by owner and driver of motor vehicle

- (1) If a person, other than the driver, has been injured or has died as a result of the driving of a motor vehicle, the driver and the owner of the motor vehicle, if the driver is not the owner, must, on the prescribed form and within 14 days after the occurrence, furnish the Fund with particulars of the occurrence and any prescribed information.
- (2) A person who refuses or fails to comply with subsection (1) commits an offence and is liable to a fine not exceeding N\$5 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment.
- (3) The Fund, within 21 days after a claimant has complied with section 28(1), must furnish the claimant or his or her representative with a copy of the particulars and information supplied by the owner or driver under subsection (1) and statements taken from witnesses to the occurrence that it may have in its possession.

Part X – RIGHTS, LEGAL REMEDIES AND PRESCRIPTION

31. Claimant's other rights preserved

- (1) An award of a benefit in terms of this Act is without prejudice to a claim that may lie against any other party, provided that a claim must first be made against the Fund and a court adjudicating a

claim against another party in a cause of action arising out of the same facts must take into account the award or offer made by the Fund in terms hereof.

- (2) If because of any limitation imposed under this Act on the liability of the Fund, the value of benefits awarded under this Act for the damage or loss sustained is less than the actual amount due for the loss or damage sustained, the claimant may claim for the difference from the owner of the motor vehicle or from the person whose negligence or other unlawful act caused the loss or damage.
- (3) The value of an injury grant awarded under this Act is deducted from an award of general damages in any action arising out of the same accident as that giving rise to the grant and brought by the person to whom such injury grant was made.
- (4) If a person claims against another person in terms hereof, the Fund must assist the claimant by providing copies, on payment of costs of reproduction, of all documentation it has in its possession that relate to the matter.

32. Legal Proceedings

- (1) A person may not commence legal proceedings against the Fund for the purposes of obtaining benefits under this Act, unless he or she has fully complied with section 28 and a period of 90 days has expired from the date of such compliance.
- (2) Despite subsection (1), if the Fund, in writing, repudiates liability for the claim before the 90 days' period referred to in that subsection expired, the claimant may at any time after the repudiation, commence legal proceedings against the Fund.
- (3) Despite any law to the contrary, where the cause of action is founded on a repudiation of liability or a dispute regarding the claimant's contribution to the accident, injury or death giving rise to the claim, proceedings may be instituted in a court of competent jurisdiction.
- (4) In any action brought against the Fund, the court may -
 - (a) order absolution from the instance;
 - (b) dismiss the action;
 - (c) grant an order that the Fund is liable and that the Fund must proceed to make a determination to award benefits in accordance with section 25; or
 - (d) grant an order that the Fund is liable and that the Fund must proceed to make a determination to award benefits in accordance with section 25 at such reduced level as accords with the court's determination of the claimant's contribution to the accident, injury or death,and make such award as regards costs as it thinks appropriate.
- (5) Despite any provision to the contrary in any law, if the Fund has not repudiated the claim, or if there is no dispute about the claimant's contribution to the accident, injury or death, but the claimant -
 - (a) disputes the award of benefits made by the Fund; or
 - (b) is concerned with locus standi, procedure, treatment or any aspect as regards administering the provisions of this Act,the proceedings are by way of review to the High Court which must make such order under administrative law as it thinks appropriate.
- (6) Review proceedings may not be commenced, unless the claimant has first served a notice as prescribed on the Fund setting out the grounds on which he or she is dissatisfied to which notice the Fund must respond in writing within 21 days of receipt thereof setting out the reasons for the award, its decision or action complained of and attach any reports on which reliance was placed.

