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[2010

## CERTIFICATION OF ACTS

IT is hereby notified for general information, that the following Acts made by the National Parliament were certified by the Speaker of the National Parliament on 9th July, 2010.

No. 24 of 2009 — *Customs (Amendment) Act 2009*

No. 6 of 2010 — *Environment (Amendment) Act 2010*

No. 7 of 2010 — *Civil Aviation (Amendment) Act 2010*

No. 8 of 2010 — *Immigration and Citizenship Service Act 2010.*

DON PANDAN,  
Clerk of the National Parliament.

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No. 8 of 2010.

*Immigration and Citizenship Service Act 2010.*

Certified on : 09-07-10



No. of 2010.

*Immigration and Citizenship Service Act 2010.*

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AN ACT

entitled

*Immigration and Citizenship Service Act 2010.*

Being an Act to establish the Papua New Guinea Immigration and Citizenship Services Authority and to define its power and functions, and for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with the advice of the Minister.

**PART 1. - PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

This Bill, 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:-

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution* is a law that is made for the purposes of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local Level Governments*, it is hereby declared that this Act relates to a matter of national interest.

**2. INTERPRETATION.**

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

“Authority” means the PNG Immigration and Citizenship Service Authority established under Section 3;

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“Board” means the PNG Immigration and Citizenship Service Authority Advisory Board established under Section 8;

“Chairman” means the Chairman of the Board appointed under Section 12;

“Chief Migration Officer” means the Chief Migration Officer appointed under Section 22;

“Committee” means a committee established under Section 20;

“Officer” means:-

- (a) an employee of the Authority;
- (b) an officer appointed to the Public Service under the *Public Service (Management) Act 1995*;
- (c) a person employed to render temporary or casual assistance in the Public Service under the *Public Services (Management) Act 1995*;
- (d) a person who holds office that:-
  - (i) is constituted by or under an Act; and
  - (ii) is for the time being declared by notice under Section 1(5) of the *Interpretation Act* (Chapter 2);

“State body” means:-

- (a) the National Government;
- (b) a Provincial Government;
- (c) an arm, department, agency or provincial government or;
- (d) any body, authority or instrumentality established by the state or body under an Act;

“transitional period” means the 12 month period immediately after the commencement of this Act.

## **PART II. - ADMINISTRATION.**

### *Division 1. - PNG Immigration and Citizenship Service Authority.*

#### **3. ESTABLISHMENT ETC., OF AUTHORITY.**

- (1) The PNG Immigration and Citizenship Service Authority is hereby established.
- (2) The Authority:-
  - (a) is a corporation with perpetual succession;
  - (b) shall have a common seal;
  - (c) may acquire, hold and dispose of property; and
  - (d) may sue and be sued in its corporate name.



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(3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

#### **4. OBJECTIVES OF THE AUTHORITY.**

(1) In carrying out its functions under this Act, the Authority shall pursue the following objectives:-

- (a) the management, development and protection of the nation's interests in so far as the security of the nation is protected;
- (b) elimination of corruption and increase in accountability;
- (c) provision of a more flexible operational working environment;
- (d) increased operational and management efficiency in financial management, accountability and performance management;
- (e) provision of a mechanism for the achievement of best practice
- (f) provision of financial and administrative autonomy;
- (g) increased levels of client service delivery;
- (h) encouragement of study and research in areas which will contribute to the protection and security of the nation;
- (i) increased acquisition and dissemination of skills, knowledge and information in immigration and citizenship through education and training;
- (j) pursuit of effective strategies including improved administrative and legal machinery for managing immigration, citizenship and passport matters;
- (k) ensure the Authority retains its primacy and leadership role with regard to the provision of effective border control and security through the effective management of entry and stay of people in Papua New Guinea.

