

No. 24 of 1994.

***National Cultural Commission Act 1994.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 24 of 1994.

*National Cultural Commission Act 1994.*

ARRANGEMENT OF SECTIONS.

**PART I – PRELIMINARY.**

1. Interpretation.
  - “art”
  - “Chairman”
  - “Executive Director”
  - “Commission”
  - “cultural development programme”
  - “cultural entertainment”
  - “cultural heritage”
  - “Deputy Chairman”
  - “exhibitions”
  - “former Committee”
  - “member”
  - “Committee”
  - “this Act”

**PART II – CULTURAL COMMISSION.**

2. Establishment of the National Cultural Commission.
3. Incorporation of the Commission.
4. Functions of the Commission.
5. Powers of the Commission.
6. Policy directions.

**PART III – MEMBERSHIP OF THE COMMISSION, ETC.**

7. Membership.
8. Chairman and Deputy Chairman.
9. Leave of absence of members.
10. Vacation of office.
11. Vacancy not to affect powers or functions.
12. Calling of meeting.

13. Meeting of the Commission.
14. Disclosure of interest by members.
15. Committees.
16. Delegation.
17. Annual Report.

**PART IV – CULTURAL INSTITUTION AND CULTURAL CENTRE  
ESTABLISHMENT.**

18. Establishment of cultural institutions etc.
19. The National Performing Arts Troupe.
20. The Institute of Papua New Guinea Studies.
21. The National Film Institute.
22. Appointment, etc., of Directors of National Cultural Institutions.
23. Functions of the Directors.

**PART V – STAFF OF THE COMMISSION.**

24. Executive Director.
25. Functions of the Executive Director.
26. Officers.
27. Contracts of employment.
28. Conditions of employment.
29. Public Service rights.
30. Liable to taxation.

**PART VI – MISCELLANEOUS.**

31. Protection from liability.
32. Proof of certain matters.
33. Service of process.
34. Authentication of documents.
35. Compensation.
36. Recovery of money due.
37. Consultants.
38. Regulations.

**PART VII – FINANCES OF THE COMMISSION.**

39. Application of Public Finances (Management) Act.
40. Moneys of the Commission generally.

**PART VIII – REPEAL.**

41. Repeal.

**PART IX – SAVINGS AND TRANSITIONAL.**

42. Transfer of assets, etc., to the Commission.
43. Transfer of accounts.
44. Saving of contracts.
45. Staff.
46. Actions, etc., not to abate.
47. Application of Acts, etc.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*National Cultural Commission Act 1994,*

Being an Act to establish a National Cultural Commission and to define its functions and powers, and for related purposes.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**art**” includes creative and interpretative expression through theatre, literature, music, film and crafts;

“**Chairman**” means the Chairman of the Commission appointed under Section 8;

“**Executive Director**” means the Chief Executive Officer of the Commission appointed under Section 24;

“**Commission**” means the National Cultural Commission appointed under Section 2;

“**cultural development programme**” means a programme for the preservation, development and promotion of all positive aspects of the indigenous lifestyle of the peoples of Papua New Guinea as well as their cultural heritage and values;

“**cultural entertainment**” means cultural forms of expression in song, dance and drama as interpretations of both traditional and contemporary works;

“**cultural heritage**” means all aspects of indigenous cultures both tangible and intangible;

**“Deputy Chairman”** means the Deputy Chairman of the Commission appointed under Section 8;

**“exhibitions”** means displays of works of art which includes paintings, artifacts, crafts or other artistic creations;

**“former Committee”** means the National Cultural Committee established under the *National Cultural Committee (Interim Arrangement) Act 1993* (No. 4 of 1993) repealed by this Act;

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

**“Committee”** means a Committee established under Section 15;

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

**PART II. – CULTURAL COMMISSION.**

**2. ESTABLISHMENT OF THE NATIONAL CULTURAL COMMISSION.**

A body to be known as the National Cultural Commission is hereby established.

