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National Emergency Response Council on HIV/AIDS Act, 2003

Act 8 of 2003

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National Emergency Response Council on HIV/AIDS Act, 2003

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National Emergency Response Council on HIV/AIDS Act, 2003

Act 8 of 2003

Commenced on 13 June 2003

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[Note: The original publication document is not available and this content could not be verified.]

An Act to provide for the establishment of the National Emergency Response Council on HIV/AIDS (NERCHA) and the multi sectoral response to the HIV/AIDS pandemic and other matters related thereto.

Part I – Preliminary

1. Short title and commencement

This Act may be cited as The National Emergency Response Council on HIV/AIDS Act, 2003, and shall come into force on the date of publication.

2. Interpretation

In this Act, unless the context otherwise requires—

“**Council**” means the National Emergency Response Council on HIV/AIDS established in terms of [section 3](#) of this Act;

“**Councillors**” means the members of Council appointed under [section 3](#) of this Act;

“**Directorate**” means the Staff of National Emergency Response Council on HIV/AIDS appointed in terms of [section 9](#) of this Act;

“**Director**” means the Director of the National Emergency Response Council on HIV/AIDS appointed in terms of [section 11](#) of this Act;

“**Fund**” means the HIV/AIDS Emergency Fund established under [Legal Notice No. 24 of 2002](#);

“**NERCHA**” shall have the same meaning as Council;

“**Minister**” shall mean the Prime Minister; and

“**Secretary**” means the Director.

Part II – Establishment and composition

3. Establishment of Council

- (1) There is hereby established a Council to be known as the National Emergency Response Council on HIV/AIDS.
- (2) The Council shall be a body corporate.

4. Composition of Council

- (1) The Council shall be composed of not more than 30 members appointed by the Minister in consultation with Cabinet and drawn from non-governmental organisations, stakeholders and such other persons having special knowledge or interest in matters related to HIV/AIDS.

- (2) The Minister shall by notice from time to time publish the names of Councillors in the *Government Gazette*.
- (3) Membership to the Council shall be for a period not exceeding three years and subject to the provisions of the Act and such other terms and conditions as may be stipulated by the Minister at the time of the appointment.
- (4) A Councillor shall be eligible for re-appointment.
- (5) A Councillor who will not be able to attend the business of Council for a period exceeding three months shall notify the Secretary and the Minister may appoint an alternate Councillor.
- (6) If a Councillor has or acquires a pecuniary interest, either personally or through any company or partnership, or through any person who is related to the Councillor within the third degree of consanguinity or affinity, in any contract for the supply of materials to, or the execution of any work for, Council, or any other contract in which the Council is interested, or if the Council is considering an application for any such contract in which the member would have any such interest, the member shall forthwith make full disclosure of that interest to Council and shall not take part in Council's consideration or discussion of any question relating to such contract or application or vote thereon without the prior consent of the Chairperson.
- (7) A Councillor shall be disqualified from the Council or not be eligible for appointment if the Councillor—
 - (a) is convicted of an offence and sentenced to imprisonment for more than six (6) months;
 - (b) is incapacitated by prolonged physical or mental illness;
 - (c) has been absent from two consecutive meetings of Council, otherwise than by reason of illness or some other cause approved by Council;
 - (d) has any undeclared financial interest, direct or indirect, in any of the activities of Council that will accrue to the Councillor;
 - (e) becomes an employee of Council, other than the Secretary;
 - (f) has within the last five years, before the appointment, been convicted of any offence and sentenced to imprisonment;
 - (g) is an unrehabilitated insolvent.
- (8) The Minister may terminate the appointment of any member in the event—
 - (a) the Councillor has become disqualified on any of the grounds set out in subsection 7;
 - (b) for misconduct, inefficiency or negligence in carrying out of, or failure to carry out any of the duties and functions of Council.
- (9) A member of Council may resign from office at any time by giving to the Minister, one month's notice in writing.

