



GOVERNMENT GAZETTE OF THE REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 196

2014

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 7 of 2014: Namibia Students Financial Assistance Fund Amendment Act, 2014.

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EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing provisions.

Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the Namibia Students Financial Assistance Fund Act, 2000, so as to amend certain definitions and insert new definitions; to provide for objects of Act; to make further provisions relating to the approval of institutions of higher education; to reconstitute the Namibia Students Financial Assistance Fund Board; to make new provisions relating to the term of office of the chairperson of the Board; to make provision for the appointment of new Board members; to make further provisions relating to the powers, duties and functions of the Board; to make further provisions relating to the establishment of the secretariat of the Fund; to provide for appointment of chief executive officer of the Fund; to amend the provisions relating to bank accounts, financial statements, bookkeeping and auditing of the Fund; to make provision relating to the recovery of loans; to make further provisions relating to the making of regulations by the Minister; to repeal the provisions relating to alternate members of the Board; and to provide for incidental matters.

(Signed by the President on 19 September 2014)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 26 of 2000

1. Section 1 of the Namibia Students Financial Assistance Fund Act 2000 (hereinafter referred to as the principal Act) is amended by -

- (a) the insertion after the definition of "Board" of the following definitions:

"borrower" means a student to whom a loan has been granted in terms of this Act;

"chief executive officer" means the chief executive officer of the Fund appointed in terms of section 12;"

- (b) the substitution for the definition of "financial assistance" for the following definition:

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

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- (c) the insertion after the definition of "Fund" of the following definition:

"grantee" means a student to whom a grant has been granted in terms of this Act;";

- (d) the substitution for the definition of "higher education" for the following definition:

"higher education" means all learning programmes leading to qualifications higher than grade 12 or its equivalent, and includes tertiary education as contemplated in Article 20(4) of the Namibian Constitution and vocational education and training as defined in section 1 of the Vocational Education and Training Act, 2008 (Act No. 1 of 2008);" and

- (e) the substitution for the definition of "local institution of higher education" for the following definition:

"local institution of higher education" means an institution that provides higher education and which is -

- (a) contemplated in the Vocational Education and Training Act, 2008 (Act No. 1 of 2008);
- (b) established by or under law; or
- (c) registered as a private higher education institution under the Higher Education Act, 2003 (Act No. 26 of 2003);"

- (f) the substitution for the definition of "student" of the following definition:

"student" means a person who -

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

Insertion of section 1A in Act No. 26 of 2000

2. The principal Act is amended by the insertion of the following section before section 2:

" Objects of Act

1A. The objects of this Act are -

- (a) to establish the Namibia Students Financial Assistance Fund to provide financial assistance to eligible students at approved institutions of higher education;
- (b) to establish the Namibia Students Financial Assistance Fund Board to manage and control the Fund;

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- (c) to establish the Namibia Students Financial Assistance Fund secretariat to administer the Fund.”.

Substitution of section 2 of Act No. 26 of 2000

3. The following section is substituted for section 2 of the principal Act:

“Approval of institutions of higher education

2. (1) The Minister may from time to time, on the recommendation of the Namibia Qualifications Authority, approve one or more -

- (a) local institutions of higher education; and
- (b) foreign institutions of higher education,

in respect of which students can, for the purposes of this Act, qualify for financial assistance.

(2) An institution of higher education that has not been approved as contemplated in subsection (1), may apply to the Minister to be approved as contemplated in that subsection.

(3) An application referred to in subsection (2) shall -

- (a) be in the form determined by the Board;
- (b) be submitted to the Minister before the end of June of each year;
- (c) be accompanied by documents and information as may be prescribed; and
- (d) be accompanied by the receipt of payment of the prescribed fee.

(4) The Minister shall give notice in the *Gazette* of local institutions of higher education approved in terms of subsection (1) and subsection (2) and foreign institutions of higher education approved in terms of subsection (1)(b).”.

Amendment of section 3 of Act No. 26 of 2000

4. Section 3 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The Fund [shall be] is a juristic person [.] with the objects, functions and powers provided for in this Act.”.