#### **5. FUNCTIONS OF THE AUTHORITY.**

(1) The functions of the Authority are:-

- (a) to perform the functions and exercise the powers conferred on an authorized person or an officer under the *Migration Act* (Chapter 16) or the *Passports Act* (Chapter 17); and
- (b) to assist the Ministers responsible for the administration of the *Migration Act* (Chapter 16) and *Passports Act* (Chapter 17) in the performance of their functions under those Acts respectively; and
- (c) to assist the Minister responsible for citizenship in the performance of his functions under Part IV of the *Constitution* and the *Citizenship Act* (Chapter 12); and



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- (d) to collect fees, penalties and other revenue authorised under the *Migration Act* (Chapter 16), *Passport Act* (Chapter 17) and *Citizenship Act* (Chapter 12);
- (e) to administer the APEC Business Travel Card Scheme under the *Migration Act* (Chapter 16); and
- (f) to collect, monitor, secure and maintain information and technological systems to enable fully integrated and supported immigration, citizenship and passport operations; and
- (g) undertake development of legislation and policy to support the operations of the Authority and the effective administration of the *Migration Act* (Chapter 16), *Passport Act* (Chapter 17) and the *Citizenship Act* (Chapter 12); and
- (h) advise the Minister on policy issues which relate to this Act and the effective administration of the *Migration Act* (Chapter 16), *Passport Act* (Chapter 17) and the *Citizenship Act* (Chapter 12); and
- (i) exercise and carry out such functions and powers and perform all duties which under any other written law are or may be or become vested in the Authority or are delegated to the Authority by this Act or any other law; and
- (j) carry out such other duties as are necessary, supplementary, incidental to or consequential to achieve the objectives or the discharge of its functions under this Act.

(2) Subject to this Act and any other law, the National Executive Council or the Minister may give to the Authority through the Chief Migration Officer such directions consistent with Government policies and programmes and not inconsistent with the provisions of this Act in regard to the carrying out of the functions of the Authority as the Council or Minister considers necessary for the purpose of achieving the objectives of the Authority.

#### **6. POWERS OF THE AUTHORITY.**

The Authority has, in addition to the powers otherwise conferred on it by this Act or any other law, full powers to do all things that are necessary or convenient to be done for or in connection with the performance of its functions and achievement of its objectives.

#### **7. INTERESTS OF THE STATE.**

(1) Where in the opinion of the Minister, a State body has unduly affected the application, grant or consideration of an entry permit, visa, passport or citizenship application or whose action has adversely affected the interests of the State, he may refer the matter to the Minister responsible for such State body.

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(2) The Minister to whom the reference is made under Subsection (1) shall provide to the Minister within 30 days of such reference a report on the reasons for his actions and the measures that are being taken or will be taken to minimize any further delay.

### *Division 2. - The Board.*

#### **8. ESTABLISHMENT OF THE BOARD.**

(1) There is established the PNG Immigration and Citizenship Service Authority Advisory Board.

(2) The functions of the Board are to provide policy and strategic advice to the Minister and the Chief Migration Officer consistent with the Authority's functions and objectives including the Authority's legislative and administrative responsibilities under the *Migration Act* (Chapter 16), *Passport Act* (Chapter 17) and *Citizenship Act* (Chapter 12).

#### **9. MEMBERSHIP OF THE BOARD.**

(1) The Board shall consist of:-

- (a) the Chief Migration Officer or his nominee, *ex-officio*;
- (b) the Departmental head of the Department responsible for Prime Minister & NEC or his nominee *ex-officio*;
- (c) the Commissioner of Police or his nominee *ex-officio*;
- (d) the Departmental head of the Department responsible for Foreign Affairs and Trade or his nominee *ex-officio*;
- (e) the Departmental head of the Department responsible for Justice and Attorney General or his nominee *ex-officio*;
- (f) two members nominated by the Minister responsible for immigration;
- (g) a member nominated by the PNG Chamber of Commerce and Industry;
- and
- (h) one member representing non government organizations and the community.

(2) The members referred to in Subsection (1)(f), (g) and (h):-

- (a) shall be appointed in accordance with the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*;
- (b) must be ordinarily resident in Papua New Guinea;
- (c) shall be appointed for a term not exceeding three years;
- (d) are eligible for re-appointment; and

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- (e) shall hold office on such terms and conditions as are determined under the *Boards (Fees and Allowances) Act* (Chapter 299).

