



Republic of Namibia
Annotated Statutes

Racial Discrimination Prohibition Act 26 of 1991

(GG 328)

came into force on date of publication: 23 December 1991

as amended by

Liquor Act 6 of 1998 (GG 1843)

brought into force on 22 December 2001 by GN 250/2001 (GG 2670)

Racial Discrimination Prohibition Amendment Act 26 of 1998 (GG 1959)

came into force on date of publication: 21 September 1998

Affirmative Action (Employment) Act 29 of 1998 (GG 1962)

brought into force in relevant part on 18 November 1998 by GN 278/1998 (GG 1996)

ACT

To render criminally punishable, in pursuance of the provisions of Article 23 of the Namibian Constitution, certain acts and practices of racial discrimination and apartheid in relation to public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services, and involving the incitement of racial disharmony and victimisation; to amend the Liquor Ordinance, 1969 and the Admission of Persons to Namibia Regulation Act, 1972; and to provide for matters incidental thereto.

(Signed by the President on 12 December 1991)

ARRANGEMENT OF SECTIONS

1. Definitions
2. Access to and use of public amenities and facilities
3. Provision of goods and services
4. Immovable property
5. Educational institutions
6. Medical institutions
7. Employment
8. Associations
9. Religious services
10. Advertisements

Racial Discrimination Prohibition Act 26 of 1991

11. Inciting racial disharmony
12. Victimisation
13. Exemptions
14. Offences and penalties
15. Competent orders in relation to licences, registration certificates and other authorizations
16. Compensation for damages
17. Vicarious responsibility
18. Trial only at instance of Prosecutor-General
19. Act binding on employees of State
20. **[deleted]**
21. Amendment of Act 59 of 1972
22. Repeal of Act 3 of 1979, Act 10 of 1980 and Act 21 of 1981
23. Short title

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

Definitions

1. In this Act -

“racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origin.

Access to and use of public amenities and facilities

2. (1) No person shall -
 - (a) deny any other person access to or the use of any public amenity or any facility in a public amenity;
 - (b) permit any other person such access or use on less favourable terms or conditions than those upon which he or she would otherwise permit such access or use; or
 - (c) require any other person to leave or cease to use any such amenity or facility,

because such other person is a member of a particular racial group.

(2) No person shall in respect of any public amenity apply any practice or policy whereby any facility or service available at such public amenity is provided to members of the public on a segregated basis according to colour, race, nationality or ethnic or national origin.

- (3) For the purposes of subsections (1) and (2), “public amenity” means -
 - (a) any public accommodation establishment, including any hotel, guest-house, pension, rest camp, guest farm, holiday farm, caravan park or any other premises in or upon which accommodation is normally available for and provided to members of the public;
 - (b) any public recreation area, including any game park, nature reserve, tourist recreation area, holiday resort or any other similar area to which members of the public normally have access or may obtain admission either free of charge or against payment of a fee;

Racial Discrimination Prohibition Act 26 of 1991

- (c) any public restaurant, including any refreshment room, tea room or other premises in or upon which food or drink (whether alcoholic or not) for consumption on the premises is normally provided to members of the public;
- (d) any public conveyance which members of the public are normally entitled or allowed to use for travelling, whether by air, rail, road or sea;
- (e) any theatre or other premises where a dramatic performance, play, concert or film is presented or shown to members of the public;
- (f) any premises where an exhibition, sports meeting or any function is held or any event takes place which members of the public have been invited or are normally allowed to attend.

Provision of goods and services

3. No person engaged in any business, trade or profession for the provision of goods or services to the public, or any person employed by a person so engaged, shall -

- (a) refuse or fail on demand to provide such goods or services to any other person; or
- (b) provide any other person with such goods or services on less favourable terms or conditions than those upon which he or she would otherwise provide such goods or services,

because such other person is a member of a particular racial group.

