



Republic of Namibia
Annotated Statutes

Law Reform and Development Commission Act 29 of 1991

(GG 331)

brought into force on on 15 July 1992 by Proc. 21/1992 (GG 439)

as amended by

**Law Reform and Development Commission
Amendment Act 4 of 1995 (GG 1036)**

came into force on date of publication: 28 February 1995

**Law Reform and Development Commission
Amendment Act 2 of 2004 (GG 3238)**

brought into force on 15 July 2004 by GN 147/2004 (GG 3239)

ACT

To establish a Law Reform and Development Commission and to provide for matters incidental thereto.

(Signed by the President on 12 December 1991)

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

Definitions

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

“Commission” means the Law Reform and Development Commission established by section 2; and

“Minister” means the Minister of Justice.

Establishment of Commission

2. There is hereby established a body to be known as the Law Reform and Development Commission.

Constitution of Commission

3. (1) The Commission consists of -

- (a) a chairperson appointed by the President after consultation with the Minister;
- (b) the Ombudsman;
- (c) one legal practitioner as defined in section 1 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), appointed by the President after consultation with the Law Society of Namibia established by section 40 of that Act;
- (d) one staff member of the Ministry of Justice nominated by the Minister and appointed by the President;
- (e) one person who is in full-time employment in a lecturing capacity at the Faculty of Law of the University of Namibia, appointed by the President after consultation with the Vice-Chancellor of the University;
- (f) not more than three persons appointed by the President after consultation with the Minister, who in the opinion of the President, are suitable for appointment on account of any qualification relating to the objects of the Commission.

[subsection (1) amended by Act 4 of 1995 and substituted by Act 2 of 2004]

- (2) (a) The Commission shall elect one of its members to be the deputy chairperson of the Commission.
- (b) The deputy chairperson shall exercise all the powers and perform all the duties and functions conferred or imposed upon the chairperson by or under this Act during a vacancy in the office of chairperson, or during any period when the chairperson is absent or is otherwise unable to perform his or her duties as chairperson.

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- (3) The chairperson of the Commission -
- (a) holds office and performs his or her functions under this Act in a full-time capacity; and
 - (b) shall not hold, or be engaged in, any other remunerative employment or occupation while serving on the Commission.

[subsection (3) deleted by Act 4 of 1995 and inserted by Act 2 of 2004]

Period of office

4. (1) The chairperson of the Commission is appointed for five years, and the members of the Commission referred to in section 3(1)(c), (d), (e) and (f) are appointed for three years.

(2) A member, except the chairperson, appointed to fill a casual vacancy holds office for the unexpired portion of the period of office of the person in whose place he or she is appointed.

(3) The chairperson and other members of the Commission are eligible for reappointment upon expiration of their term of office.

[Section 4 is substituted by Act 2 of 2004, which includes the following transitional provision (which is of no ongoing relevance):

“Every person who holds office as a member of the Law Reform and Development Commission immediately before this Act comes into operation ceases to hold that office when this Act comes into operation, but is eligible for reappointment as such a member.”]

Vacation of office

5. (1) A member of the Commission, other than the chairperson, the Ombudsman and the member referred to in section 3(1)(d), vacates his or her office if he or she -

- (a) resigns by giving a signed notice of resignation to the secretary of the Commission;
- (b) is absent from three consecutive meetings of the Commission without the permission of the Commission or the chairperson of the Commission acting with the authorisation of the Commission;
- (c) is convicted of an offence for which the member is sentenced to imprisonment without the option of a fine, whether or not such sentence or part thereof is suspended;
- (d) being a member appointed under section 3(1)(c) or (e), ceases to hold the qualification or office on account of which he or she was appointed; or
- (e) is removed from office under subsection (3).

(2) The chairperson of the Commission vacates his or her office if he or she -

- (a) resigns by giving a signed notice of resignation to the President; or
- (b) is removed from office under subsection (3).

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(3) The chairperson of the Commission or a member of the Commission appointed under section 3(1)(c), (e) or (f) may be removed from office by the President by notice in writing if -

- (a) the member is mentally or physically incapable of efficiently performing the duties of a member;
- (b) the member is guilty of misconduct;
- (c) the member is unfit or incapable of carrying out efficiently the duties of a member; or
- (d) the member's estate is sequestrated.

(4) The President may at any time revoke the appointment of a member referred to in section 3(1)(d) by notice in writing.

