

## **RESEARCH, SCIENCE AND TECHNOLOGY ACT 23 OF 2004**

[ASSENTED TO 8 DECEMBER 2004]

[DATE OF COMMENCEMENT: TO BE PROCLAIMED]

*(Signed by the President)*

**as amended by**

State-owned Enterprises Governance Act 2 of 2006

### **ACT**

**To provide for the promotion, co-ordination and development of research, science and technology in Namibia; to establish the National Commission on Research, Science and Technology and the National Research, Science and Technology Fund; and to provide for incidental matters.**

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**PART I  
PRELIMINARY (ss 1-3)**

**1 Definitions**

In this Act, unless the context otherwise indicates-

**"chief executive officer"** means the person appointed as chief executive officer in terms of section 14;

**"Commission"** means the National Commission on Research, Science and Technology established by section 4;

**"commissioner"** means a person appointed as commissioner in terms of section 6;

**"committee"** means a committee established under section 13, and includes a standing committee established by that section;

**"council"** means a council established under section 19(1);

**"designated group"** means a designated group as defined in section 1 of the Affirmative Action (Employment) Act, 1998 (Act 29 of 1998), and includes-

- (a) in addition to the groups specified in section 18 of that Act, a group which was or is disadvantaged by unfair discrimination on the basis of age; and
- (b) any body, organisation or association, whether corporate or unincorporated, the majority of whose members are persons belonging to a designated group;

**"executive committee"** means the committee established by section 12;

**"financial year"** means the financial year of the Commission referred to in section 25;

**"Fund"** means the National Research, Science and Technology Fund established by section 23;

**"Minister"** means the Minister responsible for science and technology;

**"national programme"** means the national research, science and technology programme contemplated in section 18;

**"prescribed"** means prescribed by regulation;

**"public good research"** means any research, scientific or technological activity the outcome of which is of public interest and the result of which is available to the general public;

**"regulation"** means a regulation made under section 35;

**"research"** means the systematic investigation or analysis into, and study of, materials, sources and the physical universe in order to establish facts and knowledge and reach conclusions;

**"research institute"** means any research, science or technological organisation, institute, society or other body, whether corporate or unincorporated, and whether in the public or private sector, which has the practicing of research, science or technology as a part of its activities;

**"rule"** means a rule made under section 17;

**"science"** means the systematic study of nature, society and behaviours of material and the physical universe based on observation, experimentation and formulation of laws to describe these facts in general terms, and includes natural sciences, engineering

sciences, medical sciences, agricultural sciences, social sciences and humanities;

**"staff member"** means a staff member as defined in section 1 of the Public Service Act, 1995 (Act 13 of 1995);

**"technology"** means the application of science principles to industry or commerce or the application of total practical knowledge and skills available to human society for industry, arts and science, and includes indigenous technology; and

**"this Act,"** includes the regulations.

## **2 Objects of Act**

(1) The objects of this Act are-

- (a) to ensure the co-ordination, monitoring and supervision of research, science and technology in Namibia;
- (b) to promote and develop research, science and technology in Namibia;
- (c) to promote common ground in research, scientific and technological thinking across all disciplines, including the physical, mathematical and life sciences, as well as human, social and economic sciences;
- (d) to encourage and promote innovative and independent thinking and the optimum development of intellectual capacity of people in research, science and technology;
- (e) to ensure dedicated, prioritised and systematic funding for research, science and technology application and development in Namibia;
- (f) to promote linkages between Namibia and international institutions and bodies on the development of research, science and technology.

## **3 Powers of President and Minister**

(1) Subject to this Act, the President-

- (a) is the patron of research, science and technology in Namibia and for this purpose the President is not obliged to exercise his or her functions in consultation with Cabinet;
- (b) after consultation with the Minister and the Commission, may in writing give the Commission such general policy directives as the President considers appropriate to the functions of the Commission and the objects of this Act.

(2) The Commission must comply with a directive given to it under subsection (1), and set out such directive in its annual report, including an account of the actions which the Commission has undertaken to give effect to such directive.

(3) The Minister may take any necessary step not inconsistent with this Act to achieve the objects of this Act.

## **PART II**

### **NATIONAL COMMISSION ON RESEARCH, SCIENCE AND TECHNOLOGY (ss 4-17)**

#### **4 Establishment of Commission**

There is established a juristic person to be known as the National Commission on Research, Science and Technology.

