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## ACT NO. 8 OF 2005

**The National AIDS Commission Act, 2005**

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## ACT NO. 8 OF 2005

**The National AIDS Commission Act, 2005**

**An Act to provide for the establishment of the National AIDS Commission as a body responsible for the development and coordination of strategies and programmes for combating HIV and AIDS; for facilitating implementation, monitoring and evaluation of programmes for provision of policy and guidance over implementing structures and for related matters.**

ENACTED BY THE PARLIAMENT OF LESOTHO

**Short title and commencement**

1. This Act may be cited as the National AIDS Commission Act, 2005 and shall come into operation on such date as the Minister may, by notice published in the Gazette, appoint.

**Interpretation**

2. In this Act, unless the context otherwise requires –

**“Acquired Immune Deficiency Syndrome (AIDS)”** means a condition characterized by a combination of signs and symptoms caused by HIV and which attacks and weakens the body’s immune system, making the infected person susceptible to other life threatening infection;

**“Board”** – means the Board of Commissioners established under section 5;

**“Commission”** means the National Aids Commission established under section 3;

**“Commissioner”** means a commissioner of the Board of the National AIDS Commission appointed in terms of Section 5:

**“Human Immunodeficiency Virus” (HIV)** means the virus which causes AIDS;

**“HIV and AIDS prevention control”** means measures aimed at protecting non-infected persons from contracting HIV and minimising the impact of the condition of persons living with HIV;

**“HIV – positive”** means the presence of HIV infection as documented by the presence of HIV or HIV antibodies in the sample being tested;

**“HIV testing”** means any scientific or laboratory procedure done on an individual to determine the presence or absence of HIV infection;

**“HIV transmission”** means the transfer of HIV from one infected person to an uninfected person, most commonly through sexual intercourse, blood transfusion, sharing of intravenous needles and during pregnancy;

**“mandatory HIV testing”** means an HIV testing imposed upon a person attended or characterised by the lack of vitiated consent, use of physical force, intimidation or any form of coercion or compulsion;

**“medical confidentiality”** means the relationship of trust and confidence created or existing between a patient and his attending physician, consulting medical specialist, nurse, medical technologist and all other health workers or personnel involved in any counseling, testing or professional care of the former; it also applies to any person who, in any official capacity, has acquired or may have confidential information;

**“person with HIV”** means an individual whose HIV test indicates, directly or indirectly, that he is infected with HIV;

**“Secretariat”** means the National AIDS Secretariat established under section 10.

### **Establishment of the National Aids Commission**

3. (1) There is established a body to be known as the National Aids Commission.
- (2) The Commission –


- (a) is a body corporate with perpetual succession;
  - (b) shall have power to enter into contracts;
  - (c) may acquire, hold and dispose of movable or immovable property;
  - (d) may sue or be sued in its corporate name;
  - (e) may do or perform any such acts as are necessary or incidental to the attainment of the purposes of the Commission; and
  - (f) may perform the duties imposed on it and exercise powers conferred on it by or under this Act.
- (3) The Commission shall have a common seal.
- (4) The seal of the Commission shall be kept in the custody of the Chief Executive.

#### **Functions of the Commission**

4. The functions of the Commission shall be-
- (a) to develop and establish policies, strategies and priorities for national response to HIV and AIDS embracing the institution of a nationwide HIV and AIDS information and education programme;
  - (b) to review periodic reports evaluating the progress of the Commission towards achieving its goals;
  - (c) to monitor the implementation of the National AIDS Strategic Plan and Strategies for scaling up the fight against HIV and AIDS in Lesotho;
  - (d) to coordinate and support the scaling up of innovative efforts

that involve stakeholders at various levels;

