



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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### Government Notice

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#### OFFICE OF THE PRIME MINISTER

No. 146 2004

#### 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. 2 of 2004: Law Reform and Development Commission Amendment Act, 2004.

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Act No. 2, 2004

**LAW REFORM AND DEVELOPMENT  
COMMISSION AMENDMENT ACT, 2004**

**EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[                    ] Words in bold type in square brackets indicate omissions from existing provisions.

**ACT**

**To amend the Law Reform and Development Commission Act, 1991 so as to alter the constitution of the Law Reform and Development Commission; to make provision that the chairperson of the Commission shall hold office in a full-time capacity; to expand the objects of the Commission; to alter the method of determining a quorum for meetings of the Commission; and to provide for incidental matters.**

*(Signed by the President on 13th July 2004)*

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

**Amendment of section 3 of Act No. 29 of 1991, as amended by section 1 of Act No. 4 of 1995.**

**1.** Section 3 of the Law Reform and Development Commission Act, 1991 (hereafter referred to as the principal Act) is amended -

(a) by the substitution for subsection (1) of the following subsection:

"(1) The Commission consists of -

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| <p>(a) a chairperson appointed by the President after consultation with the Minister;</p> <p>(b) the Ombudsman;</p> <p>(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;</p> <p>(d) one staff member of the Ministry of Justice nominated by the Minister and appointed by the President;</p> <p>(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;</p> <p>(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.";</p> |
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(b) by the addition of the following subsection:

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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."

**Substitution of section 4 of Act No. 29 of 1991.**

2. The following section is substituted for section 4 of the principal Act:

**"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."

**Substitution of section 5 of Act No. 29 of 1991, as amended by section 2 of Act No. 4 of 1995.**

3. The following section is substituted for section 5 of the principal Act:

**"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

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(b) is removed from office under subsection (3).

(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."

**Amendment of section 6 of Act No. 29 of 1991.**

4. The following paragraph is inserted after paragraph (d) of section 6 of the principal Act:

"(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."

**Amendment of section 8 of Act No. 29 of 1991, as amended by section 3 of Act No. 4 of 1995.**

5. Section 8 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

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

**Substitution of section 12 of Act No. 29 of 1991, as amended by section 4 of Act No. 4 of 1995.**

6. The following section is substituted for section 12 of the principal Act:

**"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."

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COMMISSION AMENDMENT ACT, 2004****Transitional provisions**

7. 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.

**Short title and commencement**

8. This Act is called the Law Reform and Development Commission Amendment Act, 2004 and comes into operation on a date to be determined by the Minister of Justice by notice in the *Gazette*.

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