

THE EMOLUMENTS COMMISSION BILL, 2022

MEMORANDUM

The objects of this Bill are to—

- (a) provide for the membership, functions, operations and financial management of the Emoluments Commission;
- (b) provide for a harmonised framework to govern the determination and management of emoluments for chiefs and officers in a State organ and State institution;
- (c) enhance the capacity of a State organ and State institution to attract, retain and motivate officers and staff with requisite qualifications, skills and experience in order to improve service delivery; and
- (d) provide for matters connected with, or incidental to, the foregoing.

M. D. KABESA,
Attorney-General

THE EMOLUMENTS COMMISSION BILL, 2022

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Section

1. Short title
2. Interpretation
3. Supremacy of Act

PART II

THE EMOLUMENTS COMMISSION

4. Seal of Commission
5. Functions of Commission
6. Composition of Commission
7. Proceedings of Commission
8. *Ad hoc* committees
9. Emoluments
10. Director-General and other staff
11. Disclosure of interest
12. Prohibition of publication or disclosure of information to unauthorised persons
13. Oath on appointment
14. Immunity

PART III

DETERMINATION OF EMOLUMENTS AND FACTORS FOR CONSIDERATION

15. Principles for determination of emoluments
16. Review cycle
17. Special review
18. Study to precede review

19. Procedure for submission of proposals
20. Factors to be considered when preparing and submitting proposals
21. Requirement to submit data annually
22. Determination of emoluments
23. Communication of approved emoluments
24. Hiring of expert
25. Application to Commission

PART IV
FINANCIAL PROVISIONS

26. Funds of Commission
27. Financial year
28. Accounts
29. Annual report

PART V
GENERAL PROVISIONS

30. Directive of Commission on non-compliance
31. Compliance notice by Commission
32. Privileged reports
33. Non-compliance by relevant authority
34. General offences
35. Regulations
36. Transitional provisions

A BILL

ENTITLED

An Act to provide for the membership, functions, operations and financial management of the Emoluments Commission; provide for a harmonised framework to govern the determination and management of emoluments for chiefs and officers in a State organ and State institution; enhance the capacity of a State organ and State institution to attract, retain and motivate officers and staff with requisite qualifications, skills and experience in order to improve service delivery; and provide for matters connected with, or incidental to, the foregoing.

ENACTED by the Parliament of Zambia.

Enactment

PART I PRELIMINARY

1. This Act may be cited as the Emoluments Commission Act, 2022.

Short title

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

Interpretation

“associate” has the meaning assigned to the word in the Anti-Corruption Act, 2012;

Act No. 3 of 2012

10 “Chairperson” means the person appointed Chairperson of the Commission under section 6;

”chief” has the meaning assigned to the word in the Constitution;

Cap. 1

”Commission” means the Emoluments Commission established under Article 232 of the Constitution;

Cap. 1

N.A.B. 1, 2022

Cap. 1	“Constitutional office holder” has the meaning assigned to the words in the Constitution;	
Cap. 1	“councillor” has the meaning assigned to the word in the Constitution;	
Cap. 1	“Director-General” means the person appointed as Director-General of the Commission under section 10;	5
Cap. 1	“emoluments” has the meaning assigned to the word in the Constitution;	
Act No. 6 of 2019	“legally disqualified” means the absence of legal capacity as provided under section 4 of the Mental Health Act, 2019;	10
	“member” means a person appointed as a member of the Commission under section 6;	
Cap. 1	“Member of Parliament” has the meaning assigned to the word in the Constitution;	15
Cap. 1	“oath” has the meaning assigned to the word in the Constitution;	
	”officer” means a public officer, State officer, councillor, Constitutional office holder and judge;	
	“pay policy” means a framework of intended action on emoluments by a State organ or State institution to enhance the capacity to attract and motivate personnel with requisite skills and experience;	20
Cap. 1	“political party” has the meaning assigned to the words in the Constitution;	25
Cap. 1	“public officer” has the meaning assigned to the words in the Constitution;	
Act No. 3 of 2012	”relative” has the meaning assigned to the word in the Anti-Corruption Act, 2012;	
	“relevant authority” means the authority responsible for recommending emoluments of a chief, State organ or State institution;	30
Cap. 1	“State institution” has the meaning assigned to the words in the Constitution;	
Cap. 1	“State officer” has the meaning assigned to the words in the Constitution;	35
Cap. 1	“State organ” has the meaning assigned to the words in the Constitution; and	
	“Vice-Chairperson” means the person appointed Vice-Chairperson of the Commission under section 6.	40