- (7) The Minister, on recommendation of the Board, may prescribe -
- (a) that all legal proceedings in terms of subsection (3) are to be referred to and determined by way of arbitration; or
 - (b) the rules of procedure to be followed in such arbitration proceedings referred to in paragraph (a), and such rules may be amended from time to time.
- (8) Except where the Fund requests that an agreement or undertaking be made an order of court, no agreement or undertaking by the Fund to award benefits in respect of any claim is enforceable in any court, unless in addition thereto liability has actually accrued to the Fund in terms of this Act.
- (9) If legal proceedings brought under this Act are settled before a court determines the matter, the claimant or the Fund is entitled to party and party costs in respect of that claim and, failing agreement, is entitled to have a bill of costs taxed.
- (10) In any legal proceedings the Fund, as represented by its duly authorized employees who have right of appearance in the courts of law, may -
- (a) act on its own behalf;
 - (b) appear in any court; or
 - (c) sue out, serve and receive service of process.
- (11) Whilst performing any function or exercising a power under this Act -
- (a) a member;
 - (b) a member of a committee established under section 17;
 - (c) a person appointed under section 11(2)(c);
 - (d) a staff member of the Fund; or
 - (e) any person who has performed a duty or exercised a power on behalf of the Fund,
- is not personally liable for anything done or omitted in good faith, unless the commission or omission constitutes gross negligence.
- (12) This section applies with the necessary changes to a claim for compensation made on the Fund in respect of loss or damage suffered as a result of a motor vehicle accident that occurred prior to commencement of this Act.

33. Fund's right of recourse

- (1) If under section 25 benefits have been awarded by the Fund to any person, the Fund, subject to subsections (2) and (3), and without having obtained cession of the right of action from the claimant, may recover -
- (a) from the owner of the motor vehicle; or
 - (b) the person whose negligence or other unlawful act caused the loss or damage,
- an amount equating to the value of benefits awarded as equates in monetary value to the amount as the claimant could, but for sections 24 and 25, have recovered from the owner or the person whose negligence or other unlawful act caused the loss or damage, if the Fund had not paid the benefits.

- (2) The Fund's right of recourse against the owner of a motor vehicle under subsection (1) may arise only if the motor vehicle at the time of the incident which gave rise to the award of benefits, was being driven -
- (a) by a person other than the owner of the vehicle and -
 - (i) the person was under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of proper control of the vehicle; and
 - (ii) the owner of the vehicle allowed the person to drive the vehicle knowing that the driver was under the influence of intoxicating liquor or of a drug;
 - (b) by a person other than the owner of the vehicle and -
 - (i) the person did not hold a license issued under the law governing the licensing of drivers of motor vehicles; or
 - (ii) the person being the holder of a learner's license or other restricted license issued under the law governing the licensing of drivers of motor vehicle failed to comply with conditions or requirements of the learner's licence or restricted licence,
and the owner of the motor vehicle allowed the driver to drive the motor vehicle knowing that the driver did not hold a licence or that the driver was not complying with the conditions or requirements of a learner's or restricted licence;
 - (c) by the owner of the motor vehicle and he or she was under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of proper control of the vehicle;
 - (d) by the owner of the motor vehicle and -
 - (i) he or she did not hold a license issued under the law governing the licensing of drivers of motor vehicles; or
 - (ii) he or she, being, the holder of a learner's license or other restricted license issued under the law governing the licensing of drivers of motor vehicles, failed to comply with the conditions or requirements of the learner's or restricted license;
 - (e) by the owner of the motor vehicle and -
 - (i) he or she failed to comply with section 30; or
 - (ii) he or she knowingly furnished the Fund with false information about the accident, and the Fund is financially or materially prejudiced by the failure to comply with section 30 or the furnishing of false information;
 - (f) by the owner of the motor vehicle at a time when such vehicle was defective and such defect caused or contributed to the cause of the accident in which case the Fund is entitled to recover as provided for in subsection (1) other than the value of any benefit accruing in terms of section 27(1)(k).
- (3) The Fund's right of recourse under subsection (1) against any person who with or without the owners consent was driving the motor vehicle at the time of the occurrence that gave rise to a claim may only arise if -
- [The word "owners" should be written with an apostrophe as "owner's".]
- (a) the person drove the vehicle whilst he or she was under the influence of intoxicating liquor or of a drug to such an extent as to be incapable of proper control of the vehicle;
 - (b) the person drove the vehicle when -
 - (i) he or she did not hold a license issued under the law governing the licensing of drivers of motor vehicles; or