**3. INCORPORATION OF THE COMMISSION.**

(1) The Commission–

- (a) is a body corporate with perpetual succession; and
- (b) may acquire, hold and dispose of property; and
- (c) may sue and be sued in its corporate name.

(2) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Commission affixed to a document and shall presume that it was duly affixed.

**4. FUNCTIONS OF THE COMMISSION.**

The functions of the Commission are to perform the cultural functions of the former National Cultural Committee and in this connection–

- (a) to assist and facilitate, preserve, protect, develop and promote the traditional cultures of the indigenous peoples of Papua New Guinea; and
- (b) to encourage the development, promotion and protection of the contemporary cultures of Papua New Guinea; and
- (c) to facilitate the marketing of selected and approved aspects of the cultures of Papua New Guinea; and
- (d) to co-ordinate with related Government and Non-Government Agencies on cultural matters; and
- (e) to co-ordinate cultural activities with Provincial cultural bodies; and
- (f) to liaise with Non-Government organisations on cultural matters; and
- (g) to liaise with international cultural organisations.

**5. POWERS OF THE COMMISSION.**

The Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions under this Act.

**6. POLICY DIRECTIONS.**

The Commission shall give effect to any directions as to the overall culture policy or policies on the development and promotion of culture given to the Commission by the Minister or the National Executive Council.

**PART III. – MEMBERSHIP OF THE COMMISSION, ETC.****7. MEMBERSHIP.**

(1) The Commission shall consist of eight (8) members, namely–

- (a) the Departmental Head of the Department of Prime Minister and National Executive Council or his nominee *ex officio*; and
- (b) the Departmental Head of the Department responsible for Education matters or his nominee *ex officio*; and
- (c) the Director of the National Museum and Art Gallery or his nominee *ex officio*; and
- (d) the Dean of the Faculty of Creative Arts of the University of Papua New Guinea or his nominee *ex officio*; and
- (e) the Executive Director of the National Cultural Commission *ex officio*; and
- (f) three persons associated with culture.

(2) The members referred to in Subsection (1)(f)–

- (a)<sup>1</sup> shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) shall be appointed for a period of three (3) years; and
- (c) are eligible for re-appointment.

(3) A nominee referred to in Subsection (1) shall be of a level not less than Assistant Secretary in the National Public Service or its equivalent.

(4) The members hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act 1955*.

**8. CHAIRMAN AND DEPUTY CHAIRMAN.**

The member holding office–

- (a) under Section 7(1)(a) shall be the Chairman of the Commission; and
- (b) under Section 7(1)(d) shall be the Deputy Chairman of the Commission.

**9. LEAVE OF ABSENCE OF MEMBERS.**

The Minister may grant leave of absence to a member on such terms and conditions as the Minister determines.

<sup>1</sup> Section 7 Subsection (2) amended by No. 97 of 2006, Sched. 1.



**10. VACATION OF OFFICE.**

(1) A member, other than an *ex officio* member, may resign his office by writing signed by him and delivered to the Minister.

(2) Where a member—

- (a) dies or resigns his office; or
- (b) becomes of unsound mind; or
- (c) becomes permanently incapable of performing his duties; or
- (d) resigns his office in accordance with Subsection (1); or
- (e) is absent, except with the written consent of the Minister, from three consecutive meetings of the Commission; or
- (f) fails to comply with certain provisions of this Act; or
- (g) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (h) is found guilty of misconduct in Office under the Leadership Code; or
- (i) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Minister shall terminate his appointment.

(3) The Minister, may, at any time, by written notice, advise a member that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour or on any grounds under Section 10.

(4) Within 14 days of the receipt of a notice under Subsection (3), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.

(5) Where the member referred to in Subsection (3), does not reply in accordance with Subsection (4), his appointment is terminated.

**11. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

The exercise of a power or the performance of a function of the Commission is not invalidated by reason of a vacancy in the membership of the Commission.