(3) A nominee referred to in Subsection (1)(a), (b), (c), (d), and (e) shall be an officer of a level not less than that of a Deputy Secretary level in the Public Service.

#### **10. ALTERNATE MEMBERS.**

(1) For each of the members appointed under Section 9(1), (g) and (h), an alternate member shall be appointed in the same manner and subject to the same conditions as the member for whom he is alternate.

(2) In the event of the inability to act as a member, the alternate member has and may exercise all his powers, functions, duties and responsibilities and this Act applies accordingly.

#### **11. FILLING OF VACANCIES.**

Where there is a vacancy in the membership of the Board (other than a vacancy in the offices referred to in Section 9(1)(a), (b), (c), (d), and (e)):-

- (a) an appointment to fill the vacancy shall, subject to Paragraphs (b) and (c) be made as soon as practicable and in any case not later than three months after the date on which the vacancy occurs; and
- (b) the appointment shall be made in accordance with Section 9 and the person so appointed shall hold office, subject to this Act, for the balance of his predecessor's term of office; and
- (c) where the vacancy occurs within three months before the expiration of the term of office, the vacancy shall remain unfilled for the remainder of the term.

#### **12. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) The Minister, on the recommendation of the members of the Board, shall appoint one of the members to be the Chairman, and one other member to be Deputy Chairman of the Board.

(2) The Chairman and Deputy Chairman shall:-

- (a) be an officer under the *Public Service Management Act* 1995; and
- (b) hold office for a period not exceeding three years until the expiration of their respective appointments or until they cease to be members, whichever first occurs.

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#### 13. LEAVE OF ABSENCE.

(1) The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman or Deputy Chairman on such terms and conditions as the Minister determines.

#### 14. VACATION OF OFFICE.

(1) A member of the Board other than an *ex-officio* member may resign his office by writing signed by him and delivered to the Minister.

(2) If a member of the Board or the Chairman or Deputy Chairman, other than an *ex-officio* member:-

- (a) dies; or
- (b) becomes ill or permanently incapable of performing his duties; or
- (c) resigns his office in accordance with Subsection (1); or
- (d) is absent, except with the written consent of the Minister, from three consecutive meetings of the Board; or
- (e) fails to comply with Section 16; or
- (f) becomes bankrupt or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (g) is convicted of an offence punishable under a law by a term of imprisonment for one year or longer and as a result of the conviction is sentenced to death or imprisonment; or
- (h) ceases to be ordinarily resident in the country,

the Minister shall terminate his appointment.

(3) Where the body, which has nominated a member appointed under Section 9(1)(g) and (h), requests the Minister to terminate the appointment of that member, the Minister shall terminate his appointment.

(4) The Minister may, at any time, by written notice, advise a member or the Chairman or the Deputy Chairman that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehavior.

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(5) Within 14 days of the receipt of a notice under Subsection (4), the member or the Chairman or Deputy Chairman as the case may be, may reply in writing to the Minister who shall consider the reply and where appropriate, terminate the appointment.

(6) Where the member referred to in Subsection (4) or the Chairman or Deputy Chairman, as the case may be, does not reply in accordance with Subsection (5), his appointment is terminated.

#### **15. VACANCY NOT TO AFFECT FUNCTIONS.**

The performance of a function of the Board is not invalidated by reason of a vacancy in the membership of the Board.

#### **16. MEETINGS OF THE BOARD.**

(1) The Board shall meet as often as the business of the Authority requires and at such times and places as the Board determines or as the Chairman or in his absence the Deputy Chairman directs but in any event shall meet not less frequently than once in every three months.

(2) Where he receives a request to do so by the Minister or by not less than two members, the Chairman or in his absence the Deputy Chairman shall convene a meeting of the Board within 14 days.

(3) For the purposes of Subsection (1), the Chairman or the Deputy Chairman shall give to every member, at least 14 days notice of the meeting.

(4) The Minister may from time to time, request the Board to meet and consider and advise him on matters he may put to the Board.

