



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 91	2005
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. 6 of 2005: National Youth Service Act, 2005

Act No. 6, 2005

NATIONAL YOUTH SERVICE ACT, 2005**ACT**

To provide for the establishment of the National Youth Service and the Youth Service Fund; to provide for the management and administration of the Service; to provide for recruitment to and participation in the Service; and to provide for incidental matters.

(Signed by the President on 11 July 2005)

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

**PART 1
PRELIMINARY****Definitions**

1. In this Act, unless the context otherwise indicates -

“areas of activity” means any programme, project or other activity determined in terms of section 14;

“Board” means the Board established in terms of section 5;

“Commissioner” means the individual appointed in terms of section 11 as Commissioner of the National Youth Service;

“financial year” means the period referred to in section 22;

“Fund” means the Youth Service Fund established in terms of section 18;

“Minister” means the Minister to whom the President has assigned any function or delegated any power in terms of section 3(2);

“prescribe” means prescribe by regulation made in terms of section 30;

“recruit” means an individual recruited to the Service under section 13;

“Service” means the National Youth Service established by section 2;

“this Act” includes regulations made in terms of this Act; and

“youth” means an individual aged between 16 and 30 years.

Act No. 6, 2005**NATIONAL YOUTH SERVICE ACT, 2005****PART 2
THE NATIONAL YOUTH SERVICE****Establishment of the Service**

2. (1) There is established the National Youth Service.
- (2) The Service is a juristic person capable of -
- (a) suing or being sued;
 - (b) acquiring, holding and disposing of movable and immovable property; and
 - (c) so far as is possible for a juristic person, exercising the rights, powers and privileges and incurring the liabilities and obligations of a natural person of full age and capacity.

President is head of Service

3. (1) The President is the head of the Service and to that extent the President may give written directions to the Service concerning the performance of its functions or exercise of its powers, either generally or in relation to a particular matter, and the Service must give effect to those directions.

- (2) The President -
- (a) may assign the administration of this Act;
 - (b) must, whenever the need arises, assign any function required to be performed or delegate any power required to be exercised in terms of sections 28 and 29; and
 - (c) may assign any other function required to be performed by him or her in terms of this Act or delegate any other power required to be exercised by him or her in terms of this Act,

to any Minister.

(3) Any assignment of functions or delegation of powers done in terms of subsection (2) must be by proclamation in the *Gazette*.

(4) The President is not divested or relieved of the function or power delegated or assigned in terms of subsection (2) and the President may -

- (a) withdraw or amend any such delegation or assignment; or
- (b) set aside or vary any decision made in the exercise of such function or power.

Objectives, functions and powers of the Service

4. (1) The objectives of the Service are to -

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- (a) serve as a meeting point for youth from various social and cultural backgrounds so as to enable the youth to share common experiences and to encourage notions of equality;
 - (b) provide the youth with opportunities for further studies and training so as to enhance their opportunities of employment;
 - (c) contribute to the socio-economic development of Namibia and the alleviation of poverty in the country;
 - (d) provide opportunities for the youth to take part in national development on a voluntary basis; and
 - (e) encourage patriotism, a sense of nationhood and commitment to Namibia's development.
- (2) The functions of the Service are to -
- (a) recruit on a voluntary basis youths to benefit from the Service's programmes and activities;
 - (b) provide skills training and personal development programmes and activities for the recruits;
 - (c) initiate, plan, organise, fund, manage, administer and control programmes and activities for recruits development;
 - (d) employ the recruits in tasks of national importance and otherwise in the service of the nation;
 - (e) inculcate youth volunteerism and civic responsibilities among the recruits.
- (3) In order to achieve the objectives set out in subsection (1) and perform the functions set out in subsection (2) the Service may -
- (a) buy, hire or otherwise acquire, sell, let or otherwise dispose of or hypothecate, pledge or otherwise deal with any movable property or immovable property or any right in or over movable or immovable property, but, in the case of immovable property, with the prior concurrence of the Minister responsible for finance;
 - (b) enter into commercial arrangements with any person including a body corporate or incorporate and in particular it may -
 - (i) enter into joint ventures;
 - (ii) establish its own corporate bodies in which it will be the sole or majority shareholder;
 - (iii) purchase shares or other interests in existing corporate bodies;
 - (c) with the concurrence of the Minister responsible for finance, invest money or any other asset not immediately required for its affairs with any institution or organisation;

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- (d) enter into any contract with any person to give effect to any provision of this Act, including any contract for entering into joint ventures with any person; or
- (e) with the concurrence of the Minister responsible for finance, accept donations made to it by any person or body.