**12. CALLING OF MEETING.**

(1) The Commission shall meet as often as the business of the Commission requires and at such times and places as the Commission determines or as the Chairman, or in his absence the Deputy Chairman, directs, but in any event shall meet not less frequently than four times in each year.

(2) Where he receives a request to do so by the Minister or by not less than two members, the Chairman, or in his absence the Deputy Chairman, shall convene a meeting of the Commission within 14 days.

(3) For the purposes of Subsection (1), the Chairman or Deputy Chairman shall give to every member at least seven days' notice of the meeting.

**13. MEETING OF THE COMMISSION.**

(1) At a meeting of the Commission—

- (a) five members constitute a quorum; and
- (b) the Chairman, or in his absence the Deputy Chairman, shall preside, but if both the Chairman and Deputy Chairman are not present, the members present shall appoint a Chairman from among their own number; and
- (c) matters arising shall be decided by a majority of the votes of the members present and voting; and
- (d) the person presiding has a deliberative vote and, in the event of an equality of votes on any matter, also has a casting vote.

(2) The Commission shall cause minutes of its meetings to be recorded and kept.

(3) Subject to this Act, the procedures of the Commission are as determined by the Commission.

**14. DISCLOSURE OF INTEREST BY MEMBERS.**

(1) A member who is or whose immediate family is, in any way directly or indirectly interested in a matter whatsoever being considered or about to be considered or falls to be considered by the Commission shall, disclose the nature of the interest at a meeting of the Commission.

(2) A disclosure under Subsection (1), shall be recorded in the minutes of the Commission and the member—

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Commission in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

**15. COMMITTEES.**

(1) The Commission may establish such Committees as the Commission considers necessary for the purposes of the Commission.

(2) The Commission may—

(a) appoint persons (including members of the Commission) to be members of the Committees; and

(b) prescribe the powers, functions and procedures of the Committees.

(3) A member of a Committee shall be paid such fees and allowances as are determined under the *Board (Fees and Allowances) Act 1955*.

**16. DELEGATION.**

The Commission may, by written instrument, delegate to any person all or any of its functions and powers under this Act (except this power of delegation).

**17. ANNUAL REPORT.**

(1) The Commission shall, as soon as possible between 1 January and 31 March of each year, prepare and furnish to the Minister a report on the Commission and its operation under this Act for the preceding 12 months.

(2) As soon as practicable, after the Minister has received the report, he shall lay the report before the Parliament within 14 sitting days of the receipt of the report.

**PART IV. – CULTURAL INSTITUTION AND CULTURAL CENTRE  
ESTABLISHMENT.**

**18. ESTABLISHMENT OF CULTURAL INSTITUTIONS ETC.**

(1) The Commission shall establish as National Cultural Institutions–

- (a) the National Performing Arts Troupe; and
- (b) the Institute of Papua New Guinea Studies; and
- (c) the National Film Institute,

and may–

- (d) establish such other national cultural institutions and cultural centres as in the opinion of the Commission are necessary for the purpose of the Act; and
- (e) recognize and assist cultural institutions and cultural centres established by any person, group or organization, other than the Commission.

(2) A National Cultural Institution referred to in this section–

- (a) is a corporation under the name by which it is established, with perpetual succession; and
- (b) shall have a seal; and
- (c) subject to this Act, may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) All Courts, Judges and persons acting judicially shall take judicial notice of the seal of a National Cultural Institution affixed to a document and shall presume that it was duly affixed.

**19. THE NATIONAL PERFORMING ARTS TROUPE.**

Subject to this Act, the National Performing Arts Troupe is responsible to the Commission, within the limits of funds and other resources lawfully available to it, for–

- (a) developing and utilising theatre in Papua New Guinea as a tool for communication and social change at all levels of society, with particular emphasis at the village level; and
- (b) utilising theatre to promote Papua New Guinea national identity through major folk, traditional and contemporary operas and productions; and
- (c) promoting traditional Papua New Guinea cultures by establishing a repertoire and performing traditional dances and songs; and

- (d) developing theatre as a professional art form; and
- (e) supporting and developing formal and informal training in theatre at the national and regional theatres; and
- (f) staging local, regional, national and international theatre and cultural festivals; and
- (g) domestic and overseas festivals; and
- (h) developing and assisting provincial and village theatre and cultural groups; and
- (i) entering into affiliations or becoming members of international theatre and cultural organisations; and
- (j) any other prescribed matters.