3. Subject to the Constitution, where there is an inconsistency between the provisions of this Act and the provisions of any other written law on the determination of emoluments, the provisions of this Act shall prevail to the extent of the inconsistency.

Supremacy
of Act Cap. 1

5 PART II
THE EMOLUMENTS COMMISSION

4. (1) The seal of the Commission shall be a device that may be determined by the Commission and kept by the Director-General.

Seal of
Commission

10 (2) The affixing of the seal shall be authenticated by the Chairperson or the Vice-Chairperson and the Director-General or any other person authorised in that behalf by a resolution of the Commission.

15 (3) A contract or instrument which, if entered into or executed by a person not being a body corporate, would not be required to be under seal may be entered into or executed without seal on behalf of the Commission by the Director-General or any other person generally or specifically authorised by the Commission in that behalf.

20 (4) A document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, without further proof, unless the contrary is proved.

25 5. (1) Subject to the Constitution, the Commission shall determine, harmonise and rationalise emoluments for a chief and an officer in a State organ or State institution.

Functions of
Commission

Cap. 1

(2) Despite the generality of subsection (1), the functions of the Commission are to —

- 30 (a) ensure compliance of the provisions of this Act by a State organ, State institution and the House of Chiefs;
- (b) formulate and review the pay policy relating to a State organ, State institution and the House of Chiefs;
- (c) issue guidelines to relevant authorities on the parameters of emoluments for officers;
- 35 (d) harmonise and rationalise emoluments to ensure fairness and equity;
- (e) coordinate and undertake research on emoluments to facilitate the development of standards relating to the determination of emoluments;

- (f) establish a framework for the determination of emoluments;
- (g) coordinate the undertaking of a job analysis and evaluation of salary structures of officers in a State organ and State institution; and 5
- (h) monitor and evaluate adherence to pay policy, guidelines and standards.
- (3) The Commission may, in furtherance of its functions —
- (a) collect information that it considers relevant for the performance of its functions; 10
- (b) undertake consultations with stakeholders or hold inquiries for the purposes of performing its functions under this Act; and
- (c) receive written or oral statements from a person or organisation for the purposes of its functions under the Constitution and this Act. 15
- Cap. 1 (4) The Commission shall ensure equality and fairness in the determination, harmonisation and rationalisation of emoluments.
- (5) The Commission shall not engage itself in negotiating a salary or condition of service for a chief or an officer in a State organ or State institution. 20
- Composition of Commission 6. (1) The Commission consists of the following part time members appointed by the President:
- (a) the Chairperson; 25
- (b) a representative of the Attorney-General;
- (c) a representative of the Ministry responsible for finance;
- (d) a representative of the Clerk of the National Assembly; 30
- (e) a representative of the Chief Justice;
- (f) a representative of the Public Service Management Division; and
- (g) a person nominated from the most representative federation of trade unions. 35
- (2) The members shall elect the Vice- Chairperson from among themselves.

(3) A person qualifies for appointment as Chairperson or member if that person holds a —

- (a) full grade twelve school certificate; and
- (b) degree, or an equivalent qualification from a higher education institution established, registered or declared under the Higher Education Act, 2013. Act No. 4 of 2013

(4) A person does not qualify for appointment as the Chairperson or a member if that person is —

- (a) a Member of Parliament;
- (b) a member of a governing body of a political party;
- (c) an undischarged bankrupt; or
- (d) removed from office for contravening the provisions of the Constitution or any other written law. Cap. 1

(5) Subject to subsection (6), a member of the Commission shall hold office for a term of five years and may be re-appointed for a further and final term of five years.