**PART 3
MANAGEMENT AND ADMINISTRATION OF THE SERVICE**

Establishment of Board

5. (1) There is established a Board which is responsible for the overall management and control of the affairs of the Service, and the Board has authority, in the name of the Service, to perform the functions and to exercise the powers conferred on the Service by this Act.

(2) The Board consists of not fewer than seven and not more than nine members appointed by the President.

(3) When making appointments in terms of subsection (2), the President must ensure that -

- (a) the persons appointed have the necessary training, skills or experience relevant to the functions of the Service; and
- (b) female persons are equitably represented on the Board.

(4) A person is not eligible for appointment as a member of the Board if that person-

- (a) is an unrehabilitated insolvent;
- (b) has been convicted of an offence of which dishonesty is an element and sentenced to imprisonment without the option of a fine; or
- (c) is considered a mentally ill person under the Mental Health Act, 1973 (Act No. 18 of 1973).

(5) The President must designate one of the members of the Board to be chairperson of the Board and the members of the Board must, at their first meeting elect one of their number to be the deputy chairperson of the Board.

(6) A member of the Board or of a committee of the Board who has a direct or indirect financial or personal interest -

- (a) in a contract or proposed contract with the Service; or
- (b) in a matter being considered or proposed to be considered by the Board or a committee of which he or she is a member, must, as soon as is practicable after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Board or the committee, as the case may be.

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(7) Subsection (6) does not apply to an interest which is held as a member of a public company in common with other members of that company.

(8) A disclosure made in terms of subsection (6) must be recorded in the minutes of the meeting at which it is made.

(9) A person who makes a disclosure in terms of subsection (6) must not -

(a) take any further part in any consideration or discussion of the contract, proposed contract or other matter;

(b) take part in any vote on the contract, proposed contract or other matter; or

(c) be counted for the purposes of a quorum.

(10) A person who makes a full and accurate disclosure under subsection (6) and who complies with subsection (9)(a) and (b) is not in breach of any duty owed by him or her to the Service by reason of his or her interest in the contract, proposed contract or other matter about which the disclosure was made.

(11) A person who fails to comply with subsection (6) commits an offence and is liable to a fine not exceeding N\$4 000 or to imprisonment for a period not exceeding one year, or to both that fine and imprisonment.

Functions of the Board

6. (1) Without derogating from the generality of the functions referred to in section 5(1), the functions of the Board are to -

(a) give policy directions to the Commissioner on the management and administrative affairs of the Service;

(b) advise the President -

(i) on the activities, programmes and policies of the Service;

(ii) on investments, establishment, governance and funding of Service enterprises;

(iii) on legislation concerning youth matters including, amendments to this Act or any other relevant law; and

(iv) on any matter referred to it by the President.

(2) To enable it to perform its functions, the Board may -

(a) call to its assistance any persons whom or bodies which it considers necessary to investigate matters relating to any matter provided for in this Act;

(b) enter into an agreement with any person, including the State, a university, a research institution or any other person or body for the performance of any specific act or function or the rendering of specific services;

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(c) enter into any other contract and agreement for a legitimate purpose.

(3) In performing functions in terms of this Act the Board must, in as far as is possible, consult and co-operate with ministries, offices and agencies as defined in the Public Service Act, 1995 (Act No. 13 of 1995), or statutory bodies having objectives and functions similar to or related to the objectives and functions of the Service.

Tenure of service of members

7. (1) Subject to subsection (2), a member of the Board holds office for a period of three years, but a member is eligible for re-appointment at the end of that member's term of office.

(2) A member referred to in subsection (1) vacates office if he or she -

(a) has, without leave of the Board, absented himself or herself from three consecutive meetings of the Board;

(b) in writing, resigns from office; or

(c) becomes subject to a disqualification referred to in section 5(4).

(3) Notwithstanding subsection (1), the President may, after affording a member an opportunity to make representations on the matter, remove a member from office if the President has reasonable cause to believe that the member is no longer fit or able to discharge the functions of his or her office.

(4) If a member of the Board vacates office under the circumstances referred to in subsection (2) or (3) or dies, the vacancy must be filled by the President in accordance with section 5.

(5) A member who is appointed under subsection (4) holds office for the remainder of the period for which his or her predecessor was entitled to hold office.

Conditions of service of members

8. A member of the Board who is not in full-time employment of the State -

(a) is entitled to receive remuneration, allowances and other benefits determined by the President in consultation with the Minister responsible for finance; and

(b) will be appointed on terms and conditions determined by the President.

Committees

9. (1) The Board may establish one or more committees to perform, subject to the directions of the Board, any functions assigned to that committee by the Board.