## **5 Functions and powers of Commission**

(1) Subject to subsection (2)(a) or (b), where applicable, the functions of the Commission are-

- (a) to monitor and supervise the promotion, co-ordination, development and continuation of research, science and technology in all sectors in Namibia, and to minimise overlapping in the fields of research, science and technology;
- (b) to prepare and review a national programme in the manner referred to in section 18;
- (c) to co-ordinate and facilitate the development of research, science and technology on national, regional and local level, and to provide direction and policy guidance to the research, science and technology innovation systems in Namibian;
- (d) to promote broad participation in research, science and technology activities with due regard to the promotion of designated groups or persons belonging to designated groups;
- (e) to promote the participation of Namibians and research institutes in regional and international research, science and technology projects and events, and, in co-operation with the Minister and Ministers responsible for foreign affairs and finance, to enter into agreements on co-operation and maintenance of relationships with similar foreign institutions in the fields of research, science and technology;
- (f) to promote awareness and national appreciation of the value of research, science and technology to social, cultural and economic development;
- (g) to promote, facilitate and organise seminars, conferences, lectures, workshops and similar events relating to research, science and technology;
- (h) to promote the application of research, science and technology to the development and improvement of industrial and commercial outputs, designs and productivity;
- (i) in co-ordination with the Minister responsible for foreign affairs, to participate in international research, science and technology events of national interest, and to represent Namibia at research, science and technology conferences, meetings, workshops or any similar event;
- (j) to participate, in co-operation with relevant bodies and institutes, in studies on human resources relating to research, science and technology activities, and where appropriate, to promote the growth and development of human resources for such activities;
- (k) to collect and distribute, in accordance with this Act, financial, human and other resources for the efficient management and promotion of councils and research institutes and to solicit and make priorities for funding in respect of-

- (i) research, science and technology purposes;
- (ii) a framework for expense on research, science and technology;
- (iii) the building and maintenance of research, science and technology capacity by way of selective funding of training and development; and
- (iv) national facilities for research, science and technology;
- (l) to co-ordinate the use of moneys of the Fund and investments, and to facilitate, separately or in co-operation with the private sector, the use of public good research outputs, and to stimulate proposals of broad national interest for research;
- (m) to provide research grants, loans, bursaries and similar financial aid in research, science and technology;
- (n) to collect, disseminate and promote any research, science and technology results, statistics, reports, literature, data, services or any other information, including the establishment and maintenance of information systems to support-
  - (i) the monitoring and evaluation of the overall management and functioning of the science and technology system and the national system of innovation; and
  - (ii) the continuous revision of science and technology policies to address changing and new circumstances;
- (o) to undertake, in co-operation with the appropriate institutions and other bodies, the development and exploitation of any research, science and technology invention, and to provide advice and assistance to innovators and inventors in the registration and protection of their innovations and inventions;
- (p) to identify and validate national research and development priorities in or relating to research, science and technology;
- (q) to identify and raise awareness with any authority, institution, body or person, of any need relating to the establishment, transformation or dissolution of any relevant research, science or technology body or policy or other relevant matter, including the co-ordination of any request for advice in this regard;
- (r) to build capacity, skills and know-how of the staff of the Commission and councils and Namibian people in general;
- (s) to advise the Minister on manners how to secure a sustained basis for the funding of research, science and technology;
- (t) to advise the Minister, the President, Parliament and any other authority or body on the functions and initiatives of the Commission and on any matter relating to research, science and technology;
- (u) to make recommendations to the Minister regarding the amendment of this Act or any other Acts which may contribute to the promotion of research, science and technology;
- (v) at the request of the Minister, or on its own accord, to enquire into, report on and make recommendations on any matter, or the performance of such other

tasks, falling within the objects of this Act.

(2) The Commission may-

- (a) at the request of any person or authority and subject to such conditions and the payment of such costs as may be agreed upon, conduct or cause to be conducted any investigation relating to any matter in the field of research, science or technology;
- (b) in respect of any other service rendered by it under this Act, charge such fees or levies, or make such other financial arrangements as it thinks fit;
- (c) with the prior approval of the President, engage in or promote any research, science and technology activities of military nature or relevance;
- (d) with the approval of the Minister, borrow money for the benefit of the Fund;
- (e) without prejudice of rights, vary or set aside any decision of the executive committee taken under section 12(2)(a).

