

No. 24 of 2004.

***Constitutional and Law Reform Commission Act 2004.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 24 of 2004.

*Constitutional and Law Reform Commission Act 2004.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Constitutional and Law Reform Commission Act 2004,***

Being an Act to implement Sections 21(2) and 260, and Schedules 2.13 and 2.14 of the *Constitution* by establishing the Constitutional and Law Reform Commission and to define its powers, functions, duties and responsibilities, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**PART 1. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears –

“**commission**” means the Constitutional and Law Reform Commission of Papua New Guinea established by Section 3;

“**law**” includes –

- (a) the *Constitution*; and
- (b) an Organic Law;

“**member**” means a member of the Commission;

“**Secretary**” means the Secretary to the Commission appointed under Section 17;

“**this Act**” includes the regulations.

**2. APPLICATION.**

Nothing in this Act affects the operation of –

- (a) the Revision of the Laws Act 1973; or

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- (b) the *Statute Law Revision Machinery Act 1972*; or
- (c) the *Legislative Drafting Service Act 1972*.

**PART 2. – ESTABLISHMENT, ETC., OF THE COMMISSION.**

**3. ESTABLISHMENT OF THE COMMISSION .**

(1) The Constitutional and Law Reform Commission of Papua New Guinea is hereby established.

(2) The Commission is a constitutional office to which Part IX (Constitutional Office Holders and Constitutional Institutions) of the *Constitution* applies.

(3) Subject to Subsection (4), the Commission shall consist of six prominent citizens appointed by the Minister by notice in the National Gazette, of whom –

- (a) two should be serving members of Parliament; and
- (b) one shall have qualifications and experience in constitutional law; and
- (c) one shall have qualifications and experience in anthropology, sociology or political science; and
- (d) one person nominated by the Papua New Guinea Council of Churches to represent the Churches; and
- (e) the Dean of the Faculty of Law of the University of Papua New Guinea *ex officio*

(4) Where the Chairman appointed under section 8 is not a member of the Commission appointed under Subsection (3), he is, on his appointment as Chairman, a member of the Commission.

(5) The offices of Commissioner are offices to which Division III.2 (Leadership Code) of the *Constitution* applies.

**4. TERMS AND CONDITIONS OF APPOINTMENT.**

Subject to this Act, the terms and conditions of appointment of a member (other than a holder of a judicial office) are as determined by the Minister from time to time.

**5. TENURE OF OFFICE .**

(1) A member of the Commission shall hold office for such period not exceeding four years as the minister specifies in the notice under Section 3(3) and is eligible for re-appointment.

(2) A member may, by written notice addressed to the Minister, resign his office.

(3) The Minister may at any time terminate the appointment of a member for inability, inefficiency, incapacity or misbehaviour.

- (4) A member shall not be appointed or ceases to hold office if he –
  - (a) is or becomes an undischarged bankrupt or insolvent; or
  - (b) is or becomes a person of unsound mind; or

- (c) is sentenced to death or imprisonment for a year or more; or
  - (d) is disqualified under Section 31 (disqualification and dismissal) of the *Constitution*; or
  - (e) ceases to be a citizen.
- (5) Where a member –
- (a) resigns; or
  - (b) his appointment is terminated under Subsection (3); or
  - (c) ceases to member under Subsection (4),

the Minister shall, by notice in the National Gazette, declare the member's office vacant.

#### **6. DECLARATION OF OFFICE.**

Before performing the duties of his office, a member shall take the Oath of Office, and if he has not already made it, the Declaration of Loyalty before the Head of State or a person appointed by the Head of State for that purpose.

#### **7. APPOINTMENT OF HOLDERS OF JUDICIAL OFFICE.**

The appointment of, or services by, a person who holds an office of a Judge or Magistrate as a member or Chairman of the Commission does not affect –

- (a) his tenure of that office; or
- (b) his rank, title, status, precedence, salary or annual allowances or other rights or privileges as the holder of that office,

and for all purposes, his services as a member of the Commission shall be taken to be service as the holder of that office.