(5) Where he receives a request under Subsection (4), the Chairman shall convene such meetings within 14 days.

(6) At the meeting of the Board:-

(a) five members constitute a quorum;

(b) the Chairman or in his absence the Deputy Chairman shall preside and if both the Chairman and Deputy Chairman are absent, the members present shall appoint from among their own number, a Chairman for that meeting;



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- (c) matters arising shall be decided by a majority of the votes present and voting;  
and
- (d) the person presiding has a deliberative, and in the event of an equality of votes on any matter, also a casting vote.

(7) The Board shall cause minutes of its meetings to be recorded and kept.

(8) Subject to this Act, the proceedings of the Board are as determined by the Board.

#### **17. DISCLOSURE OF INTERESTS OF MEMBERS.**

(1) A member who has a direct or indirect personal interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Board and the member shall:-

- (a) not take part after the disclosure, in any deliberation or decision of the Board in relation to the matter; and
- (b) be disregarded for the purposes of constituting a quorum of the Board for any such deliberation or decision.

#### **18. REPORTS.**

(1) The Board shall furnish to the Minister:-

- (a) on or before 15<sup>th</sup> March in every year, a report on the performance of its functions for the previous year; and
- (b) such other reports as may be requested by the Minister from time to time.

(2) As soon as practicable after he has received the report referred to in Subsection 1(a), the Minister shall forward the report to the Speaker for presentation to the Parliament.

#### **19. DIRECTIONS BY THE MINISTER.**

(1) The Minister may, after consultation with the Board or otherwise, give to the Board such directions consistent with Government policies and programmes and not inconsistent with the provisions of this Act, as he considers fit, as to the exercise and performance by the Board of its powers, duties and functions under the Act, and the Board shall give effect to such directions.

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(2) The Board shall furnish the Minister with such information with respect to its activities as he may from time to time require.

#### **20. COMMITTEES.**

(1) The Board may from time to time establish such number of committees as it may consider necessary for the proper carrying out of its functions.

(2) A committee established under Subsection (1) shall:-

- (a) be appointed by the Board; and
- (b) have such functions and powers as are determined by the Board; and
- (c) consist of such number of members as may be determined by the Board of whom not less than one half shall be members of the Authority and the remainder of whom shall be persons nominated by the Chief Migration Officer and shall include persons having technical expertise on the subjects to be dealt with by a Committee.

(3) The Board shall provide to each committee established under this section such authority as is necessary to enable such committee to carry out its functions.

#### **21. POWERS TO BE EXERCISED BY BOARD, ETC.**

(1) The powers conferred on the Board by this Part shall be exercised only by resolution of the Board or committee in accordance with this Act and no power shall be vested in an individual member of the Board.

(2) The Board has, in addition to the powers otherwise conferred on it by this Act and any other law, full powers to do all things that are necessary or convenient to be done for or in connection with the performance of its functions of the Authority.

### *Division 3. - Staff of the Authority.*

#### **22. CHIEF MIGRATION OFFICER.**

(1) There shall be a Chief Migration Officer whose manner of appointment, suspension and dismissal is as specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.



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(2) The Chief Migration Officer shall:-

- (a) be the Chief Executive Officer and the head of the staff of the Authority;
- (b) be appointed for a period of four (4) years and is eligible for re-appointment;
- (c) be responsible to the Minister for the efficient carrying out of the functions of the Authority.

(3) Subject to the *Salaries and Conditions Monitoring Committee Act 1988* the terms and conditions of appointment of the Chief Migration Officer are as determined by the Head of State, acting on the advice of the Minister.

#### **23. FUNCTIONS ETC., OF THE CHIEF MIGRATION OFFICER.**

The Chief Migration Officer shall:-

- (a) manage the operational matters and implement the functions, objectives and responsibilities of the Authority; and
- (b) provide advice to the Board and Minister on implementation of strategic policy; and
- (c) advise the Board on any matter concerning the Authority referred to him by the Board; and
- (d) carry out and perform such duties as are required under this Act and under his contract of employment.