## **6 Constitution of Commission**

The Commission shall be constituted, and the commissioners, including the chairperson and the vice-chairperson of the Commission, shall be appointed in accordance with, and for a period as determined under, sections 14 and 15 of the State-owned Enterprises Governance Act, 2006, but the membership of the Commission must include-

- (a) a person nominated by the President;
- (b) every chairperson of a council;
- (c) the President of the Namibia Chamber of Commerce and Industry or his or her duly appointed representative;
- (d) a person nominated by the Director-General of the National Planning Commission referred to in Article 129 of the Namibian Constitution;
- (e) a person with experience or expertise relevant to the functions of the Commission nominated by the National Council for Higher Education established by section 4 of the Higher Education Act, 2003 (Act 26 of 2003);
- (f) a person nominated by an organisation which is, in the opinion of the Minister, representative of students in a scientific area;
- (g) a legal practitioner nominated by the Law Society of Namibia; and
- (h) six persons with experience or expertise relevant to the functions of the Commission selected by the Minister and of whom, in the opinion of the Minister, each represents one of the following sectors-
  - (i) environment and tourism;
  - (ii) fisheries and marine resources;
  - (iii) works, transport and communication;

- (iv) mines and energy;
- (v) agriculture; and
- (vi) trade and industry.

[Sec 6 substituted by sec 49 of Act 2 of 2006.]

## **7 Disqualification for appointment as commissioner**

A person may not be appointed as a commissioner, if such person-

- (a) is an unrehabilitated insolvent;
- (b) during a period of 10 years preceding the date of the proposed appointment as a commissioner, has been convicted of any offence and was sentenced to a period of not less than six months imprisonment without the option of a fine;
- (c) as a result of improper conduct, has been removed from an office of trust; or
- (d) is a member of the National Assembly or a regional council.

## **8 .....**

[Sec 8 repealed by sec 49 of Act 2 of 2006.]

## **9 Vacation of office by commissioner**

(1) A commissioner vacates office, if such commissioner-

- (a) becomes disqualified for appointment as commissioner in terms of section 7;
- (b) resigns from office, after giving the Minister a 30 days' written notice of his or her intention to resign;
- (c) is declared to be mentally ill or of unsound mind or is detained as a mentally ill person;
- (d) has been absent from three consecutive meetings of the Commission without the permission of the chairperson of the Commission; or
- (e) is removed from office under subsection (2).

(2) The Minister, by notice in writing, may remove a commissioner from office on a valid reason, after giving such commissioner a reasonable opportunity to be heard.

(3) If a commissioner dies or vacates office before the expiration of his or her term of office, the Minister must appoint a person to fill the vacancy for the remainder of such term in accordance with section 6.

## **10 Alternate commissioner**

(1) The Minister, with due regard to section 6, may appoint for every commissioner a person as alternate commissioner to act in the place of a commissioner in the event of such commissioner's absence or inability to act as a commissioner.

(2) The provisions of this Act relating to a commissioner apply in the same manner to



an alternate commissioner when acting in the place of a commissioner.

## **11 Meetings of Commission**

(1) The first meeting of the Commission takes place at a time and place determined by the Minister, and thereafter at least four meetings must be held per year at a time and place determined by the chairperson of the Commission.

(2) The chairperson of the Commission may at any time call a special meeting of the Commission, and must within 14 days of receipt of a written request-

- (a) by the Minister;
- (b) by the President after consultation with the Minister; or
- (c) signed by at least one third of the commissioners,

call a special meeting of the Commission.

(3) The President, after consultation with the Minister, or the Minister, may in writing request that any matter pertaining to the functions of the Commission be placed on the agenda of a meeting of the Commission and be considered by the commissioners.

(4) Two-thirds of all the commissioners forms a quorum for any meeting of the Commission.

(5) If a quorum cannot be formed at any meeting of the Commission, the meeting must be adjourned to a time and date determined by the chairperson of the Commission.

(6) A decision of a majority of the commissioners present and voting at a meeting of the Commission constitutes the decision of the Commission, and in the event of an equality of votes, the chairperson of the Commission has a casting vote in addition to a deliberative vote.

(7) The chairperson of the Commission must cause minutes to be kept of each meeting of the Commission as approved by the commissioners, and a copy of such minutes must be submitted to the Minister as soon as practicable.

(8) The Commission may invite any person to attend and participate in the deliberations of a meeting of the Commission, but such person has no right to vote.

## **12 Executive committee**

(1) There is established an executive committee of the Commission to execute the decisions and manage the affairs and activities of the Commission.

