



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Proclamation

by the

PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 9

1997

COMMISSION OF INQUIRY INTO THE AVIATION REGULATORY PRACTICES OF THE DIRECTORATE: CIVIL AVIATION IN THE MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

Under the powers vested in me by section 1 of the Commissions Act, 1947 (Act No. 8 of 1947), I hereby declare the provisions of the said Act to be applicable with reference to the Commission of Inquiry into the Aviation Regulatory Practices of the Directorate : Civil Aviation in the Ministry of Works, Transport and Communication, the appointment of which was made known by me by Government Notice No. 153 of 23 July 1997, and hereby make the regulations set out in the Schedule with reference to that Commission.

Given under my Hand and the Seal of the Republic of Namibia, at Windhoek this 18th day of July, One Thousand Nine Hundred and Ninety-Seven.

SAM NUJOMA

President

BY ORDER OF THE PRESIDENT-IN-CABINET

SCHEDULE

1. In these regulations, unless the context otherwise indicates -

“chairperson” means the chairperson of the Commission;

“Commission” means the Commission of Inquiry into the Aviation Regulatory Practices of the Directorate : Civil Aviation in the Ministry of Works, Transport and Communication;

“document” includes any book, pamphlet, note, record (including any tape or other mechanical recording of anything or any transcription of any such note, record, tape or other mechanical recording), list, circular, plan, placard, poster, publication, drawing, photograph or picture;

“inquiry” means the inquiry conducted by the Commission in the execution of its terms of reference;

“staff member” means any person designated under regulation 2 to assist the Commission;

“Minister” means the Minister of Works, Transport and Communication;

“premises” includes any land, building, structure, or any part of any building or structure or any vehicle, vessel, aircraft, or other means of transport.

2. The administrative functions of the Commission shall be performed by staff members in the public service designated by the Permanent Secretary: Works, Transport and Communication for that purpose, and who shall perform their duties subject to the control and direction of the Secretary to the Commission.

3. The Minister may, on such terms and conditions as the Minister may determine -

- (a) appoint any person to assist the Commission in or in connection with the execution of its inquiry;
- (b) designate one or more persons to be present at the inquiry and to present evidence and arguments which have a bearing on the inquiry and to cross-examine witnesses appearing before the Commission subject to the provisions of regulation 10.

4. The chairperson shall determine the procedure to be followed at any proceedings of the Commission.

5. All sittings of the Commission shall be held at such times and places as may be determined by the Commission.

6. The Secretary to the Commission shall by notice in the *Gazette*, and in such other manner as the Commission may direct, announce the times when and places where public sittings of the Commission will be held for the purpose of hearing evidence and addresses in relation to matters pertaining to its terms of reference.

7. Written submissions to the Commission shall -

- (a) be prepared in the official language;
- (b) if and where possible be typewritten or word-processed on A4-size paper;
- (c) bear the name, address and telephone or fax number of the author; and
- (d) be submitted in tenfold.

8. No shorthand notes or mechanical records of the proceedings of the Commission shall be transcribed except by order of the chairperson.

9. (1) Every person employed by the Commission or assisting with the functions of the Commission, including any person employed to transcribe the proceedings of the Commission, shall preserve and aid in preserving secrecy with regard to the functions, proceedings and documents of the Commission and any matter or information which may come to his or her knowledge in the performance of his or her duties in connection with the said functions, except in so far as the disclosure of such proceedings, documents, matter or information shall be necessary for the purposes

of the Commission's report or in terms of an order of a competent court, and every such person, except a member of the Commission, shall at the outset take an oath or make an affirmation of fidelity and secrecy before the chairperson or a staff member generally or specifically authorised thereto by the chairperson in the following form:

"I, declare under oath/affirm and declare that, except in so far as it may be necessary for the purposes of the report of the Commission of Inquiry into the Aviation Regulatory Practices of the Directorate: Civil Aviation in the Ministry of Works, Transport and Communication, or in terms of an order of a competent court, I shall not communicate to any person any matter or information which may come to my knowledge in connection with the inquiry of the said Commission, or the performance of my duties in connection therewith, and that I shall not suffer or permit any person to obtain access to any document of the said Commission, including any note, record or transcription of the proceedings of the said Commission in my possession or custody or in the possession or custody of the said Commission or any staff member."

(2) No person shall, except in so far as it may be necessary in the execution of the terms of reference of the Commission or in terms of an order of a competent court, publish or furnish or communicate to any person the report of the Commission or a copy or any part thereof or an extract therefrom or any finding, recommendation or information contained therein, unless and until the President has made the report available for publication.