Amendment of section 6 of Act No. 26 of 2000

5. Section 6 of the principal Act is amended by -

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- (a) the substitution for subsection (1) of the following subsection:

“(1) The Board consist of -

- (a) the chief executive officer as an *ex officio* member, but the chief executive officer may not vote at any meeting of the Board;
- (b) the following members appointed by the Minister in accordance with this section:
 - (i) a legal practitioner as defined in the Legal Practitioners Act, 1995 (Act No. 15 of 1995), from amongst persons nominated by the Law Society of Namibia established under that Act;
 - (ii) a staff member from the Ministry responsible for the administration of matters relating to education and nominated by the Minister responsible for education;
 - (iii) a staff member from the Ministry responsible for the administration of matters relating to finance and nominated by the Minister responsible finance;
 - (vi) four persons who in the opinion of the Minister have high moral standing and special knowledge, skill or expertise in matters relating to the functions of the Board.”;

- (b) the insertion after subsection (1) of the following subsections:

“(1A) A person may not be appointment as a member of the Board under subsection (1) or as an additional member of the Board under subsection (2) if that person is not a Namibian citizen.

(1B) For the purposes of appointment of persons as members of the Board under subsection (1), the Minister shall in writing invite the ministers and organisations contemplated in that subsection to nominate persons for appointment as members of the Board within the period stated in the invitation.

(1C) If a nomination contemplated in subsection (1B) is not received by the Minister within the period specified in the invitation, the Minister shall appoint suitable persons as members of the Board.

(1D) The Minister shall give notice in the *Gazette*, of the names, date of appointment and period of appointment of persons appointed as members of the Board in terms of subsection (1).”;

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- (c) the substitution for subsection (2) of the following subsection:

“(2) The Minister may if he or she considers it expedient, for a particular purpose and on such terms and conditions and for such period as he or she may determine, but subject to subsection (5), appoint one other person the Minister considers to be a fit and proper person as an additional member of the Board.”.

- (d) the repeal of subsection (3).

Amendment of section 7 of Act No. 26 of 2000

6. Section 7 of the principal Act is amended by -

- (a) the substitution for subsection (1) of the following subsection:

“(1) Subject to subsection (2) -

- (a) the chairperson of the Board may not hold office for more than two consecutive terms of three years; and
(b) a member of the Board hold office for a period of three years and is on the expiry of his or her term of office eligible for re-appointment.”;

- (b) the insertion after subsection (1) of the following subsection:

“(1A) Persons who at the commencement of this Act held office as members of the Board may continue to hold office for a period of six months from the date of commencement of this Act.”; and

- (c) the substitution for paragraph (f) of subsection (2) of the following paragraph:

“(f) [in the case of such member,] if he or she is absent from three consecutive meetings of the Board without leave of the Board [or, in the case of such alternative member, if he or she is so absent during the absence or vacancy in the office of the member of the Board to whom he or she has been appointed as alternate member].”;

- (d) the substitution for the definition of “voting member” for the following definition:

“voting member” means a member of the Board [other than an additional member of the Board] except the chief executive officer.”.

Amendment of section 9 of Act No. 26 of 2000

7. Section 9 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

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- (a) an additional member is appointed under section 6(2), four voting members shall constitute a quorum for a meeting of the Board; and
- (b) an additional member is not appointed under section 6(2), three voting member shall constitute a quorum for a meeting of the Board."

Substitution of section 10 of Act No. 26 of 2000

8. The following section is substituted for section 10 of the principal Act:

"Powers, duties and functions of Board

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

- (a) may initiate formulation of policy and provide a regulatory framework for the administration of the Fund and the granting of financial assistance;
- (b) may enter into agreements in the name of the Fund with students on the terms and conditions under which financial assistance is provided in each case;
- (c) may take such measures, including the engagement of governmental or non-governmental institutions, as are appropriate to properly administer and control the affairs of the Fund;
- (d) may borrow money on such terms and conditions as may be approved by the Minister with the concurrence of the minister responsible for finance;
- (e) may accept grants, donations and bequests and may recover any moneys due to the Fund;
- (f) must have investment policies and may invest any moneys standing to the credit of the Fund not immediately required for use, but such investments shall be made by placements in financial institutions of good standing and which are approved as financial institutions in terms of the legislation governing financial institutions in Namibia;
- (g) shall pay all expenses incurred for or in connection with the establishment and administration of the Fund;
- (h) may investigate or deal with or cause to be investigated or to be dealt with any matter related to the object of the Fund;