(2) The executive committee-

- (a) subject to such directives as the Commission may give from time to time, may exercise the powers and perform the functions of the Commission;
- (b) may not set aside or vary a decision of the Commission, except in so far as the Commission may otherwise direct.

(3) The executive committee consists of-

- (a) the chairperson of the Commission, who is the chairperson of the committee;

(b) the vice-chairperson of the Commission, who is the vice-chairperson of the committee; and

(c) three other commissioners elected by the commissioners.

(4) A member of the executive committee ceases to be a member of the committee if such member ceases to be a commissioner.

(5) The executive committee meets at such time and place as the chairperson or, if absent, the vice-chairperson of the executive committee may determine.

(6) The chairperson or, if absent, the vice-chairperson of the executive committee, presides at all meetings of the committee, and when presiding, the vice-chairperson may exercise any power or perform any functions of the chairperson.

(7) Four members of the executive committee form a quorum at any meeting of the committee.

(8) A majority vote of members present and voting at any meeting of the executive committee constitute a decision of the committee.

(9) The chairperson of the executive committee must cause minutes to be kept of every meeting of the committee as approved by its members.

### **13 Committees of Commission**

(1) The Commission may establish any committee to perform such functions as the Commission may assign to such committee, and-

(a) must appoint a commissioner to be the chairperson of a committee; and

(b) may appoint persons who are not commissioners to be members of a committee.

(2) The Commission may at any time dissolve or reconstitute a committee.

(3) Subject to the rules and directives of the Commission, either in particular or general, a committee determines its own procedures relating to its meetings.

(4) There is established a standing committee to be known as the Foundation for Research, Science and Technology-

(a) to perform such functions as specified in the rules and as the Commission may assign to it; and

(b) consisting of seven members elected by the commissioners from their number to serve on an annual basis, or such longer period as the Minister, on the recommendation of the Commission, may determine, and of whom one must be elected as its chairperson.

(5) The Commission must designate to the standing committee staff members of the Commission, suitable and sufficient in numbers, to execute the decisions and to perform the day to day functions and activities of that committee.

### **14 Chief executive officer**

(1) Subject to the approval of the Minister, the Commission must appoint a suitably

qualified and experienced person as chief executive officer of the Commission.

(2) The chief executive officer-

- (a) is appointed for a five year term of office, subject to a six months probation, and on such terms and conditions of service, as the Commission, in agreement with the Minister and the Minister responsible for finance, may determine;
- (b) is eligible for reappointment at the expiration of a five year term of office; and
- (c) may be removed from office before the expiry of the five year term in accordance with the terms of the contract of employment.

(3) Whenever the office of the chief executive officer becomes vacant or the chief executive officer is for any reason unable to perform his or her functions, the Commission may-

- (a) designate any staff member of the Commission; or
- (b) if circumstances so require, appoint any person, after consultation with the Minister,

to act as chief executive officer, until the vacancy is filled or the chief executive officer is able to perform his or her functions.

(4) A person designated or appointed in terms of subsection (3) has all the powers and performs all the functions of the chief executive officer.

(5) Subject to this Act, the directives and policies of the Commission and the general supervision of the executive committee, the chief executive officer-

- (a) is responsible for the day to day performance of the executive and administrative functions of the Commission;
- (b) supervises the employees of the Commission and exercises disciplinary powers over such employees; and
- (c) is the accounting officer of the Commission charged with the bookkeeping of moneys received by and payments made from the Fund, and must keep such accounting records as are necessary to give a true reflection of the transactions and financial situation of the Fund and represent accurately the state of affairs and business of the Commission.

(6) Unless the Commission directs otherwise in relation to any matter, the chief executive officer must attend every meeting of the Commission and the executive committee, and may participate in discussions on any matter under consideration at such meeting, but has no right to vote at such meeting.

## **15 Staff of Commission**

(1) The Commission in agreement with the Minister and the Minister responsible for finance-

- (a) may employ such persons as it may consider necessary to perform the functions of the Commission;
- (b) determines the terms and conditions of service of its employees, which may

include medical aid, housing, gratuities or pension benefits.

(2) The Commission may enter into agreement with any person to perform any act or provide any service for or on behalf of the Commission in respect of any matter related to the functions of the Commission.

## **16 Remuneration and allowances**

(1) Commissioners and members of the executive committee and committees who are not staff members must be paid such remunerations and allowances determined in terms of subsection (2).

(2) The Minister, in agreement with the Minister responsible for finance-

- (a) determines the remunerations and allowances payable to commissioners and members of the executive committee and committees who are not staff members; and
- (b) may determine different rates of remunerations or allowances with regard to different positions occupied by such commissioners or members.