#### **8. CHAIRMAN AND DEPUTY CHAIRMAN.**

- (1) There shall be a full time Chairman of the Commission.
- (2) The Chairman shall be –
  - (a) a sitting member of the National Parliament appointed by the Head of State acting on advice of the Prime Minister; or
  - (b) a retired judge of the National and Supreme Courts or a person who is eligible for appointment as a Judge of the National and Supreme Courts appointed by the Head of State acting on advice of the Prime Minister after receiving a report from the Judicial and Legal Services Commission.

(3) The terms and conditions of employment of the Chairman shall be as determined by the Salaries and Remuneration Commission pursuant to Section 216A (the Salaries and Remuneration Commission) of the *Constitution* where the appointee is not a holder of another public office.



(4) The Deputy Chairman shall be elected by the members of the Commission amongst their own number.

(5) The offices of the Chairman and Deputy Chairman are offices to which Division III.2 (Leadership Code) of the *Constitution* applies.

## **9. PROCEDURES OF THE COMMISSION.**

(1) Subject to Subsection (2), the Commission shall hold four meetings each calendar year.

(2) Where the business of the Commission requires, the Commission may, in addition to the meetings under Subsection (1), hold further meetings as special meetings, but the number of special meetings shall be no more than four in any one year.

(3) The Chairman shall fix the time and places for the meetings of the Commission.

(4) At a meeting of the Commission –

(a) four members constitute a quorum; and

(b) the Chairman or in his absence the Deputy Chairman, shall preside; and

(c) if the Chairman or the Deputy Chairman, are both absent, the members present shall appoint one of their number to be the Chairman of that meeting; and

(d) all matters shall be decided by a majority of votes but this provision does not prevent a member or members from submitting a minority report to the National Parliament; and

(e) in even of an equality of votes on a matter, the member presiding has a casting vote as well as a deliberative vote.

(5) The Commission shall cause minutes of its meetings to be kept.

(6) The procedures of the Commission shall be as determined, from time to time, by the Commission

## **10. ANNUAL REPORTS .**

The Commission shall, as soon as practicable, after 31 March in each year, furnish to the Minister, through the Office of the Attorney General, for presentation to the Parliament, a report on operation of the Commission during the year ending on the preceding 31 December.

**PART 3. – POWERS FUNCTIONS, ETC; OF THE COMMISSION .****11. POWERS OF THE COMMISSION.**

Subject to this Act, the Commission may, in the exercise of its powers under this Act –

- (a) consult with –
  - (i) any Government Department; or
  - (ii) any Government institution, authority, organisation, instrumentality or body; or
  - (iii) any other institution, organisation or body that, in the opinion of the Commission, would be affected by any proposed change in a law; or
  - (iv) any member of the public; and
- (b) provide advice and information to any government department or governmental institution, authority, organisation, instrumentality or body concerned with proposals for the reform or amendment of a law; and
- (c) consider any proposal for the reform of a law that is referred to it; and
- (d) hold seminars and conferences on appropriate legal issues; and
- (e) under take research and study programs in order to provide itself with material on which to base its recommendations on law reform matters, particularly in the field of customary law; and
- (f) use any information, advice or assistance available to it from any source whether within or outside the Government; and
- (g) obtain information on the laws and legal systems of other countries as a means of providing ideas for the reform and development the laws of Papua New Guinea; and
- (h) do all things necessary or convenient to be done for or in connection with the performance of its functions.

**12. FUNCTIONS OF THE COMMISSION.**

(1) The Commission shall inquire into and review the workings of the *Constitution* and the Organic Laws, and inquire into such other matters of a constitutional nature as directed by the Head of state, acting on advice.

(2) In addition to the function specified in Subsection (1), the Commission shall, in accordance with references made to the Commission by the Minister, whether at the suggestion of the Commission or otherwise –

- (a) review the laws of Papua New Guinea with a view to the systematic development and reform, including –

- (i) the modernization of the laws by bringing them into accord with current conditions; and
  - (ii) the elimination of the defects in the laws; and
  - (iii) the simplification of the laws; and
  - (iv) the adoption of new and more effective methods for the administration of the laws and the dispensation of justice; and
- (b) make recommendations in relation to the making of laws; and
- (c) make recommendations in relation to –
- (i) the consolidation of laws; and
  - (ii) the repeal of laws that are obsolete or unnecessary; and
- (d) make recommendations in relation to the, restatement codification, amendment or reform of customary laws; and
- (e) make recommendations in relation to the development of new approaches to the changing needs of Papua New Guinea society and of individual members of that society; and
- (f) liaise with the National Government and any other implementing Parliament based in its recommendations.

