

No. 17 of 1989.

Attorney-General Act 1989.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Attorney-General Act 1989,

Being an Act—

- (a) to implement Section 156(2) of the *Constitution* in relation to the Office of principal legal adviser to the National Executive by establishing the Office of Attorney-General to be the principal legal adviser and providing for the duties, functions and responsibilities of that Office; and
- (b) to establish the Office of Solicitor-General and provide for the duties, functions and responsibilities of that Office; and
- (c) to repeal the *Legal Aid Act* (Chapter 53) and the *Principal Legal Adviser Act* (Chapter 54); and
- (d) for related purposes.

1. **INTERPRETATION.**

In this Act, unless the contrary intention appears—

“**Attorney-General**” means the person holding the Office of Attorney-General in accordance with this Act;

“**IPA**” means the Investment Promotion Authority established by the *Investment Promotion Act 1992*;

“**Solicitor-General**” means the person appointed as Solicitor-General under Section 10.

2. **ESTABLISHMENT OF OFFICE OF ATTORNEY-GENERAL.**

The Office of Attorney-General of Papua New Guinea is hereby established.

3. ATTORNEY-GENERAL TO BE PRINCIPAL LEGAL ADVISER.

For the purposes of Section 156(2) of the *Constitution*, the Attorney-General is the principal legal adviser to the National Executive.

4. MINISTER AS ATTORNEY-GENERAL.

Where the Minister responsible for the National Justice Administration is a lawyer fully admitted to practice under the *Lawyers Act 1986* he is the Attorney-General and principal legal adviser to the National Executive.

5. DEPARTMENTAL HEAD AS ATTORNEY-GENERAL.

Where the Minister responsible for the National Justice Administration—

- (a) is a person to whom Section 4 applies, but is out of the country or is out of speedy and effective communication or is otherwise unable to fulfil the duties of the Office of Attorney-General; or
- (b) is not a lawyer fully admitted to practise under the *Lawyers Act 1986*,

the Departmental Head of the Department responsible for National Justice Administration is the Attorney-General and principal legal adviser to the National Executive.

6. DEPARTMENTAL HEAD AS ATTORNEY-GENERAL MAY ATTEND MEETINGS OF NATIONAL EXECUTIVE COUNCIL.

Where the Departmental Head of the Department responsible for National Justice Administration is the Attorney-General, he is entitled to attend all meetings of the National Executive Council but—

- (a) is not entitled to vote on any matter before the National Executive Council; and
- (b) attends only for the purpose of providing legal advice to the National Executive Council.

7. DUTIES, FUNCTIONS AND RESPONSIBILITIES OF THE ATTORNEY-GENERAL.

The duties, functions and responsibilities of the Attorney-General are—

- (a) in accordance with Section 8, to carry out the duties of the principal legal adviser to the National Executive Council and related duties; and
- (b) to exercise the duties, functions and responsibilities conferred upon the Attorney-General or upon the principal legal adviser by the Constitutional Laws and Acts; and
- (c) to exercise the functions vested in the Office of Attorney-General by virtue of the underlying law including the bringing of proceedings known as relator proceedings; and

- (d) to exercise powers delegated to him by the National Executive Council or a Committee of the National Executive Council; and
- (e) in accordance with Section 10, to appoint a lawyer to be the Solicitor-General; and
- (f) in accordance with Section 13, to review any decision of the Public Solicitor to refuse legal aid and assistance to a person and to grant such aid and assistance in his absolute discretion following a review; and
- (g) in accordance with Section 15, to grant a certificate that a barrister or solicitor practising outside the country is authorized to appear before the National and Supreme Courts; and
- (h) in accordance with Section 16, to grant a certificate to Investment Promotion Authority that—
 - (i) a lawyer who is a non-citizen may commence practice as a lawyer in the country; and
 - (ii) a firm of lawyers registered as a foreign enterprise under the *Investment Promotion Act 1992* may continue to practise as lawyers in the country; and
- (i) to instruct lawyers within or outside the country to appear for the State in any matter; and
- (j) to recommend to the Minister responsible for finance matters the payment by the State of an *ex gratia* sum of money in cases where the State is not under a legal liability but where it appears nevertheless that the State should compensate a person as an act of grace.

8. LEGAL ADVICE AND OPINION.

(1) The Attorney-General, as the principal legal adviser, shall tender legal advice and opinion to the National Executive following a request to do so and shall of his own initiative give such advice where it appears to him necessary or appropriate for legal advice to be given on a matter.

(2) The Attorney-General may tender or offer legal advice or opinion to the National Executive Council on a matter coming before the Council.

(3) The Attorney-General may tender or offer legal advice or opinion to a Minister on a matter relating to the portfolio of that Minister.

(4) On matters affecting the conduct of the business of the State where legal issues arise or might arise, legal advice shall be provided by the Attorney-General, either in his capacity as principal legal adviser to the National Executive or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorizes the giving of legal advice by any other person.

9. DELEGATION.

The Attorney-General may delegate in writing all or any of his duties, functions, responsibilities or powers under this Act or any other law (except this power of delegation).

10. ESTABLISHMENT OF OFFICE OF SOLICITOR-GENERAL.

(1) The Office of Solicitor-General of Papua New Guinea is hereby established as an office within the National Public Service.