## **17 Rules by Commission**

(1) The Commission, subject to the approval of the Minister, may make rules relating to-

- (a) the measures to be implemented by the Commission in order to protect the liquidity of the Fund and the assessment of the financial performance of the Fund;
- (b) the policies to be followed by the Commission in the making of investments, the borrowing of money and the procurement of goods and services;
- (c) the procedures in respect of meetings of the Commission and the executive committee;
- (d) the functions of the executive committee and committees and the manner how remuneration and allowances are paid;
- (e) the good management and administration of the affairs of the Commission and the effective execution of its functions;
- (f) personnel matters, including disciplinary measures and procedures;
- (g) the keeping of records, minutes and books of account; or
- (h) any other matter which the Commission considers necessary or expedient for the effective carrying out of its functions, or for the achievement of the objects of this Act.

(2) A copy of the rules must be available at the Commission's offices for inspection by any interested person during business hours.

### **PART III NATIONAL RESEARCH, SCIENCE AND TECHNOLOGY PROGRAMME, COUNCILS AND RESEARCH INSTITUTES (ss 18-22)**

## **18 National research, science and technology programme**

(1) Subject to subsection (2), the Commission, once in every three years, or at such other intervals as the Minister may determine, must prepare a national programme for research, science and technology for the following three years, or such other period as the Minister may determine, which programme must-

- (a) set out the national direction on research, science and technology for Namibia;
- (b) review the state of research, science and technology in Namibia for the previous three years or such other period as has lapsed between the current national programme and the previous national programme;
- (c) identify shortcomings and priorities for research, science and technology;
- (d) set out the research, science and technology projects (other than those contemplated in paragraph (e)) and requirements for such projects of every research, science or technology organisation, institution or body in receipt of moneys from the Fund, and includes the Commission's observations and recommendations on such projects and requirements in view of the national policy for research, science and technology;
- (e) set out the programmes and projects envisaged by the Commission to be undertaken by it or a council during the period covered by the national programme; and
- (f) assess the previous national programme, if any.

(2) When drawing up a national programme the Commission must consult with such relevant organisations, institutes, authorities and other bodies involved in research, science and technology as it may identify.

(3) The Commission must submit a national programme to the Minister for comment, who-

- (a) after any change made to it, if any, will submit it to Cabinet for approval; and
- (b) as soon as practicable after approval by Cabinet, must table it in the National Assembly.

(4) Every national programme may be periodically reviewed and subsections (2) and (3) apply in the same manner to a reviewed programme.

## **19 Establishment of councils**

(1) The Commission, from time to time in the prescribed manner and after consultation with the Minister, may establish one or more councils in the research, science and technology sector to perform such functions as prescribed and as may be assigned to it by the Commission.

(2) A council performs its functions under the supervision of the Commission.

## **20 Registration of research institutes**

(1) A research institute based in Namibia may not conduct any type of research in Namibia without being registered with the Commission in terms of subsection (3).

(2) A research institute which desires to be registered as a research institute in terms of this section may apply to the Commission for registration in the prescribed manner.

(3) Upon payment of the prescribed application and registration fees, the Commission must register a research institute which applies in terms of subsection (2) and complies with the prescribed requirements.

(4) Despite subsection (3), a research institute in the public sector is exempted from the payment of application and registration fees.

## **21 Monitoring of research and related activities**

(1) Subject to section 22(3), a non-Namibian person or research institute who or which desires to conduct any type of research in Namibia or to collect any type of samples for the purposes of research must-

(a) apply in the prescribed manner for a written authorisation to conduct such research or to collect such samples; and

(b) submit such information as may be prescribed.

(2) For the purposes of this section, the Minister may prescribe-

(a) the manner in which such authorisation must be given;

(b) the authority to whom such application must be made and which will be responsible for the implementation of this section;

(c) conditions which may be attached to such authorisation;

(d) any prohibition with regard to research or the taking of samples which the Minister thinks is in the interest of Namibia; or

(e) the keeping of information with regard to activities falling under this section.

## **22 Information to be given to Commission**

(1) A person or research institute who or which receives money from the Fund must give to the Commission such information regarding its financial statements or the activities so funded as the Commission may require.

(2) The Commission may investigate any person or research institute referred to in subsection (1) to establish the true position of the money received by such person or research institute from the Fund.