(6) The office of a member becomes vacant if that member—

- (a) dies;
- (b) is absent, without reasonable excuse, from three consecutive meetings of the Commission of which the member had notice without the approval of the Commission;
- (c) is adjudged bankrupt;
- (d) is convicted of an offence under any other written law and sentenced to imprisonment for a term exceeding six months without the option of a fine;
- (e) is legally disqualified from performing the functions of a member;
- (f) resigns;
- (g) ceases to be an employee or a member of the institution that the member is representing; or
- (h) is removed by the President.

(6) A member shall, on the expiration of the period for which the member is appointed, continue to hold office until a successor is appointed, but in no case shall the further period exceed four months.

Proceedings of
Commission

(7) Whenever the office of a member becomes vacant before the expiry of the term of office, the President may appoint another person to be a member in place of the member who vacates the office for the unexpired term of that office.

7. (1) Subject to this Act, the Commission may regulate its own procedure. 5

(2) The Commission shall meet for the transaction of business at least once in every four months at a place and time that the Chairperson may determine.

(3) The Chairperson may call for a meeting of the Commission on giving notice of not less than fourteen days, or if one third or more of the members so request, in writing, except that if the urgency of a particular matter does not permit the giving of that notice, a special meeting may be called on giving a shorter notice. 10 15

(4) Five members shall form a quorum at a meeting of the Commission.

(5) There shall preside at a meeting of the Commission—

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson; and 20

(c) in the absence of the Chairperson and the Vice-Chairperson, another member that the members present may elect for the purposes of that meeting.

(6) A decision of the Commission on a question shall be by a majority of the members present and voting at the meeting and, in the event of an equality of votes, the person presiding at the meeting shall have a casting vote in addition to that person's deliberative vote. 25

(7) Where a member is for any reason unable to attend a meeting of the Commission, the member may, in writing, nominate another person from the same organisation to attend the meeting in that member's stead and that person shall be considered to be a member for the purpose of that meeting. 30

Ad hoc
committees

(8) The Commission may invite a person whose presence is, in its opinion, desirable to attend and participate in the deliberations of a meeting of the Commission, but that person shall have no vote. 35

(9) The validity of any proceedings, act or decision of the Commission shall not be affected by a vacancy in the membership of the Commission or by a defect in the appointment of a member or by reason that a person not entitled to do so took part in the 5 proceedings.

(10) The Commission shall cause minutes to be kept of the proceedings of every meeting of the Commission and every meeting of a committee of the Commission.

8. (1) The Commission may, for the purpose of performing 10 the Commission's functions under this Act, establish *ad hoc* committees that the Commission considers necessary and delegate to any of those *ad hoc* committees the Commission's functions. *Ad hoc committee*

(2) The Commission may appoint as members of an *ad hoc* committee, persons who are or are not members, except that at 15 least one member shall be a member of the Commission.

(3) A person serving as a member of a committee shall hold office for a period that the Commission may determine.

(4) Subject to any specific or general direction of the Commission, an *ad hoc* committee may regulate its own procedure.

20 9. A member of the Commission or any *ad hoc* committee of the Commission shall be paid emoluments that the President may determine. *Emoluments*

10. (1) The Commission shall appoint the Director-General on terms and conditions that the Commission may determine. *Director-General and other staff*

25 (2) The Director-General shall —
(a) be the chief executive officer of the Commission;
(b) be responsible for the day-to-day administration of the Commission;
(c) be an *ex-officio* member of the Commission; and
30 (d) exercise the functions conferred on the Director-General by, or under, this Act.

(3) The Commission shall appoint other staff of the Commission that are necessary for the purposes of this Act on terms and conditions that the Commission may determine.