(2) The Office of Solicitor-General shall consist of the Solicitor-General and such number of Assistant Solicitors-General as the Attorney-General considers necessary, together with other staff who shall be officers of the National Public Service.

11. APPOINTMENT OF SOLICITOR-GENERAL.

(1) The Solicitor-General shall be appointed by the Attorney-General by notice in the National Gazette.

(2) The Solicitor-General shall be appointed for a period not exceeding three years.

12. QUALIFICATIONS FOR APPOINTMENT AS SOLICITOR-GENERAL.

No person is eligible to be appointed as Solicitor-General unless he is a lawyer fully admitted to practise in accordance with the *Lawyers Act 1986*, who has practised as a lawyer within the country for a period of at least five years prior to his appointment as Solicitor-General.

13. FUNCTION OF SOLICITOR-GENERAL.

(1) The primary function of the Solicitor-General is to appear as an advocate for the State in matters coming before the courts in Papua New Guinea.

(2) In the exercise of his function under Subsection (1), the Solicitor-General shall accept instructions only from the Attorney-General.

14. REVIEW OF DECISION TO REFUSE TO GRANT LEGAL AID AND ASSISTANCE.

(1) The Attorney-General shall, on the application of a person who has applied for legal aid and assistance to the Public Solicitor and who has been refused such legal aid and assistance, review the decision of the Public Solicitor.

(2) In carrying out a review under Subsection (1), the Attorney-General shall take full account of all the circumstances of the application, including the means of the applicant, the nature of the case involving the applicant and the likelihood of the applicant being prejudiced or suffering injustice as a result of the refusal to grant legal aid.

(3) The Attorney-General may, following a review, grant legal aid and assistance to an applicant in a manner appropriate to the circumstances of the applicant.

15. EMPLOYMENT OF BARRISTERS, ETC., PRACTISING OUTSIDE THE COUNTRY.

(1) The Attorney-General may, in his discretion, issue to a barrister or solicitor who—

- (a) is a non-citizen; and
- (b) ordinarily practises as a barrister or solicitor outside the country; and
- (c) is not ordinarily resident in the country,

a certificate in the prescribed form authorizing that barrister or solicitor to appear in a case before the National or Supreme Court.

(2) A barrister or solicitor who—

- (a) is a non-citizen; and
- (b) ordinarily practises as a barrister or solicitor outside the country; and
- (c) is not ordinarily resident in the country,

is not entitled to appear before the National or Supreme Court in any case without a certificate under Subsection (1).

(3) An application for a certificate under Subsection (1) shall be made by the lawyer proposing to instruct the barrister or solicitor in respect of whom the application is made and shall be accompanied by—

- (a) evidence that the barrister or solicitor has obtained a work permit under the *Employment of Non-citizens Act 1978*; and
- (b) evidence of the qualifications and experience of the barrister or solicitor; and
- (c) a certificate to the effect that there is no lawyer who—
 - (i) is a citizen; or
 - (ii) is normally resident in the country,

available and competent to appear in the case; and

(d) such other information as the Attorney-General may require.

(4) In determining whether or not to grant a certificate under Subsection (1), the Attorney-General shall have regard to—

- (a) the academic and practise qualifications of the barrister or solicitor; and
- (b) the degree of difficulty of any legal issues which might reasonably be expected to arise in the matter in which it is proposed to instruct the barrister or solicitor to appear; and

- (c) whether the matter is one in which, in the opinion of the Attorney-General, a competent lawyer practising within the country could be expected to appear; and
- (d) any other relevant matter.

(5) A certificate under Subsection (1) authorizes the barrister or solicitor named in the certificate to appear in all applications, interlocutory or final, in the case specified in the certificate.

(6) The provisions of this section are in addition to, and not in derogation of, the requirements of the *Lawyers Act 1986*.

16. LEGAL PRACTICE BY NON-CITIZEN LAWYERS.

(1) Notwithstanding the provisions of the *Investment Promotion Act 1992*, a person applying under that Act for—

- (a) registration; or
- (b) renewal or extension of the registration; or
- (c) variation of terms and conditions of the registration,

of a foreign enterprise for the purpose of practising law in the country shall provide to the Attorney-General at the time of applying for registration with Investment Promotion Authority—

- (d) copies of all documents which he has submitted to Investment Promotion Authority in support of his application; and
- (e) such other documents and such other information as the Attorney-General may require.

(2) Investment Promotion Authority shall not grant registration to a foreign enterprise to practise law in the country without a certificate of approval in the prescribed form of the Attorney-General.

(3) The Attorney-General shall consider the documents and other information submitted to him under Subsection (1) and shall, within a reasonable time of such consideration, grant a certificate of approval to Investment Promotion Authority or notify Investment Promotion Authority and the applicant of his refusal to do so.

(4) Notwithstanding the provisions of the *Investment Promotion Act 1992*, the Attorney-General shall keep under continuing review a foreign enterprise registered under that Act and permitted to practise law in the country in accordance with that Act.

(5) The Attorney-General may from time to time issue to Investment Promotion Authority guidelines concerning the establishment in the country of foreign enterprises practising law.

17. REPEAL.

The *Legal Aid Act* (Chapter 53) and the *Principal Legal Adviser Act* (Chapter 54) are repealed.

18. REGULATIONS.

The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all things that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for prescribing fees and for prescribing penalties of fines not exceeding K100.00 for offences against the Regulations.

Office of Legislative Counsel, PNG