Immovable property

4. No person who, whether as principal or agent -

- (a) intends to sell or otherwise dispose of any immovable property or any right therein, shall -
 - (i) refuse or fail to sell or so dispose of such property or right to any other person; or
 - (ii) sell or so dispose of, or offer to sell or so dispose of, such property or right to any other person on less favourable terms and conditions than have been or are or would be offered to other persons,

because such other person is a member of a particular racial group;

- (b) intends to let or in any other manner grant any right to occupy any immovable property or any part thereof, shall -
 - (i) refuse or fail to let or grant such right to any other person; or
 - (ii) let or grant such right, or offer to let or grant such right, to any other person on less favourable terms and conditions than have been or are or would be offered to other persons,

because such other person is a member of a particular racial group;

Racial Discrimination Prohibition Act 26 of 1991

- (c) has entered into an agreement with any other person for the sale or disposal otherwise of immovable property or any right therein, or for the lease or grant of any other right of occupation of such property or any part thereof, shall terminate such agreement because such other person is a member of a particular racial group.

Educational institutions

5. (1) No person responsible for the management of, or employed at, an educational institution, shall -

- (a) deny any other person admission to such educational institution as a pupil or student;
- (b) permit any other person such admission on less favourable terms or conditions than those upon which he or she would otherwise permit such admission; or
- (c) where any other person has been admitted to an educational institution, deny or restrict the use by such other person of any facility or service available at or provided by such institution, or in any other manner treat such other person less favourably than he or she would otherwise treat any other pupils or students of that educational institution, on the ground of that other person's race, colour or creed.

(2) For the purposes of subsection (1) "educational institution" means any school or institution at which education is provided and includes any university, technikon or college or any other establishment where vocational or technical training or instruction is provided.

Medical institutions

6. (1) No person responsible for the management of, or employed at, a medical institution shall -

- (a) deny any other person admission to such medical institution as a patient for the purpose of receiving treatment or for visiting any patient of the institution;
- (b) permit any other person such admission on less favourable terms or conditions than those upon which he or she would otherwise permit such admission; or
- (c) where any other person has been so admitted, deny or restrict the use by such other person of any facility or service available at or provided by such institution or in any other manner treat such other person less favourably than he or she would otherwise treat other patients of the institution or other visitors calling at such institution,

because such person is a member of a particular racial group.

(2) For the purposes of subsection (1) "medical institution" means any hospital, nursing home, clinic and any other place where patients receive treatment and includes a maternity home.

Employment

7. (1) No employer, or any person acting on behalf of an employer, shall, when seeking to employ a person on work of any description -

Racial Discrimination Prohibition Act 26 of 1991

- (a) refuse or fail to appoint a person who has applied for such work and has the required skills or qualifications;
- (b) appoint or offer to appoint a person with the required skills or qualifications on terms and conditions, including conditions in relation to access to benefits, facilities or services, which differ from those which apply to other employees of the employer with the same or substantially similar skills or qualifications and who perform the same or substantially similar duties,

on the ground of that person's race, colour or ethnic origin.

(2) No employer or any person acting on behalf of an employer, shall dismiss any employee or subject him or her to any other detriment in circumstances in which other employees of that employer performing similar work are not or would not be dismissed or are not or would not be subjected to such detriment, on the ground of that employee's race, colour or ethnic origin.

(3) The provisions of subsection (1) does not prohibit employment policies and practices consistent with the provisions of the Affirmative Action (Employment) Act, 1998.

[Subsection (3) is added by Act 29 of 1998.
The verb "does" should be "do" to be grammatically correct.]

Associations

8. No association of persons shall, whether by any provision in its constitution, or in accordance with any policy or practice -

- (a) deny any person admission to membership of that association;
- (b) permit any person such membership on less favourable terms or conditions than those upon which such association would otherwise permit such admission; or
- (c) where any person has been admitted to membership of that association, deny or restrict the use by such person of any facility or service provided by the association or in any other manner treat such person less favourably than such association would otherwise treat any other member of that association,

because such other person is a member of a particular racial group.