#### **24. DELEGATION.**

(1) The Minister may, by instrument delegate to the Chief Migration Officer all or any of his powers and functions under this Act (except this power of delegation).

(2) The Chief Migration Officer may, by instrument delegate to any employee of the Authority all or any of his powers and functions under this Act (except this power of delegation).

#### **25. APPOINTMENT OF OTHER EMPLOYEES.**

(1) The Chief Migration Officer may appoint to be officers of the Authority such persons as he may consider fit and necessary for the purposes of the Authority.

(2) The terms and conditions of employment of officers appointed under Subsection (1) shall be determined in accordance with the *Salaries and Conditions Monitoring Committee Act 1988*.

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#### **26. TEMPORARY AND CASUAL EMPLOYEES.**

(1) The Chief Migration Officer may appoint such temporary and casual employees as are necessary for the purposes of the Authority.

(2) Employees appointed under Subsection (1) are not employees for the purposes of the *Salaries and Conditions Monitoring Committee Act 1988* and shall be employed on such terms and conditions as the Chief Migration Officer determines.

#### **27. CONSULTANTS.**

The Chief Migration Officer may, from time to time:-

(a) within the limit of funds available for the purpose in accordance with the *Public Finance Management Act 1995*; and

(b) on such terms and conditions as the Chief Migration Officer determines, appoint such consultants as are necessary for the purposes of the Authority.

#### **28. CONTRACT OF EMPLOYMENT.**

The Chief Migration Officer and every other employee of the Authority (other than temporary or casual employees) shall be employed under a written contract of employment: -

(a) in the case of the Chief Migration Officer, the written Contract of Employment shall be executed by the Head of State, acting on advice of the Minister and by the Chief Migration Officer; and

(b) in the case of any other employee, shall be executed by the Chief Migration Officer on behalf of the Authority and the employee concerned.

#### **29. PUBLIC SERVICE RIGHTS.**

Where an officer or employee of the Public Service is appointed to be the Chief Migration Officer or an employee of the Authority, his service as a Chief Migration Officer or as an employee of the Authority shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of:-

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

(b) furlough, or pay in lieu of furlough (including pay to dependants on the death of the employee).

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**PART III. - FINANCES OF THE AUTHORITY.**

**30. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT* 1995**

Part VIII of the *Public Finances (Management) Act* 1995 applies to and in relation to the Authority.

**31. APPLICATION OF *AUDIT ACT* 1989.**

The accounts of the Authority shall be audited in accordance with Part III of the *Audit Act* 1989.

**32. FUNDS OF THE AUTHORITY.**

The funds of the Authority shall consist of:-

- (a) all grants from the National Government;
- (b) fifty percent (50%) of all fees, fines, penalties and charges under this Act or any other law made under Part IV;
- (c) the proceeds from investments (including interest on bank deposits); and investments from commercial enterprises conducted by the Authority; and
- (d) such other monies as are lawfully available to it under any Act of Parliament or a law continued in force under Section 56.

**33. GRANTS FROM NATIONAL GOVERNMENT.**

- (1) The National Government shall make the following grants to the Authority:-

- (a) sums appropriated for each financial year;
- (b) grants in respect of functions transferred to the Authority which shall be paid annually at the level of the National Government funding at the time of transfer and indexed annually in accordance with rises in the Consumer Price Index or in accordance with an alternative method of fixing annual increase agreed between the Authority and the National Government;
- (c) such other sums as the National Government may, from time to time decide.

- (2) The sums specified in this section shall be paid out of the Consolidated Revenue Fund which is appropriated accordingly.

**34. EXEMPTION FROM TAXATION.**

The income, property and operation of the Authority are not subject to income tax under the *Income Tax Act* 1959.

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#### 35. FINES AND FEES.

(1) All fees, fines and other imposts or charges payable under the *Migration Act* (Chapter 16), the *Passports Act* (Chapter 17), the *Citizenship Act* (Chapter 12) or this Act shall be collected by the Authority on behalf of the State.