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- (i) shall determine the manner and forms and the periods to be observed with regard to applications for financial assistance and the consideration and processing of applications for financial assistance;
- (j) shall ensure the allocation of financial assistance in a fair and transparent manner, to all eligible students;
- shall* (k) may raise funds as contemplated in this Act;
- (l) shall expand the number of students receiving financial assistance;
- (m) shall ensure the sustainability of the Fund;
- (n) shall develop an advocacy and marketing strategy;
- (o) shall ensure the development of an appropriate criteria and conducive environment or conditions for the granting of financial assistance in consultation with key stakeholders and the Minister and in support of the State's decentralisation process;
- (p) shall ensure the effective recovery of loans, which includes instituting legal action in the name of the Fund for the purposes of recovery of loans;
- (q) shall ensure maintenance and analysis of a database, which will promote loan recovery;
- (r) shall carry out research for the better use of financial resources;
- (s) may advise the Minister on matters relating to student financial assistance; and
- (t) shall constantly liaise with the National Planning Commission, the Namibia Statistics Agency and the Ministry of Education in order to update information pertaining to the demand for projections of areas of study, priority fields and data on the number of students.

Amendment of section 12 of Act No. 26 of 2000

9. Section 12 of the Principal Act is amended -

- (a) in the heading by the substitution for the word "Board" of the word "Fund";;
- (b) by substitution for subsection (1) of the following subsection:

"(1) There shall be a secretariat of the Fund, consisting of administrative personnel to execute the day to day administration and incidental work of the Fund as the Board may determine.";

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- (c) the insertion after subsection (1) of the following subsections:

“(2) The secretariat referred to in subsection (1) shall be headed by the chief executive officer appointed by the Board with the concurrence of the Minister.

(3) The chief executive officer may, with the concurrence of the Board, appoint such employees as are necessary, to enable the Fund to properly carry out its functions, in accordance with the structure approved by the Board.”; and

- (d) the substitution for subsection (2) of the following subsection:

“(4) A person employed by the [Board] Fund under subsection (1) shall be paid from the Fund such remuneration and allowances as the Board [in consultation with] with the concurrence of the Minister may, [from time to time] subject to the State-Owned Enterprises Governance Council’s remuneration directives issued under the State Owned Enterprise Act, 2006 (Act No. 2 of 2006), determine.”.

Amendment of section 13 of Act No. 26 of 2000

10. Section 13 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The Board shall open and maintain [a] bank accounts in the name of the Fund [with a banking institution] at one or more banking institutions authorised or deemed to have been registered, to conduct business as banking institutions in Namibia, in terms of the Banking Institutions Act, 1998 (Act No. 2 of 1998) -

- (a) into which shall be deposited all moneys accruing to or obtained for the benefit of the Fund; and
- (b) from which shall be defrayed all expenditure in connection with the administration of the Fund [(1), including expenditure in connection with the performance of the functions of the Board (1)], and be paid any amounts with which the Fund is charged in terms of this Act.”.

Amendment of section 15 of Act No. 26 of 2000

11. Section 15 of the principal Act is amended by:

- (a) the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2) and (3), the Board shall as soon as possible, but not later than six months after the end of each financial year, prepare, or cause to be prepared, and submit to the Minister -

- (a) annual financial statements in respect of the financial year in question, together with a report by [the Auditor-

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General] an accountant and auditor contemplated in subsection (3) relating to such statements; and

- (b) a report on its activities during that financial year.”;
- (b) the substitution for subsection (2) of the following in subsection:

“(2) The annual financial statements referred to in subsection (1)(a) shall be in such form as the **[Board may]** Minister may determine after consultations **[with the Auditor-General]**, and shall contain;

- (a) detailed particulars of moneys received by the Fund and expenditure incurred by the Fund during the financial year in question; and
- (b) such additional particulars as an accountant or auditor contemplated in subsection (3) [the Auditor-General] may reasonably require.”.
- (c) the substitution for subsection (3) of the following in subsection:

“(3) The accounts and records and the annual financial statements referred to in section 14(2) and subsection (1)(a), respectively, shall be examined and audited by **[the Auditor-General]** a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act No. 51 of 1951) and appointed by the Board.”.