5. Appointments to fill casual vacancies

Where for any reason whatsoever, there is a vacancy in Council before the expiry of the term of office of a Councillor, and the unexpired portion of the term of office is six months or more, the vacancy may be filled by the appointment of a new Councillor who shall hold office for so long as the former Councillor would have held office.

Part III – Meetings of Council

6. Meetings of Council

- (1) The Minister shall appoint the Chairperson in consultation with Cabinet. The Vice-Chairperson shall be appointed by the Councillors.
- (2) The Chairperson, and in the absence of the Chairperson, the Vice-Chairperson, shall preside over meetings of Council.
- (3) In the absence of both the Chairperson and the Vice-Chairperson from any meeting of Council, the Councillors present shall elect one of their number to preside over that meeting, and the Councillor so elected shall in respect of that meeting have the power and perform the duties of the Chairperson.
- (4) The Chairperson or Vice-Chairperson presiding over a meeting shall have a casting vote as well as a deliberative vote.
- (5) Subject to the provisions of this section, Council shall regulate its own procedure and determine the time and venue for its meetings.
- (6) The quorum of any meeting of Council shall be fifty percent plus one, including the Chairperson and the Vice-Chairperson, and decisions of Council shall be by majority.
- (7) Council shall hold quarterly meetings or such meetings as are considered necessary by the Chairperson in consultation with the Director.

Part IV – Powers and functions of Council

7. Powers of Council

Council shall have the power to do anything which is calculated to enable it to exercise and perform its functions, or which are incidental or conducive thereto, including in particular but not derogating from the generality of this provision, powers which shall include the power to—

- (a) open and operate a banking account;
- (b) acquire, sell, let, exchange, dispose of, hypothecate, pledge, or cede any property or rights which it has acquired or is possessed of;
- (c) appoint and employ such persons as it thinks fit, pay them such remuneration and such allowances as it thinks fit, grant them such leave and other benefits as it deems fit and dismiss them;
- (d) insure the property of Council against any losses, damage, risks and liabilities which the Council may incur;
- (e) formulate policy, enter into contracts of whatsoever nature related, to its core business, assume and undertake liabilities and obligations and administer all affairs of Council;
- (f) appoint such sub-committees as maybe necessary for the efficient carrying out of its functions; and
- (g) exercise any power conferred upon Council under the provisions of this Act or any other law.

8. Functions of Council

The Council shall—

- (a) oversee the coordination of the National multi-sectoral response to HIV/AIDS;
- (b) review the quarterly progress and financial reports of the Directorate;

- (c) review and adopt as appropriate the HIV/AIDS related policies and strategy recommendations of the Directorate;
- (d) provide guidance the Directorate on all matters relating to the Action Plans;
- (e) approve the annual budgets and Action Plans of the Council and the Directorate;
- (f) submit to the Minister annual audited accounts of the Fund within 4 months of the end of the financial year, who shall in return submit them to Parliament;
- (g) approve funding allocations to implementing Agencies as recommended by the Directorate;
- (h) submit to the Minister quarterly progress reports;
- (i) advise the Minister and Government on all issues referred to it and other pertinent matters relating to the HIV/AIDS epidemic;
- (j) appoint such sub-committees as maybe necessary for the carrying out of its functions; and
- (k) carry out any other functions that are in any way related to the above in pursuance of the functions of Council.

Part V – The Directorate

9. Establishment of the Directorate

- (1) There is hereby established a Directorate which shall consist of such staff, appointed by Council, as may be necessary to carry out the functions of Council.
- (2) The Directorate shall be headed by a Director appointed in terms of the provisions of [section 11\(1\)](#).