- (e) to facilitate the development and implementation of communication strategies to support the national response with emphasis on behavioural change;
- (f) to encourage openness and tolerance to people living with HIV and AIDS;
- (g) to develop and issue, in consultation with the Ministry responsible for Health, guidelines on medical and other practices and procedures that carry the risk of HIV transmission;
- (h) to facilitate the provision of accessible and affordable HIV testing and counselling services to people who are in need of them;
- (i) to facilitate the provision of accessible, affordable and acceptable health and support services for persons living with HIV and AIDS in hospitals and in communities;
- (j) to spearhead HIV and AIDS advocacy and create an enabling environment for all stakeholders to effectively participate in the national response against the HIV and AIDS pandemic;
- (k) to develop a national HIV and AIDS monitoring and evaluation system and coordinate its implementation in order to assess the impact and results of relevant programmes and other interventions;
- (l) to develop resource mobilization strategies, facilitate allocation and, track effective utilisation in the implementation of the national response to HIV and AIDS pandemic;
- (m) to act as a national agent for mobilising financial and technical resources for HIV and AIDS activities from Government, the donor community and the private sector and solicit their partnership and support in the implementation, monitoring and evaluation processes;

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- (n) to identify emerging policy and programme issues and challenges;
  - (o) to determine research, facilitate research work and use findings to inform policy reform and development;
  - (p) to provide strategic direction for core-streaming HIV and AIDS into all national policies and programmes;
  - (q) to advocate for the observance of medical confidentiality and adherence to the precepts of this Act;
  - (r) to map out interventions indicating the geographical coverage and the scope of the interventions and actors throughout the country; and
  - (s) to coordinate, monitor and supervise all activities relating to HIV and AIDS.

#### **The Board of Commissioners**

- 5. (1) The governing and implementing body of the Commission shall be the Board of Commissioners.
- (2) The Board shall consist of the following:
  - (a) the Chairperson;
  - (b) a person with legal qualifications and extensive administrative experience;
  - (c) a person with finance and management qualifications and experience;
  - (d) a member of the HIV and AIDS Forum nominated by members of the Forum; and
  - (e) a person with health related qualifications and experience.

- (3) The Commissioners shall be appointed by the Prime Minister.
- (4) The appointment of Commissioners shall be published by notice in the gazette.

#### **Tenure of office**

6. (1) A Commissioner, except the Chairman who shall hold office for a period of five years, shall hold office for a period of three years and is eligible for re-appointment at the expiration of his term.
- (2) A Commissioner shall vacate office if –
  - (a) he is declared bankrupt by a competent court of law;
  - (b) he fails to attend three consecutive meetings of the Commission without the permission of the chairman;
  - (c) he commits any act which renders him unfit to continue as a Commissioner;
  - (d) he becomes incompetent to act as a member by reason of physical disability or infirmity of mind;
  - (e) he, by his conduct, brings the Commission into disrepute;
  - (f) he has been convicted of an offence and sentenced to imprisonment without the option of a fine;
  - (g) he resigns his office by written notice to the Prime Minister.
- (3) The Prime Minister may terminate the appointment of a Commissioner if he considers it necessary in the interests of effective performance of the functions of the Commission or if, in his opinion, it is in the public interest to terminate such appointment.



**Meetings of the Board**

7. (1) The Board shall, subject to the provisions of this section, regulate its own procedure.
- (2) The chairperson shall preside at all meetings of the Board and in his absence the members shall elect one of them to preside at a meeting where the chairperson is absent.
- (3) The chairperson shall have a deliberative vote and in the event of equality of votes, he shall have a casting vote.
- (4) A quorum at the meeting of the Board shall be three members.
- (5) Any issue, before the Board at a meeting, which requires voting upon shall be decided by a majority of the members of the Board present and voting.
- (6) The Board may at any time, invite any person to attend a meeting of the Board for a specified purpose aimed at assisting the Board in respect of any matter under consideration by the Board.
- (7) The Board shall meet as often as the business of the Board shall require, but in any case not less than four times in each financial year.
- (8) A meeting of the Board shall be convened after at least seven days written notice to the Commissioners.
- (9) The Chairperson shall, following a written request of at least three Commissioners, convene an extraordinary meeting of the Board within five days of his receipt of the request.
- (10) A Commissioner shall be paid such expenses and allowances as may be determined by the Prime Minister in consultation with the Minister responsible for finance.

