

No. 30 of 1997.

National AIDS Council Act 1997.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Compliance with Constitutional requirements.
2. Interpretation.
 - “AIDS”
 - “Chairman”
 - “Committee”
 - “Council”
 - “Director”
 - “Global Strategy on AIDS”
 - “health worker”
 - “HIV”
 - “member”
 - “this Act”

PART II – ADMINISTRATION.

Division 1 – National AIDS Council.

3. Establishment of the Council.
4. Objects of the Council.
5. Functions of the Council.
6. Powers of the Council.

Division 2 – Membership, etc., of the National AIDS Council.

7. Composition of the Council.
8. Alternate members.
9. Leave of absence of members.
10. Vacation of office.
11. Vacancy not to affect powers or functions.
12. Meetings of the Council.
13. Disclosure of interest by members.
14. Delegation.

15. Reports.

Division 3 – Committees of the Council.

16. Power to establish Committees, etc.

17. Vacancy not to affect powers or functions.

18. Meetings of Committees.

19. Procedures of Committees.

Division 4 – The Service of the Council, etc.

20. Establishment of the National AIDS Council Secretariat.

21. Director.

22. Staff of the Council.

23. Terms and conditions of employment.

24. Consultants.

Division 5 – Finance.

25. Application of *Public Finances (Management) Act 1995*.

26. Funds of the Council.

PART III – MISCELLANEOUS.

27. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

National AIDS Council Act 1997,

Being an Act to provide for the protection and promotion of public health and public welfare in the management and prevention of HIV/AIDS by the establishment of a National AIDS Council, and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution* namely–

- (a) the right to privacy conferred by Section 49 of the *Constitution*; and
- (b) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public safety, public welfare and public health.

(2) For the purposes of–

- (a)¹ [*Repealed.*]
- (b) Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*,

it is hereby declared that this Act relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears–

“AIDS” means Acquired Immune Deficiency Syndrome;

¹ Section 1(2)(a) repealed in consequence of repeal of *Organic Law on Provincial Government*.

- “Chairman”** means the Chairman of the Council appointed under Section 7(1)(a);
- “Committee”** means a Committee established under Section 16;
- “Council”** means the National AIDS Council established by Section 3;
- “Director”** means the Director of the Council appointed under Section 21;
- “Global Strategy on AIDS”** means the Global Strategy for the Prevention and Control of AIDS as endorsed by the meeting of the World Health Assembly in May 1987 by resolution number WHA40.26 and as amended from time to time;
- “health worker”** means a medical practitioner, dental practitioner, allied health worker, health extension officer, nurse or nurse aide, registered or enrolled in accordance with the *Medical Registration Act 1980*;
- “HIV”** means Human Immunodeficiency Virus;
- “member”** means a member of the Council;
- “this Act”** includes the Regulations.

PART II. – ADMINISTRATION.

Division 1.

National AIDS Council.

3. ESTABLISHMENT OF THE COUNCIL.

(1) The National AIDS Council is hereby established.

(2) The Council—

(a) is a corporation with perpetual succession; and

(b) shall have a seal; and

(c) may acquire, hold, deal with and dispose of 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 the Council affixed to a document, and shall presume that it was duly affixed.

4. OBJECTS OF THE COUNCIL.

The objects of the Council are—

(a) to take multi sectoral approaches with a view to prevent, control and to eliminate transmission of HIV in Papua New Guinea; and

(b) to organise measures to minimize the personal, social and economic impact of HIV infection and the disease of AIDS; and

(c) to ensure, as far as is possible, that personal privacy, dignity and integrity are maintained in the face of the HIV/AIDS epidemic in Papua New Guinea,

in accordance with the *Constitution* and the Global Strategy on AIDS.