(2) A committee appointed in terms of subsection (1) may -

(a) consist solely of members of the Board; or

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- (b) consist of members and other persons who are not members of the Board as the Board may determine.
- (3) The Board must designate a member of the Board to be the chairperson of a committee.
- (4) The chairperson of the Board may attend a meeting of a committee of which he or she is not a member and may take part and vote in the proceedings thereof as if he or she were appointed as a member thereof.
- (5) The Board may at any time dissolve or reconstitute a committee.
- (6) The Board is not divested or relieved from a power or duty which has been delegated or assigned to a committee.
- (7) A decision of a committee in the exercise of a power delegated or a duty assigned to it is subject to approval by the Board, and the Board may at any time vary or set aside the decision.

Meetings of the Board

- 10.** (1) The first meeting of the Board must be held at a place and time determined by the President and any meeting of the Board thereafter must be held at a place and time determined by the Board.
- (2) The Board must meet at least four times in every calendar year.
- (3) The chairperson of the Board -
 - (a) may decide the date, time and place of meetings of the Board;
 - (b) must call a special meeting of the Board -
 - (i) on the written and motivated request of four members; or
 - (ii) at the request of the President.
- (4) The chairperson must preside over all meetings of the Board at which the chairperson is present.
- (5) If the chairperson and deputy chairperson are not present, the members may elect a chairperson from among their number to chair the meeting.
- (6) The majority of the members of the Board constitute a quorum.
- (7) A decision of the majority of the members of the Board present at the meeting is the decision of the Board.
- (8) In the case of a tied vote, the individual presiding at the meeting has the casting vote in addition to that individual's deliberative vote.
- (9) A decision made by the Board is valid despite -

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- (a) a vacancy on the Board at the time the decision was made; or
- (b) the presence at the meeting when the decision was made of an individual who was not entitled to sit as a member,

if a majority of the members present and entitled to sit, voted in favour of the decision.

(10) The Board -

- (a) may make rules for the conduct of its meetings or meetings of a committee referred to in section 9; and
- (b) must keep a written record of the meetings referred to in paragraph (a).

Commissioner of the Service

11. (1) The President must, pursuant to Article 32(3)(i)(ee) of the Namibian Constitution and in consultation with the Board, by proclamation in the *Gazette* appoint an individual to be the Commissioner of the National Youth Service.

(2) An appointment made in terms of subsection (1) is subject to such terms and conditions which the President may, after consultation with the Board and the Minister responsible for finance, determine.

(3) The Commissioner is -

- (a) the chief executive officer of the Service; and
- (b) subject to the control and directions of the Board, responsible for the efficient management and administration of the Service.

(4) The Commissioner is an *ex-officio* member of the Board with no voting right.

Administration of the Service

12. (1) Staff of the Service consists of staff members referred to in the Public Service Act, 1995 (Act No. 13 of 1995), who are, subject to that Act, seconded to the Service.

(2) The Board may appoint, on such terms and conditions as it may determine, other suitable individuals as it may consider necessary to employ to perform the functions and conduct the affairs of the Service.

(3) The Commissioner and staff of the Service referred to in this section must render secretarial and administrative services to the Board in the performance of its functions in terms of this Act.

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RECRUITMENT TO AND PARTICIPATION IN THE SERVICE****Recruitment to the Service**

13. (1) A person is eligible to be recruited to the Service if he or she is a youth and a citizen of Namibia.

(2) Recruitment to the Service must not be done on a discriminatory basis but the Board may determine different criteria for admission to the various areas of activity undertaken by the Service.

(3) When recruiting persons to the Service, the Board must ensure that there is equitable representation of persons from all the regions into which Namibia is divided.

(4) Notwithstanding anything to the contrary in any law, recruits are not employees of the Service and, subject to any provision to the contrary in this Act, the Labour Act, 2004 (Act No. 15 of 2004), or any law governing relations between employers and employees, does not apply to them.

Areas of activity

14. The Commissioner may, after consultation with the Board -

- (a) determine the various areas of activity in which recruits may be engaged in; and
- (b) determine the terms and conditions under which recruits may participate in the activities of the Service, including any amount payable as allowances to the recruits during their period of service.

Service graduates to get certain preferences

15. (1) When -

- (a) awarding any scholarship, grant or any other educational benefit or facility which is offered by the State or any statutory body;
- (b) recruiting persons into the Namibian Defence Force, Namibian Police or Namibian Prison Service,

the person making the award or recruiting the persons must take into account and give due weight to the fact that a person has successfully completed his or her programme or programmes with the Service.

(2) Nothing in subsection (1) is to be construed as permitting the award of a scholarship, grant or benefit to a person or the recruitment of a person who is not suitably qualified for a specific programme or position.