[section 5 amended by Act 4 of 1995 and substituted by Act 2 of 2004]

Objects of Commission

6. The objects of the Commission shall be to undertake research in connection with and examine all branches of the law of Namibia and to make recommendations for the reform and development thereof, including -

- (a) the repeal of obsolete or unnecessary enactments;
- (b) the consolidation or the codification of any branch of the law or the introduction of other measures aimed at making the law more readily accessible;
- (c) the integration or harmonization of the customary law with the common and statutory law; and

[The "and" at the end of paragraph (c) has become superfluous after the addition of new paragraphs at the end of section 6.]

- (d) new or more effective procedures for the administration of the law and the dispensing of justice;
- (dA) the enactment of laws to enhance respect for human rights as enshrined in the Namibian Constitution or to ensure compliance with international legal obligations.

[Paragraph (dA) is inserted by Act 2 of 2004, with a full stop at the end instead of a semicolon, and no addition of the word "and" as would be expected.]

- (e) to advise the Minister in regard to any matter which the Minister may refer to it.

[Paragraph (e) does not fit properly with the introductory phrasing of section 6.]

Powers and duties of Commission

7. (1) In order to achieve its objects, the Commission shall from time to time prepare and submit to the Minister for approval, programmes in which the various matters which in its opinion require consideration are included in order of priority.

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(2) The Commission may invite and receive any suggestions relating to its objects from any person or body and may include such suggestions in any programme.

(3) The Commission shall, as far as possible in order of priority, examine the matters appearing on any programme as approved or amended by the Minister and may for that purpose consult any person or body, whether by the submission of study documents prepared by the Commission or in any other manner.

(4) If after examining any matter the Commission is of the opinion that legislation ought to be enacted with regard to that matter, the Commission shall prepare draft legislation for that purpose.

(5) (a) (i) For the purpose of ascertaining any matter relating to a subject being examined by it, the Commission shall have the powers which the High Court of Namibia has, to summon witnesses, to cause an oath or affirmation to be administered to them, to examine them, and to call for the production of books, documents and objects.

(ii) A summons for the attendance of a witness or for the production of any book, document or object before the Commission shall be signed and issued by the secretary of the Commission in a form prescribed by the chairperson of the Commission, and shall be served in the same manner as a summons for the attendance of a witness at a criminal trial in the High Court of Namibia.

(iii) If required to do so by the chairperson of the Commission a witness shall, before giving evidence, take an oath or make an affirmation, which oath or affirmation shall be administered by the chairperson or such official of the Commission as the chairperson may designate.

(iv) Any person who has been summoned to attend any sitting of the Commission as a witness or who has given evidence before the Commission shall be entitled to the same witness fees, as if he or she had been summoned to attend or had given evidence at a criminal trial in the High Court of Namibia held at the place of such sitting, and in connection with the giving of any evidence or the production of any book or document before the Commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in that court, shall apply.

(b) Where the Commission has summoned any person in accordance with this subsection, the evidence and addresses of such a person shall be heard by the Commission in public, but the chairperson of the Commission may, in his or her discretion, exclude from the place where such evidence is to be given or such address is to be delivered any person whose presence at the hearing of such evidence or address is, in his or her opinion, not necessary or desirable.

(6) The Commission may, with the approval of the Minister in consultation with the Minister of Finance, on a temporary basis or for a particular matter which is being examined by it, employ any person with special knowledge of any matter relating to the work of the Commission, or obtain the co-operation of any body, to advise or assist the Commission in the exercise of its powers and the performance of its duties and functions under this Act, and fix the remuneration (including reimbursement for travelling, subsistence and other expenses) or other benefits, if any, of such person or body.

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Meetings of Commission

8. (1) Meetings of the Commission shall be held at the times and places determined by the chairperson of the Commission.

(2) At a meeting of the Commission a majority of the members of the Commission holding office at that time shall constitute a quorum.

[subsection (2) substituted by Act 2 of 2004]

(3) If both the chairperson and the deputy-chairperson of the Commission are absent from a meeting, the members present shall choose one of their number to preside at that meeting.

(4)

[subsection (4) deleted by Act 4 of 1995]

(5) Minutes shall be kept of all the meetings of the Commission.

Reports of Commission

9. (1) The Commission shall prepare a full report in regard to any matter examined by it and shall submit such report together with draft legislation, if any, prepared by it, to the Minister for consideration.

(2) The Commission shall annually not later than the first day of March submit to the Minister a report on all its activities during the previous year.

(3) The report submitted to the Minister in terms of subsection (2) shall be laid upon the Table of the National Assembly by the Minister within one month after receipt thereof if the National Assembly is then in ordinary session, or, if the National Assembly is not then in ordinary session, within one month after the commencement of its next ensuing ordinary session.