5. FUNCTIONS OF THE COUNCIL.

(1) The functions of the Council are—

(a) to be responsible for formulating, implementing, reviewing and revising national policy, in accordance with its objects, for the prevention, control and management of HIV/AIDS; and

(b) to make recommendations and provide guidelines on any issue related to HIV/AIDS to the National Executive Council and, where appropriate, to Provincial Governments and Local-level Governments in accordance with the national policy referred to in Paragraph (a); and

(c) to foster, co-ordinate and monitor HIV/AIDS prevention, control and management strategies and programmes in the country, and to foster their evaluation; and

- (d) to encourage, accept, administer and allocate aid monies, whether from within the country or elsewhere, for purposes consistent with its objects, and to account for such of those monies as are allocated to non-government organisations; and
- (e) to administer and expend money appropriated by the National Parliament, or raised or received by the Council, for the purposes of the Council; and
- (f) to make comment on any proposals to be submitted to the National Executive Council on the allocation and sharing of public funds, aid monies and other resources in relation to HIV/AIDS between national and provincial levels, the public and private sectors and other persons and bodies; and
- (g) to consult and co-operate with the appropriate Departments, State Services, statutory authorities and other persons and organisations in Papua New Guinea and elsewhere on matters related to its activities; and
- (h) to initiate, encourage, facilitate and monitor the preparation and dissemination of information and educational material related to HIV/AIDS, and ensure that any such material is in accordance with its objects; and
- (i) to liaise with and advise Departments, State Services, statutory authorities, health workers and other health and allied services regarding testing, treatment, case management, drug trials, the setting of standards, and other medical issues in relation to HIV/AIDS; and
- (j) to initiate, encourage, facilitate and monitor counselling, care and legal services in relation to HIV/AIDS; and
- (k) to initiate, encourage, facilitate and monitor research, whether medical, epidemiological, psychological, sociological, legal and otherwise, on or in relation to HIV/AIDS in Papua New Guinea, and to ensure that any such research is carried out in accordance with its objects; and
- (l) to advise and make recommendations to the Minister on the operation of this Act and any other law as it relates to HIV/AIDS, and on changes and amendments it considers necessary or advisable to be made to any law in order to promote and further its objects; and
- (m) to provide advice to National and Provincial Governments and to other bodies and individuals on the operation of the law in relation to HIV/AIDS; and
- (n) such other functions as are given to it under this Act or any other law.

(2) The Council may perform any of its functions in co-operation with a Provincial Government, or with any body established by a provincial government to perform functions for or in relation to HIV/AIDS, or with any other person, association or organization.

6. POWERS OF THE COUNCIL.

The Council has power to do all things necessary or convenient to be done for or in connection with the performance of its functions, and in particular, may—

- (a) enter into contracts, including contracts regarding the expenditure of aid monies; and
- (b) acquire, hold and dispose of real or personal property; and
- (c) occupy, use and control any land or building owned or held under lease by the Government of Papua New Guinea and made available for the purposes of the Council; and
- (d) accept gifts, bequests or devises made to the Council (whether on trust or otherwise) and act as trustee of money or other property vested in the Council on trust; and
- (e) subject to the approval of the Minister, borrow money on terms and conditions approved by the Minister; and
- (f) establish or participate in the establishment of a body, whether incorporated or not, whether situated in Papua New Guinea or elsewhere, for the purpose of exercising any of the Council's functions or powers; and
- (g) require furnishing of information by Departments, other Government agencies and other relevant bodies whom the Council believes hold information with respect to persons with HIV/AIDS status; and
- (h) exercise other powers conferred on it by this Act or any other law.

Division 2.

Membership, etc., of the National AIDS Council.

