

**THE LAW REFORM COMMISSION BILL**

(No. .... of 2005)

**Explanatory Memorandum**

The object of this Bill is to establish a Law Reform Commission as a central advisory body for the review, reform and development of the law of Mauritius.

**J. VALAYDEN**

*Attorney-General,*

*Minister of Justice and Human Rights*

.....2005

---

**THE LAW REFORM COMMISSION BILL**

(No. .... of 2005)

**ARRANGEMENT OF CLAUSES**

*Clause*

- |                                    |                                     |
|------------------------------------|-------------------------------------|
| 1. Short title                     | 13. Appointment of staff            |
| 2. Interpretation                  | 14. Consultants                     |
| 3. Establishment of the Commission | 15. General Fund                    |
| 4. Functions of the Commission     | 16. Protection from civil liability |
| 5. Powers of the Commission        | 17. Annual Report                   |
| 6. Request by Attorney-General     | 18. Donations and legacies          |
| 7. Membership of the Commission    | 19. Regulations                     |
| 8. Advisory panels                 | 20. Repeal                          |
| 9. Meetings of the Commission      | 21. Consequential amendment         |
| 10. Disclosure of interest         | 22. Savings                         |
| 11. Chief Executive Officer        | 23. Commencement                    |
| 12. Secretary                      |                                     |

## **A BILL**

### **To establish a Law Reform Commission as a central advisory body for the review, reform and development of the law of Mauritius**

ENACTED by the Parliament of Mauritius, as follows -

#### **1. Short title**

This Act may be cited as the Law Reform Commission Act 2005.

#### **2. Interpretation**

In this Act -

“Chairperson” means the Chairperson of the Commission appointed under section 7;

“Commission” means the Law Reform Commission established under section 3;

“member” means a member of the Commission and includes the Chairperson.

#### **3. Establishment of the Commission**

(1) There is established, for the purposes of this Act, the Law Reform Commission.

(2) The Commission shall be a body corporate.

#### **4. Functions of the Commission**

(1) The functions of the Commission shall be to -

(a) keep under review in a systematic way the law of Mauritius;

(b) make recommendations for the reform and development of the law of Mauritius;

(c) advise the Attorney-General on ways in which the law of Mauritius can be made as understandable and accessible as is practicable.

(2) When making its recommendations, the Commission shall, where applicable and as far as practicable, attach a draft bill to the recommendations.

(3) The Commission shall prepare and submit to the Attorney-General, at least once a year, a programme for the review of specified aspects of the law of Mauritius with a view to their reform or development.

## **5. Powers of the Commission**

(1) The Commission shall have such powers as are reasonably necessary or expedient to enable it to carry out its functions.

(2) Without limiting the generality of subsection (1), the Commission shall have the power to -

- (a) initiate proposals for the review, reform or development of any aspect of the law of Mauritius and to receive and consider any such proposal made or referred to it by the Attorney-General or any other person;
- (b) initiate, sponsor and carry out such studies and research as it thinks expedient for the proper discharge of its functions;
- (c) publicise such parts of its work in such manner as it thinks expedient, conduct public hearings, seek comments from the public on its proposals, and consult any person or class of persons;
- (d) request information from any Government department, any organisation or person in relation to the review, reform or development of any aspect of the law of Mauritius.

## **6. Request by Attorney-General**

(1) The Attorney-General may, at any time, request the Commission to examine any aspect of the law of Mauritius, and the Commission shall review that aspect of the law accordingly and report to the Attorney-General thereon with its recommendations.

(2) The Commission shall report to the Attorney-General on the results of any review it carries out and shall include in the report such recommendation as it deems necessary.

## **7. Membership of the Commission**

(1) The Commission shall consist of -

- (a) a Chairperson, who shall be appointed by the Attorney-General;
- (b) a representative of the Judiciary appointed by the Chief Justice;
- (c) the Solicitor-General or his representative;
- (d) a barrister, who shall be appointed by the Attorney-General after consultation with the Mauritius Bar Council;
- (e) an attorney, who shall be appointed by the Attorney-General after consultation with the Law Society;
- (f) a notary, who shall be appointed by the Attorney-General after consultation with the *Chambre des Notaires*;
- (g) a full-time member of the Department of Law of the University of Mauritius, who shall be appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
- (h) two members of the civil society, who shall be appointed by the Attorney-General.

(2) Every member, other than a member appointed under subsection (1)(b) and (c) -

- (a) shall hold office for a term of 5 years;
- (b) may resign by notifying the Attorney-General in writing to that effect and his resignation shall become effective at the time the Attorney-General receives the notice or at the time specified in the notice, whichever is the later.

(3) Every member shall be paid such allowances as the Attorney-General may determine.

(4) The Attorney-General may at any time terminate the appointment of a member, other than a member appointed under subsection (1)(b) and (c), for bankruptcy, neglect of duty, misbehaviour, or physical or mental incapacity.

## **8. Advisory panels**

(1) For the purposes of advising and assisting the Commission in any particular project, the Commission may establish an advisory panel presided over by a member and consisting of persons having specialised knowledge in, or particularly affected by, the matter to be studied and such other members as the Commission may deem appropriate.

(2) Every person serving on an advisory panel shall serve without remuneration, but shall be paid reasonable expenses incurred in the course of performing duties under this section.

## **9. Meetings of the Commission**

(1) Subject to this section, the Commission shall regulate its proceedings in such manner as it thinks fit.

(2) (a) Subject to paragraph (b), the Commission shall meet at such time and place as may be determined by the Chairperson.