(2) Where, a law continued in force under Section 56 provides for the imposition of fines, penalties or forfeitures, the amount of the fees and the fines or penalties shall be paid, or the forfeitures shall be made, as the case may be, to the Authority.

#### 36. TRUST ACCOUNT.

(1) The Authority shall open and maintain a trust account for the exercise and performance of its powers and functions and shall pay into such account:-

- (a) fifty percent (50%) of all specified fees, fines, charges or penalties levied or made by the Authority under this Act; and
- (b) all moneys appropriated under any Act for the purposes of carrying out or giving effect to this Act; and
- (c) all other moneys received by the Authority in or for the performance of its functions, duties or powers.

(2) Out of the monies standing to its credit in Subsection (1), the Authority shall:-

- (a) pay the salaries of its staff; and
- (b) pay such amounts as the Chief Migration Officer considers appropriate for the purposes of improving and making more efficient the administration and implementation of this Act.

(3) Payments made out of the Trust Account which are not for the purposes of improving and making more effective the administration and implementation of this Act, shall require the prior written approval of the Minister.

(4) The Trust Account shall be maintained by the Chief Migration Officer who shall:-

- (a) authorize all payments out of the account only for the purposes specified in Subsection (2) and the purposes allowed by Subsection (3); and
- (b) maintain such records pertaining to the Trust Account as are required by the Minister responsible for financial management matters; and
- (c) furnish monthly statements and summaries of the account to the Minister.

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#### 37. UNUSED FUNDS.

Subject to the *Public Finances (Management) Act 1995*, where there are monies standing to the credit of the Authority's Account and which have not been used or committed at the end of each financial year, such monies shall be paid into the Consolidated Revenue Fund.

#### PART IV. - SUSPENSION.

#### 38. APPLICATION OF THE *REGULATORY STATUTORY AUTHORITIES (APPOINTMENT TO CERTAIN OFFICES) ACT 2004*.

Part 3 of the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004* applies to Part IV of this Act.

#### 39. MINISTER MAY APPOINT COMMITTEE OF INQUIRY.

(1) Where the Minister is of the opinion that:-

- (a) there is widespread corruption in the administration of the affairs of the Authority;
- (b) there has been gross mismanagement of the financial affairs of the Authority;
- (c) there has been persistent and deliberate frustration of, or failure to comply with lawful directions of the Government;
- (d) the Authority has persistently exceeded its powers or disobeyed applicable laws; or
- (e) it is in the national interest to do so,

he may, with the consent of the National Executive Council appoint a Committee of Inquiry comprising of three persons to inquire into and report to him on any of the matters referred to in Paragraphs (a) to (e).

(2) On the receipt of a report under Subsection (1), the Minister shall refer the report to the National Executive Council with a statement of his reasons for appointing a Committee of Inquiry.

#### 40. SUSPENSION.

The Head of State, acting on advice, given after consideration of the report referred to in Section 39(1) may, by order in the National Gazette:-

- (a) suspend all or any of the powers or functions of the Authority; or
- (b) suspend the Chief Migration Officer for a stated or an indefinite period.



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**41. EFFECT OF SUSPENSION.**

(1) Subject to Subsection (2), an order of suspension under Section 40 operates to deprive the Authority of the suspended powers or functions during the period of suspension.

(2) The suspension of a power or functions under Section 40 does not affect all rights, privileges, obligations or liability acquired, accrued under or in respect of the suspended power or functions, or any investigation, legal proceeding or remedy in respect of such right, privilege, obligations or liability which may, subject to this Act be carried on or endorsed as if the suspension had not taken place.

**42. APPOINTMENT OF CHIEF MIGRATION OFFICER FOLLOWING SUSPENSION.**

(1) Where an order of suspension is made under Section 40, the Head of State, acting on advice, may in the order or in a subsequent instrument appoint a person to be the Chief Migration Officer in relation to the Authority.

(2) Subject to any directions given by the Head of State, acting on advice a person appointed under Subsection (1) in relation to the Authority:-

- (a) has and may exercise on behalf of the body such of the suspended powers and functions as are specified by the Head of state, acting on advice; and
- (b) has such other powers and functions as are prescribed.