Disclosure of
interest

11. (1) A person who is present at a meeting of the Commission or any *ad hoc* committee at which a matter is the subject of consideration, and in which matter that person or that person's relative or associate is directly or indirectly interested in a private capacity shall, as soon as is practicable after the commencement of the meeting, declare that interest and shall not, unless the Commission or the *ad hoc* committee otherwise directs, take part in a consideration or discussion of, or vote on, a question relating to that matter. 5

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made. 10

(3) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 15

Prohibition of
publication or
disclosure of
information to
unauthorised
persons

12. (1) A person shall not, without the consent, in writing, given by or on behalf of the Commission, otherwise than in the course of duties of that person, publish or disclose to an unauthorised person the contents of a document, communication or information, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act. 20

(2) A person who contravenes subsection (1) commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 25

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates the information to another person, commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both. 30

Oath on
appointment
Cap. 5

13. (1) A member of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act. 35

Cap. 5

(2) The Director-General and other staff of the Commission shall, on appointment, take an oath in accordance with the Official Oaths Act.

(3) An oath taken by a member shall be administered by a judge and an oath taken by a member of staff of the Commission shall be administered by the Director-General.

5 **14.** An action or other proceeding shall not lie or be instituted against a member of the Commission, a member of an *ad hoc* committee of the Commission or a member of staff of the Commission for or in respect of an act or thing done or omitted to be done in good faith in the exercise or performance of any of the
10 powers, functions or duties conferred under this Act. Immunity

PART III

DETERMINATION OF EMOLUMENTS AND FACTORS FOR CONSIDERATION

15 **15.** The Commission shall, in the determination of emoluments, be guided by the following principles: Principles for determination of emoluments

 (a) retention of officers and staff in a State organ and State institution with the requisite qualifications and skills for improved service delivery;

 (b) efficient performance in a State organ or State institution;

20 (c) the need for emoluments that reflect the level of responsibility of a chief or an officer in a State organ or State institution;

 (d) enhancement and maintenance of macroeconomic stability in the country; and

25 (e) affordability and sustainability.

16. Subject to section 17, the Commission shall undertake a concurrent review of emoluments for chiefs and officers in a State organ and State institution every two years. Review cycle

30 **17.** (1) Despite section 16, the Commission shall undertake special reviews to — Special review

 (a) attract and retain critical or scarce professional skills required to effectively execute the functions of a State organ or State institution; or

 (b) compensate for the increased cost of living for a chief
35 or an officer in a State organ or State institution.

(2) A special review by the Commission under subsection (1) shall not interrupt or replace the two year review cycle, but its results shall inform the review referred to under section 16.

Study to precede review	<p>18. (1) The Commission shall, before undertaking the review referred to under section 16, cause the following to be conducted:</p> <p>(a) a study on labour market efficiency and dynamics; and</p> <p>(b) a survey of the prevailing economic situation.</p> <p>(2) The Commission shall prepare a report on the findings under subsection (1) and the report shall form the basis for the review.</p>	5
Procedure for submission of proposals	<p>19. (1) The Commission shall, whenever a review is due under sections 16 and 17, request a relevant authority for a proposal on emoluments for their officers and staff by notice in the <i>Gazette</i> and at least two daily newspapers of general circulation in the Republic.</p> <p>(2) A relevant authority shall submit the proposals under subsection (1) to the Commission in the prescribed manner and form.</p>	10 15
Factors considered when preparing and submitting proposals	<p>20. (1) A relevant authority shall, in the preparation of the proposal requested for by the Commission under section 19, take the following factors into account:</p> <p>(a) fixed and variable components of emoluments;</p> <p>(b) legal, social, economic and environmental issues;</p> <p>(c) results of job evaluations, performance and productivity;</p> <p>(d) results of comparative labour market surveys;</p> <p>(e) existing collective bargaining agreements;</p> <p>(f) specific cost of employment in relation to the resource capacity of the relevant authority;</p> <p>(g) affordability and sustainability of proposed emoluments, and available funds within the approved budget of a State organ and State institution;</p> <p>(h) emoluments of similar regional or international organisations;</p> <p>(i) equity and competitiveness;</p> <p>(j) linkage to the national objectives, priorities and human resource management strategy;</p>	20 25 30 35

- (k) salary structures of a chief and an officer in a State organ and State institution; and
- (l) any other matter relevant to the determination of emoluments.