- (ii) he or she being the holder of a learner's license or other restricted license issued under the law governing the licensing of drivers of motor vehicles failed to comply with the conditions or requirements of that learner's or restricted license; or
- (c) the person failed to comply with section 30 or knowingly furnished the Fund with false information about the incident and the Fund is financially or materially prejudiced by the failure to comply with section 32 or the furnishing of false information.
- (d) the person was driving a motor vehicle at a time when such vehicle was defective and such defect caused or contributed to the cause of the accident in which case the Fund is entitled to recover as provided for in subsection (1) other than the value of any benefit accruing in terms of section 27(1)(k).

34. Prescription of claims

- (1) Despite any provision to the contrary in any law relating to prescription, and subject to subsections (2) and (3), the right to claim benefits under sections 24 and 25 becomes prescribed at the expiry of a period of one year from the date the claim arose.
- (2) If within the period referred to in subsection (1), a person who is entitled to claim for benefits under this Act lodges a claim that complies with section 28(1), the claim becomes prescribed at the expiry of a period of two years from the date the claim arose.
- (3) Prescription of a claim referred to in this section does not run against -
 - (a) a minor;
 - (b) any person detained as a patient in terms of any mental health legislation; or
 - (c) a person under curatorship.
- (4) Despite subsections (1) and (2), a person who is entitled to claim for benefits under this Act and unreasonably fails to do so within 90 days of receiving a notice from the Fund in terms of section 28(3) to submit a claim as prescribed forfeits the right to claim.

Part XI – GENERAL PROVISIONS

35. Regulations

- (1) The Minister, on the recommendation of the Board, may make regulations relating to -
 - (a) the procedure to be followed when making a claim under this Act;
 - (b) the conditions to be fulfilled before a claim is made in respect of injury or death caused by a motor vehicle whose driver or owner at the time of the incident cannot be identified;
 - (c) the administration of benefits that may be awarded under this Act;
 - (d) any matter which he or she is required or permitted to prescribe under this Act; or
 - (e) generally any matter which is necessary or expedient in order to achieve the objectives of this Act.
- (2) A regulation made under subsection (1) may prescribe penalties for any contravention or failure to comply with it, not exceeding a fine of N\$5 000 or imprisonment not exceeding a period of three months, or both such fine and such imprisonment.

36. Savings and transitional provisions

- (1) This Act applies to cases where the occurrence which gave rise to the claim or obligation took place after the commencement of this Act, but -
 - (a) any claim or obligation that arose before the commencement of this Act is dealt with in accordance with the repealed law, subject to the procedural requirements of section 32; and
 - (b) any payment due to the claimant under the repealed law is paid out of the Fund.
- (2) At the commencement of this Act -
 - (a) except as is otherwise provided herein, the assets, liabilities, rights and obligations existing in or accruing to the previous Fund established by the repealed law are transferred to the Fund; or
 - (b) except where the context indicates otherwise, a reference in any law to the previous Fund or an agreement with the previous Fund is construed as a reference to or an agreement with the Fund.
- (3) To the extent that a provision of the Assessment of Damages Act, 1969 (Act [No. 9 of 1969](#)) or the Apportionment of Damages Act, 1956 (Act [No. 34 of 1956](#)) is in conflict with a provision of this Act, this Act prevails.

37. Repeal of laws

The Motor Vehicle Accidents Fund Act, 2001 (Act [No. 4 of 2001](#)) is repealed.

38. Short title and commencement

This Act is called the Motor Vehicle Accident Fund Act, 2007, and it commences on a date determined by the Minister by notice in the Gazette.