

Chapter 397.
Higher Education Act 1983.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 397.

Higher Education Act 1983.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Higher Education Act 1983,

Being an Act to make provision for the establishment of a Commission for Higher Education to foster—

- (a) the rational development of higher education with regard to the needs and resources of Papua New Guinea; and
- (b) the rationalization and co-ordination of institutions of higher education so that the most effective use can be made of the resources available for higher education,

and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely the right to privacy conferred by Section 49 of the *Constitution*, is a law that is made for that purpose.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Governments and Local-level Governments* it is declared that this Act relates to a matter that is of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**agency**” means a Department or an organization or person conducting and institution of higher education;

“**Chairman**” means the Chairman of the Commission;

“**church**” includes mission;

“**Commission**” means the Commission for Higher Education established under Section 5;

“**Commissioner**” means a member of the Commission and includes the Chairman;

“**declared institution**” means an institution of higher education in receipt of government funds declared under Section 3 to be an institution to which this Act applies;

“**Director General**” means the Director General of the Office of Higher Education appointed under Section 18A.

“**financial assistance**” means the tertiary education studies assistance scheme providing financial scholarships to students in accordance with Section 24;

“**graduate tax**” means a cost recovery measure on loan through a tax levy on graduates in addition to income tax;

“**higher education**” means all types of education of post-Grade 10 level, but does not include National High Schools or similar institutions or religious institutions;

“**identity**” means the character of a declared institution as determined by the agency responsible for the declared institution and includes the statement of philosophy as published from time to time by the agency;

“**institution of higher education**” means an institution at which higher education is provided;

“**programme**” means a combination of subjects, the successful completion of study in which will lead to the granting of an academic award;

“**religious institution**” means—

- (a) an institution in which instruction is wholly or mainly of a religious or doctrinal nature; or
- (b) an institution conducted by a church for the exclusive training of its own personnel;

“**scholarship**” means financial assistance given to students in accordance with Section 24;

“**subject**” means a distinct and formally assessed part of a programme;

“**this Act**” includes the regulations.

13. APPLICATION.

(1) The Minister may, in accordance with decisions of the National Executive Council, by notice in the National Gazette, declare an institution of higher education to be an institution to which this Act applies.

(2) Notwithstanding Subsection (1), Sections 27 and 30 apply to all institutions of higher education whether declared or not.

(3) This Act does not restrict or authorize the establishment or maintenance of a religious institution.

(4) This Act does not derogate the right of an agency responsible for a declared institution to promote a particular identity within that declared institution.

(5) The Minister shall ensure that agencies administering declared institutions exercise their powers and functions under this Act and any other law relating to higher education with due respect for the identity and the philosophy of all agencies.

¹ Section 2 (definition of “Director General”) inserted by *Higher Education (Amendment) Act* 1998 (No. 18 of 1998), s2; Section 2 (definition of “financial assistance”) inserted by No. 45 of 2000 s.1; Section 2 (definition of “graduate tax”) inserted by No. 45 of 2000 s.1; Section 2 (definition of “scholarship”) inserted by No. 45 of 2000 s.1.

PART II. – OBJECTS OF HIGHER EDUCATION.**4. OBJECTS OF HIGHER EDUCATION.**

(1) Bearing in mind the National Goals and Directive Principles of the *Constitution*, and subject to this section, the objects and purposes of higher education, by means of the maximum involvement and co-operative effort by persons and bodies interested in higher education in the country (including the State, the teaching profession, churches and the community as a whole) and the maximum utilization of the resources available from all sources, are–

- (a) for the integral human development of the person; and
- (b) to develop and encourage the development of a system of higher education fitted to the requirements of the country and its people; and
- (c) to establish, preserve and improve standards of education throughout the country; and
- (d) to make the benefits of such education available as widely as possible,

as far as this can be done by legislative and administrative measures, and in such a way as to foster among other things a sense of common purpose and nationhood and the importance and value of higher education.

(2) In achieving the objects and purposes referred to in Subsection (1)–

- (a) the desirability of making due allowance for reasonable diversity of educational methods, provided that standards of educational achievement are not sacrificed; and
- (b) the right to define, develop and preserve the identity and character of declared institutions of a particular nature, whether of a religious or other nature (not being based on distinctions of race or colour, or other criteria unacceptable in a democratic society); and
- (c) the basing of education in declared institutions on both noble traditions and Christian principles; and
- (d) the role of agencies as partners in higher education,

are and shall be, to such extent as is reasonably practicable and not inconsistent with the basic aims of this Act, specifically recognized.

(3) This Act does not restrict or authorize the making of regulations restricting the giving of religious and doctrinal instruction in declared institutions, but no declared institution is entitled to exclude a student solely on the grounds of religious or doctrinal affiliation.

(4) The general principles set out in this section are the principles to be observed in the administration of higher education and this Act.

PART III. – COMMISSION FOR HIGHER EDUCATION.

5. COMMISSION FOR HIGHER EDUCATION.

The Commission for Higher Education is hereby established.

6. MEMBERSHIP OF THE COMMISSION.

(1) The Commission shall consist of–

(a)² a Chairman; and

(b)³ not less than four nor more than seven Commissioners each of whom shall have expertise or experience in higher education, administration, planning, finance or legislation and of whom–

(i) at least one shall be a woman; and

(ii) one shall be chosen from a panel nominated by an association or associations jointly, recognized by the Minister as representing the interests of church agencies,

who shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) The Chairman shall be–

(a) appointed for a period not exceeding five years; and

(b)⁴ appointed on honorarium on a part-time basis on such terms and conditions as are determined by the Head of State, acting on advice; and

(c) eligible for re-appointment.

(3) The Commissioners, other than the Chairman, shall be–

(a) appointed for a period not exceeding three years; and

(b) appointed on such terms and conditions as are determined by the Minister; and

(c) eligible for re-appointment.

(4) Prior to making recommendations under Subsection (1)(b), the Minister shall consult with institutions of higher education, professional and industrial associations, employers, agencies and co-ordinating bodies, and solicit names of possible Commissioners.

² Section 6(1)(a) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s79. Section 6(1)(a) repealed and replaced by *Higher Education (Amendment) Act 1998* (No. 18 of 1998), s3(a);
Section 6 Subsection (1) amended by No. 97 of 2006, Sched. 1.

³ Section 6 Subsection (1) amended by No. 97 of 2006, Sched. 1.

⁴ Section 6(2)(b) repealed and replaced by *Higher Education (Amendment) Act 1998* (No. 18 of 1998), s3(b).

7. ALTERNATE COMMISSIONERS.

(1) For each Commissioner, other than the Chairman, an alternate Commissioner shall be appointed in the same way and subject to the same conditions as the Commissioner for whom he is the alternate.

(2) In the event of the inability to act of a Commissioner, the alternate Commissioner has and may exercise all his powers, functions, duties and responsibilities.

(3) An alternate Commissioner may attend any meeting of the Commission and in the absence of the Commissioner for whom he is the alternate, take part in discussion, vote on any matter and be counted toward a quorum.

(4) Where, in relation to the office of a Commissioner appointed under Section 6, a casual vacancy occurs, the person appointed to be the alternate to the Commissioner may be deemed to be appointed for the balance of the term of office of the Commissioner.

8. LEAVE OF ABSENCE OF COMMISSIONERS.

The Chairman may grant leave of absence to a Commissioner on such terms and conditions as he determines.

9. VACATION OF OFFICE OF COMMISSIONERS.

(1) Where a Commissioner—

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office by writing under his hand addressed to the Minister; or
- (c) is absent, except with the written consent of the Chairman, from three consecutive meetings of the Commission; or
- (d) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (e) is convicted of an offence punishable under a law by imprisonment for one year or longer or by death, and as a result of the conviction is sentenced to imprisonment or death,

his appointment shall be terminated by the authority responsible under Section 6 for making the appointment.

(2) The National Executive Council acting on advice of the Minister may, at any time, by written notice, advise a Commissioner that it intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the Commissioner may reply in writing to the National Executive Council who shall

consider the reply and as soon as is practicable deliver written notice of its decision to the Commissioner.

(4) Where the Commissioner referred to in Subsection (2) does not, within 14 days of the receipt of a notice under that subsection, reply in writing to the National Executive Council, his appointment is terminated.

10. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.

The exercise or performance of a power or function of the Commission is not invalidated by reason only of a vacancy in the membership of the Commission.

11. MEETINGS OF THE COMMISSION.

(1) The Commission shall meet at such times and places as the Chairman determines, but in any event shall meet not less frequently than three times in each year.

(2) The Minister may direct that a meeting of the Commission be held at a time and place fixed by him, and the Chairman shall convene a meeting accordingly.

(3) Where he receives a request to do so by not less than two Commissioners, the Chairman shall convene a meeting within 14 days.

(4) At a meeting of the Commission—

(a) half the number of Commissioners plus one is a quorum; and

(b) the Chairman shall preside at all meetings at which he is present, and in his absence a Commissioner elected by the Commissioners present shall preside in his place; and

(c) matters arising shall be decided by a majority of the votes of the Commissioners present and voting; and

(d) the Commissioner presiding has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(5) The Commission shall cause minutes of its meetings to be recorded and kept.

(6) Subject to this Act, the procedures of the Commission are as determined by the Commission.

12. NATIONAL PLAN FOR HIGHER EDUCATION.

Subject to Section 29, there shall be a national plan for higher education which shall be determined by the Head of State, acting on advice, given after receiving from the Minister a report and recommendations from the Commission.

13. FUNCTIONS OF THE COMMISSION.

(1) The functions of the Commission are—

- (a) to advise the Minister, after consultation with interested parties, on all matters concerning higher education that are referred by him to the Commission; and
- (b) to make recommendations to the Minister on—
 - (i) a national plan for higher education; and
 - (ii) the broad areas of responsibility and objectives that should be assigned to the various declared institutions; and
 - (iii) general policies in relation to academic programmes, building, equipment and staffing in declared institutions; and
 - (iv) general policies in relation to Government financial support for students to undertake programmes of higher education; and
 - (v) a national structure of academic awards for programmes of higher education; and
 - (vi) financial allocations needed for declared institutions, having regard to overall national resources and any directions by the National Executive Council as to the amount or proportion of finances available for higher education; and
 - (vii) appropriate arrangements for the co-ordination and management of declared institutions under Part V; and
 - (viii) general policies in relation to higher education of citizens resident abroad, and of non-citizen students enrolled in programmes in declared institutions.

(2) The recommendations concerning the national plan for higher education referred to in Subsection (1)(b)(i) shall include recommendations as to—

- (a) the range and level of programmes needed to meet national requirements; and
- (b) the declared institutions at which various programmes should be conducted; and
- (c) the number of students that should be enrolled in each programme and the number and level of Government scholarships or other awards that should be made available for each course or type of course; and
- (d) the establishment of new declared institutions or the amalgamation or closure of existing ones.

(3) The Commission shall review progress towards implementation of the national plan for higher education determined under Section 12, and shall report on such progress as provided for in Section 16.

14. EXECUTIVE RESPONSIBILITIES OF THE COMMISSION.

The Commission is responsible for—

- (a) implementing, so far as lies within its powers, Government policy in relation to higher education; and
- (b) determining, in consultation with the institutions of higher education involved and on behalf of all Departments and State instrumentalities, the relative status of academic awards given by declared institutions of higher education and accredited by their respective Ministers; and
- (c) promoting co-ordination and co-operation between declared institutions where it is in the best interests of the development of higher education to do so; and
- (d) assisting, in consultation with declared institutions and other bodies concerned, the preparation and execution of such plans for the development of declared institutions as may from time to time be required in order to ensure that they are fully adequate to national needs; and
- (e) monitoring, in respect of the national plan for higher education referred to in Section 12, enrolment patterns and programme offerings at declared institutions; and
- (f) collecting, examining and making available, information related to declared institutions; and
- (g) reviewing proposals for financial assistance for declared institutions to be made to the State and advising the Budget Priorities Committee of its views; and
- (h) so far as is practicable, regularly visiting each declared institution and each co-ordinating body appointed under Part V; and
- (i) appointing committees (which shall, where appropriate, reflect the principles of partnership of all higher education agencies) to carry out such duties as it thinks fit and conferring appropriate powers on such committees; and
- (j) undertaking and encouraging research in higher education.

15. PUBLICATION OF HANDBOOKS.

The Commission shall, from time to time, publish handbooks to guide declared institutions on planning and the formulation of financial requests.

16. REPORTS.

The Commission shall, as soon as is practicable after 1 January in each year, give to the Minister for presentation to the Parliament, a report on the operations of the Commission, and of this Act, and on higher education in the country during the immediately preceding year, including progress towards implementation of the national plan for higher education.

PART IV. – SPECIAL FUNCTIONS OF THE CHAIRMAN.

17. FUNCTIONS IN RELATION TO AGENCIES.

The Chairman is responsible for ensuring that the principle of partnership of all agencies is upheld in practise in accordance with this Act and any other law relating to higher education matters.

PART IVA. – OFFICE OF HIGHER EDUCATION, ETC⁵.**18. THE OFFICE OF HIGHER EDUCATION.**

⁶(1) An Office of Higher Education is hereby established.

(2) The functions of the Office of Higher Education are to provide services for the Commission and such other functions as are determined by the Minister.

(3) Any staff required for the Office of Higher Education shall be officers or employees of the Public Service.

(4)⁷ [*Repealed.*]

18A. DIRECTOR GENERAL.

⁸(1) An office of Director General of the Office of Higher Education is hereby established.

(2) The Director General shall be—

(a) appointed by notice in the National Gazette by the Head of State, acting on advice given after consultation with the Departmental Head of the Department of Personnel Management; and

(b) appointed for a period of three years; and

(c) subject to the *Salaries and Conditions Monitoring Committee Act 1988*, appointed on such terms and conditions as are determined by the Head of State, acting on advice; and

(d) be eligible for re-appointment.

(3) For the purposes of the *Public Services (Management) Act 1995* the Director General is, in relation to the officers and employees of, and to offices in the Office of Higher Education, deemed to be the Departmental Head.

19. CONSULTANTS, ETC.

Out of moneys lawfully available to it for the purpose, the Commission may, with the permission of the Consultancy Steering Committee, engage consultants and obtain expert advice on matters in respect of which the Commission has functions under this Act.

⁵ Part IVA: heading inserted by *Higher Education (Amendment) Act 1995* (No. 25 of 1995), s1.

⁶ Section 18: headnote amended by *Higher Education (Amendment) Act 1995* (No. 25 of 1995), s2(a).

⁷ Section 18(4) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s80. Section 18(4) amended by *Higher Education (Amendment) Act 1995* (No. 25 of 1995), s2(b). Section 18(4) repealed by *Higher Education (Amendment) Act 1998* (No. 18 of 1998), s4.

⁸ Section 18A inserted by *Higher Education (Amendment) Act 1998* (No. 18 of 1998), s5.

PART V. – CO-ORDINATING BODIES FOR HIGHER EDUCATION.

20. ESTABLISHMENT OF CO-ORDINATING BODIES.

(1) The Commission shall encourage the establishment of co-ordinating bodies to provide advice to the Commission as to any or all of the group activities of a group of declared institutions, and such bodies shall include representatives of the declared institutions affected.

(2) Where the Minister considers it desirable in the national interest or in the interest of higher education to do so, he may, by notice in the National Gazette, declare an existing body to be a co-ordinating body for the purpose of providing advice to the Commission.

(3) Where a body referred to in Subsection (1) is not a body already in existence, the Minister may, by notice in the National Gazette, and after consultation, establish a co-ordinating body for the purpose of providing advice to the Commission.

PART VI. – GOVERNING COUNCILS FOR DECLARED INSTITUTIONS.

21. DECLARED INSTITUTIONS TO WHICH THIS PART APPLIES.

Where the Minister is satisfied that–

- (a) it is desirable that a declared institution be administered by a governing council in accordance with this Part; and
- (b) a governing council has not been appointed under this or any other Act,

the Minister may, by notice in the National Gazette, declare that institution to be an institution to which this Part applies.

22. ESTABLISHMENT OF GOVERNING COUNCILS.

(1) In consultation with the Minister responsible, an agency shall establish a governing council for each declared institution of higher education for which it is responsible.

(2) In the event of an agency not fulfilling the requirement of Subsection (1), the Minister responsible may instruct the agency concerned to appoint a governing council.

(3) An agency shall submit, for approval by the Minister responsible, the constitution, membership, procedures, functions and responsibilities of the governing council of its declared institution of higher education.

(4) A governing council shall include a representative or representatives of the agency conducting the declared institution and such representatives may constitute a majority of the council.

(5) In performing and carrying out its functions and responsibilities, a governing council shall work, within the framework of plans, policies and financial provisions laid down by the Minister and the agency conducting the institution.

PART VII. – SALARIES AND CONDITIONS OF SERVICE.**23. SALARIES AND CONDITIONS OF SERVICE.**

(1) The Commission shall make recommendations to the Salaries and Conditions Monitoring Committee established under the *Salaries and Conditions Monitoring Committee Act 1988* on the salaries and conditions of teachers in declared institutions.

(2) Before making recommendations under Subsection (1) the Commission—

- (a) shall engage in consultation on the terms of its proposed recommendations with such of the following as are appropriate in the circumstances:—
- (i) the Councils of Universities and Colleges; and
 - (ii) the Association of Colleges; and
 - (iii) the University and College Teachers' Associations as the organizations representing the interests of university and college teachers; and
 - (iv)⁹ the Departmental Head of the Department of Personnel Management;
 - (v) the Teaching Services Commission; and
 - (vi) other professional associations; and
- (b) may engage in consultations on the terms of its proposed recommendations with such other persons or organizations as it thinks fit.

⁹ Section 23(2)(a)(iv) repealed and replaced by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s81.

PART VIII. – MISCELLANEOUS.

24. TERTIARY EDUCATION STUDIES ASSISTANCE SCHOLARSHIP IN DECLARED INSTITUTIONS.

¹⁰(1) The Minister may, out of moneys lawfully available for the purpose, make financial assistance available to students in declared institutions subject to such terms and conditions as are prescribed.

(2) Financial assistance made available to a student under Subsection (1) shall—

- (a) be awarded through formal applications; and
- (b) be awarded on the applicant's academic record; and
- (c) be in the form of a scholarship; and
- (d) be the subject of a contract between the State and the successful applicant; and
- (e) be subject to graduate tax imposed on the successful applicant after graduating; and
- (f) is recoverable from the successful applicant through the graduate tax imposed under Paragraph (e).

25. PROPOSALS FOR INTRODUCTION OR EXTENSION OF CERTAIN INSTITUTIONS AND COURSES.

Where it is proposed to introduce or extend a programme of higher education, or to establish or extend an institution of higher education, financed or proposed to be financed wholly or partly by the State, full details shall be given to the Commission in sufficient time to allow it to report, through the Minister, to the National Public Expenditure Plan and the Budget Priorities Committee, as appropriate, on the proposal, before any commitment is entered into.

26. INFORMATION CONCERNING CERTAIN INSTITUTIONS AND COURSES.

(1) The Minister may specify the information that shall be submitted to the Commission concerning programmes or declared institutions financed or to be financed wholly or partly by the State in order to allow the Commission to perform its functions.

(2) The information referred to in Subsection (1) shall be submitted in such form, manner and detail, and at such times, as are specified by the Minister in the notice.

¹⁰ Section 24 repealed and replaced by No. 45 of 2000 s.2.

27. COMMISSION MAY OBTAIN INFORMATION.

(1) The Commission or a person authorized by it, may require any person who has, either solely or in association with other persons, the management or control of an institution of higher education or authority to supply it with any information concerning higher education at that institution.

(2) A person who, without reasonable excuse (proof of which is on him), refuses or fails to supply any information required under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) It is a defence to a charge of an offence against Subsection (2) if the defendant proves that the information was not relevant to the performance of the functions, or the carrying out of the responsibilities, of the Commission.

28. COMMISSION TO WORK WITHIN NATIONAL PLANS.

In performing its functions under this Act, it is the duty of the Commission to work within the framework of the Government's programme and budgets, and with regard to the resources of Papua New Guinea.

29. CONSULTATION WITH INTERESTED BODIES.

In performing its functions under this Act, the Commission shall consult with all interested persons and authorities on matters which affect the functional responsibilities of those persons and authorities.

30. PROHIBITION ON CONFERRING OF CERTAIN DIPLOMAS.

(1) In this section “**unrecognized diploma**” means a degree, diploma, certificate or other such distinction of a kind, or seemingly of a kind, usually granted by a university or institution of higher education, or having a name or an abbreviation that suggests that it has been granted by a university or institution of higher education, but does not include a degree, diploma, certificate or other distinction which is—

- (a) approved by the Commission; or
- (b) authorized by or under an Act; or
- (c) of a religious nature,

and which is granted in accordance with the conditions (if any) of the approval or authorization.

(2) A person or institution granting an unrecognized diploma is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) Where an academic qualification is required by law for any purpose, an unrecognized diploma shall not be treated as, or be counted towards, the qualification.

31. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Office of Legislative Counsel, PNG