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**Functions of the Board**

8. The functions of the Board shall be –
- (a) to oversee the implementation and operation of the policy and functions of the Commission;
  - (b) to establish procedures for the appointment, discipline and termination of appointments of the staff of the Commission;
  - (c) to approve the budget of the Commission;
  - (d) to advise the Government on all matters relating to policy in regard to HIV and AIDS and programmes of action to fight against HIV and AIDS pandemic at all levels and sectors of society; and
  - (e) to recommend suspension or cancellation of any licence or authorisation of any person or health institution that contravenes safe health practices prescribed under any law relating to HIV and AIDS.

**Committees of the Commission**

9. (1) The Commission may establish such committees as the Board may deem necessary to perform such functions and such responsibilities as the Commission may determine.
- (2) The Commission shall assign to each committee a Commissioner who shall be Chairperson.
- (3) A committee shall conduct its own affairs in accordance with the powers and procedures laid down in the instrument establishing it.

**Secretariat to the Commission**

10. (1) There is established a National AIDS Secretariat which shall be responsible for the administration and implementation of the strategies and policies of the Commission.

- (2) The staff of the Secretariat shall be appointed by the Chief Executive in consultation with the Board.
- (3) The Secretariat shall be headed by the Chief Executive.

#### **Appointment of the Chief Executive**

- 11. (1) There shall be the Chief Executive who shall be appointed by the Prime Minister on the advice of the Board and on such terms and conditions as the Prime Minister may determine.
- (2) The Chief Executive shall hold the office for a period of four years and is eligible for reappointment.

#### **Functions of the Chief Executive**

- 12. (1) The Chief Executive shall, among other things, be responsible for -
  - (a) the management of the affairs of the Commission and implementation of its policies;
  - (b) the provision of secretarial services for the meetings of the Board and HIV and AIDS Forum;
  - (c) the day to day management of the affairs of the Commission;
  - (d) the management of the assets and business of the Commission;
  - (e) the establishment of an effective administration and operational structures for implementation of the Commission's mandate.
  - (f) the implementation of strategies, policies, procedures and guidelines of the Commission;
  - (g) the preparation and presentation of the strategic plan,

- annual work plans and budget for approval by the Board;
- (h) the provision, to the Board, of quarterly progress reports, annual progress reports and audited financial statements;
  - (i) the issuing of tender documents, and signing of authorised agreements, undertakings and contracts on behalf of the Commission;
  - (j) the appointment, in consultation with the Board, of Officers and employees of the Commission on such terms and conditions as the Board may determine;
  - (k) such other duties as may be assigned to him by the Board.

#### **Establishment of the HIV and AIDS Forum**

13. There is established a body to be known as the HIV and AIDS Forum, which shall be an organ of the Commission.

#### **Composition of the Forum**

14. The Forum shall consist of the following:
- (a) a representative of people living with HIV and AIDS, nominated by the Lesotho Network of People Living with HIV and AIDS;
  - (b) a representative of women, nominated by women's organisations;
  - (c) a representative of the youth nominated by youth organisations;
  - (d) a representative of the business sector;

- (e) a representative of faith-based organizations;
- (f) one representative of the Lesotho Council of Non-Governmental Organisations nominated by the Lesotho Council of Non-Governmental Organisations;
- (g) a representative of the Ministry of Health;
- (h) a representative of the Ministry of Finance;
- (i) a representative of the Ministry of Education;
- (j) a representative of the Ministry of Local Government;
- (k) a member of the Senate nominated by members of the Senate;
- (l) a member of the National Assembly nominated by the members of the National Assembly;
- (m) a representative of the teaching profession nominated by the Teachers' organizations;
- (n) a representative of the Sporting Bodies.

#### **Functions of HIV and AIDS Forum**

15. The functions of the HIV and AIDS Forum shall be –
- (a) to provide a formal and representative coordination platform for discussion, consensus building, joint and mutual support for constituencies in the national response to HIV and AIDS;
  - (b) to encourage stakeholders and constituencies to harmonise the national response to HIV and AIDS;
  - (c) to provide a communication channel for more effective information sharing within the various constituencies in society;

- (d) to recommend to the Commission, the emerging policy and programme issues and challenges;
- (e) to advise the Commission on the implementation of the National Strategy;
- (f) to advocate demystification of HIV and AIDS, and the removal of stigma and discrimination associated with HIV and AIDS; and for the protection of rights of orphans and other vulnerable groups;
- (g) to encourage constituencies to submit annual action plans and indicators in relation to the implementation of the national response to HIV and AIDS.