Religious services

9. No person shall deny any other person access to any organised religious service conducted by a religious institution because such other person is a member of a particular racial group and not a member of that institution.

Advertisements

10. No person shall publish or display, or cause or permit to be published or displayed, any advertisement or notice that indicates an intention to perform any act prohibited in terms of sections 2 to 9, both inclusive.

Inciting racial disharmony

Racial Discrimination Prohibition Act 26 of 1991

11. (1) No person shall publicly use any language or publish or distribute any written matter or display any article or do any act or thing with intent to -

- (a) threaten or insult any person or group of persons on the ground that such person belongs or such persons belong to a particular racial group; or
- (b) cause, encourage or incite hatred between different racial groups or persons belonging to different racial groups; or
- (c) disseminate ideas based on racial superiority.

(2) For the purposes of subsection (1) “article” shall include any flag, insignia or emblem.

(3) No person shall establish, support or be a member of or participate in the activities of an organization or movement of which the aim is disseminate any ideas based on racial superiority aimed at members of any particular racial group or engage in activities aimed at causing, bringing about, promoting or contributing to any such disseminating of such ideas or engaging in such activities.

[section 11 substituted by Act 26 of 1998, after *S v Smith NO & Others* 1996 NR 367 (HC) declared the original version of section 11(1) unconstitutional]

Victimisation

12. No person shall perform or cause to be performed any act to the detriment of any other person, or treat such other person less favourably than in those circumstances he or she treats or would treat other persons, on account of the fact, or because he or she suspects or believes, whether or not the suspicion or belief is justified or correct, that that other person -

- (a) has laid, or intends to lay, a criminal charge against the first-mentioned person or any other person pursuant to any provision of this Act; or
- (b) has furnished, or intends to furnish any information or document relating to the institution of criminal proceedings against the first-mentioned person or any other person in terms of this Act or has given, or intends to give, evidence before a court in connection with such proceedings.

Exemptions

13. Nothing in this Act contained shall be construed as prohibiting the preferential treatment of any person pursuant to a policy or program contemplated in Article 23(2) of the Namibian Constitution which is aimed at the advancement of persons who have been socially, economically or educationally disadvantaged by discriminatory laws or practices which have been enacted or practised before the independence of Namibia.

Offences and penalties

14. (1) Any person who contravenes any provision of sections 2 to 12, both inclusive, shall, subject to subsection (2), be guilty of an offence and on conviction be liable -

- (a) in the case of an offence in terms of any of those sections, except section 11, to a fine not exceeding N\$80 000 or to imprisonment for a period not exceeding 10 years or to both such fine and such imprisonment; and

Racial Discrimination Prohibition Act 26 of 1991

- (b) in the case of an offence in terms of section 11, to a fine not exceeding N\$100 000 or to imprisonment for a period not exceeding 15 years or to both such fine and such imprisonment.
- (2) No person shall be convicted of an offence under subsection (1) of section 11 -
- (a) if the act complained of was, at the time of the commission thereof, relevant to any subject of public interest, the discussion of which was for public benefit, and if on reasonable grounds such person believed the statement or statements concerned to be true; or
- (b) if such person, in good faith and with the intention of removing matters tending -
- (i) to threaten or to insult any racial group or any person belonging to such racial group; or
- (ii) to cause, encourage or incite hatred between different racial groups or between persons belonging to different racial groups,
- pointed out such matters; or
- (c) if it is established that the language, publication or distribution complained of communicated the truth and that the main purpose thereof was to so communicate the truth and not to cause any of the acts referred to in that subsection.