Committees of Commission

10. (1) The Commission may, if it deems it necessary for the effective performance of its duties or functions -

- (a) establish a working committee, which shall consist of such members of the Commission as the Commission may designate;
- (b) establish such other committees as it may deem necessary, and which shall consist of -
 - (i) such members of the Commission as the Commission may designate; or
 - (ii) such members of the Commission as the Commission may designate and the other persons appointed by the Minister for the period determined by the Minister.

(2) The Minister may at any time extend the period of an appointment referred to in subsection (1)(b)(ii) or, if in his or her opinion good reasons exist therefor, revoke any such appointment.

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(3) The Commission shall designate the chairperson and, if the Commission deems it necessary, the deputy-chairperson of a committee established under subsection (1).

(4) (a) A committee referred to in subsection (1) shall, subject to the directions of the Commission, exercise such powers and perform such duties and functions of the Commission as may be assigned to it by the Commission.

(b) Any power so exercised, or duty or function so performed by the working committee referred to in subsection (1)(a), shall be deemed to have been exercised or performed by the Commission.

(5) The Commission may at any time dissolve any committee established by it.

(6) The provisions of sections 7(5) and 8 shall *mutatis mutandis* apply to a committee of the Commission or to members of such a committee.

(7) For the purposes of section 12, a member of a committee who is not a member of the Commission, shall be deemed to be a member of the Commission.

Secretary and staff

11. (1) The Minister shall designate an officer in the public service as the secretary of the Commission.

(2) In the exercise of its powers and the performance of its duties and functions under this Act, the Commission and its secretary shall be assisted by officers and employees in the public service made available for such purpose by the Permanent Secretary for Justice.

Conditions of service and remuneration

12. (1) The chairperson of the Commission is appointed on the terms and conditions as the President determines.

(2) A member of the Commission who is not in the full-time employment of the State is entitled to such remuneration, benefits, privileges and allowances (including allowances for the reimbursement of travelling and subsistence expenses incurred in connection with the performance of their functions under this Act) as the Minister, with the concurrence of the Minister of Finance, may determine.

(3) The remuneration, benefits privileges or allowances of members determined under subsection (2) may differ according to different functions performed by the members.

[section 12 amended by Act 4 of 1995 and substituted by Act 2 of 2004]

Offences

13. Any person -

(a) who wilfully interrupts the proceedings of the Commission or any committee thereof or who wilfully hinders or obstructs the Commission or such a committee in the performance of its functions;

(b) summoned to attend and give evidence or to produce any book, document or object before the Commission or any committee thereof, who, without sufficient cause

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fails to attend at the time and place specified in the summons, or to remain in attendance until the conclusion of the enquiry or until he or she is excused by the chairperson of the Commission or such a committee from further attendance, or having attended, refuses to be sworn or to make affirmation as a witness after he or she has been required by the chairperson of the Commission or such a committee to do so or, having been sworn or having made an affirmation, fails to answer, subject to the provisions of section 7(5)(a)(iv), fully and satisfactorily any question lawfully put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she has been summoned to produce;

- (c) who, after having been sworn or having made an affirmation, gives false evidence before the Commission or any committee thereof on any matter, knowing such evidence to be false or not knowing or believing it to be true;

shall be guilty of an offence and liable on conviction -

- (i) in the case of an offence in terms of paragraph (a) or (b), to a fine not exceeding R2 000 or to imprisonment for a period not exceeding six months, or to both such fine and such imprisonment;
- (ii) in the case of an offence in terms of paragraph (c), to a fine not exceeding R4 000 or to imprisonment for a period not exceeding 12 months, or to both such fine and such imprisonment.

Regulations

14. The Minister may, after consultation with the Commission, make regulations relating to -

- (a) the procedures to be followed at, or in connection with, meetings of the Commission or a committee thereof;
- (b) the form in which the suggestions referred to in section 7(2) are to be submitted to the Commission; and
- (c) generally, such other matters which may be considered necessary or expedient to be prescribed in order to achieve the purposes of this Act.

Repeal of laws

15. The South African Law Commission Act, 1973 (Act 19 of 1973), section 20 of the General Law Amendment Act, 1974 (Act 29 of 1974), and the South African Law Commission Amendment Act, 1984 (Act 85 of 1984), are hereby repealed.

Short title and commencement

16. This Act shall be called the Law Reform and Development Commission Act, 1991, and shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.