5 (2) A relevant authority shall, in addition to the factors mentioned in subsection (1), take into account the relevant authority's nature of service, performance or financial turnover.

10 **21.** A relevant authority shall submit to the Commission data of the prevailing emoluments of the relevant authority's officers and staff annually. Requirement to submit data annually

22. The Commission shall, in determining or reviewing emoluments of a chief, State organ and State institution, take into account the factors referred to under section 20(1). Determination of emoluments

15 **23.** (1) The Commission shall, not later than the second quarter of the second year of the review, communicate to the relevant authority the approved emoluments by notice in the *Gazette*. Communication of approved emoluments

20 (2) The emoluments communicated under subsection (1) shall be effected on a date not earlier than 1st of January of the subsequent financial year after being factored in the national budget.

24. (1) A relevant authority shall, where a relevant authority seeks to engage the services of an expert whose emoluments are likely to be outside the relevant authority's emoluments structure, refer the issue of the expert's emoluments to the Commission. (2) Hiring of expert

25 An expert referred to under subsection (1) shall be recruited in accordance with the Public Procurement Act, 2020. Act No. 8 of 2020

25. Nothing in this Act shall be construed as precluding a relevant authority from making an application, in writing, to the Commission seeking guidance or advice on the emoluments accruing to the relevant authority's officers and members of staff in a State organ or State institution. Application to Commission

PART IV
FINANCIAL PROVISIONS

35 26. (1) The funds of the Commission consist of monies that may — Funds of Commission

- (a) be appropriated to the Commission by Parliament;
- (b) be paid to the Commission by way of grants or donations; or

- (c) otherwise vest in or accrue to the Commission.
- (2) The Commission may, subject to the approval of the Minister responsible for finance —
- (a) accept monies by way of grants or donations from any source within or outside the Republic; and 5
- (b) raise by way of loans or otherwise, monies that the Commission may require for the performance of the Commission’s functions.
- (3) There shall be paid from the funds of the Commission
- (a) the emoluments of the members and staff of the Commission; 10
- (b) such travelling and other allowances for the members and the members of an *ad hoc* committee of the Commission when engaged on the business of the Commission, at rates that the President may 15 determine; and
- (c) any other expenses incurred by the Commission in the performance of the Commission’s functions under this Act.
- (4) The Commission may, with the approval of the 20 President, invest in a manner that the Commission considers appropriate, funds of the Commission that it does not immediately require for the performance of the Commission’s functions.
- Financial year 27. The financial year of the Commission shall be a period 25 of twelve months ending on 31st December in each year.
- Accounts 28. (1) The Commission shall cause to be kept proper books of accounts and other records relating to the Commission’s accounts.
- (2) The accounts of the Commission shall be audited 30 annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General’s fees shall be paid by the Commission.
- Annual report 29. (1) As soon as practicable, but not later than ninety 35 days after the end of the financial year, the Commission shall submit to the President a report concerning the Commission’s activities during the financial year.

(2) The report referred to under subsection (1) shall include information on the financial affairs of the Commission and there shall be appended to the report —

- (a) an audited balance sheet;
- 5 (b) an audited statement of income and expenditure;
and
- (c) other information that the President may require.

(3) The Minister responsible for finance shall cause to be prepared an annual statement of the income and expenditure of
10 the Commission to be laid before the National Assembly.