10. (1) No person, other than a member of the Commission or a person designated under regulation 3(b), nor the legal representative of any person, shall have the right to cross-examine any witness appearing before the Commission, unless the chairperson permits such cross-examination because the chairperson deems it necessary in the interests of the inquiry.

(2) The chairperson may, when he or she permits the cross-examination of any witness in terms of subregulation (1), limit such cross-examination to the subjects and in the manner which he or she deems necessary in the interests of the inquiry.

11. Any witness appearing before the Commission may, in the discretion of the chairperson and in the manner determined by him or her, be assisted by a legal practitioner, or by any other person, including, if he or she so desires, a person designated by the Permanent Secretary: Works, Transport and Communication for that purpose.

12. In any proceedings before the Commission the chairperson of the Commission shall not be bound by the rules of law relating to the admissibility of evidence.

13. Any member of the Commission or any staff member, may, for the purposes of the inquiry at any reasonable time enter and inspect any premises and there carry out any investigation which he or she deems necessary and demand and peruse or seize or copy or make extracts from any document which is or is kept in custody upon such premises.

14. No person shall insult, disparage or belittle the chairperson or any other member of the Commission or prejudice, influence or anticipate the proceedings or findings of the Commission.

15. Any person who contravenes or fails to comply with –

- (a) a provision of regulation 8 or 9, or any order of the chairperson made thereunder; or
- (b) a provision of regulation 14,

shall be guilty of an offence and liable on conviction –

- (i) in the case of an offence referred to in paragraph (a), to a fine not exceeding N\$200 or imprisonment for a period not exceeding six months; and
 - (ii) in the case of an offence referred in paragraph (b), to a fine not exceeding N\$1000 or imprisonment for a period not exceeding one year.
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Government Notice

OFFICE OF THE PRESIDENT OF THE REPUBLIC OF NAMIBIA

No. 153

1997

APPOINTMENT OF A COMMISSION OF INQUIRY INTO THE AVIATION REGULATORY PRACTICES OF THE DIRECTORATE : CIVIL AVIATION IN THE MINISTRY OF WORKS, TRANSPORT AND COMMUNICATION

It is hereby made known for general information that the President has appointed a Commission of Inquiry into the Aviation Regulatory Practices of the Directorate : Civil Aviation in the Ministry of Works, Transport and Communication, consisting of -

- (a) Dr S. Akweenda, who is the chairperson;
- (b) Mr M.R. Bandravala;
- (c) Dr S. Finkelstein;
- (d) Mr S.M. Lemire; and
- (e) Mr J.D. Mansfield.

The chairperson may also, in consultation with the Minister of Works, Transport and Communication, co-opt additional persons from time to time to assist the Commission in an advisory capacity in the performance of its assigned tasks.

The Commission's terms of reference are as follows:

"1. To investigate all allegations as to irregularity, malpractice and illegality -

1.1 on the part of anyone prior to or during the investigation into the accident to V5-M1H, a Cessna 210, in the Naukluft mountains on 23rd January 1997;

1.2 in the practices and procedures of the Division : Aviation Safety and Security of the Directorate : Civil Aviation, with respect to -

- (a) aircraft accident and incident investigation;

- (b) flight operations and the licensing of aviation personnel;
 - (c) aircraft airworthiness; and
 - (d) aviation medicine.
2. To determine whether or not the investigation referred to in paragraph 1.1 and the practices and procedures referred to in paragraph 1.2, were in compliance with the relevant laws and regulations of Namibia, and in accordance with the Convention on International Civil Aviation to which Namibia is a party, and with the Standards and Recommended Practices contained in the relevant annexes to the said Convention.
3. To determine the cause of the accident to V5-M1H.
4. To determine, should it be established as per paragraph 2, that the relevant laws and regulations have not been complied with, the reason or reasons underlying the lack of compliance with the said laws and regulations.
5. To report to the Minister of Works, Transport and Communication on its findings and make relevant recommendations.”.

The Commission shall submit a first interim report on the terms of reference within four months of the date of appointment of the Commission and its final report within six months of that date or such further period as the President may, on the request of the Commission, determine.

Interested persons and bodies wishing to submit written representations to or give evidence before the Commission are requested and required to send or submit, in the manner prescribed in the regulations set out in the Schedule to Proclamation No. 9 of 1997, written submissions in which those representations or a summary of that evidence is set out, to the Secretary, Commission of Inquiry into the Aviation Regulatory Practices of the Directorate : Civil Aviation of the Ministry of Works, Transport and Communication c/o The Permanent Secretary, Ministry of Works, Transport and Communication, Private Bag 13341, Windhoek or fax (061) 228560, as soon as possible, but no later than 1 August 1997. The Commission may in appropriate cases accept and entertain later representations.