7. COMPOSITION OF THE COUNCIL.

(1) The Council shall consist of the following members:—

- (a) the Departmental Head of the Department responsible for health matters or his nominee, *ex officio*, who shall be Chairman; and
- (b) the Departmental Head of the Department responsible for education matters or his nominee, *ex officio*; and
- (c) the Departmental Head of the Department responsible for provincial and local government affairs, or his nominee, *ex officio*; and
- (d) the Departmental Head of the Department responsible for home affairs and youth matters, or his nominee, *ex officio*; and
- (e) the Departmental Head of the Department responsible for industrial relations matters, or his nominee, *ex officio*; and
- (f) the Departmental Head of the Department responsible for lands and physical planning matters, or his nominee, *ex officio*; and

- (g) the Departmental Head of the Department responsible for commerce and industry matters, or his nominee, *ex officio*; and
- (h) the Departmental Head of the Department responsible for civil aviation matters, or his nominee, *ex officio*; and
- (i) the Departmental Head of the Department responsible for minerals resource matters, or his nominee, *ex officio*; and
- (j) the Departmental Head of the Department responsible for agriculture matters, or his nominee, *ex officio*; and
- (k) the Departmental Head of the Department responsible for national planning and implementation matters, or his nominee, *ex officio*; and
- (l) the Executive Director of the National Fisheries Authority, or his nominee, *ex officio*; and
- (m) the Commissioner for Correctional Services, or his nominee, *ex officio*; and
- (n) the Commander of the Defence Force, or his nominee, *ex officio*; and
- (o) the Commissioner for Police, or his nominee, *ex officio*; and
- (p) the Executive Director of the National Forest Authority, or his nominee, *ex officio*; and
- (q) one member to represent business and employers; and
- (r) one member to represent church organisations; and
- (s) one member to represent voluntary organisations; and
- (t) one member to represent the interests of women; and
- (u) the Director, *ex officio*.

(2) A person nominated under Subsection (1)(a) to (p) inclusive shall be an officer of a level not less than an officer in charge of a branch or division of that Department or organization as the case may be or equivalent and which exercises functions having the most relevance to the functions of the Council.

(3) The persons referred to in Subsection (1)(q), (r), (s) and (t)–

- (a)² shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) shall be appointed for a term not exceeding three year; and
- (c) are eligible for re-appointment; and
- (d) hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act 1955*.

(4) The members shall appoint one of their number to be the Deputy Chairman of the Council.

² Section 7 Subsection (3) amended by No. 97 of 2006, Sched. 1.

8. ALTERNATE MEMBERS.

(1) For each of the members appointed under Section 7(1)(q), (r), (s) and (t) an alternate member shall be appointed in the same way and subject to the same conditions as the member for whom he is the alternate.

(2) In the event of the inability to act of a member, the alternate member has and may exercise all his powers, functions, duties and responsibilities (including membership of a Committee) and this Act applies accordingly.

(3) An alternate member may, unless the Council otherwise directs, attend all meetings of the Council but shall not, except where he is attending in the absence of the member for whom he is the alternate, take part in debate, vote on any matter or be counted toward a quorum.

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.

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) If a member, other than an *ex officio* member—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office in accordance with Subsection (1); or
- (c) is absent, except with the written consent of the Minister, from three consecutive meetings of the Council; or
- (d) fails to comply with Section 13; or
- (e) 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
- (f) 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, other than an *ex officio* member, that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(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 Council is not invalidated by reason of a vacancy in the membership of the Council.

12. MEETINGS OF THE COUNCIL.

(1) The Council shall meet as often as the business of the Council requires, and at such times and places as the Chairman directs, but in any event not less frequently than once in every quarter.

(2) At a meeting of the Council—

- (a) eight members constitute a quorum; and
- (b) the Chairman, or in his absence the Deputy Chairman, shall preside, and if both the Chairman and the Deputy Chairman are absent, the members present shall appoint, from among their own number, a Chairman for that meeting; 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, and in the event of an equality of votes on any matter, also a casting vote.

(3) The Council shall cause minutes of its meetings to be recorded and kept.

(4) Subject to this Act, the procedures of the Council are as determined by the Chairman or the Council.

13. DISCLOSURE OF INTEREST BY MEMBERS.

(1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Council, otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons, shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Council.

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

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

14. DELEGATION.

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

15. REPORTS.

(1) The Council shall, as soon as possible by 31 March in each year, furnish to the Minister a report on the progress and the performance of the Council in relation to its functions for the year ending 31 December preceding.