#### **Meetings of the HIV and AIDS Forum**

16. (1) The Chairperson of the Board shall preside at all meetings of the HIV and AIDS Forum.
- (2) The Chief Executive shall, at a meeting of the Forum, provide secretarial services and administrative support to the HIV and AIDS Forum.
- (3) The Chairperson shall at all times encourage support and promote active participation of all stakeholders and constituencies in the deliberations of the HIV and AIDS Forum to assure a truly national response to prevention and control of HIV and AIDS pandemic in Lesotho.
- (4) The Forum shall meet as often as necessary but not less than four times a year.

#### **Education and information**

17. The Minister responsible for education shall, in consultation with the Minister responsible for health and the Commission, integrate instruction on the causes of HIV and AIDS and other sexually transmitted diseases in subjects taught in public and private schools at post primary

level, secondary and tertiary levels including traditional learning systems.

#### **Accreditation of HIV testing centres**

18. (1) All testing centres, clinics or laboratories offering HIV testing services shall obtain accreditation from the Commission.
- (2) The Commission shall set and maintain reasonable accreditation standards in consultation with the Ministry of Health and relevant health professional bodies.

#### **The HIV and AIDS Fund**

19. (1) There is established an HIV and AIDS Fund into which all monies received by the Commission shall be paid and out of which all payments shall be made.
- (2) The fund shall consist of the following:
  - (a) monies appropriated by Parliament to the Commission for the purposes of this Act;
  - (b) all monies that may be donated, lent or granted to the Commission by the Government of Lesotho or any agency of the Government of Lesotho or any person, institution, international organisations or governments of countries with which Lesotho has friendly relations;
  - (c) all other monies that may in any manner, become payable to or vested in the Commission in respect of any matter incidental to its purpose, powers and duties.
- (3) All funds, assets and resources of the Lesotho AIDS Programme Coordinating Authority (LAPCA) are vested in the Commission.
- (4) The Commission may invest monies which are not immediately required in such investments and securities as the Minister responsible for Finance may approve.

- (5) The Commission may borrow, temporarily by way of bank overdraft or otherwise, such sums as it may require for meeting its obligations or in the exercise of its powers or in the performance of its functions under this Act.

#### **Accounts**

20. The Commission shall cause proper books of accounts to be kept, as well as necessary books and records in connection therewith.

#### **Audit**

21. (1) The accounts of the Commission shall be audited annually by an auditor appointed by the Auditor General.
- (2) No person shall be qualified for appointment as an auditor of the Commission unless he is a chartered accountant and a member of the Lesotho Institute of Accountants or its affiliates.

#### **Audited Accounts of the Commission to be furnished to Government and to Parliament**

22. (1) The Commission shall, after six months of the financial year, submit -
- (a) an audited report;
  - (b) a balance sheet and profit and loss account that reflects the state of financial affairs of the Commission;
  - (c) a report signed by the auditor, containing a statement, the balance sheet and profit and loss account that reflects a true statement of the assets and liabilities of the Commission;
  - (d) a report of the Commission concerning the business of the Commission during the last preceding financial year and its future policy and programme.



- (2) The Prime Minister shall lay copies of the balance sheet, profit and loss account and of reports referred to in subsection (1) before the Senate and the National Assembly within one month after the receipt thereof, and if Parliament is not in ordinary session, within one month after the commencement of its next ensuing ordinary session.

### **Regulations**

23. (1) The Prime Minister may make regulations for the purpose of giving effect to the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations made under subsection (1) may -
  - (a) prescribe fees payable to HIV testing and counselling centres designated by the Commission as facilities for provision of accessible and affordable HIV testing and counselling;
  - (b) prescribe criteria for accreditation of any entity including hospital, surgery, clinic or other facility where HIV testing is done.

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