Service recruits to assist in emergencies

16. Where a declaration has been made by the President in terms of Article 26 of the Namibian Constitution, the President may make such regulations relating to recruits as are necessary to enable the recruits to render appropriate assistance to the nation.

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17. (1) The President may, on the recommendation of the Board, by proclamation in the *Gazette* make regulations relating to the discipline of recruits during their period of service in the Service.

(2) Regulations made under subsection (1) may authorise the Commissioner to prepare codes of conduct and such codes have the force of law.

**PART 5
NATIONAL YOUTH SERVICE FUND**

National Youth Service Fund

18. (1) There is, as contemplated in Article 125(3) of the Namibian Constitution, established a special fund to be known as the National Youth Service Fund.

(2) For the purposes of the State Finance Act, 1991 (Act No. 31 of 1991), the Commissioner is the accounting officer of the Fund responsible for -

- (a) all money received and payments made by the Service; and
- (b) all assets and the discharging of all liabilities of the Service.

Finances of the Fund

19. (1) The Fund consists of -

- (a) money appropriated by Parliament for the purposes of the Service;
- (b) money generated through the performance of the functions of the Service, including the sale of products made or produced through programmes or projects undertaken by the Service or the provision of services by the Service;
- (c) interest or funds received from investments made by the Service;
- (d) donations or contributions received by the Service with prior approval of the Minister responsible for finance; and
- (e) money lawfully received from any other source.

(2) The Commissioner must annually submit to the Board, at a time determined by the Board, a statement of the Service's estimated income and expenditure for its next financial year for approval by the Board, with the concurrence of the Minister responsible for finance.

(3) The Commissioner may during the course of a financial year submit to the Board supplementary estimates of expenditure for that financial year for approval by the Board, with the concurrence of the Minister responsible for finance.

(4) The Service may not incur any expenditure except in accordance with an estimate of expenditure approved under subsection (2) or (3).

Act No. 6, 2005**NATIONAL YOUTH SERVICE ACT, 2005****Bank accounts**

20. (1) The Board must open and maintain or cause to be opened and maintained accounts with a banking institution, as defined in section 1 of the Banking Institutions Act, 1998 (Act No. 2 of 1998), as may be necessary for the performance of the functions of the Service.

- (2) The Board must ensure that -
- (a) all money received by or on behalf of the Service is deposited into its bank account as soon as is practicable after the receipt thereof;
 - (b) any payment by the Service is made from its bank account; and
 - (c) no money is withdrawn, paid or transferred from its bank account without the Commissioner's authority.

Investment of money

21. The Board may, with the concurrence of the Minister responsible for finance, invest or cause to be invested, at a banking institution referred to in section 20(1) or at any other financial institution, any money of the Service that is not immediately required for expenditure.

Financial year, accounts and audit

- 22.** (1) The financial year of the Service ends on 31st March of each year.
- (2) The Board must -
- (a) cause proper books and records of account to be kept in accordance with generally accepted accounting practice and procedure to represent fairly the state of affairs and business of the Service and to explain its transactions and financial position; and
 - (b) not later than three months after the end of each financial year, cause annual financial statements to be prepared showing, with appropriate particulars, the money received and expenditure incurred by the Service during the financial year and its assets and liabilities as at the end of that financial year.
- (3) The books and records of account and the annual financial statements of the Service must be audited by the Auditor-General.

Reports and financial statements

- 23.** (1) The Board must -
- (a) furnish to the President such information as the President may from time to time in writing require in connection with the activities and financial position of the Service; and
 - (b) each year, within six months after the end of the financial year, submit to the President -

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- (i) a report on the Service's activities in respect of that financial year; and
- (ii) copies of the Service's audited financial statements and the auditor's report for that financial year.

(2) On receipt of the annual report and financial statements referred to in subsection (1) the President must -

- (a) if the National Assembly is in session, cause the annual report and the statements to be tabled in the National Assembly within 30 days after receiving the annual report or statement; or
- (b) if the National Assembly is not in session, cause the annual report and the statement to be tabled in the National Assembly within 30 days after the commencement of the next session.

Exemption from taxation

24. Despite anything to the contrary in any law -

- (a) the income of the Service is exempt from income tax;
- (b) no transfer duty, stamp duty or any other fee payable to the Registrar of Deeds in connection with the transfer of movable or immovable property is payable in respect of the acquisition and transfer of immovable property by the Service; and
- (c) no stamp duty is payable in respect of any document if the stamp duty is, according to law, payable by the Service and no stamp duty is payable in respect of the registration or the transfer of securities issued by the Service.

