

Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders.

ARRANGEMENT OF SECTIONS.

1. Definitions.
2. Retention of Public Service Rights.
3. Part not to apply to certain office-holders.
4. Constitutional Office-holders Rights Tribunal.
5. Referral of matters to the tribunal.
6. Tribunal not bound by legal formalities, etc.
7. Grounds of removal.
8. Removal from office.
9. Suspension.
10. Rights on termination of employment.
11. Special provisions for first constitutional office-holders.

12. Former constitutional office-holders on re-employment subject to Public Service legislation.
13. Protection of officers under control of constitutional office-holders.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Organic Law on the Guarantee of the Rights and Independence of Constitutional Office-holders,

Being an Organic Law to implement Section 223(2) (general provision for constitutional office-holders) of the Constitution by providing guarantees as to the rights and independence of constitutional office-holders.

PART I. – PRELIMINARY.

1. DEFINITIONS.

In this Law–

“constitutional office-holder” has the same meaning as in Section 221 (definitions) of the Constitution;

“the appointing authority” in relation to a constitutional office-holder, means the person or body specified in the Constitution or in the relevant Organic Law, as the case may be, to be the authority responsible for the appointment of the constitutional office-holder;

“the tribunal” means the Constitutional Office-holders Rights Tribunal established by Section 4.

PART II. – RETENTION OF PUBLIC SERVICE RIGHTS.

2. RETENTION OF PUBLIC SERVICE RIGHTS.

If a constitutional office-holder was, immediately before his appointment, an officer of the pre-Independence Public Service or the National Public Service, his service as a constitutional office-holder shall be counted as service in the National Public Service for the purposes of determining his rights (if any) in respect of–

(a) absence on leave on the ground of illness; and

(b) furlough or pay in lieu of furlough (including pay to dependants or personal representatives on the death of the office-holder).

PART III. – REMOVAL FROM OFFICE.

3. PART NOT TO APPLY TO CERTAIN OFFICE-HOLDERS.

This Part does not apply to–

- (a) the Chief Justice of the National Court; and
- (b) a Judge of the National Court; and
- (c) the Public Solicitor; and
- (d) the Public Prosecutor; and
- (e) the Chief Magistrate,

being persons to whom Subdivision VI.5.H (removal from office of senior judicial and legal office-holders) of the Constitution applies.

4. CONSTITUTIONAL OFFICE-HOLDERS RIGHTS TRIBUNAL.

(1) There is hereby established a Constitutional Office-holders Rights Tribunal.

(2) The Tribunal shall consist of a Chairman and two other members, each of whom must be a Judge of the National Court.

5. REFERRAL OF MATTERS TO THE TRIBUNAL.

(1) If the appointing authority is satisfied that the question of the removal from office of a constitutional office-holder should be investigated, it shall, by notice in writing to the Chief Justice, request that he appoint three Judges to be the Chairman and members of the tribunal to hear and determine the matter.

(2) Nothing in Subsection (1) prevents the Chief Justice from appointing himself as the Chairman or a member of the tribunal.

6. TRIBUNAL NOT BOUND BY LEGAL FORMALITIES, ETC.

The tribunal shall make due enquiry into any matter referred to it without regard to legal formalities or the rules of evidence, and shall inform itself in such manner as it thinks proper, subject to compliance with the principles of natural justice.

7. GROUNDS OF REMOVAL.

A constitutional office-holder may be removed from office only—

- (a) for inability (whether arising from physical or mental infirmity or otherwise) to perform the functions and duties of his office; or
- (b) for misbehaviour; or
- (c) in accordance with Division III.2 (leadership code) of the Constitution, for misconduct in office; or
- (d) for a breach or contravention of a condition of employment laid down in the Organic Law relating to the Office-holder.

8. REMOVAL FROM OFFICE.

(1) The appointing authority shall, at the same time as it takes action under Section 5, refer the matter of the removal of the constitutional office-holder from office, together with a statement of the reasons for its opinion, to the tribunal for investigation and report back to it.

(2) If the tribunal reports that the constitutional office-holder should be removed from office, the appointing authority shall, by notice in writing to the office-holder, remove him from office.

(3) The appointing authority shall send a copy of the notice, together with a copy of the report of the tribunal to the Speaker for presentation to the Parliament.