(3) Notwithstanding Subsection (2), but subject to any directions given by the Head of State, acting on advice, the Minister may exercise during a suspension under this Act all or any of the suspended powers or functions.

**43. PERIOD OF SUSPENSION.**

A suspension under this Part operates until:-

- (a) the end of a period stated in the order of suspension made under Section 40; or
- (b) such time as the order of suspension made under Section 40 is revoked by the Head of State acting on advice,

whichever first occurs.

**44. PERIODIC REVIEW.**

This Act shall be reviewed periodically as determined by the Minister, but not less than every two years.

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PART V. - MISCELLANEOUS.

45. PUBLIC PURPOSE.

The purposes of the Authority are public purposes.

46. AUTHORISED PERSONS OR OFFICERS.

The Chief Migration Officer and the staff or employees of the Authority are deemed to be authorized persons or officers for the purposes of the *Migration Act* (Chapter 16) and the *Passport Act* (Chapter 17).

47. PROTECTION OF EMPLOYEES.

(1) The Minister, the Chief Migration Officer or an employee of the Authority, including casual and temporary employees, is not personally liable for any matter or thing done or omitted to be done by him in good faith in the exercise of his powers or the performance of his duties under this Act, the *Migration Act* (Chapter 16), the *Passports Act* (Chapter 17) or the *Citizenship Act* (Chapter 12).

(2) Any expenses incurred by the Board or a Committee, employee or other person acting under the direction of the Authority shall be borne by and paid out of the funds of the Authority.

48. INDEMNITY OF MEMBERS OF BOARD, ETC.

A member of the Board or any Committee established under this Act is not personally liable for any act done in good faith, in the course of carrying out the functions of the Board or Committee.

49. SERVICE OF NOTICES OR LEGAL PROCESS.

A summons, notice, writ or other process required to be served on the Authority may be served by being given to the Chief Migration Officer.

50. REGULATIONS.

(1) 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 for carrying out or giving effect to this Act, and in particular for prescribing:-

(a) fees and charges to be paid; and

(b) penalties of fines not exceeding K5,000.00 for offences against the Act.



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(2) The regulation making powers under this Act apply only to this Act and do not extend to the *Migration Act* (Chapter 16), the *Passports Act* (Chapter 17) or the *Citizenship Act* (Chapter 12).

#### **51. CONFIDENTIALITY.**

(1) Information disclosed under this Act to the Minister, to a member of the Board or a Committee or to an employee of the Authority shall not be disclosed to any person who is not a member of the Board or a Committee or an employee of the Authority without the prior written approval of the person who provided that information, except:-

- (a) to the extent that disclosure is authorized or required under this Act or any other law; or
- (b) to the extent that the person providing the information authorized its disclosure at the time of providing the information; or
- (c) to the extent necessary to enable the Chief Migration Officer to publish statistical information concerning the subject matter of the functions of the Authority; or
- (d) to the extent necessary to enable the Authority or the Minister to give advice to the National Executive Council, Departments or any other agency of the State.

(2) A member of the Board or a Committee or an employee of the Authority who uses, for the purpose of his personal gain, any information disclosed under this Act that comes to his knowledge in the course of, or by reason of his membership of the Board or a Committee or his employment as an employee of the Authority, is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding two years, or both.

#### **PART VI. - TRANSITIONAL AND SAVING.**

#### **52. TRANSFER OF ASSETS AND LIABILITIES TO THE AUTHORITY.**

(1) All assets used for the Authority services (other than land held by the State) which, immediately before the coming into operation of this Act, were held by the Department of Foreign Affairs and Trade and which, by agreement between the Departmental Head of that Department and the Authority, are necessary to be transferred to the Authority for the purposes of the Authority, are, on that coming into operation, transferred to and become assets of the Authority.

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(2) All land in Papua New Guinea in the name of the State held under a Certificate of Occupancy or set aside for use by the Department of Foreign Affairs and Trade for the purpose of providing immigration, passport or citizenship services, immediately before the coming into operation of this Act is, on and from the coming into operation of this Act deemed to have been transferred to and to have become the property of the Authority.