(3) A person or research institute conducting a research in Namibia or collecting samples for the purposes of research must, during the course of such research or collection of samples, give the prescribed information to the Commission, including the outcome of such research or collection of samples and such other information as the Commission may require.

## **PART IV NATIONAL RESEARCH, SCIENCE AND TECHNOLOGY FUND AND FINANCIAL PROVISIONS (ss 23-27)**

## **23 Establishment of National Research, Science and Technology Fund**

There is established a fund to be known as the National Research, Science and Technology Fund.

## **24 Moneys of Fund**

(1) The Fund consists of-

- (a) moneys appropriated by Parliament for that purpose;
- (b) fees received under this Act for the benefit of the Fund;
- (c) interest or dividends earned on any investment made in terms of subsection (5);
- (d) all moneys derived from the sale of any assets of the Commission;
- (e) money borrowed under section 5(2);
- (f) moneys received by way of donations or grants from any source in Namibia, and, subject to the approval of the Minister in agreement with the Minister responsible for finance, from any source outside Namibia;
- (g) money obtained through the sale of-
  - (i) publications prepared by or for the Commission;
  - (ii) reference material, data and information; and
- (h) all other money which may accrue to the Commission from any other source.

(2) The Commission must manage the Fund in accordance with sound principles of financial management, and, in particular, by observing the measures implemented to protect the liquidity of the Fund as contemplated in section 17(1)(a).

(3) Subject to section 25(2), the money available in the Fund must be used-

- (a) to pay the administrative expenses of the Commission;
- (b) to pay the administrative expenses of every council;
- (c) to fund the costs of any project or other activity of the Commission undertaken by the Commission or by any research institute with the approval of the Commission; and
- (d) to pay remunerations and allowances payable by the Commission and such other expenses incurred by the Commission in the performance of its functions.

(4) The executive committee must open a banking account in the name of the Fund with a banking institution registered under the Banking Institutions Act, 1998 (Act 2 of 1998) into which all moneys received for the benefit of the Fund must be deposited and from which all expenses payable by the Fund must be paid.

(5) Moneys received by way of a donation for the benefit of the Fund may be administered on such conditions as may be agreed upon between the donor and the Commission.

(6) Any moneys standing to the credit of the Fund and which are not required for immediate use or as a reasonable operating balance may be invested by the Commission, subject to the consideration of the determination of the budget for the

ensuing financial year.

(7) Any unexpended balance in the Fund at the end of a financial year of the Commission must be carried forward as a credit in the Fund to the ensuing financial year.

## **25 Financial year and budget**

(1) The financial year of the Commission ends on 31 March in each year.

(2) The Commission may not incur any expense except in accordance with a budget drawn up in terms of this section.

(3) The Commission, once during every financial year, must draw up a budget for the ensuing financial year and submit it to the Minister for comment, and thereafter the Minister must submit such budget to the Cabinet for approval.

(4) The budget drawn up in terms of this section must contain particulars regarding the expense of the Commission as referred to in section 24(3) and the applicable national programme.

(5) The Commission, during the course of a financial year, may submit to the Minister for comment and submission to Cabinet for approval supplementary estimates of expense of the Commission if the Commission considers it necessary.

## **26 Auditing**

(1) The Commission, in agreement with the Auditor-General, must appoint a person registered as an auditor in terms of the Public Accountants' and Auditors' Act, 1951 (Act 51 of 1951), to annually audit its accounting records and financial statements and submit a report to the Commission.

(2) The auditor referred to in subsection (1) audits the accounting records and financial statements of the Commission subject to such directives as the Auditor-General may issue to such auditor.

(3) Not later than three months after the end of each financial year the Commission must submit audited accounting records and financial statements together with a report referred to in subsection (1) to the Auditor-General who reviews and reports thereon.

## **27 Annual report**

(1) Not later than six months after the end of each financial year the Commission must prepare and submit to the Minister an annual report relating to such financial year.

(2) The annual report referred to in subsection (1) must contain-

- (a) particulars of all activities of the Commission during the financial year under review;
- (b) audited financial statements of the Commission and the Auditor-General's report; and
- (c) such other matters as the Minister may require.

(3) The Minister must table the annual report in the National Assembly within 60 days, if the National Assembly is in session, or, if it is not in session, within 30 days after



the commencement of its next session.