(b) The Chairperson shall convene a meeting on receiving a written request to do so, signed by at least 3 other members.

(3) (a) The Chairperson shall preside all meetings at which he is present.

(b) If the Chairperson is not present at a meeting, the members who are present shall elect one of their number to preside.

(4) Five members shall constitute a quorum.

(5) A decision of the Commission shall be determined by a majority of the votes of the members present and voting.

(6) The person presiding a meeting shall have a deliberative vote and, if there is an equality of votes, he shall also have a casting vote.

(7) The Commission shall keep minutes of all its proceedings.

## **10. Disclosure of interest**

(1) Every member who has a material personal interest in a matter that is being considered, or is about to be considered, by the Commission shall disclose the nature of his interest at the first meeting of the Commission after the relevant facts have come to the member's knowledge.

(2) The disclosure shall be recorded in the minutes of the meeting at which it is made.

(3) Unless the Commission otherwise determines, the member making a disclosure under subsection (1) -

(a) shall not be present during any deliberation by the Commission on the matter; and

- (b) shall not take part in any decision of the Commission on the matter.

(4) For the purposes of any determination being made under subsection (3), a member who has a material personal interest in the matter to which the disclosure relates -

- (a) shall not be present during any deliberation by the Commission on whether to make the determination; and
- (b) shall not take part in making the determination.

#### **11. Chief Executive Officer**

(1) There shall be a Chief Executive Officer, who shall be -

- (a) a legally-qualified person with wide experience in legal research;
- (b) appointed by the Commission on such terms and conditions as it may determine.

(2) Under the direction of the Chairperson, the Chief Executive Officer shall be responsible -

- (a) for all research to be done by the Commission in the discharge of its functions;
- (b) for the drafting of all reports to be made by the Commission;
- (c) generally, for the day-to-day supervision of the staff and work of the Commission; and
- (d) for such other duties as may be assigned to him by the Commission.

(3) The Chief Executive Officer, unless otherwise directed by the Commission, shall attend every meeting of the Commission and may take part in its deliberations, but shall not have the right to vote.

#### **12. Secretary**

There shall be a Secretary to the Commission who shall -

- (a) under the supervision of the Chief Executive Officer, be responsible for the administration of the Commission;
- (b) be responsible for taking the minutes of all the proceedings of the Commission;

- (c) be appointed by the Commission on such terms and conditions as it thinks fit.

### **13. Appointment of staff**

The Commission may appoint, on such terms and conditions as it may determine, such persons as it thinks necessary for the efficient carrying out of its functions under this Act.

### **14. Consultants**

The Commission may engage, on such terms and conditions as it may determine, persons with suitable qualifications and experience as consultants to the Commission.

### **15. General Fund**

(1) The Commission shall establish a General Fund into which shall be paid -

- (a) such funds as the National Assembly shall appropriate for the purposes of the Commission; and
- (b) such other sum as may lawfully accrue to it.

(2) All payments required to be made by the Commission shall be effected out of the General Fund.

(3) The Commission's money shall only be applied -

- (a) in the discharge of its obligations and liabilities arising under this Act; and
- (b) in the payment of any salary or allowances payable under this Act.

(4) Subsection (3) shall not prevent the investment of surplus money of the Commission.

(5) The Commission shall, not later than 3 months before the commencement of every financial year, prepare and submit to the Minister responsible for the subject of finance an estimate of its income and expenditure for that financial year.

(6) For the purposes of the Statutory Bodies (Accounts and Audit) Act, the period extending from the commencement of this Act to 30 June next following shall be deemed to be the first financial year of the Commission.

(7) Sections 5, 7, 8 and 9 of the Statutory Bodies (Accounts and Audit) Act shall, in so far as they relate to audited accounts, not apply to the first financial year of the Commission.

(8) The auditor to be appointed under section 5(1) of the Statutory Bodies (Accounts and Audit) Act shall be the Director of Audit.

#### **16. Protection from civil liability**

(1) No action or other proceedings for damages shall lie against the Commission in relation to anything done, or not done, in good faith in the performance, or purported performance, of any of the Commission's functions or powers under this Act.

(2) No action or other proceedings for damages shall lie against the Commission, a person who is a member or employee of, or consultant engaged by, the Commission in relation to anything done, or not done, by the person in good faith in the performance, or purported performance, of his duties as a member or employee of, or consultant engaged by, the Commission.

#### **17. Annual Report**

(1) The Commission shall make an annual report to the Attorney-General on the activities of the Commission.

(2) The Attorney-General shall, as soon as practicable, lay a copy of every report made by the Commission before the Assembly.

#### **18. Donations and legacies**

Article 910 of the Code Napoléon shall not apply to the Commission.

#### **19. Regulations**

(1) The Attorney-General may, after consultation with the Commission, make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under subsection (1) may provide for the levying of fees or charges.

#### **20. Repeal**

The Law Reform Commission Act is repealed.

## **21. Consequential amendment**

The Statutory Bodies (Accounts and Audit) Act is amended in Part II of the Schedule, by inserting in the appropriate alphabetical order the following item –

Law Reform Commission

## **22. Savings**

(1) Any act done by the former Law Reform Commission prior to the coming into operation of this Act shall be deemed to have been done by the Commission under this Act.

(2) All the assets, rights and liabilities of the former Law Reform Commission shall, on the coming into operation of this Act, vest in the Commission without compliance with any other formality.

(3) In this section, “former Law Reform Commission” means the Law Reform Commission established by the enactment repealed by section 20.

## **23. Commencement**

This Act shall come into operation on a date to be fixed by Proclamation.