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Malawi

## Law Commission Act

### Chapter 3:09

Legislation as at 31 December 2014

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## Law Commission Act (Chapter 3:09)

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# Malawi

## Law Commission Act Chapter 3:09

Commenced on 3 July 1998

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[13 of 1998]*

**An Act to make provision for the functional operation of the Law Commission established under Part XII of the Constitution and for matters connected therewith or ancillary thereto**

### Part I – Preliminary

#### 1. Short title

This Act may be cited as the Law Commission Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**Commission**” means the Law Commission established under Chapter XII of the Constitution;

“**Law Commissioner**” means the officer designated and appointed as such under section 133 of the Constitution;

“**matter**” in relation to the work of the Commission, means a matter within the competence of the Commission under the Constitution or this Act;

“**programme**” means a programme of the work of the Commission prepared and published under section 7 (a);

“**report**” means a report of the findings and recommendations of the Commission required by section 135 (d) of the Constitution to be submitted to the Minister and to be published and laid in Parliament by him.

### Part II – Staff of the Commission

#### 3. The Law Commissioner

The Law Commissioner shall be paid such salary and allowances and shall be entitled to such benefits as Parliament shall determine.

#### 4. Other staff of the Commission

- (1) There shall be employed in the service of the Commission, subordinate to the Law Commissioner, such other support staff as the Commission shall consider necessary for the performance and exercise of the functions, duties and powers of the Commission, and who shall be officers in the public service appointed by the Commission.
- (2) Such of the professional or specialized staff of the Commission as the Commission shall specify shall be appointed on such terms and conditions of service as Parliament may approve.

## 5. Other members of the Commission

Members of the Commission, other than the Law Commissioner, appointed under section 133 (1) (b) of the Constitution shall receive such remuneration as Parliament shall specially or generally approve on the recommendation of the Commission, but such members shall not, by reason only of their appointment as such, be deemed to be officers in the public service.

## Part III – Functions of the Commission

### 6. Functions

The functions of the Commission, in addition to those conferred by the Constitution, shall be—

- (a) to review the Laws of Malawi with a view to the systematic development and reform of the law, including, in particular—
  - (i) the modernization of the laws by bringing them into accord with current national and international conditions and norms;
  - (ii) the elimination from the laws of any defects, whether of a procedural, substantive or policy nature;
  - (iii) the simplification of the laws;
  - (iv) the recommendation of new or more effective methods and procedures for the administration of the laws;
- (b) to make recommendations for the fusion or harmonization of customary law with other laws of Malawi;
- (c) to make recommendations for the codification of any branch of the law or of any customary law; and
- (d) to promote awareness of the laws and the Constitution by the public and by departments of the Government and other authorities or bodies.

### 7. Duties

- (1) In pursuance of its powers and functions under the Constitution and this Act, the Commission—
  - (a) shall, from time to time, prepare programmes of its work for any specified period not exceeding a calendar year setting out, in an order of priority, matters for its consideration and shall publish a notice of any such programme in the *Gazette*;
  - (b) may invite the Attorney General, on behalf of the Government, or any Minister to refer to the Commission any matter for inclusion in its programme to be prepared and published under paragraph (a);
  - (c) may conduct a public inquiry into any matter relating to law reform or development and, for the purposes of such inquiry, the Commission shall have the same powers as commissioners appointed under the Commissions of Inquiry Act;  
*[Cap. 18:01]*
  - (d) may invite or receive from any person or body proposals or submissions pertaining to any matter relating to law reform or development for its consideration;
  - (e) may, for purposes of considering any matter relating to law reform or development, consult any person or body or conduct public or national consultation whether by circulation of working papers setting forth preliminary views on the matter or otherwise;

- (f) shall prepare a full written report incorporating the findings and recommendations it has made in respect of any matter it has considered, which report the Commission shall submit to the Minister pursuant to section 135 (d) of the Constitution;
- (g) shall prepare and submit, as part of any of its reports to the Minister, draft legislation which it considers to be necessary or required to implement its recommendations;
- (h) shall assist the Minister with the publication of any of the reports of the Commission as required by section 135 (d) of the Constitution;
- (i) may prepare and publish law reports or assist in such preparation and publication; and
- (j) shall act as the repository of public information on the state of the law in Malawi and of international instruments to which Malawi is party.