[section 14 substituted by Act 26 of 1998; the defences added in subsection (2) are based on the ruling of *S v Smith NO & Others* 1996 NR 367 (HC) which declared the original version of section 11(1) unconstitutional in the absence of such defences]

Competent orders in relation to licences, registration certificates and other authorizations

15. (1) Where any person who is convicted of an offence in terms of this Act is the holder of a licence, registration certificate or other authorization for or in respect of the public amenity, business, trade or profession, or educational institution or medical institution in connection with which the offence was committed, the court convicting such person may, notwithstanding the provisions of any other law, in addition to any penalty which it imposes under this Act -

- (a) declare such licence, registration certificate or authorization cancelled;
- (b) suspend such licence, registration certificate or other authorization for such period as the court deems just; or
- (c) make such other order in relation to such licence, registration certificate or other authorization, including the imposition of conditions, as may seem to the court appropriate in the circumstances.

(2) Whenever any licence, registration certificate or other authorization is cancelled or suspended, or any other order is made in relation thereto, in terms of subsection (1), the clerk of the court concerned shall inform the authority which issued such licence, registration certificate or other authorization in writing of such cancellation, suspension or order, as the case may be.

(3) Where a person who is convicted of an offence in terms of this Act is not or is believed not to be a Namibian citizen, the court convicting such person shall cause a written

Racial Discrimination Prohibition Act 26 of 1991

notification to be furnished to the Minister of Home Affairs with particulars of the person so convicted and the offence for which he or she was convicted.

Compensation for damages

16. (1) Whenever the court convicts any person of an offence under this Act, the court may, upon the application of the complainant, if he or she has suffered damage as a result of an act in respect of which that person was so convicted, award the complainant compensation for such damage.

(2) The provisions of paragraph (a) of subsection (1) and subsections (2), (3), (4) and (5) of section 300 of the Criminal Procedure Act, 1977 (Act 51 of 1977), shall *mutatis mutandis* apply to any application and award contemplated in subsection (1).

Vicarious responsibility

17. If any person who does or omits to do any act which constitutes an offence in terms of this Act, acted in a capacity of agent or employee, the employer or principal of the agent or employee shall be deemed himself or herself to have done or omitted to do such act if it is proven that -

- (a) he or she connived at or permitted the act or omission by the agent or employee;
- (b) (i) he or she failed to take all reasonable steps to prevent the act or omission by the agent or employee; and
 - (ii) the act or omission by the agent or employee fell within the scope of authority of employment of the agent or employee.

[section 17 substituted by Act 26 of 1998]

Trial only at instance of Prosecutor-General

18. No trial for an offence under this Act shall be instituted without the written authority given personally by the Prosecutor-General in each case.

Act binding on employees of State

19. This Act shall bind all persons in the employment of the State.

20.

[section 20 deleted by Act 6 of 1998]

Amendment of Act 59 of 1972

21. The Admission of Persons to Namibia Regulation Act, 1972 is hereby amended by the addition in Schedule 1A of the following:

“Contravention of any provision of the Racial Discrimination Prohibition Act, 1991 which constitutes an offence under that Act.”.

Repeal of Act 3 of 1979, Act 10 of 1980 and Act 21 of 1981

Racial Discrimination Prohibition Act 26 of 1991

22. (1) Subject to the provisions of subsection (2), the Abolition of Racial Discrimination (Urban Land and Public Amenities) Act, 1979, the Abolishment of Racial Discrimination (Urban Areas and Public Amenities) Amendment Act, 1980, and the Abolition of Racial Discrimination (Urban Land and Public Amenities) Amendment Act, 1981, are hereby repealed.

(2) Notwithstanding the repeal of the Abolition of Racial Discrimination (Urban Land and Public Amenities) Act, 1979, by subsection (1), that Act shall, for the purposes of any charge in any criminal proceedings for any offence which a person has, before the commencement of this Act, committed, and the imposition of any penalty in relation thereto, remain in force as if the provisions of this Act had not been passed.

Short title

23. This Act shall be called the Racial Discrimination Prohibition Act, 1991.