(3) In making references to the Commission under Subsection (2), the Minister may –

- (a) modify the terms of any reference ; and
- (b) give directions to the Commission as to the order in which it is to deal with references.

(4) For the purposes of this section, the Commission may conduct such inquiries as it thinks proper.

(5) For the purposes of any inquiry under this section, the members of the Commission have all the powers, authorities, protections and immunities conferred on a Commission under the *Commissions of Inquiry Act 1951*.

### **13. FUNDAMENTAL PRINCIPLES, ETC,..**

In the exercise of its powers and the performance of its functions under this Act, the Commission shall take into account any fundamental principles and policies laid down by Parliament.

### **14. PRIVILEGES .**

Section 7 of the *Defamation Act 1962* extends to and applies to –

- (a) an inquiry and the report of the enquiry made by the Commission under the authority of this Act; and

- (b) the proceedings of the Commission and to reports of those proceedings as if those proceedings were an inquiry made by the Commission under this Act.

**15. REPORTS.**

(1) The Commission shall prepare such reports as specified by the Head of State, acting on advice, under Section 12(1) and the reports –

- (a) shall set out the findings of the Commission on the matters monitored, reviewed or inquired into by the Commission; and
- (b) may make recommendations as to any amendment of the laws;
- (c) may propose the enactment of new law; and
- (d) may recommend a review of any administrative procedure; and
- (e) may make general recommendations or comments.

(2) For the purposes of Section 12(1)), the Commission –

- (a) may, from time to time, and shall, when directed to do so by the Minister, make an interim report of its work under any reference; and
- (b) shall, upon completion of its work under any references, make a final report and recommendations on its work under the reference.

(3) A report made by the Chairman and one other member of the Commission is a report of the Commission for the purposes of this Act.

(4) The Commission shall publish each of its reports unless there is, in the opinion of the Commission, good and sufficient cause for not publishing the report.

(5) All reports and recommendations under this section shall be forwarded to the Minister through the office of the Attorney – General for presentation to Parliament.

**16. REQUIREMENTS OF PARLIAMENT .**

If the Parliament or a Committee of the Parliament requires the Commission to furnish to any information concerning the performance of the functions or the exercise of the powers of the Commission under this Act, the Commission shall comply with the requirement.

**PART 4. – STAFF.**

**17. APPOINTMENT OF SECRETARY.**

(1) There shall be a Secretary to the Commission who –

- (a) shall be appointed by the Head of State, acting on advice, by notice in the National Gazette; and
- (b) shall be appointed for such period, not exceeding four years, as the Head of State, acting on advice, determines; and
- (c) is eligible for re-appointment.

(2) The Secretary is the Executive Officer of the Commission.

(3) The terms and conditions of appointment and service of the Secretary shall be as determined by the Salaries and Remuneration Commission pursuant to Section 216A(3)(d) (Salaries and Remuneration Commission) of the *Constitution*.

(4) For the purposes of this section, the office of the Secretary is an office to which Division III.2 (Leadership Code) of the *Constitution* applies.

**18. VACATION OF OFFICE OF SECRETARY.**

(1) If the Secretary –

- (a) becomes permanently incapable of performing his duties; and
- (b) resigns his office by writing under his hand addressed to the Head of State; or
- (c) engages, without the consent of the Head of State, acting on advice, in any paid employment outside the duties of his office; or
- (d) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (e) is convicted of an offence punishable by death or imprisonment for one year or longer and, as a result of the conviction, is under sentence of death or imprisonment,

his appointment as Secretary automatically terminates.

(2) The Head of State, acting on advice, may at any time terminate the appointment of the Secretary for inability, inefficiency, incapacity or misbehaviour.

