



10/06/2025

To: The Honourable Minister of Health and Social Services – Dr E. Luvindao

Through: The Executive Director Mr Penda Ithindi (via email: pa.ed@mhss.gov.na)

Dear Honourable minister Dr. Luvindao,

Submission on Discriminatory Licensing Fees for Foreign-Trained Health Professionals

1. Introduction

The Namibian Private Practitioners Forum (NPPF), a Section 21 non-profit company representing healthcare providers across the spectrum, respectfully submits this document on behalf of its members to address the **discriminatory registration fees** imposed by the Health Professions Council of Namibia (HPCNA) on non-citizen healthcare providers. **Since December 2023, this issue has remained unresolved**, despite repeated efforts by various professional associations to raise concerns with the HPCNA Registrar, the HPCNA Legal Department, the former Joint Presidents Committee, and, most recently, with the President of the reconstituted Health Professions Council.

2. Context and Significance

Honourable Minister, your recent appointment as Chair of Committee A at the 78th World Health Assembly reflects international recognition of your leadership and underscores Namibia's commitment to equitable health policy and international human rights standards.

In this spirit of global health equity, we bring to your attention serious legal and ethical concerns arising from the current professional registration framework, which imposes legislated fees on non-Namibian practitioners that are up to **400% higher** than those applied to Namibian citizens (Government Gazette No. 8220, 25 September 2023).

This disparity lacks any objective or lawful justification and stands in clear conflict with both the Namibian Constitution and Namibia's international legal obligations.

3. Constitutional Violations

The following provisions of the Namibian Constitution are directly implicated:

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Website: <https://nppf.info> **Company Reg No:** 21/2012/0830

Directors: Dr J Hoffmann, Dr N Afshani, Dr S Van Rooyen, Dr B Bruwer, Dr J Jacobs, Mrs C von der Heiden

- **Article 10(1)–(2):** Guarantees equality before the law and prohibits discrimination, including on the grounds of economic or social status.
- **Article 18:** Requires administrative bodies to act lawfully, fairly, and reasonably.
- **Article 22:** Provides that any limitation on fundamental rights must be lawful, reasonable, necessary in a democratic society, of general application, and must not negate the essential content of the right.
- **Article 96(d):** Requires Namibia to foster respect for international law and treaty obligations.
- **Article 144:** Incorporates international agreements into the domestic legal system.

The HPCNA proceeded to enforce the discriminatory fee regime published under Government Gazette No. 8220—**initially introduced without statutory authority under the now repealed health professions council legislation.**

Despite formal objections from multiple stakeholders, including the NPPF, this disparity was carried forward into the new Health Professions Act (Act 16 of 2024), in disregard of clear and repeated concerns that the HPCNA continues to violate statutory principles of transparency, legal continuity, and ratified international protocols.

4. Violation of International Law

Namibia is bound by international legal instruments that expressly prohibit discrimination and require equal access to professional opportunities, including:

- **Universal Declaration of Human Rights (Article 2)**
- **International Covenant on Civil and Political Rights (Article 26)**
- **International Convention on the Elimination of All Forms of Racial Discrimination (Article 2)**
- **African Charter on Human and Peoples' Rights**
- **SADC Protocol on Health**

Furthermore, the **Joint UN Statement on Ending Discrimination in Health Care Settings (2017)** urges states to eliminate structural legal and regulatory barriers that perpetuate inequity in health systems.

5. Legal Assessment: Unjustified Fees and Constitutional Tests

The HPCNA has attempted to retroactively justify the imposition of disparate fees under

Sections 30(1) and 52(3)–(4) of the Health Professions Act (Act 16 of 2024). However, these provisions do not meet the constitutional thresholds set by Article 22 of the Namibian Constitution, which requires that any limitation on fundamental rights must:

- Be of general application and not aimed at specific groups;
- Clearly specify the extent of the limitation;
- Identify the constitutional basis for such a restriction.

Notably, Article 22(a) prohibits limitations that are “*aimed at a particular individual*.” While the language appears singular, constitutional interpretation—both in Namibia and comparative jurisdictions—recognizes that laws which disproportionately burden a clearly identifiable group, such as non-citizens or foreign-trained professionals, fall within this restriction.

The registration fee structure introduced under Government Gazette No. 8220 imposes such a burden on non-Namibians based on their **national origin**. As such, it triggers the protections of Articles 10, 18, and 22 of the Constitution, all of which prohibit discrimination and require **fairness, legality, and proportionality in administrative actions**.

The fee structure therefore fails all constitutional tests. It is not **of general application, it lacks necessity in a democratic society, and it negates the essential content of the right to fair and equal access to the profession**. It is thus arbitrary, unconstitutional, and incompatible with Namibia’s binding international obligations.

Moreover, **General Comment No. 18 of the UN Human Rights Committee** (interpreting Articles 2(1) and 26 of the ICCPR) affirms that **national origin** is an impermissible ground for discriminatory treatment in law and practice.

