

No. **3** of 2022.

*Attorney-General (Amendment) Act 2022.*

Certified on :- **4 MAR 2022**



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**ARRANGEMENT OF SECTIONS.**

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“State”.
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**“7. DUTIES, FUNCTIONS AND RESPONSIBILITIES OF THE ATTORNEY-GENERAL.”.**
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**“9A. REPORTING.”.**
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**“10. ESTABLISHMENT OF THE OFFICE OF THE SOLICITOR-GENERAL.”.**
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**“13. FUNCTIONS OF SOLICITOR-GENERAL.”.**
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9. Appointment of the State Solicitor (Amendment of Section 13D).
10. New Section 17A.

**“17A. TRANSITIONAL PROVISION.”**

11. Regulations (Amendment to Section 18).



No. 3 of 2022.

AN ACT

entitled

***Attorney-General (Amendment) Act 2022,***

Being an Act to amend the *Attorney-General Act 1989* to provide for the powers of the Attorney-General, functions of the Solicitor-General and State Solicitor, and for related purposes,

MADE by the National Parliament.

**1. INTERPRETATION (AMENDMENT OF SECTION 2).**

Section 2 of the Principal Act is amended by inserting the following new definitions in alphabetical order:

““IPA”, means the Investment Promotion Authority established by Section 5 of the *Investment Promotion Authority Act 1992*;

“State”, in relation to the functions and powers of the State Solicitor and Solicitor-General, means government departments, Provincial and Local-level Governments and an arm, department, agency or instrumentality of the National Government or a Provincial Government and includes a body set up by statute or an administrative act for government or official purposes;”.

**2. DUTIES, FUNCTIONS AND RESPONSIBILITIES OF THE ATTORNEY-GENERAL (REPEAL AND REPLACEMENT OF SECTION 7).**

The Principal Act is amended by repealing Section 7 and replacing it with the following:

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

(1) For the purposes of this section, the State refers to public bodies and statutory bodies as defined under the *Public Finances (Management) Act 1995*.

- (2) The duties, functions and responsibilities of the Attorney-General are -
- (a) to carry out the duties of the principal legal adviser to the National Executive Council and related duties in accordance with Section 8; and
  - (b) to exercise the duties, functions and responsibilities conferred upon the Attorney-General or upon the principal legal adviser by the *Constitution* and other laws; and
  - (c) to exercise the functions vested in the Office of the 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 11, to recommend to the Judicial and Legal Services Commission to appoint a lawyer to be the Solicitor-General; and

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- (f) in accordance with Section 13D, to recommend to the Judicial and Legal Services Commission to appoint a lawyer to be the State Solicitor; and
- (g) in accordance with Section 15, to grant a certificate that a barrister or solicitor practising outside the country is authorised to appear before the National and Supreme Courts; and
- (h) in accordance with Section 16, to grant a certificate to the Investment Promotion Authority; and
- (i) to brief-out to a lawyer or firm of lawyers, within or outside the country, to appear for the State in accordance with Section 7B; and
- (j) to vet and approve lawyers bills for brief-outs in accordance with Section 7C; and
- (k) to recommend to the Minister responsible for finance matters the payment by the State of ex-gratia sum of money, in cases where it appears nevertheless that the State should compensate a person as an act of grace; and
- (l) to vet and approve any out-of-court settlement by the State in accordance with Section 7D; and
- (m) to receive and to act upon the advise of the Attorney-General's Advisory Committee established under Section 7A.

(3) For the avoidance of doubt, a lawyer or firm of lawyers under Subsection (2) excludes the Solicitor-General and State Solicitor.”.

**3. NEW SECTIONS 7A, 7B, 7C AND 7D.**

The Principal Act is amended in Section 7 by inserting the following new sections:

**“7A. ATTORNEY-GENERAL’S ADVISORY COMMITTEE.**

- (1) The Attorney-General’s Advisory Committee is hereby established.
- (2) The functions of the Attorney-General’s Advisory Committee include providing advice to the Attorney-General on the following:
  - (a) brief-out matters under Section 7B; and
  - (b) vetting of lawyers bills under Section 7C; and
  - (c) out-of-court settlement under Section 7D.
- (3) The Attorney-General’s Advisory Committee shall consist of -
  - (a) the Secretary for Justice as the Chairperson (if the Secretary is not the Attorney-General); and
  - (b) the Solicitor-General; and
  - (c) the State Solicitor; and
  - (d) two senior officers of the department at the Deputy Secretary level.
- (4) The proceedings of the Attorney-General’s Advisory Committee shall be as prescribed.
- (5) Any form of communication between the Attorney-General and the Attorney-General’s Advisory Committee is privileged and non-justiciable.

**7B. BRIEF-OUT MATTERS.**

- (1) A brief-out by the Attorney-General under Section 7(2)(i) shall be made on the recommendation of the Attorney-General’s Advisory Committee.

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(2) A lawyer or a firm of lawyers appearing for the State in any matter without a brief-out shall be deemed to be acting without the instructions of the Attorney-General.

Penalty: A fine not less than K500,000.00.

**7C. LAWYERS BILL.**

(1) Lawyers bill for brief-out shall only be settled after it has been vetted and approved by the Attorney-General on the recommendation of the Attorney-General's Advisory Committee.

