

Namibia

Executive Powers Transfer Proclamation, 1977

Proclamation AG3 of 1977

Legislation as at 17 June 1985

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Executive Powers Transfer Proclamation, 1977

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[Amended by Executive Powers Transfer (General Provisions) Proclamation, 1977 (Proclamation AG7 of 1977) on 15 November 1977
[Amended by Executive Powers Transfer Amendment Proclamation, 1978 (Proclamation AG10 of 1978) on 2 March 1978
[Amended by Native Laws Amendment Proclamation, 1979 (Proclamation AG3 of 1979) on 1 August 1978
[Amended by South West Africa Legislative and Executive Authority Establishment Proclamation, 1985 (Proclamation R101 of 1985) on 17 June 1985

PROCLAMATION

of the ADMINISTRATOR-GENERAL FOR THE TERRITORY OF SOUTH WEST AFRICA

TRANSFER OF THE ADMINISTRATION OF CERTAIN GOVERNMENT DEPARTMENTS TO THE ADMINISTRATOR-GENERAL

Under the powers vested in me by Proclamation 181 of 19 August 1977, I hereby make the laws set out in the Schedule.

M. T. STEYN

Administrator-General

Windhoek, 26 September 1977

Schedule

1. Definitions

In this Proclamation, unless the context indicates otherwise -

“**commencement**”, in relation to this Proclamation, means its coming into operation on the date on which it is published in the Official Gazette of the territory;

“**department**” means the Department of Plural Relations and Development, the Department of Education and Training, the Department of Coloured, Rehoboth and Nama Relations, or the Department of Water Affairs, as the context may require;

[The definition of “department” is amended by AG 3 of 1979 to substitute expressions containing the word “Bantu”. The References to Plural Relations and Development Act 10 of 1979 (OG 4023), which came into force on 1 July 1979 (section 2 of Act 10 of 1979), provides that a reference in any law to the Department of Plural Relations and Development shall be construed as a reference to the Department of Co-operation and Development, without technically amending any laws.]

“**law**” means an Act of the Parliament of the Republic (including the Exchequer and Audit Act, (Act 66 of 1975)), an ordinance of the Legislative Assembly of the territory, any proclamation issued under such an Act or ordinance, and any regulation, rule or other enactment issued under such an Act, ordinance or proclamation, in so far as it relates to or applies in that territory or is connected with its administration or the administration in it of any matter referred to in section 2;

[definition of “law” amended by AG 7 of 1977; commas not explicitly added by the amendment have been inserted as required by the context]

“**officer**” means an officer as defined in the Public Service Act, 1957 (Act 54 of 1957);

“**Republic**” means the Republic of South Africa;

“**secretary**”, in relation to a department, means the head of that department in terms of the Public Service Act, 1957;

“**territory**” means the territory of South West Africa.

2. **Transfer of administration of certain departments**

Notwithstanding anything to the contrary contained in any other law but subject to the provisions of this Proclamation, the administration of the affairs of the territory relating to any matter which at the commencement of this Proclamation is administered by -

- (a) the Minister of Plural Relations and Development;
- (b) the Minister of Education and Training;
- (c) the Minister of Coloured, Rehoboth and Nama Relations; or
- (d) the Minister of Water Affairs,

of the Republic, shall be carried on by the Administrator-General.

[Section 2 is amended by AG 3 of 1979 to substitute expressions containing the word “Bantu”. The References to Plural Relations and Development Act 10 of 1979 (OG 4023), which came into force on 1 July 1979 (section 2 of Act 10 of 1979), provides that a reference in any law to the Minister of Plural Relations and Development shall be construed as a reference to the Minister of Co-operation and Development, without technically amending any laws.]

3. Application of Laws

[The word “Laws” in the heading should not be capitalised.]

- (1) Subject to the provisions of subsection (2), any reference in any law relating to a matter referred to in section 2 -
 - (a) to a Minister mentioned in that section or to the Minister of Finance or State President or Parliament (including the Senate or the House of Assembly) or Government of the Republic, shall be construed as a reference to the Administrator-General;
 - (b) to the Government Gazette of the Republic, shall be construed as a reference to the Official Gazette of the territory;
 - (c) to the Commissioner-General or his office, shall as from 1 November 1977 be deemed to be deleted.

- (2) The provisions of subsection (1) shall not apply with reference to -
 - (a) section 4 of the South West Africa Native Affairs Administration Act, 1954 (Act [56 of 1954](#));
 - (b) the promotion of the Economic Development of Bantu Homelands Act, 1968 (Act [46 of 1968](#));

[AG 3 of 1979 provides that “there is hereby substituted for the word ‘Bantu’ wherever it occurs in any law as a reference to a person or persons, the word ‘Black’ or ‘Blacks’, as the context in question may require”. It is not clear if this directive would apply to the name of a law, and so the name “Promotion of the Economic Development of Bantu Homelands Act” has not been changed here. In any event, this provision is of no relevance in independent Namibia.]