6. Institutional Accountability & Transitional Liability

Under **Section 95(5)** of the Health Professions Act, the HPCNA assumes full liability for the decisions and actions of its predecessor councils. It therefore cannot disavow responsibility for discriminatory regulations implemented prior to the enactment of the new Act on 20 March 2024.

Further, **Section 30** of the new Act invokes **Article 22**, reinforcing that any differential treatment must be:

- Reasonable;
- Necessary in a democratic society;
- Of general application; and
- Must not negate the essential content of the right in question.

The **only** rationales provided to NPPF to date are repetitive and include:

- ***“It is reiterated that the distinction between citizens and non-citizens in the published fees does not violate Article 10 of the Namibian Constitution, as the fundamental right to equality before the law is not absolute.”*** — Prof. C. Wilders, on behalf of the Joint Presidents Committee, HPCNA letter to NPPF (13 Dec 2024, received 9 May 2025)
- ***“Disparity in fees is commonplace globally and is also observed locally, such as in Namibia’s tourism sector, where tourists pay higher fees. The Minister noted that Councils are empowered to determine fee structures, and the process in this case was performed in accordance with the applicable law.”*** — Former MOHSS Minister Kalumbi Shangula, cited from meeting minutes with NPPF (12 Dec 2024)

These justifications fall short and cannot withstand constitutional or international scrutiny:

- Invoking the principle of “**non-absolute equality**” is legally insufficient **without** a demonstrated basis of **necessity, rationality, or proportionality**. Despite repeated requests, no legal framework or policy rationale has been provided to justify the statutory enforcement of such stark fee disparities.
- Comparisons to tourism levies are fundamentally misplaced. Tourism-related charges are voluntary and consumption-based, while professional registration fees are compulsory - govern lawful access to employment, affect livelihoods, and regulate the right to contribute to the public health system.
- Foreign citizens and permanent residents working in the healthcare sector are subject to the same legal obligations and tax contributions as Namibian citizens. Many provide specialist services that are otherwise unavailable in the country. Treating these professionals as transient economic actors or outsiders is factually incorrect, legally flawed, and counterproductive to national public health goals.

The current HPCNA Council—under the transitional and liability provisions of the new Health Professions Act—must assume full accountability for both past and ongoing regulatory violations. Yet, despite this clear statutory obligation, its President has declined to engage meaningfully on unresolved issues. As recently as **6 June 2025**, correspondence on these very matters was dismissed (**Annexure A**). This means that the regulatory failure is not historical but ongoing under the leadership of a ministerial appointee.

7. Call for Policy Reform

The HPCNA’s continued failure to acknowledge or address clear constitutional and legal concerns leaves affected professionals without remedy and reinforces the need for the Honourable Minister’s direct intervention. Given the Minister’s powers of appointment,

oversight, and policy direction under the Act, leadership from your office is now both necessary and urgent.

In light of these legal, constitutional, and policy concerns, the NPPF respectfully calls on the Ministry to:

- Repeal the current discriminatory fee structure;
- Ensure that all future regulatory instruments comply with constitutional and international legal standards;
- Suspend the implementation of nationality-based registration fees pending the development of a lawful, proportionate, and transparent framework;
- Engage affected stakeholders—including the NPPF and foreign-trained professionals—in all consultations regarding regulatory changes.

8. Conclusion

Your leadership, Honourable Minister, at the World Health Assembly reflects Namibia's global commitment to fair, inclusive, and rights-based governance. We trust that these same principles will guide domestic reforms to ensure that all health professionals—regardless of nationality—are treated with the dignity and equality contemplated by Article 8(1) of the Namibian Constitution, as well as Namibia's binding obligations under ratified UN and WHO instruments.

To support this effort and reinforce your leadership in driving such change, we intend to copy this correspondence to the Namibian representatives of the WHO and the United Nations, as well as the Legal Assistance Centre—each of whom plays a critical role in advancing health equity, legal accountability, and adherence to international human rights standards. Their collective engagement may assist in urgently addressing the demonstrated HPCNA's regulatory shortcomings through principled and collaborative reform.

We remain available for consultation and welcome the opportunity to engage further on this matter.

Yours faithfully



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Annexure A



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PROTECTING THE PUBLIC THROUGH REGULATED EDUCATION AND PRACTICE

HEALTH PROFESSIONS COUNCIL OF NAMIBIA
(Established under the Health Professions Act, 16 of 2024)

06 June 2025

ISG Namibia
P. O. Box 11618
Klein Windhoek
Windhoek

By Email: eben@isgnamibia.com

Attention: Mr. Eben de Klerk

Dear Sir,

RE: NPPF AND DR J HOFFMANN

1. We refer to the above matter and acknowledge receipt of your letter dated 23 May 2025, addressed to the Council on behalf of your client, the Namibia Private Practitioners Forum.
2. The contents of your correspondence have been noted. Having considered the contents, the Council is of the view that its position has been clearly conveyed and remains unchanged. Accordingly, the Council does not intend to enter into further correspondence on the issues raised.
3. Your client remains at liberty to explore any further channels it may consider appropriate.

Yours faithfully,

Ms. T. Geises
President of the Health Professions Council of Namibia

All correspondence must be addressed to the Registrar