Substitution of section 17 of Act No. 26 of 2000

12. The following section is substituted for section 17 of the principal Act:

“Application for financial assistance

17. Any student may, subject to this Act, apply to the Board for financial assistance in the manner and on an application form determined by the Board.”.

Insertion of sections 18A, 18B, 18C and 18D in Act No. 26 of 2000

13. The principal Act is amended by the insertion after section 18 of the following sections:

“Fields of study and courses to be given priority for the purpose of financial assistance

18A. The Minister, after consulting the Board, shall each year before the end of January publish a list of the fields of study and courses which, for the purposes of financial assistance in terms of this Act, are to be given priority.

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18B. The Board may enter into third party agreements or memorandum of understandings with ministries, public institutions and state owned enterprises for the purposes of recovery of loans granted in terms of this Act.

Collaboration between the Fund and the Namibia Inland Revenue Office

18C. (1) The Board may inform the Namibia Inland Revenue Office annually, by a written notice sent by a registered mail, of the list of borrowers and grantees liable for reimbursement under this Act.

(2) The Namibia Inland Revenue Office shall at the request of the Board provide the Board with the name and address of the employer of the borrower or grantee if such information is known to the Office.

Repayment of loans

18D. (1) A loan shall be repaid as provided in the loan agreement between the Fund and a student.

(2) A borrower may repay a loan wholly or in part before the due date.

(3) If a borrower fails to make repayments as provided for in this Act, his or her name may be placed by the Board on a list of defaulting debtors published by any person or body whose business it is to compile and publish such lists.

(4) The name of a borrower may not be placed on a list contemplated in subsection (3) by the Board unless he or she -

(a) has been notified by the Board by registered post addressed to his or her chosen *domicilium citandi et executandi* of failure to make repayments and of the intention of Board to act in terms of subsection (3);

(b) has been afforded a reasonable opportunity to pay the arrear amount and has failed to do so.

(5) Nothing in this subsection prevents the Board from instituting legal action in a court with jurisdiction within Namibia, against a student to recover the amount due to the Fund in terms of a loan."

Loan write off

18E. The Board may, subject to directives issued by the Minister with the concurrence of the minister of finance, write off a loan granted to a student."

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Substitution of section 20 of Act No. 26 of 2000

14. The following section is substituted for section 20 of the principal Act:

“Regulations

20. (1) The Minister may make regulations not inconsistent with this Act with regard to any matter which the Minister may consider necessary or expedient to prescribe in order to achieve or promote the object of this Act or to effectively administer this Act, including -

- (a) the formulation of policy and the identification of national priorities and forecasts of labour power needs to be considered in connection with the granting of financial assistance, after consultation with the minister of finance;
- (b) the criteria for qualifying for financial assistance, after consultation with the minister of finance;
- (c) guidelines with regard to procedural aspects of or for the recovery of any moneys due from students or otherwise to the Fund;
- (d) the obligations of employers of students who have received financial assistance relating to deductions to be made from the salaries of former students who are employed; and
- (e) repayment of financial assistance granted to a student, after consultation with the minister of finance.

(2) A regulation made in terms of subsection (1) may prescribe penalties, for an contravention of a regulation or failure to comply with a regulation, not exceeding N\$4000 or to imprisonment for a period not exceeding one year or to both such fine and such imprisonment.”.

Repeal of words in Act No. 26 of 2000

15. The principal Act is amended by the repeal of the words “alternate member”, “an alternate member” or “alternate member of the Board” wherever they appear in the Act.

Short title and commencement

16. This Act is called the Namibia Students Financial Assistance Fund Amendment Act, 2014, and comes into operation on a date determined by the Minister by notice in the *Gazette*.