Utilisation of Fund and accountability

25. (1) Property and money allocated to, or standing to the credit of, the Fund may only be utilised by the Service for the purposes approved in terms of section 19(2) and (3) and in particular for -

- (a) financing the various programmes, projects and other activities of the Service;
- (b) financing the activities of the Board;
- (c) the administration of the Fund.

(2) All amounts of money withdrawn, or property allocated, from the Fund under subsection (1), must be so withdrawn or allocated as prescribed.

(3) Whenever property or money is allocated from the Fund under this Act the specific purpose for which that property or money is to be utilised must be indicated.

Act No. 6, 2005**NATIONAL YOUTH SERVICE ACT, 2005****PART 6
GENERAL****Delegation of powers**

26. (1) The Board may, subject to such conditions or restrictions which it may impose, in writing delegate any power or assign any function imposed or conferred on it or on the Service by this Act to the Commissioner except the function or power referred to in section 6(1)(a), 11(1) or 30.

(2) The Board is not divested or relieved of the function or power delegated or assigned in terms of subsection (1) and the Board may -

- (a) withdraw or amend any such delegation or assignment; or
- (b) set aside or vary any decision made in the exercise of such function or power.

(3) The Commissioner may, subject to such conditions or restrictions which the Commissioner may impose, in writing delegate any power or assign any function imposed or conferred on the Commissioner by this Act to any staff member of the Service, but the Commissioner is not divested of or relieved of the function or power so delegated or assigned and the Commissioner may -

- (a) withdraw or amend any such delegation or assignment; or
- (b) set aside or vary any decision made in the exercise of such function or power.

Immunity from liability

27. The Service, the Commissioner, a staff member of the Service, a member of the Board or of a committee of the Board, a recruit or any person who has done anything required to be done in terms of this Act, is not liable for anything done or omitted to be done in good faith -

- (a) in the carrying out a function or power under this Act or any other law; or
- (b) in reasonable belief that the act or omission was in the carrying out of a function or power under this Act or any other law.

Transfer of property

28. (1) The Minister may, by agreement with the Service and on a date determined by the Minister -

- (a) transfer in ownership or make available under agreement of lease to the Service, as the Minister with the concurrence of the Minister responsible for finance may decide -
 - (i) any State land which before that date was being used for or in connection with the activities of the Service; or
 - (ii) any other State land; or

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(b) transfer and assign to the Service any other assets and other liabilities, rights and obligations of the State which relate to or are connected with the conduct of the activities of the Service.

(2) The Minister must cause the date of transfer determined in terms of subsection (1) to be published in the *Gazette*.

(3) Where ownership of land is transferred to the Service in terms of subsection (1), the Service is, with effect from the transfer date, vested with the ownership of the land and rights to that land and charged with the liabilities and obligations transferred or assigned to it in terms of subsection (1).

(4) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or other asset or right described in that certificate has been transferred to the Service in terms of subsection (1) is sufficient proof that such land or right so described vests in the Service.

(5) On submission of a certificate referred to in subsection (4) to the Registrar of Deeds or to any person in charge of any office where a register or record is being kept of the ownership of or entitlement to the land, asset or right described in that certificate, the Registrar or that other person must make such entries in or on the relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect transfer in the name of the Service.

Dissolution of Service

29. (1) The Service may only be dissolved by or under the authority of an Act of Parliament.

(2) Unless the contrary is provided for in an Act of Parliament, on dissolution of the Service all assets and liabilities of the Service vest in the State.

(3) The Minister must, subject to the provisions of any Act of Parliament, transfer and assign the assets and liabilities referred to in subsection (2) to the State, and such transfer or assignment must, subject to necessary changes, be done in accordance with section 28(4) and (5).

Regulations

30. (1) The President may, on the recommendation of the Board, make regulations in relation to -

- (a) the various areas of activity in which the recruits of the Service may be engaged in;
- (b) the manner in which persons may apply to join the Service and the criteria for recruitment to the Service; and
- (c) any matter required or permitted to be prescribed under this Act or which the President considers necessary or expedient to prescribe for the purpose of achieving the objects of this Act.

(2) Regulations made under this section -

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- (a) must be published by proclamation in the *Gazette*;
- (b) may create an offence for any contravention thereof or any failure to comply therewith; and
- (c) may prescribe penalties in respect of any such offence not exceeding a fine of N\$4 000 or imprisonment for a period of one year.

Short title and commencement

31. (1) This Act is called the National Youth Service Act, 2005, and it comes into operation on a date to be determined by the President by proclamation in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.

(3) Any reference in this Act to the commencement of this Act must be construed as a reference to the date determined under subsection (2).