(3) Where land referred to in Subsection (2) is land registered under the *Land Registration Act 1981*, the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the Authority, enter or register the Authority in the Register kept under that Act and, on entry and registration, grant a certificate of title, lease or other instrument evidencing title to the land within that Act.

#### **53. CONTRACTS.**

All contracts and agreements entered into, made with or addressed to:-

- (a) the State, through the Department of Foreign Affairs and Trade; or
- (b) the Immigration and Citizenship Service,

in so far as they relate to the functions of the Authority under this Act, are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favour of the Department of Foreign Affairs and Trade are on that coming into operation, binding on and of full force and effect against or in favour of the Authority as fully and effectually as if instead of the State or the Department of the Foreign Affairs and Trade, the Authority has been a party to them or bound by them or entitled to the benefits of them.

#### **54. ACTIONS, ETC., NOT TO ABATE.**

Where, immediately before the commencement date, any arbitration, action or proceedings was pending or existing by, against or in favour of:-

- (a) the Department of Foreign Affairs and Trade that relate to the Immigration and Citizenship Service; or
- (b) the Papua New Guinea Immigration and Citizenship Service,

it does not, on the commencement date, abate or discontinue, but it may be prosecuted, continued or enforced by, against or in favour of the Authority.

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### 55. STAFF.

The person who, immediately before the coming into operation of this Act, held:-

- (a) the position of the Chief Migration Officer in the Immigration and Citizenship Service of the Department of Foreign Affairs and Trade shall on that coming into operation hold office as the Acting Chief Migration Officer and subject to the *Salaries and Conditions Monitoring Act 1988* hold office on the same terms and conditions until such time as the Chief Migration Officer is appointed and conditions determined in accordance with Section 22;
- (b) an office in the Immigration and Citizenship Service of the Department of Foreign Affairs and Trade shall, on that coming into operation, hold a similar office under this Act until such time as appointments are made under this Act.

### 56. APPLICATION OF ACTS, ETC.

- (1) Where:-

- (a) any act, or subordinate legislation other than this Act; or
- (b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Department of Foreign Affairs and Trade (or the Department responsible for migration and citizenship matters) that reference shall, on the coming into operation of this Act, except where the context otherwise requires, be read and construed and have effect as a reference to the Authority and in such cases, references in other Acts to the Departmental Head and Departmental officers are taken to be references to the Chief Migration Officer and employees of the Authority.

- (2) Nothing in this Act affects the validity of anything done under the *Migration Act* (Chapter 16), the *Passports Act* (Chapter 17) or the *Citizenship Act* (Chapter 12) before the commencement of this Act.

### 57. SPECIAL FUNCTIONS OF THE MINISTER.

During the transitional period, the Minister shall:-

- (a) generally do all things within his powers to ensure that the members of the Board referred to in Section 9 are appointed and in office within a period of six months of the commencement date; and
- (b) liaise with persons relevant to the groups to be represented by members appointed under Section 9; and
- (c) for a period of two months after the members of the Board are appointed, act as Chairman of the Board.



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**58. CARRYING OUT, ETC., OF THE FUNCTIONS AND POWERS OF THE AUTHORITY BY THE ACTING CHIEF MIGRATION OFFICER.**

In carrying out of the functions and the exercise of the powers of the Authority, the Acting Chief Migration Officer in his role as caretaker, pending the appointment of the members of the Authority, shall not, without the consent of the Minister:-

- (a) initiate any major new policy or major changes in the policy of the Authority immediately before the commencement date; or
- (b) effect any major change to the staff of the Authority.

I hereby certify that the above is a fair print of the *Immigration and Citizenship Service Act 2010* which has been made by the National Parliament.



Clerk of the National Parliament.

09 JUL 2010

I hereby certify that the *Immigration and Citizenship Service Act 2010* was made by the National Parliament on 28 May 2010.



Speaker of the National Parliament.

09 JUL 2010