**19. PUBLIC SERVICE RIGHTS OF THE SECRETARY TO CONTINUE .**

(1) If an officer of the Public Service is appointed to be the Secretary, his service as the Secretary shall be counted as service in the Public Service for the purposes of determining his rights (if any) in respect of –

- (a) leave of absences on the ground of illness; and

- (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

(2) The officer of Secretary is an office to which the provision of the *Public Services (Management) Act 1995* apply in relation to leave to serve under another Act.

**20. FUNCTIONS, ETC., OF THE SECRETARY.**

The Secretary shall –

- (a) manage the affairs of the Commission; and
- (b) in relation to the management of the affairs of the Commission, act in accordance with any directions of the Commission; and
- (c) advice the Commission on any matter concerning the affairs of the Commission that is referred to him by the Commission; and
- (d) when required to do so by the Commission –
  - (i) prepare or obtain legal opinions; and
  - (ii) advice the Commission on any matter relating to law reform; and
  - (iii) assist in the preparation and implementation of any law reform program,

and has such other powers, functions, duties and responsibilities as the Commission determines.

**21. OTHER STAFF.**

(1) Subject to Subsection (2) any staff (other than the Secretary) required for the purposes of this Act shall be officers or employees of the Public Service.

(2) does not prevent any person from being employed by the Commission, on contract or otherwise, for the purposes of the Commission.

**PART 5. – REPEAL, SAVINGS AND TRADITIONAL.**

**22. REPEAL.**

The Constitutional Development Commission Act 1997 and the Law Reform Commission Act (Chapter 18) are hereby repealed.

**23. COMMISSIONERS OF THE FORMER COMMISSIONS.**

(1) For the purposes of this Part –

“**the former Constitutional Development Commission** ” means the Constitutional Development Commission established by the Constitutional Development Commission Act 1997 repealed by Section 22;

“**the former Law Reform Commission** ” means the Law Reform Commission established by the Law Reform Commission Act (Chapter 18) repealed by Section 22.

(2) A person who was, immediately before the coming into operation of this Act, appointed, or deemed to have been appointed, as Commissioner of or the former Constitutional Development Commission or the former Law Reform Commission ceases, on that coming into operation, to be a Commissioner of the former Constitutional Development Commission or the former Law Reform Commission, as the case may be.

(3) The Minister may, on the certification of this Act in accordance with Section 110 (Certification as to making of Laws) of the *Constitution* Section 110 (certification as to making of laws) of the Constitution, appoint, by notice in the National Gazette, an Interim Commission of seven members to perform the functions of, and exercise the powers of, the Commission until permanent appointments to the Commission are made in accordance with this Act.

**24. STAFF OF THE FORMER COMMISSIONS.**

(1) A person who was, immediately before the coming into operation of this Act, appointed as Director of the former Constitutional ceases, Development Commission or as Secretary of the former Law Reform ceases, on that coming into operation, to hold that office in the former Constitutional Development Commission or the former Law Reform Commission, as the case may be.

(2) A person who, immediately before the commencement of this Act held an office or appointment in the former Constitutional Development Commission or the former Law Reform Commission shall, on the commencement of this Act, hold a similar office or appointment under this Act and on the same terms and conditions until –

- (a) is appointment as a staff of the Commission is made under this Act; or
- (b) he is made redundant and his entitlements paid to him wherein he shall cease to be an officer of the Commission,

whichever first occurs.

(3) A person who, immediately before the commencement of this Act held an office or appointment in the former Constitutional Development Commission or the former Law Reform Commission on a secondment basis ceases, on the commencement of this Act, to be on secondment to the former Constitutional Development Commission, as the case may be.

**25. ASSETS AND LIABILITIES .**

The assets (other than land held by the State ) and liabilities which, immediately before the coming into operation of this Act, were held by the former Constitutional Development Commission and the former Law Reform Commission are, on that coming into operation, transferred to and become assets, and liabilities of the Commission.

**26. APPLICATION OF ACTS, ETC.**

Where –

- (a) any Act, or subordinate enactment, other than this Act; or
- (b) any document or instrument whenever made or executed,

contains a reference, express or implied, to the former Constitutional Development Commissioner the former Law Reform Commission, as the case may be, that reference shall, on the commencement of this Act, except where the context otherwise requires, be read and construed and has effect as reference to the Commission.

Office of Legislative Counsel, PNG