**20. THE INSTITUTE OF PAPUA NEW GUINEA STUDIES.**

Subject to this Act, the Institute of Papua New Guinea Studies is responsible to the Commission, within the limits of funds and the resources lawfully available to it, for—

- (a) carrying out research into, recording and interpreting all aspects of the traditional culture of the indigenous inhabitants of the country; and
- (b) establishing a library of Papua New Guinea folklore; and
- (c) making all its records available for the development of literature, drama, music and the visual arts; and
- (d) determining the terms and conditions under which persons wishing to conduct research into any aspects of traditional culture may be allowed to do so; and
- (e) the systematic recording of the music of the country with a view to establishing a tape and record library of such music; and
- (f) developing a film-making programme to document indigenous arts and crafts; and
- (g) developing a publication programme to inform the people of the country about all aspects of indigenous culture; and
- (h) establishing and maintaining a trust fund to be used to finance research into the indigenous culture of the country; and
- (i) any other prescribed matter.

**21. THE NATIONAL FILM INSTITUTE.**

Subject to this Act, the National Film Institute is responsible to the Commission, within the limits of funds and other resources lawfully available to it, for—

- (a) developing film as a medium of communication with a wide Papua New Guinea audience; and
- (b) creating awareness of the richness of Papua New Guinea cultures through film; and
- (c) encouraging the making of Papua New Guinea documentary films; and
- (d) producing films with a Papua New Guinea perspective; and
- (e) developing film as an educational tool; and
- (f) promoting Papua New Guinea abroad through film; and
- (g) developing towards establishing a commercial film industry; and
- (h) monitoring and facilitating the activities of foreign film crews in Papua New Guinea; and
- (i) drawing up policies to regulate foreign film crews in Papua New Guinea; and
- (j) any other prescribed matter.

**22. APPOINTMENT, ETC., OF DIRECTORS OF NATIONAL CULTURAL INSTITUTIONS.**

(1) Each National Cultural Institution shall have a Director who—

- (a) shall be appointed by the Commission on the recommendation of the Executive Director; and
- (b) shall be appointed for such periods as the Commission on the recommendation of the Executive Director determines; and
- (c) shall be the Chief Executive Officer of the Institution to which he is appointed.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act 1988* the terms and conditions of appointment of a Director of a National Cultural Institution are as determined by the Minister.

**23. FUNCTIONS OF THE DIRECTORS.**

(1) A Director of a National Cultural Institution shall manage the affairs of the Institution and any associated service and shall, in relation to the management of these affairs, act in accordance with the Cultural Development Programme and any directions of any Committee established by the National Cultural Commission.

(2) In addition, a Director of a National Cultural Institution shall advise the Committee of that Institution on any matter concerning the affairs of the Institution referred to him by the Commission.

(3) A Director of a National Cultural Institution has such other functions as a Committee of the Commission may, from time to time, determine.

**PART V. – STAFF OF THE COMMISSION.**

**24. EXECUTIVE DIRECTOR.**

(1)<sup>2</sup> <sup>3</sup>There shall be an Executive Director of the Commission whose manner of appointment, suspension and dismissal is as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) The Executive Director is–

- (a) the Chief Executive of the Commission; and
- (b) the head of the staff of the Commission.

**25. FUNCTIONS OF THE EXECUTIVE DIRECTOR.**

(1) The Executive Director shall–

- (a) manage the Commission in accordance with the policy and directions of the Commission; and
- (b) advise the Commission on any matter concerning the Commission referred to him by the Commission.