(2) Where a State instrumentality pays legal bills without the approval of the Attorney-General, the head of the State instrumentality is personally liable to pay a fine of K50,000.00.

**7D. OUT-OF-COURT SETTLEMENT.**

The State shall not be liable for the payment of any out-of-court settlement, whether under deed of agreement or a contract, unless it has been approved by the Attorney-General on the recommendation of the Attorney-General's Advisory Committee."

**4. NEW SECTION 9A.**

The Principal Act is amended by inserting after Section 9, the following new section:

**"9A. REPORTING.**

(1) The Solicitor-General and State Solicitor shall provide regular reports to the Attorney-General in relation to the performance of their functions.

(2) Any form of communication between the Attorney-General, and either the Solicitor-General or the State Solicitor is privileged and non-justiciable."

**5. ESTABLISHMENT OF THE OFFICE OF THE SOLICITOR-GENERAL (REPEAL AND REPLACEMENT OF SECTION 10).**

The Principal Act is amended by repealing Section 10 and replacing it with the following:

**"10. ESTABLISHMENT OF THE OFFICE OF THE SOLICITOR-GENERAL.**

(1) There is established within the National Public Service, the Office of the Solicitor-General.

(2) The Office of the Solicitor-General consists of -

(a) the Solicitor-General; and

(b) such numbers of deputies who are appointed under the *Public Services (Management) Act 1995*; and

(c) other officers and staff who must be officers or employees of the National Public Service.

(3) Subject to Section 26(3) of the *Constitution (Application of Division 2)*, the Office of the Solicitor-General is declared to be an office to and in relation to which *Division III.2 (Leadership Code)* of the *Constitution* applies."

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**6. APPOINTMENT OF THE SOLICITOR-GENERAL (REPEAL AND REPLACEMENT OF SECTION 11).**

The Principal Act is amended by repealing Section 11 and replacing it with the following:

**“11. APPOINTMENT OF THE SOLICITOR-GENERAL.**

(1) The Solicitor-General is appointed by the Judicial and Legal Services Commission on the recommendation of the Attorney-General following the appointment process as prescribed.

(2) The Solicitor-General holds office in accordance with the terms and conditions of a contract of employment with the State.

(3) The Solicitor-General is appointed for a term of five years and is eligible for re-appointment.”

**7. FUNCTIONS OF SOLICITOR-GENERAL (REPEAL AND REPLACEMENT OF SECTION 13).**

The Principal Act is amended by repealing Section 13 and replacing it with the following:

**“13. FUNCTIONS OF THE SOLICITOR-GENERAL.**

(1) The primary functions of the Solicitor-General are to -

- (a) appear as an advocate for the State before the courts in Papua New Guinea, unless otherwise instructed by the Attorney-General; and
- (b) provide legal representation as advocate in all court-annexed alternative dispute resolution matters for and on behalf of the State; and
- (c) perform any other functions consistent with his advocacy functions.

(2) All officers and employees of the State, its agents or instrumentalities must -

- (a) co-operate with; and
- (b) comply with any instructions issued by,

the Solicitor-General when the Solicitor-General is performing the functions or exercising the powers of his office under this Act or any other law.

(3) A person who fails or refuses to comply with Subsection (2) commits a disciplinary offence under the terms and conditions of his employment.

(4) The Solicitor-General may, in writing, delegate all or any of his powers and functions, except his power of delegation, under this Act or any other law, to a Deputy Solicitor-General.

(5) Any delegation under Subsection (4) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Solicitor-General.”

**8. FUNCTIONS OF THE STATE SOLICITOR (AMENDMENT TO SECTION 13A).**

Section 13A of the Principal Act is amended in Subsection (2) by repealing Paragraph (b) and replacing it with the following:

“(b) such number of deputies who are appointed under the *Public Services (Management) Act 1995*; and”.

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**9. APPOINTMENT OF THE STATE SOLICITOR (AMENDMENT OF SECTION 13D).**

Section 13D of the Principal Act is amended by repealing Subsection (1) and replacing it with the following:

“(1) The State Solicitor is appointed by the Judicial and Legal Services Commission on the recommendation of the Attorney-General, following the appointment process as prescribed, and holds office in accordance with the terms and conditions of a contract of employment with the State.”.

**10. NEW SECTION 17A.**

The Principal Act is amended by inserting immediately after Section 17, the following new section:


**“17A. TRANSITIONAL PROVISION.**

The incumbent Solicitor-General is deemed to hold Office for a period of five years and is eligible for re-appointment on the coming into operation of this Act.”.


**11. REGULATIONS (AMENDMENT TO SECTION 18).**

Section 18 of the Principal Act is amended in the penalty provision by deleting “K100.00” and replacing it with “K500,000.00”.

I hereby certify that the above is a fair print of the *Attorney-General (Amendment) Act 2022*, which has been made by the National Parliament.

  
Clerk of the National Parliament.  
4 MAR 2022

I hereby certify that the *Attorney-General (Amendment) Act 2022*, was made by the National Parliament on 20 January 2022.

  
Speaker of the National Parliament.  
4 MAR 2022