(2) As soon as practicable after he has received the report referred to in Subsection (1), the Minister shall forward the report to the Speaker for presentation to the National Parliament.

Division 3.

Committees of the Council.

16. POWER TO ESTABLISH COMMITTEES, ETC.

(1) The Council may, from time to time, establish such Committees as it considers necessary in relation to its functions, in accordance with this Division.

(2) Subject to this Division, the Council shall appoint members (who may or may not be members of the Council) of a Committee and shall specify the Committee's functions and powers.

(3) Where a Committee is established under this section for the purpose of co-ordinating with another body or organization, notification of the establishment of the Committee shall be published in the National Gazette.

(4) A member of a Committee who is not a member of the Council may receive fees and allowances under the *Boards (Fees and Allowances) Act 1955*.

17. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of a Committee established under this Division is not invalidated by reason only of a vacancy in the membership of the Committee.

18. MEETINGS OF COMMITTEES.

A Committee established under this Division shall meet as often as the business of the Committee requires, and at such times and places as the Chairman of the Committee directs.

19. PROCEDURES OF COMMITTEES.

The procedures of a Committee are as specified by the Council or otherwise as determined by the Committee.

Division 4.

The Service of the Council, etc.

20. ESTABLISHMENT OF THE NATIONAL AIDS COUNCIL SECRETARIAT.

(1) There is hereby established a National AIDS Council Secretariat consisting of the following staff—

- (a) a Director appointed under Section 21; and
- (b) such other staff as are appointed under Section 22.

(2) The function of the Secretariat is to provide services to the Council and to carry out such other functions as are directed by the Council.

21. DIRECTOR.

(1) There shall be a Director of the Council, who is—

- (a) the chief executive officer of the Council; and
- (b) the head of the service of the Council; and
- (c) responsible to the Council for the efficient carrying out of the functions of the Council,

and who in relation to policy, shall act in accordance with the policy and directions of the Council.

(2) The Director—

- (a)³ shall be appointed, suspended or dismissed in the manner as is specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) holds office for such period, not exceeding three years, as is determined by the Minister; and
- (c) is eligible for re-appointment.

22. STAFF OF THE COUNCIL.

The Director may appoint to be employees of the Council such other persons as the Council considers necessary for the efficient administration of its powers and functions.

23. TERMS AND CONDITIONS OF EMPLOYMENT.

(1) The Director and every employee of the Council shall be employed under a contract of employment which, in the case of the Director, shall be executed by the

³ Section 21 Subsection (2) amended by No. 97 of 2006, Sched. 1.

Council and by the Director, and in the case of an employee, by the Director on behalf of the Council and by the employee concerned.

(2) Subject to the provisions of the *Salaries and Conditions Monitoring Committee Act 1988*, the Council shall determine the terms and conditions of employment of the Director and other employees of the Council.

(3) The services of an officer of the Public Service as the Director or as an employee of the Council shall for all purposes be counted as service in the Public Service.

24. CONSULTANTS.

The Council may, from time to time—

- (a) after consultation with the Director; and
- (b) within the limits of funds lawfully available for the purpose; and
- (c) on such terms and conditions as are fixed by the Council,

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

Division 5.

Finance.

25. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995.*

Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Council.

26. FUNDS OF THE COUNCIL.

(1) The funds of the Council consist of—

- (a) all monies appropriated by Act for the purpose of carrying out or giving effect to this Act; and
- (b) all monies received by the Council by way of grants and subscriptions; and
- (c) all monies received by the Council for services provided by the Council; and
- (d) all other monies received by the Council in accordance with the Act and in the exercise and performance of its powers, functions and duties.

(2) The monies of the Council may be expended only—

- (a) in payment or discharge of expenses, obligations and liabilities incurred or undertaken by the Council in the performance of its functions and the exercise of its powers; and
- (b) in payment of remunerations and allowances payable under this Act.

PART III. – MISCELLANEOUS.

27. 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, or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG