

Chapter 69.

***Public Services Conciliation and Arbitration Act 1969.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 69.

*Public Services Conciliation and Arbitration Act 1969.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Public Services Conciliation and Arbitration Act 1969,*

Being an Act relating to the settlement of claims to changed conditions of employment within the Public Service and the Services of certain public authorities, and for related purposes.

**PART I. – PRELIMINARY.**

**1. INTERPRETATION.**

(1) In this Act, unless the contrary intention appears—

“**Board of Inquiry**” means a Board of Inquiry established under Section 9;

“**claim**” means, subject to Subsection (2), a claim by a public employer or a public service organization to changed conditions of public employment;

“**claimant**” means the public employer or the public service organization making a claim under this Act;

“**condition of public employment**” means, subject to Subsection (2), salaries, wages, rates of pay or other terms or conditions of service or employment in public employment;

“**determination**” means—

(a) a determination made by the Tribunal under this Act in respect of a claim; or

(b) an agreement that is deemed to be a determination by virtue of Section 45;

“**party**”, in relation to a claim, means, subject to Section 25, the claimant or the public employer or public service organization to whom the claim is made;

“**public employee**” means—

- (a) an officer or employee of the Public Service; or
- (b) a member of the Local Government Service; or
- (c) a member of a prescribed class of persons employed by a prescribed statutory institution, authority or body,

but does not include an Administration Servant as defined in the *Administration Servants Act 1958* (Adopted), an employee as defined in the *Employment Act 1978*, an apprentice as defined in the *Apprenticeship and Trade Testing Act 1986* or a member of any prescribed class of persons;

**“public employer”** means—

- (a)<sup>1</sup> in relation to an officer or employee of the Public Service—the Departmental Head of the Department of Personnel Management; and
- (b) in relation to a member of the Local Government Service—the Local Government Service Commission; and
- (c) in relation to any prescribed class of persons employed by a prescribed statutory institution, authority or body—the person or authority specified in the regulations as the employer for the purposes of this Act;

**“public employment”** means employment of a public employee by a public employer;

**“public service organization”** means an organization registered under the *Industrial Organizations Act 1962*, all the members of which are public employees;

**“registered determination”** means a determination that has been—

- (a) registered by the Registrar; and
  - (b) notified in the National Gazette,
- in accordance with this Act;

**“the Registrar”** means the Registrar of the Tribunal appointed under Section 8;

**“the regulations”** means any regulations made under this Act;

**“the Tribunal”** means the Public Services Conciliation and Arbitration Tribunal established by Section 2, and in relation to the proceedings on a claim means the Tribunal as constituted under Section 20 in relation to the claim;

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

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<sup>1</sup> Section 1 (definition of “public employer” paragraph (a)) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s24.



(2) For the purposes of this Act but without affecting any restrictions imposed by any other provision of this Act, the question, whether a public employer should be obliged to employ none but members of, or persons who are willing to become, or do become, members of, a specified or any public service organization, is not a question of conditions of public employment, nor is a claim as to any such matter a claim within the meaning of this Act.

**PART II. – THE PUBLIC SERVICES CONCILIATION AND ARBITRATION TRIBUNAL.**

**2. ESTABLISHMENT OF THE TRIBUNAL.**

A Public Services Conciliation and Arbitration Tribunal is hereby established.

**3. CONSTITUTION OF THE TRIBUNAL.**

(1) Subject to this Act, the Tribunal shall consist of–

- (a) a Chairman appointed by the Head of State, acting on advice; and
- (b)<sup>2</sup> one person appointed by the Head of State, acting on advice, from a panel of names submitted to the Minister by the Departmental Head of the Department of Personnel Management; and
- (c) one person appointed by the Head of State, acting on advice, from a panel of names submitted to the Minister by the public service organizations jointly; and
- (d)<sup>3</sup> two persons appointed by the Head of State, acting on advice, as assistant members, from a second panel of names submitted to the Minister by the Departmental Head of the Department of Personnel Management; and
- (e) two persons appointed by the Head of State, acting on advice, as assistant members, from a second panel of names submitted to the Minister by the public service organizations jointly.

(2) An assistant member appointed under Subsection (1)(d) or (e) has deliberative but no voting power.

(3) The tenure of office and the terms and conditions of appointment of the members and assistant members of the Tribunal (including their respective remunerations, if any) are as determined by the Head of State, acting on advice.

(4) Notwithstanding this Act, the Head of State, acting on advice, may at any time remove a member or assistant member of the Tribunal from office.

**4. DISQUALIFICATIONS.**

<sup>4</sup>(1) The following persons are not eligible to be or to continue to be members or assistant members of the Tribunal:–

- (a) persons who are of unsound mind;

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<sup>2</sup> Section 3(1)(b) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s25.

<sup>3</sup> Section 3(1)(d) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s25.

<sup>4</sup> Section 4 amended by No. 12 of 1976.

- (b) persons who have been convicted of an offence punishable under a law of Papua New Guinea, or of Australia or a State or Territory of Australia, by death or imprisonment for one year or longer, and, as a result of the conviction, are subject to be sentenced to death or imprisonment, are under sentence of death, are undergoing imprisonment or are under bond to appear for sentence if called on.
- (2) Subject to Subsection (2A) a person who is—
- (a) an officer, employee or member of a public service organization; or
  - (b) a public employee; or
  - (c) a member of, or of the controlling body of, a statutory institution, authority or body referred to in the definition “public employer” in Section 1(1),

is not eligible to be a member of the Tribunal or an assistant member appointed under Section 21(3) to exercise the full powers of a member of the Tribunal.

(2A) Subsection (2) does not apply to the Chairman.

#### **5. OATH AND AFFIRMATION OF OFFICE.**

Before proceeding to discharge the duties of their respective offices, the members and assistant members of the Tribunal shall take before the Chief Justice, or a person authorized for the purpose by the Chief Justice, an oath or affirmation of office in the prescribed form.

#### **6. VACATION OF OFFICE.**

A member or an assistant member of the Tribunal shall be deemed to have vacated his office if—

- (a) he becomes a person who is, under Section 4, ineligible to be a member or an assistant member of the Tribunal; or
- (b) he becomes permanently incapable of performing his duties.

#### **7. MEETINGS OF TRIBUNAL.**

(1) Meetings of the Tribunal shall be held at such times and places as the Chairman of the Tribunal determines.

(2) At a meeting of the Tribunal—

- (a) the Chairman shall preside; and
- (b) all matters shall be decided by a majority of the votes of the members present; and
- (c) the Chairman has a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(3) The Tribunal may continue to act notwithstanding a vacancy in the office of a member or assistant member of the Tribunal, and an act, proceeding or requirement of the Tribunal shall not be questioned or invalidated by reason only of a vacancy having occurred in the office of a member or assistant member of the Tribunal.

**8. THE REGISTRAR.**

(1) The Minister may, by notice in the National Gazette, appoint a person to be the Registrar of the Tribunal.

(2) Subject to this Act, the duties of the Registrar are as prescribed and in addition as directed by the Chairman of the Tribunal.

**PART III. – BOARDS OF INQUIRY.**

**9. ESTABLISHMENT OF BOARDS OF INQUIRY.**

(1) There shall be such Boards of Inquiry as the Head of State, acting on advice, establishes for the purposes of this Act.

(2) A Board of Inquiry shall consist of–

(a) a Chairman; and

(b) not less than three other members,

appointed by the Head of State, acting on advice.

(3) This Act does not prevent a member of the Tribunal from being appointed as a member of a Board of Inquiry.

**10. OATH OR AFFIRMATION OF OFFICE OF MEMBERS OF BOARDS OF INQUIRY.**

Before proceeding to discharge the duties of their offices, the members of a Board of Inquiry shall take before the Chief Justice, or a person authorized by the Chief Justice, an oath or affirmation of office in the prescribed form.

**11. FUNCTIONS OF BOARDS OF INQUIRY.**

(1) A Board of Inquiry shall inquire into and report on such matters as are referred to it under this Act.

(2) In respect of each matter referred to it under this Act, a Board of Inquiry shall submit a report to the Minister without delay.

(3) A Board of Inquiry may authorize a member of the Board to inquire into and report to it on any aspect of a matter referred to it under this Act.

(4) A member of a Board of Inquiry authorized under Subsection (3) has and may exercise for the purposes of the inquiry and report all the powers and functions of a Board of Inquiry under this Act.

**12. MEETINGS OF BOARDS OF INQUIRY.**

(1) Meetings of a Board of Inquiry shall be held at such times and places as the Chairman of the Board determines or as the Head of State, acting on advice, directs.

(2) At a meeting of a Board of Inquiry–

(a) the Chairman shall preside; and

(b) all matters shall be decided by a majority of the votes of the members present; and

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

(3) A Board of Inquiry may continue to act notwithstanding a vacancy in the office of a member of the Board, and an act, proceeding or requirement of a Board of Inquiry shall not be questioned or invalidated by reason only of a vacancy having occurred in the office of a member of the Board.

(4) Subject to this Act, the procedures of a Board of Inquiry are as determined by it.

**13. REMUNERATION OF MEMBERS OF BOARDS OF INQUIRY.**

<sup>5</sup>A member of a Board of Inquiry shall be paid such remuneration (if any) as the Minister determines.

**14. PUBLICATION OF REPORTS.**

Subject to this Act, the Head of State, acting on advice, may cause or permit to be published, in such manner as, acting on advice, he thinks proper—

- (a) the whole or any part of a report by a Board of Inquiry in respect of a matter referred to it under this Act; or
- (b) any information obtained by a Board of Inquiry in the course of an inquiry under this Act.

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<sup>5</sup> Section 13 amended by No. 25 of 1976, Schedule 29.

**PART IV. – SETTLEMENT OF CLAIMS.**

***Division 1.***

***Conciliation and Preliminary Proceedings.***

**15. REPORT OF CLAIMS.**

(1) Where a public employer or a public service organization desires a change in the conditions of public employment to which the other party is unwilling or unable to agree, the first-mentioned employer or organization may report the matter to the Registrar.

(2) Any person who is concerned or interested, or is likely to be concerned or interested, in a claim between a public employer and a public service organization may report the matter to the Registrar.

(3) Subject to Subsection (4), on receipt of a report under this section the Registrar shall advise the Chairman of the Tribunal without delay.

(4) The Registrar may decline to receive a report under Subsection (1), or to advise the Chairman of the Tribunal in accordance with Subsection (3), unless he is satisfied that—

- (a) a period of 28 days, or such other period as is agreed on, generally or in respect of a particular claim, by the parties, has elapsed from the date on which details of the claim were given by the claimant to the other party and the claimant has, over that period, made all reasonable attempts to arrive at a settlement in the matter but has been unsuccessful; or
- (b) there is no real likelihood of the matter being settled without action under this Act.

**16. PRELIMINARY ACTION ON CLAIMS.**

On receipt of advice under Section 15(3), the Chairman of the Tribunal, if he has not already acted under this Part—

- (a) shall inquire into the matter; and
- (b) may, by written notice or by telegram, require the parties to enter into negotiations for the settlement of the claim within 14 days, or such other period as he thinks proper, after the date of the notice; and
- (c) may at any time direct the Registrar to consult with the parties with a view to simplifying and shortening proceedings by—
  - (i) clarifying and formulating the issues in the claim, and the differences between the parties; and
  - (ii) obtaining agreement as to facts and formal or undisputed evidence; and

- (iii) obtaining agreement as to what evidence or proposed evidence is relevant and what is irrelevant,

so far as this is practicable, and otherwise as directed by the Chairman.

#### **17. ASSISTANCE DURING NEGOTIATIONS.**

(1) At any time during negotiations for the settlement of a claim, a party may apply to the Chairman of the Tribunal for assistance in the negotiations.

(2) On receipt of an application under Subsection (1), the Chairman of the Tribunal shall—

- (a) attend the negotiations; and
- (b) endeavour to negotiate an agreement between the parties as to the terms of settlement of the claim.

#### **18. COMPULSORY CONFERENCES.**

(1) Where notice under Section 16(b) is given to the parties, then if—

- (a) at any time before the expiration of the period of 28 days after the date of the notice—
  - (i) a party has refused to negotiate, or to negotiate further, for the settlement of the claim; or
  - (ii) the parties consent; or
- (b) at the expiration of the period referred to in Paragraph (a) no settlement of the claim has been effected,

the Chairman of the Tribunal may, subject to Subsection (2), by written notice to the parties require them to attend a conference, at a time and place fixed in the notice, for the purpose of endeavouring to arrange a settlement of the claim under his supervision.

(2) Where there is, as between the parties, an arrangement for the settlement of claims by conciliation or arbitration that has been made in pursuance of an agreement between them, the Chairman of the Tribunal shall not require the attendance of the parties at a conference under Subsection (1) unless—

- (a) at the expiration of the period of 28 days referred to in Subsection (1)(a) no settlement of the claim by means of the arrangement has been effected; or
- (b) a party has refused to proceed, or to proceed further, under the arrangement; or
- (c) the parties consent to or request the conference.

(3) Notwithstanding Subsections (1) and (2), where in his opinion it is desirable in the public interest the Chairman of the Tribunal may, whether or not notice has been given under Subsection (1) or Section 16(b), by written notice to the



parties require them to attend a conference, at a time and place fixed in the notice, for the purpose of endeavouring to arrange, under his supervision, a settlement of the claim.

(4) Except to the extent that the Chairman of the Tribunal directs that it be held in public, a conference called under this section shall be held in private.

(5) At a conference called under this section, the Chairman of the Tribunal shall preside and shall endeavour by all means at his disposal—

- (a) to conciliate the parties; and
- (b) to effect a settlement of the claim.

(6) Where, under Subsection (5), the Chairman of the Tribunal effects a settlement of a claim, the parties shall record, in writing, the agreement as to the terms of settlement.

## **19. REFERENCE OF CLAIMS TO TRIBUNAL.**

(1) Where the Chairman of the Tribunal is unable to effect under Section 18 a settlement of a claim, he—

- (a) shall, if so required by the parties; and
- (b) may, if he thinks fit,

refer the matter to the Tribunal for decision and the making of a determination.

(2) Where a claim is referred to the Tribunal under this section, the Tribunal shall—

- (a) subject to this Act, inquire into the matter without delay; and
- (b) make a determination deciding the matters in issue between the parties.

### ***Division 2.***

#### ***Composition of the Tribunal for Particular Claims.***

## **20. CONSTITUTION OF TRIBUNAL IN CASES OF CLAIMS.**

(1) Subject to this section, for the purpose of the exercise and performance of its powers and functions under this Act in relation to a claim the Tribunal shall consist of—

- (a) the Chairman of the Tribunal; and
- (b) the member referred to in Section 3(1)(b); and
- (c) the member referred to in Section 3(1)(c); and
- (d) one assistant member referred to in Section 3(1)(d); and
- (e) one assistant member referred to in Section 3(1)(e).

(2) Subject to Subsection (3), the members referred to in Subsection (1)(d) and (e) shall be selected by the Chairman of the Tribunal and in making such selections the Chairman shall, as far as practicable, ensure that the assistant members referred to in Section 3(1)(d) and (e), respectively, serve in rotation.

(3) The Head of State, acting on advice given after consultation with the Chairman of the Tribunal, may direct that for the purpose of a particular claim—

- (a) a particular assistant member referred to in Section 3(1)(d) or (e) be selected to sit on the Tribunal; or
- (b) a particular assistant member referred to in Section 3(1)(d) or (e) be not selected to sit on the Tribunal,

and the Chairman shall give effect to any such direction.

(4) The Tribunal constituted to deal with a claim may decide that the claim is such that it may properly be dealt with by the Chairman of the Tribunal sitting alone, and in that case a reference in this Act to the Tribunal shall be read, in relation to the claim, as a reference to the Chairman sitting with the two assistant members appointed to the Tribunal under Subsection (1)(d) and (e).

(5) In a case referred to in Subsection (4), the Chairman of the Tribunal may, if he thinks it desirable, at any time refer the claim back to the Tribunal constituted in accordance with Subsection (1) for the purpose of the claim.

## **21. VACANCIES IN MEMBERSHIP OF TRIBUNAL.**

(1) In this section, “**vacancy**” includes the absence of a member through illness or other disability.

(2) Where the Tribunal in dealing with a claim is constituted in accordance with Section 20(1) and a vacancy occurs in the membership of the Tribunal, the Tribunal may, with the consent of all parties, continue to act notwithstanding the vacancy.

(3) The Head of State, acting on advice given after consultation with the Chairman, may fill a vacancy in the membership of the Tribunal that occurs while the Tribunal is dealing with a claim by the appointment of an assistant member.

(4) An assistant member appointed under Subsection (3) shall exercise the full powers of a member of the Tribunal.

(5) Where the Tribunal continues to act by virtue of Subsection (2), an act, proceeding or determination of the Tribunal shall not be questioned or invalidated by reason of the vacancy.

**Division 3.**  
**Hearing of Claims.**

**22. DETERMINATIONS TO BE MADE WITHOUT DELAY.**

Subject to this Act, the Tribunal shall deal with a claim referred to it under this Act as soon as practicable.

**23. TRIBUNAL TO ACT ACCORDING TO EQUITY, ETC.**

In relation to any matter under this Act, the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms.

**24. GENERAL PROCEDURES.**

(1) Subject to this Act, the Tribunal may determine its own procedure in relation to any proceedings or other matter under this Act, and in particular—

- (a) as to representation of a party before it; and
- (b) whether to proceed at any time by way of public hearing, private hearing or conference.

(2) Where in the opinion of the Tribunal it is expedient for the speedy settlement of a claim that any of the procedures laid down by this Act should be disregarded or varied, the Tribunal may substitute such other procedure, or may vary the procedure, as it thinks proper.

**25. APPEARANCE AT PROCEEDINGS.**

(1) Subject to Section 24(1)(a), the Tribunal—

- (a) shall allow all persons who apply to it for leave to appear or to be represented, being persons who appear to the Tribunal to be justly entitled to be heard; and
- (b) may order any other person,

to appear or to be represented at any proceedings under this Act.

(2) In particular, and without limiting the generality of Subsection (1), in any proceedings under this Act in relation to or involving the Local Government Service or a designated position within the meaning of the *Local Government Service Act*—

- (a) any organization registered under the *Industrial Organizations Act* and representing Local-level Governments or Local-level Government Special Purposes Authorities is entitled as of right to appear and be represented; and
- (b) any Local-level Government or Local-level Government Special Purposes Authority may, with the leave of the Tribunal, appear and be represented.

(3) The persons appearing or represented, or ordered to appear or to be represented, at any proceedings shall be deemed to be parties to the proceedings.

(4) At any stage of any proceedings (except proceedings in which the Public Services Commission is the only public employer that is a party), the Attorney-General may intervene by a lawyer or agent on behalf of the State.

**26. SETTING ASIDE, ETC., OF DETERMINATIONS.**

(1) If for any reason it thinks it desirable, the Tribunal may set aside a determination or any of the terms of a determination.

(2) The Tribunal—

(a) shall, if it thinks it desirable for the purpose of removing ambiguity or uncertainty; and

(b) may, if for any other reason it thinks it desirable,

vary any of the terms of a determination.

**27. EFFECT OF DECISIONS OF TRIBUNAL.**

(1) Subject to Section 28, a determination of the Tribunal—

(a) is final; and

(b) shall not be challenged, appealed against, reviewed, quashed or called in question in any court; and

(c) is not subject to prohibition, mandamus or injunction in any court on any account.

(2) A finding of the Tribunal or of the Chairman of the Tribunal on a question as to the existence of, and otherwise as to, a claim to changed conditions of public employment is, in all courts and for all purposes, conclusive and binding on all persons affected by the question.

(3) A determination shall not be called in question on the ground that it was made by the Tribunal constituted otherwise than as provided by this Act.

**28. STATEMENT OF CASE TO NATIONAL COURT.**

(1) The Tribunal—

(a) may at any stage of the proceedings; and

(b) shall if so directed by the National Court,

state in the form of a special case for the opinion of the National Court a question of law arising in the course of any proceedings under this Act.

(2) Notwithstanding Section 27, an opinion given by the National Court under Subsection (1) may be appealed against as if it were a judgement of that Court.

**29. MEDIATION, ETC.**

(1) The Tribunal or the Chairman of the Tribunal may—

- (a) at any stage of any proceedings under this Act in respect of a claim, postpone or adjourn the proceedings if in its or his opinion an amicable settlement of the whole or part of the claim may be come to by the parties; and
- (b) mediate or arrange consultations between the parties with a view to such a settlement.

(2) Mediation or consultation arranged under Subsection (1) may be in public or in private.

(3) Subject to Sections 46 and 50, a determination may be made by consent of parties.

**30. REFERENCE TO BOARD OF INQUIRY.**

In addition to its powers and functions under this Act, where in its opinion issues of general public importance are involved the Tribunal, in dealing with a claim, may—

- (a) request the Head of State, acting on advice, to refer the claim or any aspect of, or matter arising out of, the proceedings to a Board of Inquiry; and
- (b) adjourn the proceedings for that purpose.

**PART V. – PROCEDURE AND EVIDENCE GENERALLY.*****Division 1.******Procedure Generally.*****31. EXCLUSION OF OTHER ARBITRATION PROVISIONS.**

Except as provided in this Act or in a determination or an agreement made under this Act, no law relating to arbitration applies to any determination, proceedings or matter under this Act.

**32. REFERENCE OF MATTERS FOR REPORT.**

(1) The Tribunal or the Chairman of the Tribunal may refer any matter arising under this Act to a person for investigation and report, and may delegate to that person such of its or his powers (except the power to arbitrate on a claim or make a determination, and this power of delegation) as it or he thinks desirable.

(2) In the case of an arbitration, the Tribunal may, on the report, and after hearing further evidence or argument (or both) or without hearing further evidence or argument, as it thinks proper, decide the arbitration and make a determination.

**33. PUBLICITY OF PROCEEDINGS.**

Subject to Section 29, where any proceedings before, or inquiry by, the Tribunal, a Board of Inquiry or the Chairman of the Tribunal are in public a fair and accurate report or summary of, and fair comment on, the proceedings or inquiry (including any evidence adduced) may be published, unless the Tribunal, the Board or the Chairman, as the case may be, orders otherwise for reasons affecting the public interest.

**34. COSTS.**

Costs shall not be allowed in respect of any proceedings under this Act.

***Division 2.******Evidence Generally.*****35. EVIDENCE.**

(1) In any proceedings relating to a matter under this Act, the Tribunal, a Board of Inquiry or the Chairman of the Tribunal is not bound to observe strict legal procedure or to apply technical rules of evidence, but shall inform itself or himself as to the matter by such means as in the circumstances are thought proper, and for that purpose may, by order, require a person—

- (a) to furnish, in writing or otherwise, such particulars in relation to the matter as it or he requires; or
- (b) to attend before it or him and to give evidence on oath or otherwise; or

(c) to answer any question or produce any document or thing that, in its or his opinion, is or may be relevant to the matter.

(2) For the purposes of this Act, a requirement of the Tribunal or of a Board of Inquiry purporting to have been made or given by the Tribunal or Board shall be deemed to have been properly made or given if it is signed—

(a) by the Chairman of the Tribunal or by the Chairman of the Board, as the case may be; or

(b) in the case of a matter into which a member of a Board of Inquiry is authorized to inquire under Section 11(3), by the member.

### **36. INSPECTION OF BOOKS, ETC.**

Any book, paper, document or thing produced in evidence before the Tribunal, a Board of Inquiry or the Chairman of the Tribunal may be inspected—

(a) by the Tribunal, Board or Chairman, as the case may be; and

(b) by such of the parties as the Tribunal, Board or Chairman, as the case may be, allows.

### ***Division 3.***

#### ***Independent Experts.***

### **37. INTERPRETATION OF DIVISION 3.**

In this Division, unless the contrary intention appears—

“**expert**” includes a scientific person, a lawyer, a medical man, an engineer, an accountant, an actuary, an architect, a surveyor or any other skilled person whose opinion on a question relevant to the issues involved would be received by the Tribunal;

“**independent expert**” means an independent expert appointed under Section 38 to inquire into and report on a question of fact or opinion.

### **38. APPOINTMENT OF INDEPENDENT EXPERT.**

In a case that involves a question for an expert witness, the Tribunal may at any time, in its discretion, appoint an independent expert to inquire into and report on a question of fact or opinion not involving a question of law or construction.

### **39. REPORT.**

(1) The report under Section 38 of an independent expert shall, so far as it is not accepted by all parties, be treated as information furnished to the Tribunal, and shall be given such weight as the Tribunal thinks proper.

(2) The report shall be made in writing to the Tribunal, together with such copies as the Tribunal requires.

(3) Copies of the report shall be forwarded by the Registrar to the parties.

**40. CROSS-EXAMINATION.**

A party is not entitled to cross-examine an independent expert on his report.

**41. FURTHER REPORTS.**

The Tribunal may at any time direct the independent expert to make a further or supplemental report, which shall be treated as if it were annexed to his original report.

**42. REMUNERATION OF INDEPENDENT EXPERT.**

(1)<sup>6</sup> <sup>7</sup>The remuneration of an independent expert shall be fixed by the Minister and shall include—

- (a) a fee for making the report and a fee for any supplementary report; and
- (b) a sum for each day during which the presence of the independent expert is required before the Tribunal.

(2) The State is liable to pay the remuneration of the expert unless he is appointed on the application of a party, in which case the remuneration shall be paid as the Tribunal directs.

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<sup>6</sup> Section 42(1) amended by No. 25 of 1976, Schedule 29.

<sup>7</sup> Section 42(1) amended by No. 25 of 1976, Schedule 29.



**PART VI. – DETERMINATIONS.**

***Division 1.***

***Determinations Generally.***

**43. DETERMINATIONS INCONSISTENT WITH OTHER LAWS.**

(1) Except as provided in this section, the Tribunal shall not make a determination that is not in accordance with the law.

(2) A determination may be made that is not in accordance with a law relating to salaries, wages, rates of pay or other terms and conditions of service or employment of public employees.

(3) Where the Chairman of the Tribunal is of opinion that a determination is not, or may not be, in accordance with a law referred to in Subsection (2), he shall cause to be sent to the Minister, for presentation to the National Executive Council, with the certified copy of the determination referred to in Section 52(1), a statement of the law with which, in his opinion, it is not or may not be in accord.

**44. FILING OF DETERMINATIONS.**

A determination of the Tribunal under this Act shall be filed with the Registrar for registration.

**45. FILING AND REGISTRATION OF AGREEMENTS.**

(1) Subject to Sections 46 and 50, an agreement made under this Act between a public employer and a public service organization shall be filed with the Registrar for registration and, on being registered, shall be deemed to be a determination as between the parties to the agreement.

(2) Where in his opinion an agreement filed with him under Subsection (1) is inconsistent with the terms of a registered determination binding on the parties to the agreement or some of them or with a law, and by reason of that conflict ought not be registered, the Registrar shall not register the agreement without the approval of the Chairman of the Tribunal.

**46. LIMITATION OF DETERMINATIONS TO CONDITIONS OF PUBLIC EMPLOYMENT.**

(1) A determination of the Tribunal shall relate to conditions of public employment only.

(2) An agreement made and registered under this Act shall be deemed to be a determination only in relation to conditions of public employment.

**47. RETROSPECTIVITY OF DETERMINATIONS.**

A determination of the Tribunal does not, except with the consent of all parties or unless the Tribunal for any special reason otherwise determines, have effect from

a date before the date on which the matter out of which the determination arose was reported to the Registrar under Section 15.

**48. INTERPRETATION AND APPLICATION OF DETERMINATIONS IN CERTAIN CASES.**

(1) Any interested party may apply to the Chairman of the Tribunal to decide any question relating to the application or interpretation of a determination, and the Chairman may decide that question.

(2) A decision under Subsection (1) shall—

- (a) be notified without delay to all public employers and public service organizations concerned; and
- (b) be filed with the Registrar for registration; and
- (c) be deemed to be incorporated into and form part of the determination in respect of which it is made.

**49. INCONSISTENCY WITH OTHER DETERMINATIONS.**

Subject to Section 45(2), a determination may be made that is inconsistent with another determination.

**50. DETERMINATIONS RESTRICTING EMPLOYMENT.**

This Act does not authorize a determination or agreement that purports to oblige a public employer to employ only—

- (a) members of; or
- (b) persons who are willing to become, or do become, members of,

a specified or any public service organization, but this section does not affect any restrictions imposed by any other provision of this Act.

*Division 2.*

*Registration, Disallowance, etc., of Determinations.*

**51. REGISTRATION OF DETERMINATIONS.**

Subject to this Act, the Registrar shall, in the prescribed manner, register a determination filed with him under this Act for registration.

**52. SUBMISSION OF DETERMINATIONS.**

<sup>8</sup>(1) When a determination has been registered under Section 51, the Registrar shall, without delay, send to the Minister by registered post a certified copy of the determination.

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<sup>8</sup> Section 52 replaced by No. 25 of 1983, s1.

(2) As soon as practicable after its receipt, the Minister shall cause the certified copy of the determination, together with any statement of the Chairman of the Tribunal under Section 43(3), to be submitted to the National Executive Council.

**52A. DISALLOWANCE OF DETERMINATION.**

<sup>9</sup>(1) The Head of State, acting on advice, may at any time disallow a determination or any part of it on the grounds that it—

- (a) is contrary to public policy; or
- (b) is not in accordance with the best interests of Papua New Guinea.

(2) Notice of disallowance of a determination or of part of a determination shall be published in the National Gazette and the determination or the part of it ceases to have effect on the publication of the notice.

(3) The disallowance of a determination or of part of a determination—

- (a) does not affect any right or liability accrued or incurred before the date of the publication of the notice of disallowance; and
- (b) revives, as from the date of publication of a notice of disallowance, any determination that was, wholly or in part, superseded or revoked (whether expressly or impliedly) by the disallowed determination.

**53. PUBLICATION OF DETERMINATIONS.**

On the registration of a determination, the Registrar shall immediately cause to be published in the National Gazette notice of—

- (a) the making of the determination; and
- (b) the place where copies of it may be obtained.

**54. EFFECT OF DETERMINATIONS.**

(1) A determination is of no force or effect until registered and notified in the National Gazette in accordance with this Act.

(2) Subject to this Act—

- (a) a registered determination is binding on the public employers and the public employees to whom it relates; and
- (b) as from the date (if any) specified in the determination, the conditions of public employment to be observed shall be in accordance with the determination until varied by a subsequent registered determination or otherwise by law.

(3) The date referred to in Subsection (2) shall not be earlier than the day after the expiration of 14 days after the determination has been submitted to the National Executive Council under Section 52.

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<sup>9</sup> Section 52A added by No. 25 of 1983, s2.

(4) Where no date is specified in the determination, it shall come into operation as from the end of the period of 14 days referred to in Subsection (3).

**55. COPIES OF REGISTERED DETERMINATIONS.**

On payment of the prescribed fee, a person may obtain from the Registrar a copy of a registered determination.

**PART VII. – OFFENCES.**

**56. FAILURE TO COMPLY WITH DETERMINATIONS, ETC.**

A public employer, public service organization or public employee who fails to comply with a provision of a determination is guilty of an offence.

Penalty: A fine not exceeding K100.00.

Default penalty: A fine not exceeding K10.00.

**57. POWERS OF NATIONAL COURT AS TO ENFORCEMENT OF DETERMINATIONS, ETC.**

(1) The National Court may–

- (a) order compliance with a determination proved to the satisfaction of the Court to have been broken or not observed; or
- (b) enjoin a public employer, a public service organization or any other person from committing or continuing a contravention of this Act or a breach or non-observance of a determination.

(2) The Attorney-General may, on behalf of the State, and in the public interest, apply to the National Court for an order under Subsection (1), but this subsection does not prejudice any right that any other person has to apply for such an order.

**58. UNAUTHORIZED PUBLICATION.**

Except as provided in Section 14, a person who–

- (a) publishes the whole or part of a report by a Board of Inquiry in respect of a matter referred to it under this Act; or
- (b) discloses any matter or information coming to the knowledge of, or obtained by, a Board of Inquiry in the course of an inquiry by it,

without having first obtained the permission of, and the consent of, any other person to which that permission is subject is guilty of an offence.

Penalty: A fine not exceeding K100.00.

**59. FAILURE TO ANSWER QUESTIONS, ETC.**

(1) A person who, without reasonable excuse (proof of which is on him)–

- (a) refuses or fails–
  - (i) to answer questions or to produce documents or things lawfully required under this Act; or
  - (ii) to obey an order, direction or requirement lawfully made or given under this Act; or

- (b) hinders or obstructs a person in the performance of his functions or the exercise of his powers under this Act,

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(2) Where a person fails to obey an order, direction or requirement lawfully made or given under this Act, in addition to any penalty imposed on him under Subsection (1) the court imposing the penalty may, in its discretion, order him to be imprisoned until the order in respect of which the penalty is imposed is obeyed.

(3) It is a defence to a prosecution for an offence against Subsection (1) for failing without reasonable excuse to produce a document or thing if the defendant proves that the document or thing is not relevant to the matter in connection with which the production was required.

## **60. OFFENCES IN RELATION TO HEARINGS, ETC.**

(1) A person who—

- (a) wilfully insults or disturbs the Tribunal or a Board of Inquiry, or a member of the Tribunal or of a Board of Inquiry, when it or he is exercising powers or functions under this Act; or
- (b) interrupts any proceedings or inquiry before the Tribunal or a Board of Inquiry, or a member of the Tribunal or of a Board of Inquiry; or
- (c) uses insulting language towards the Tribunal or a Board of Inquiry, or member of the Tribunal or of a Board of Inquiry; or
- (d) by writing or speech uses words calculated—
- (i) to influence improperly—
- (A) the Tribunal or a Board of Inquiry, or a member of the Tribunal or of a Board of Inquiry; or
- (B) a witness before the Tribunal or a Board of Inquiry; or
- (ii) to bring the Tribunal or a Board of Inquiry, or a member of the Tribunal or of a Board of Inquiry, into disrepute,

is guilty of an offence.

(2) A person who creates or continues a disturbance, or takes any part in creating or continuing a disturbance, in or near any place in which the Tribunal or a Board of Inquiry, or a member of the Tribunal or of a Board of Inquiry, is sitting is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding six months, or both.

**PART VIII. – MISCELLANEOUS.**

**61. AMOUNTS PAYABLE BY DEPARTMENTAL HEAD OF THE DEPARTMENT OF PERSONNEL MANAGEMENT AS AN EMPLOYER.**

<sup>10</sup>Any amount (other than the penalty for an offence against this Act) that is payable by a public employer under this Act or a determination, is payable, in the case of the Departmental Head of the Department of Personnel Management, by the State.

**62. PROTECTION OF MEMBERS OF THE TRIBUNAL, ETC.**

In the performance of his functions and duties as such, a member of the Tribunal or of a Board of Inquiry has the same protection, privileges and immunities as a Judge.

**63. 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 that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) prescribing the method of filing and registering determinations; and
- (b) prescribing the forms to be used and the fees to be paid in connection with any matter arising under this Act; and
- (c) prescribing the returns to be made, records to be kept and notices to be given under this Act; and
- (d) the imposition of penalties of fines not exceeding K50.00 for offences against the regulations.

Office of Legislative Counsel, PNG

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<sup>10</sup> Section 61 repealed and replaced by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s25.