

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 338.

Public Prosecutor (Office and Functions).

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Justice at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

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Public Prosecutor (Office and Functions) Act.

ARRANGEMENT OF SECTIONS.

1. Interpretation—
 "Counsel"
 "the Office"
 "the State".
2. Office of the Public Prosecutor.
3. Staff.
4. Functions, etc., of Public Prosecutor.
5. Grant of immunity from prosecution.
6. Judicial notice.







INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 338.

Public Prosecutor (Office and Functions) Act.

Being an Act—

- (a) to establish an Office of the Public Prosecutor; and
- (b) to provide for the functions of the Public Prosecutor;

and for related matters.

1. Interpretation.

In this Act, unless the contrary intention appears—

“Counsel” means a lawyer who is entitled, as of right, to appear before the Supreme Court or the National Court;

“the Office” means the Office of the Public Prosecutor established by Section 2;

“the State” includes statutory authorities, and instrumentalities of the State.

2. Office of the Public Prosecutor.

(1) An Office to be known as the Office of the Public Prosecutor is hereby established.

(2) The Office of the Public Prosecutor shall consist of the Public Prosecutor and the staff referred to in Section 3.

3. Staff.

(1) Subject to Subsection (2), any staff (including State Prosecutors) required for the purposes of this Act shall be officers or employees of the Public Service.

(2) Subsection (1) does not prevent any person from being employed, on contract or otherwise, under any other law of Papua New Guinea to perform functions in relation to the Office.

4. Functions, etc., of Public Prosecutor.

(1) The Public Prosecutor—

- (a) shall control the Office; and
- (b) is administratively responsible for the efficient performance of the functions of the Office; and
- (c) shall control and exercise the prosecution function of the State; and
- (d) may, and shall when requested to do so by the relevant person or body, advise—
 - (i) the State or any statutory authority or instrumentality of the State; and
 - (ii) the Minister; and
 - (iii) the Secretary for Justice; and
 - (iv) the State Solicitor; and
 - (v) the Law Reform Commission; and

- (vi) any other person or body declared by the Minister, by notice in the National Gazette, to be a person or body to which this section applies, on matters related to or concerning the commission of offences against any law; and
- (e) shall provide Counsel—
- (i) to prosecute persons charged with any criminal offence at their trial before the National Court; and
 - (ii) to appear on behalf of the State in any criminal appeal before the National or Supreme Court; and
 - (iii) to appear before the National Court or Supreme Court in any proceeding relating to a criminal matter in which the State has an interest; and
- (f) may, in his absolute discretion, provide Counsel, to appear for and on behalf of the State, in any other proceeding before the National Court or Supreme Court in which the State has an interest; and
- (g) shall, in his absolute discretion, give consent or refuse consent, to proceed with the prosecution of any criminal offence where his consent is by law required; and
- (ga) may, in his absolute discretion, elect the method of proceeding under Section 420 of the Criminal Code, including the withdrawal of an information; and
- (h) may, in his absolute discretion, provide assistance, either by provision of legal representation or otherwise, where—
- (i) it is requested by the State; or
 - (ii) in his opinion, it is necessary to do so in the interests of justice, or in the public interest,
- in the prosecution of offences or the conduct of committal proceedings before any court other than the National Court or the Supreme Court; and
- (i) may advise the National Executive Council, through the Minister, to exercise its power under Section 151(2) (*grant of pardon, etc.*) of the Constitution to advise the Head of State to grant pardons, free or conditional, to accomplices who give evidence leading to the conviction of principal offenders.

(Amended by No. 44 of 1980.)

(2) For the purposes of the *Public Service Act* and of any other law of Papua New Guinea, the Office of the Public Prosecutor shall, in respect of the staff referred to in Section 3, be deemed to be a part of the Public Service and that staff shall be responsible to a Departmental Head for all matters other than prosecutions.

5. Grant of immunity from prosecution.

(1) Where, in the opinion of the Public Prosecutor it is necessary in the interests of justice to do so, he may grant to a person an immunity from prosecution, either absolute or conditional, in relation to an offence with which the person could otherwise be charged and, where an immunity is so granted to a person, that person shall not—

- (a) where the grant of immunity is absolute, be charged before any court with that offence; or
- (b) where the grant is conditional, be charged before any court with that offence unless the Public Prosecutor has first certified in writing that the person has breached the conditions of the grant of immunity.

(2) This section does not prevent a person who has been granted immunity from prosecution in relation to an offence being charged with any other offence against a law of Papua New Guinea.

6. Judicial notice.

All courts and persons acting judicially shall take judicial notice of the signature of any person who is, or who has been, the Public Prosecutor.

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APPENDIX.

SOURCE OF THE PUBLIC PROSECUTOR (OFFICE AND FUNCTIONS) ACT.

Part A.—Previous Legislation.

Public Prosecutor (Office and Functions) Act (No. 41 of 1977)

as amended by—

Public Prosecutor (Office and Functions) (Amendment) Act 1980 (No. 44 of 1980).

Part B.—Cross References.

Section, etc. in Revised Edition	Previous Reference ¹
1	1
2	2
3	3
4	4
5	5
6	6

¹Unless otherwise indicated, references are to the Act set out in Part A.



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