PART V
GENERAL PROVISIONS

30. (1) The Commission shall issue a directive to relevant authorities, where a relevant authority fails to comply with the
15 provisions of this Act.

Directive of
Commission
on non-
compliance

(2) The Commission may, request a relevant authority to submit a written report, within a period specified by the Commission, containing the following information:

- (a) payment of remuneration;
- 20 (b) payment of salaries;
- (c) salaries contrary to the pay policy; and
- (d) payment of pensions, allowances and other benefits.

(3) The directive issued under subsection (1) shall state —

- (a) who the directive is addressed to;
- 25 (b) the issues to report on;
- (c) documents to be submitted in support of information in the report;
- (d) the time-frame, as determined by the Commission for the submission of a report; and
- 30 (e) the address where the report shall be submitted.

(4) The relevant authority shall be liable for the failure of a chief, State organ or State institution to comply with a directive under subsection (1).

31. (1) The Commission may, in writing, where a relevant
35 authority fails to report to the Commission in accordance with section 30, issue a compliance notice to the House of Chiefs, State organ or State institution.

Compliance
notice by
Commission

(2) A compliance notice referred to under subsection (1) shall include a copy of the directive issued by the Commission and shall state —

- (a) the conditions and period for submission of the report and other documents; 5
- (b) the address where the report shall be submitted;
- (c) the name of the addressee;
- (d) the provisions of the Act or applicable written law that have not been complied with;
- (e) details of the nature and extent of non-compliance; 10
- (f) the required corrective measures to be taken;
- (g) the period within which the corrective measures shall be taken;
- (h) the form and frame for submission of the report; and 15
- (i) the enforcement measures that the Commission intends to impose in the event of non-compliance with the directive or compliance notice.

(3) A person who fails to comply with the compliance notice issued under this section, commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand penalty units or to a term of imprisonment for a term not exceeding three years, or to both. 20

Privileged reports

(4) A court may consider the fact that a person committed the offence with deliberate disregard for the provisions of this Act as an aggravating circumstance. 25

32. A report, statement or other communication or record of a meeting, inquiry or proceeding of the Commission relating to the exercise of the Commission's functions or a report, statement or other communication or record made by a member for the purposes of the Commission in the course of duty, and any application form, report or other communication dispatched to the Commission in connection with the performance of the Commission's functions, and in the possession of the Commission, is privileged and shall not be produced in any legal proceeding unless the Chairperson so directs, in writing, or a court so orders. 30 35

33. A relevant authority which fails to comply with the provisions of this Act, shall be held accountable in accordance with the Public Finance Management Act, 2018.

Non-compliance by relevant authority
Act No. 1 of 2018

34. (1) A person shall not—

General offence

- 5 (a) knowingly make, or cause to be made, to the Commission, a false testimony or false report in any material particular on an offence or matter under investigation or give false information to the Commission;
- 10 (b) knowingly mislead the Commission or any other officer of the Commission by giving any false information or statement or making a false allegation;
- 15 (c) obstruct, assault, insult, hinder or delay an officer of the Commission in the lawful exercise of the powers conferred on the officer under this Act;
- (d) refuse or fail, without reasonable cause, to give the Commission on request, a document or information required for the purposes of this Act;
- 20 (e) unlawfully influence a decision of the Commission or coerce the Commission to make a decision in favour of that person or another person;
- (f) fail to comply with a lawful summon, directive or compliance notice of the Commission or an officer of the Commission under this Act; or
- 25 (g) destroy anything or prevent the seizure of a property or document or security of the property or document.

(2) A person who contravenes subsection (1), commits an offence and is liable, on conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a term not exceeding two years, or to both.

35. The Commission may, by statutory instrument, make Regulations for the better carrying out of the provisions of this Act.

Regulations

Transitional provisions

36. A State organ, State institution or any other authority concerned with the determination of emoluments of a chief or an officer in a State organ or State institution before the commencement of this Act, shall cease to be responsible for the determination of emoluments after the commencement of this Act. 5