(2) The Executive Director–

- (a) shall carry out and perform the duties required of him under this Act and his contract of employment; and
- (b) has such other functions as the Commission may, from time to time, determine.

**26. OFFICERS.**

(1) The Executive Director may appoint to be officers and employees of the Commission such persons as he considers necessary for the purposes of this Act.

(2) The Executive Director and the officers appointed under Subsection (1), constitute the staff of the Commission.

**27. CONTRACTS OF EMPLOYMENT.**

The Executive Director, and such other officers and employees of the Commission as the Commission may approve, shall be employed under, and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, hold office in accordance with the terms and conditions of written contracts of employment.

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<sup>2</sup> Section 24 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

<sup>3</sup> Section 24 Subsection (1) substituted by No. 97 of 2006, Sched. 1.

**28. CONDITIONS OF EMPLOYMENT.**

Subject to the *Salaries and Conditions Monitoring Committee Act 1988*, an officer or employee, other than the Executive Director referred to in Section 24, holds office on such terms and conditions as the Commission determines.

**29. PUBLIC SERVICE RIGHTS.**

Where an officer or employee of the Public Service is appointed to be the Executive Director or an officer or employee of the Commission, his service on the staff of the Commission shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on grounds of illness; and
- (b) furlough or pay instead of furlough (including pay to dependants on the death of the officer or employee).

**30. LIABLE TO TAXATION.**

Income, property and operations of the Commission are subject to the provisions of the *Income Tax Act 1959*.



**PART VI. – MISCELLANEOUS.**

**31. PROTECTION FROM LIABILITY.**

Liability at Law shall not attach to members of the Commission or a Committee or any other person on account of any act or thing—

- (a) done or omitted to be done, pursuant to this Act; or
- (b) done or omitted to be done *bona fide* for the purposes of this Act and without negligence.

**32. PROOF OF CERTAIN MATTERS.**

In any proceedings by or against the Commission, proof is not required, unless evidence is given to the contrary in relation to—

- (a) the constitution of the Commission, or of a Committee; or
- (b) a resolution of the Commission or of a Committee; or
- (c) the appointment of a member of the Commission or of a Committee; or
- (d) the presence of a quorum at a meeting at which a determination is made or an act done by the Commission or by a Committee.

**33. SERVICE OF PROCESS.**

Any notice, summons, writ or other process required to be served on the Commission may be served by being left at the office of the Commission or in the case of a notice, by post.

**34. AUTHENTICATION OF DOCUMENTS.**

Any document requiring authentication by the Commission is sufficiently authenticated without the seal of the Commission if signed by the Executive Director or the Chairman.

**35. COMPENSATION.**

(1) Where loss or damage is suffered by any person by reason of the exercise, by or on behalf of the Commission, of a power conferred by or under this Act, compensation for the loss or damage is payable to that person by the Commission.

(2) Subject to Subsection (3), the amount of compensation payable under Subsection (1) is as determined by the Minister.

(3) A person, aggrieved by a determination of the Minister under Subsection (2), may appeal to the National Court.

**36. RECOVERY OF MONEY DUE.**

Any money due to the Commission under this Act may be recovered by the Commission as a debt.

**37. CONSULTANTS.**

The Commission may, from time to time—

(a) after consultation with—

(i) the Minister; and

(ii) the Executive Director; and

(b) within the limit of funds lawfully available for the purpose; and

(c) on such terms and conditions as are determined by the Commission,

employ such consultants as, in the opinion of the Commission, are necessary for the purposes of the Commission.

**38. REGULATIONS.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed for giving effect to this Act.

**PART VII. – FINANCES OF THE COMMISSION.**

**39. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT.**

(1) Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Commission, subject to modifications specified in Schedule 1 to this Act.

(2) The Commission is a trading enterprise for the purposes of Section 62 of the *Public Finances (Management) Act 1995*.