## **PART V GENERAL PROVISIONS (ss 28-38)**

### **28 Disclosure of interest**

(1) Unless the Commission otherwise decides, a commissioner or a member of the executive committee or of a committee, may not participate in the deliberations or vote on any matter which is the subject of consideration at a meeting if, in relation to such matter, such commissioner or member, or the spouse, parent, child or business partner of such commissioner or member, has any direct or indirect interest, which prevents or is likely to prevent such commissioner or member from performing his or her functions in a fair, unbiased and proper manner.

(2) If, at any stage during a meeting of the Commission, the executive committee or a committee, it appears that a commissioner or member of the executive committee or a committee or his or her spouse, parent, child or business partner, has or may have an interest in any transaction or matter which is the subject of consideration at such meeting, and which may cause a conflict of interest to arise-

- (a) such commissioner or member must forthwith and fully disclose the nature of such interest, and leave the meeting; and
- (b) after such commissioner or member having left the meeting in terms of paragraph (a), the remaining commissioners or members must discuss such disclosure and determine whether such commissioner or member is prevented from participating in such meeting by reason of a conflict of interest.

(3) A disclosure by a commissioner or member of the executive committee or a committee in accordance with subsection (2) and the decision taken by the remaining commissioners or members, as the case may be, in connection therewith, must be recorded in the minutes of such meeting.

### **29 Confidentiality**

A commissioner or member of the executive committee or a committee, the chief executive officer, an employee of the Commission or any other person who is or was involved in the administration of this Act, may not disclose to any other person any confidential information acquired in the performance of any function whether before, during or after his or her involvement in the affairs of the Commission, except for the purposes of the performance of his or her functions in terms of this Act, or when required to do so by any other law or a court of law.

### **30 Personal liability**

A commissioner or member of the executive committee or a committee, the chief executive officer, any employee of the Commission or any person or body to whom or to which any power or function has been delegated or assigned under this Act, is not personally liable for any damage or loss arising out of any act or omission committed in good faith by such person or body except such damage or loss was caused as a result of the gross negligence or dishonesty or unlawful conduct of such person or body.

### **31 Delegation of powers and assignment of function**

(1) The Commission, in writing and on such terms and conditions as it may

determine, may delegate any power or assign any function conferred or imposed upon the Commission by or under this Act, to any commissioner, the executive committee, the chief executive officer, any employee of the Commission, or to a committee or council.

(2) With the prior approval of the Commission, the chief executive officer, subject to such conditions as the chief executive officer thinks fit, may assign in writing any employee of the Commission to perform in general or in a particular case any function assigned to the chief executive officer by or under this Act.

(3) The Commission or chief executive officer, as the case may be, is not divested of any power or function delegated or assigned under this section, and, without prejudice of rights, may at any time-

- (a) amend or withdraw any decision made by virtue of such delegation; or
- (b) withdraw any function so assigned.

### **32 Validity of decisions**

A decision taken by the Commission or the executive committee or an act performed under the authority of the Commission or the executive committee is not invalid by reason only of-

- (a) a vacancy in the Commission or executive committee; or
- (b) the fact that a person who is not entitled to sit as a commissioner or a member of the executive committee sat as a commissioner or such member at the time when the decision was taken or the act was authorised,

if the decision was taken or the act was authorised by the requisite majority of the commissioners or such members who were present at the time and entitled to sit as commissioners or such members.

### **33 Intellectual property rights**

(1) Subject to subsection (2), the rights in all discoveries and inventions and improvements, in respect of processes, apparatus and machines, made by employees of the Commission in the course of their employment are vested in the Commission, which must make such discoveries, inventions and improvements available for use in the public interest subject to such conditions and the payment of such fees or royalties as the Commission may determine.

(2) The rights in a discovery, invention or improvement made by the Commission in the course of an investigation for or on behalf of the State, any person or institute or body are vested in the Commission, unless it is otherwise agreed.

(3) The rights in respect of any invention, discovery or improvement by a person in the course of studies or research in respect of which he or she received any financial support from the Commission, must be determined by agreement between the Commission and such person or his or her employer, or both such person and his or her employer.

(4) The Commission, in respect of studies or research supported by it, must-

- (a) acknowledge any invention, discovery or improvement in respect of indigenous knowledge and technology held by any person or community; and

- (b) protect in any way possible any rights of any person or community arising from the invention, discovery or improvement.

### **34 Offences**

(1) A person commits an offence, if such person-

- (a) after requested by the Commission under section 22, fails to give information, or gives false or misleading information to the Commission;
- (b) hinders any commissioner or any employee of the Commission in the conducting of any investigation under section 22(2);
- (c) contravenes or fails to comply with section 20(1), 21(1), 22(3), 28 or 29.