- (c) the Rehoboth Investment and Development Corporation Act, 1969 (Act [84 of 1969](#));
- (d) section 41 of the Exchequer and Audit Act, 1975 (Act [66 of 1975](#));
- (e) sections 12 and 50(1) of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act [41 of 1971](#));
- (f) the reference to the State President in those provisions of any law providing for or relating to his consent to any enactment or law made by the legislative authority of a self-governing area or an area for which a legislative council has been established;
- (g) those provisions of any law providing for or relating to the appointment, promotion, transfer, secondment, remuneration, allowances, discipline, discharge or suspension, the retirement, leave and pension rights and privileges or any other conditions of service of any person who is, or is engaged, in the service of the State or the Government of the Republic or any of its departments in terms of the Public Service Act, 1957 (Act [54 of 1957](#)), or any other law;
- (h) those provisions of any law providing for or relating to the institution, constitution or control of any juristic person, board or other body that may exercise or perform powers or functions in terms of such law in or in respect of both the territory and the Republic;
- (i) such provisions of any law as the Administrator-General may determine, to such extent or with reference to such matter and with effect from such date (which may be a date earlier than the date of the determination) as he may determine, and made known by notice in the Official Gazette of the territory.

[paragraph (i) “deemed to have been amended” by RSA Proc. 101 of 1985; incorporated as an amendment here]

- (3) The provisions of paragraph (g) of subsection (2) shall not prohibit the appointment by or under authority of the Administrator-General, to an office provided for in any law as applied by subsection

- (1), of any person referred to in that paragraph designated for that purpose by or under authority of the person who but for the provisions of subsection (2) could have made such appointment.
- (4) Anything done under a law referred to in subsection (1) before the commencement of this Proclamation shall be deemed to have been done under that law as applied by that subsection.
- (5) Any proclamation, regulation or rule which is issued or made after the commencement of this Proclamation by the State President, or by or under authority of a Minister mentioned in section 2, in terms of a law applying both in the territory and in the Republic, and which is published in the Government Gazette of the Republic, shall, notwithstanding the provisions of subsection (1) of this section, apply in the territory if such proclamation, regulation or rule or the notice by which it is so published, contains a statement that such proclamation, regulation or rule has been issued or made with the consent of the Administrator-General and applies also in the territory: Provided that for the purposes of the application of such proclamation, regulation or rule in the territory, the provisions of the said subsection (1) shall apply.

4. Delegation of powers

- (1) The Administrator-General may delegate any power other than a power to issue a proclamation or to make regulations or rules, which is conferred on him by any law as applied by section 3(1), and which but for the provisions of this subsection he would not be empowered to delegate, to the secretary of the department by which such law is administered or to an officer of the department concerned who is stationed in the territory.

[subsection (1) substituted by AG 10 of 1978, with the substitution deemed to have come into force on 15 November 1977]

- (2) (a) The secretary referred to in subsection (1) may delegate any power delegated to him under that subsection or, delegated to or conferred upon him under or by any other law, notwithstanding anything to the contrary contained in that other law, to an officer referred to in subsection (1).
- (b) The provisions of paragraph (a) shall not prohibit any delegation authorized by such other law.

[subsection (2) amended by AG 7 of 1977, including the insertion of paragraph (b); paragraph (a) substituted by AG 10 of 1978]

- (3) The said secretary shall not be deprived of a power delegated by him to an officer and may alter or withdraw a decision given by that officer in the exercise of that power.
- (4) The Administrator-General shall not be deprived of a power delegated by him, and may alter or withdraw any decision given in the exercise of that power, including a decision given by a secretary under subsection (3).
- (5) When a power has been delegated to the holder of a post, that power may be exercised by the person who for the time being performs the functions attached to such post.

5. Functions of Auditor-General

The Auditor-General of the Republic, referred to in section 41 of the Exchequer and Audit Act, 1975 (Act [66 of 1975](#)), shall investigate, examine and audit, in accordance with the provisions of the said Act as applied by this Proclamation or any other proclamation of the Administrator-General, all the accounts of all accounting officers in respect of a matter which in terms of this Proclamation or any other proclamation of the Administrator-General is administered by the Administrator-General, and all such accounts of all other persons entrusted with the receipt, custody, payment or issue of State moneys, stamps, securities, equipment and stores.

6. Short title

This Proclamation shall be called the Executive Powers Transfer Proclamation, 1977.