10. Functions of the Directorate

The Directorate shall co-ordinate and facilitate the National Multi-Sectoral response to the HIV/AIDS epidemic and in particular shall—

- (a) report to Council;
- (b) convert the strategies of the Swaziland National Strategic Plan for HIV/AIDS 2000-2005 into action plans;
- (c) coordinate and assist in effective implementation of its action plans in response to the epidemic;
- (d) manage the HIV/AIDS Emergency Fund and any other fund that may be established by Council;
- (e) prepare a budget and submit quarterly financial reports and annual audited accounts to Council;
- (f) periodically review and develop HIV/AIDS related policies and technical guidelines and make recommendations to Council;
- (g) recommend, for Council approval, all funding allocations to implementing agencies;
- (h) mobilise, receive, manage and allocate resources, from Government and other sources, in line with its budget and action plan;
- (i) be the Principal Recipient of the allocations from the Global Fund to fight HIV/AIDS, tuberculosis and malaria;
- (j) facilitate information sharing on local and international best practices among all sectors of society as considered appropriate;
- (k) monitor and evaluate projects funded by Council in the national response to the epidemic;

- (l) provide quarterly written reports to Council and assist in the submission of Council quarterly report to the Minister; and
- (m) brief the Minister as and when it may be required.

11. Appointment of the Director

- (1) The Director shall be appointed by Council, subject to the approval of the Minister, after consultation with Cabinet.
- (2) The Director shall hold office for a period not exceeding 3 years and subject to such terms and conditions as may be decided by the Minister on recommendation of the Council.

12. Functions of the Director

- (1) The Director shall act as Secretary to Council.
- (2) Subject to directions of Council, the Director shall be responsible for the management of the business of Council, its administration and organization, the appointment and control of the staff of Council.

Part VI – Financial provisions

13. Council funds

- (1) The funds of Council held under the HIV/AIDS Emergency Fund established under [Legal Notice No. 24 of 2002](#) shall be administered in terms of this Act.
- (2) The Council shall establish, maintain and make contributions to such other funds as may be necessary for the proper and efficient discharge of its functions and duties, and give general directives for the efficient management of funds.
- (3) The Council may invest any money which is not immediately required in such investments and securities as the Directorate may deem fit.
- (4) The Council may not borrow funds without prior approval of the Minister.

14. Accounts and auditing

- (1) The accounts of Council shall be subject to annual audit by an auditor appointed by Council.
- (2) An auditor shall be appointed from an auditing firm registered in terms of the laws of Swaziland.
- (3) An auditor shall be appointed for a period not exceeding three years.

15. Remuneration

- (1) Councillors shall receive a retainer fee, sitting and travelling allowances at the Government rates approved by the Minister after consultation with Cabinet.
- (2) In the absence of a Councillor, the alternate shall receive sitting and travel allowances.
- (3) Sub-committee members shall be paid such allowance as approved by the Minister.
- (4) The terms and conditions of the appointment of the Director shall be determined by the Minister on recommendation of Council.
- (5) Council may reimburse a Councillor for reasonable expenses incurred in the exercise and performance of their powers and functions under this Act

Part VII – Powers of the Minister

16. Power of the Minister

The Minister may, after consultation with the Council, give it such general policy directions for the efficient exercise and performance by it of its functions as may appear to the Minister to be requisite in the national interest, and Council shall give effect to any such directions.

Part VIII – Miscellaneous matters

17. Property of Council not subject to execution

Subject to [section 7\(b\)](#), the property of Council shall not be liable for attachment in execution of any judgment of the Court.

18. Protection from personal liability

No matter or thing done by a Councillor or by its staff if the matter is done in good faith for the purpose of carrying out any of the provisions of this Act, shall render such persons liable to civil proceedings whatsoever in respect thereof, provided however that the Council shall be deemed to be liable for such acts of its employees as may be determined by the Court.

19. Exemption from taxes

The Council shall be exempt from paying any tax imposed by any law and it shall not be necessary for Council to take out trading licences in connection with its activities.

20. Regulations

The Minister may make regulations to give effect to any of the provisions of this Act, prescribing anything which is required to be prescribed or for any purpose for the better carrying out of this Act.

Part IX – Transitional provisions

21. Transition

Any matter, things done, or work initiated under the provisions of Legal Notices No. 16, 24 and 70 of 2002, shall continue in place as if done under this Act.

22. Revocation

[Legal Notice No. 16 of 2003](#) is hereby revoked.