(2) A person who is convicted of an offence under subsection (1) is liable to a fine not exceeding N\$20 000 or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment.

### **35 Regulations**

(1) The Minister may make regulations relating to-

- (a) the form of any application to be made or register to be kept under this Act;
- (b) the type of services to be provided by the Commission and the fees which the Commission may charge for such services;
- (c) further requirements relating to the national programme;
- (d) the constitution, functions, proceedings and funding of, and any other matter relating to, a council;
- (e) the application and registration fees payable by research institutes, the conditions applicable to research institutes, and any other matter regarding research institutes which the Minister considers necessary;
- (f) the type of research, science and technology to which the Commission must give priority for development;
- (g) further matters regarding the monitoring of research and taking of samples activities in Namibia;
- (h) any matter which in terms of this Act is required or permitted to be prescribed; and
- (i) generally any other matter which the Minister considers necessary or expedient to give effect to the objects of this Act.

(2) A regulation made under subsection (1) may prescribe a penalty for any contravention of or failure to comply with such regulation not exceeding a fine of N\$2 000 or imprisonment for a period not exceeding two years, or not exceeding both such fine and such imprisonment.

### **36 Transitional and savings provisions**

(1) Subject to this section, the Minister, after consultation with the Minister responsible for finance, and on such conditions as the Minister may determine, must

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transfer to the Commission, with effect from a date determined by the Minister by notice in the *Gazette*, such agreements, assets, liabilities, rights or obligations of the State which relate to or are connected with research, science and technology, as may, in the opinion of the Minister, be required by the Commission.

(2) The Minister, in agreement with the Minister responsible for finance, and after consultation with the Commission, may-

- (a) subject to the consent of the creditor concerned and to such conditions as the Minister and the creditor may agree upon, assign to the Commission, any obligation of the State arising out of an existing agreement between the State and such creditor in connection with any loan obtained by the State before the commencement of this Act for any purpose related to research, science and technology; and
- (b) subject to the consent of the donor concerned and to such conditions as the Minister and the donor may agree upon, assign to the Commission any obligation of the State arising out of any existing conditions stipulated by such donor in connection with any donation or grant made to the State before the commencement of this Act for any purpose related to research, science and technology.

(3) Despite any law to the contrary, the Commission is vested with the ownership of the assets and rights, and is charged with the liabilities and obligations, transferred or assigned to it under subsection (1) or (2), with effect from the date of such transfer or assignment.

(4) A certificate issued by the Minister in which it is stated that any State land or a servitude or other real right or lease or any other asset or right described in such certificate has been transferred to the Commission in terms of subsection (1), is sufficient proof that the asset or right so described is vested in the Commission.

(5) Upon submission of the certificate referred to in subsection (4) to the Registrar of Deeds or to any other person in charge of any other office where a register or record of ownership of or entitlement to an asset or right described in such certificate is being kept, the Registrar or such person must make such entries in or on any relevant register, title deed or other document in his or her office or submitted to him or her as may be necessary to effect the transfer in the name of the Commission.

(6) The Commission is substituted for the State as a contracting party in respect of any agreement transferred to the Commission in terms of subsection (1).

(7) The value of assets and liabilities transferred to the Commission in terms of subsection (1) must be determined by the Minister after consultation with the Minister responsible for finance.

(8) Despite any law to the contrary, no duty, fee, tax or levy payable in terms of any law for the acquisition or transfer of assets or rights is payable in respect of the transfer of assets or rights by the State to the Commission in terms of subsection (1).

(9) Despite other provisions of this Act, and for the purposes of implementing certain provisions of this Act, the Minister, where applicable, in agreement with the Minister responsible for finance, may exercise any power or perform any function conferred or imposed upon the Commission by or under this Act until such time the Commission is

constituted under section 6.

(10) A body established by or under a provision of a law repealed by section 37 and which exists at the commencement of this Act continues to exist until the Minister dissolves it.

(11) Anything done under a provision of a law repealed by section 37 and which could have been done under a corresponding provision of this Act is deemed to have been done under such corresponding provision.

### **37 Repeal of laws**

The Scientific Research Council Act, 1988 (Act 46 of 1988) is repealed.

### **38 Short title and commencement**

This Act-

- (a) is called the Research, Science and Technology Act, 2004; and
- (b) commences on a date to be determined by the Minister by notice in the *Gazette*.