(2) A programme of work prepared and published under subsection (1) (a) shall serve as a guide to the Commission in proceeding with its work, but the Commission may at any time consider any matter not included in the programme and make its findings and recommendations thereon.

(3) The Commission shall keep the President and the Minister fully informed on matters concerning the general conduct of the affairs of the Commission.

## 8. Powers

The Commission shall have powers to—

- (a) produce and distribute any publication arising from or connected with its work and to retain the proceeds or royalties from any sale thereof;
- (b) sponsor, support or organize conferences, seminars, workshops and meetings on any matter under its consideration or generally for the promotion of its functions and objects;
- (c) fix, receive, recover and retain any registration, attendance or other fees in connexion with its conferences, seminars, workshops or meetings;
- (d) receive donations of funds, materials and technical assistance for the furtherance of its work;
- (e) engage persons having suitable qualifications and experience as consultants to the Commission;
- (f) determine its own procedures for carrying out consultations regarding any matter under its consideration and for the general conduct of its work; and
- (g) do and perform all such things or acts as are necessary or expedient for the implementation of its programmes and the performance or exercise of its functions, duties and powers.

## Part IV – Reports of the Commission

### 9. Publication of reports

The Minister shall publish any report he has received from the Commission in the *Gazette* or in such other manner as he shall determine with the advice of the Commission and shall do so within sixty days of the date of the report.

### 10. Laying of reports in Parliament

The Minister shall lay any report of the Commission in Parliament during the next fourteen sitting days of Parliament after publication of the report.

## 11. Reference of reports to other Ministers

Where a report submitted to the Minister contains a recommendation relating to a law the administration of which is assigned to another Minister, the Minister shall make available for the consideration of such other Minister a copy of the report or of the relevant extract of the report, inviting comments, if any, from that other Minister.

## 12. Promulgation of draft legislation recommended by the Commission

- (1) Any draft of principal legislation recommended by the Commission in any of its reports shall be referred by the Minister to the Cabinet for consideration and where Cabinet approves the draft legislation, with or without modification, such legislation shall—
  - (a) be published in the *Gazette* as a Government Bill; and
  - (b) be introduced in Parliament as a Government Bill by the Minister responsible for the matter in question.
- (2) If a report of the Commission recommends the making of subsidiary legislation under an Act of Parliament, then the Minister or other authority responsible for the making of such subsidiary legislation may make the subsidiary legislation and cause it to be published in the *Gazette*.

## 13. Comments by Cabinet, etc.

The Commission shall receive any comments, opinions and views made by Cabinet on any draft of principal legislation or made by the responsible Minister or other authority on any draft of subsidiary legislation contained in its reports and shall reconsider its report and draft legislation taking due and reasonable account of such comments, opinions and views and may make new findings and recommendations in response thereto and submit further reports to the Minister.

## Part V – Financial provisions

## 14. Funding of the Commission

- (1) The Government shall adequately fund the Commission to enable it to exercise its powers and perform its duties and functions, and so as to ensure its independence and impartiality.
- (2) The Commission may receive any donations of funds, materials and any other form of assistance for the purposes of its duties and functions:

Provided that no such donation shall jeopardize or compromise the independence and impartiality of the Commission.

## 15. Accounting and auditing

The Commission shall be liable to account to Parliament for its funds in the manner applicable to Government departments, and the accounts of the Commission shall be liable to audit by the Auditor General.

## Part VI – Miscellaneous

## 16. Regulations

The Minister may, on the advice of the Commission, make regulations for the better carrying out of the provisions of this Act.