9. SUSPENSION.

(1) Where a question has been referred to a tribunal under this Law, the appointing authority—

(a) may suspend the constitutional office-holder from office pending the report of the tribunal; and

(b) may remove the suspension at any time; and

(c) shall remove the suspension where the tribunal does not recommend removal from office.

(2) Unless otherwise determined by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, the suspension shall be on full pay.

(3) Where at the time of the suspension a suspended constitutional office-holder was dealing with any quasi-judicial proceedings, he may continue and complete those proceedings, unless the appointing authority otherwise orders.

PART IV. – TERMINATION OF EMPLOYMENT.

10. RIGHTS ON TERMINATION OF EMPLOYMENT.

(1) This section does not apply to—

(a) a constitutional office-holder who has been removed from office under this Law or any other Organic Law or the Constitution; or

(b) a constitutional office-holder who is a non-citizen; or

(c) a first appointee to the constitutional office who was immediately prior to his appointment an officer of the pre-Independence Public Service.

(2) Where an Act of the Parliament does not provide for an adequate and suitable pension or other retirement benefit for a constitutional office-holder, the Public Services Commission shall, where the term of office of the constitutional office-holder has expired and he has not been re-appointed to the same or an equivalent position, offer to him—

(a) where he was, immediately before his appointment to the constitutional office, an officer of the National Public Service, re-employment in an office in the National Public Service at least equivalent in status and type of work to the office he occupied prior to his appointment and, notwithstanding the salary payable to any other person occupying that office, a salary equivalent to that which he was receiving as a constitutional office-holder immediately before the expiration of his term of office; or

(b) where he was, immediately before his appointment a person, other than a person referred to in paragraph (a)—

(i) employment in an office in the National Public Service, being an office the occupant of which is entitled to contribute to a superannuation or other pension scheme, at least equivalent—

(A) in salary to the salary paid to him as a constitutional office-holder; and

(B) in status and type of work to the position he occupied prior to his appointment as a constitutional office-holder; and

(ii) an annual retirement pension equivalent to 70 per centum of the salary payable from time to time to the occupant of the constitutional office that he occupied immediately before the expiration of his term of office.

(3) Where in this section an equivalent of any matter has to be determined, that equivalent shall be determined by the Public Services Commission who, for the purposes of carrying out its functions under this section, is not subject to control or direction by any person or body.

(4) Where the Public Services Commission, in relation to a person referred to in Subsection (2)(a), determines that no equivalent office or position is available for the re-employment of that person, it shall grant to that person an annual pension equivalent to 70 per centum of the salary payable from time to time to the occupant of the constitutional office that he occupied immediately before the expiration of his term of office.

(5) A person referred to in Subsection (2)(b) shall, within a reasonable time after receiving the offer referred to in that subsection, accept one or other of the alternatives offered to him and where he fails to do so, the Public Services Commission shall grant to him the pension referred to in Subsection (2)(b)(ii).

PART V. – MISCELLANEOUS.

11. SPECIAL PROVISIONS FOR FIRST CONSTITUTIONAL OFFICE-HOLDERS.

(1) Where an Act of the Parliament does not provide for an adequate and suitable pension or other retirement benefit for a first appointee to a constitutional office who was, immediately prior to his appointment an officer of the pre-Independence Public Service, the Public Services Commission shall, where the term of office of that constitutional office-holder has expired and he has not been re-appointed to the same or an equivalent position, offer to him re-employment in an office in the National Public Service at least equivalent in salary, status and type of work to the office he occupied in the pre-Independence Public Service prior to his appointment.

(2) Where in this section an equivalent of any matter has to be determined, that equivalent shall be determined by the Public Services Commission who, for the purposes of carrying out its functions under this section, is not subject to control or direction by any person or body.

12. FORMER CONSTITUTIONAL OFFICE-HOLDERS ON RE-EMPLOYMENT SUBJECT TO PUBLIC SERVICE LEGISLATION.

Subject to Section 10(2)(b)(i), all laws for the time being applying to officers in the National Public Service apply to and in relation to all former constitutional office-holders who have been employed or re-employed in the National Public Service.

13. PROTECTION OF OFFICERS UNDER CONTROL OF CONSTITUTIONAL OFFICE-HOLDERS.

An officer whilst acting on the instructions and on behalf of a constitutional office-holder in the performance of that office-holder's constitutional functions is not subject to direction or control in the exercise of those functions by any person other than that constitutional office-holder.

Office of Legislative Counsel, PNG