**40. MONEYS OF THE COMMISSION GENERALLY.**

(1) The Commission shall open and maintain such bank accounts, with such bank or banks as the Minister approves for the purpose of the Commission, and shall pay into them—

- (a) all moneys appropriated by Act for the purposes of carrying out or giving effect to this Act; and
- (b) all moneys received by the Commission for the sale, leasing or hire of property; and
- (c) all other moneys received by the Commission in the exercise and performances of its powers, functions and duties.

(2) Out of the moneys standing to the credit of the accounts of the Commission referred to in Subsection (1), the Commission shall pay—

- (a) all moneys payable by it in repayment of advances or loans under this Act; and
- (b) the costs, charges and expenses incurred by the Commission in the performance of its functions under this Act; and
- (c) the costs, charges and expenses incurred by the Commission after consultation with the Minister, in establishing and maintaining cultural projects in giving effect to the functions of the Commission; and
- (d) the remuneration and allowances of the members of the Commission and of officers and employees, of the Commission; and
- (e) any other payments that the Commission is authorized or required to make under this Act or any law.

(3) In respect of moneys advanced or borrowed under this or any other Act, the Commission shall maintain a separate account in respect of the moneys that are related to each such purpose, and shall cause proper entries of—

- (a) all moneys so advanced or borrowed for a particular purpose of the Commission; and
- (b) the purpose to which the money have been applied to be made in the account maintained in respect of that purpose; and

**s. 40.**

*National Cultural Commission 1994*

- (c) the fees and charges for services rendered by the Commission; and
- (d) the establishment and maintenance of Provincial Cultural Boards, their functions, powers and procedures; and
- (e) the nature and subject of cultural promotional activities; and
- (f) the reports, returns and information to be supplied under or for the purposes of this Act; and
- (g) penalties of fines not exceeding K30,000.00 and default penalties of fines not exceeding K100.00 for offences against the regulations.

**PART VIII. – REPEAL.**

**41. REPEAL.**

The *National Cultural Committee (Interim Arrangement) Act 1993* (No. 4) is repealed.

**PART IX. – SAVINGS AND TRANSITIONAL.****42. TRANSFER OF ASSETS, ETC., TO THE COMMISSION.**

(1) All assets held by, and obligations and liabilities imposed on the former Committee immediately before the coming into operation of this Act, are, on that date, transferred to the Commission.

(2) Where any property vested in the former Committee to which Subsection (1) applies is land registered under the *Land Registration Act 1981*, the Registrar of Titles shall, without formal transfer, and without fee, on application in that behalf by the Commission, enter or register the Commission in the register kept under that Act and, on entry and registration grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

**43. TRANSFER OF ACCOUNTS.**

All sums, immediately before the coming into operation of this Act, at credit of, and on accounts opened by the former Committee are, on that coming into operation, transferred to equivalent accounts opened in the name of the Commission under the provisions of this Act or the *Public Finances (Management) Act 1986*.

**44. SAVING OF CONTRACTS.**

All contracts and agreements (other than, subject to Section 42, contracts of employment), entered into, made with or addressed to the former Committee are, to the extent that they were immediately before the coming into operation of this Act, binding on and of full force and effect against or in favour of the former Committee, on that coming into operation, binding on and of full force and effect against or in favour of the Commission as fully and effectively as if the Commission had been a party to them or entitled to the benefit of them.

**45. STAFF.**

All persons employed as officers or employees of the former Committee immediately before the coming into operation of this Act are, on that coming into operation, deemed to be officers or employees of the staff of the Commission, but in such offices and at such levels as are determined by the Commission.

**46. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any action, arbitration or proceedings was pending or existing by, against or in favour of the former Committee, it does not, on the coming into operation of this Act, abate or discontinue or be in any way affected by any provision of this Act, but it may be prosecuted, continued and enforced by, against or in favour of the Commission.

**47. APPLICATION OF ACTS, ETC.**

Where—

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

contains a reference, express or implied, to the former Committee that reference shall, where relevant to the functions of the Commission on and after the coming into operation of this Act, except where the context otherwise requires, read and construed as a reference to the Commission.

Office of Legislative Counsel, PNG