

Unvalidated References:
Defence Act 1974

This reprint of this Statutory Instrument incorporates all amendments, if any, made before 25 November 2006 and in force at 1 July 2001.

.....
Legislative Counsel
Dated 25 November 2006

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 74A.

Defence (Boards of Inquiry) Regulation 1978

ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Interpretation.
 - “Board”
 - “Board of Inquiry”
 - “Chairman”
 - “convening authority”
 - “General Board”
 - “member”
 - “terms of reference”

PART II – BOARDS OF INQUIRY.

Division 1 – Convening of Board.

2. Convening of Board.
 - Division 2 – General Boards of inquiry.***

3. Constitution of General Board.
4. Proceedings before General Board.
5. Report to be furnished.

Division 3 – Boards of Inquiry.

6. Constitution of Boards of Inquiry.
7. Proceedings before Board of Inquiry.
8. Board of Inquiry to furnish report.

Division 4 – Boards Generally.

9. Meetings of Boards.
10. Jurisdiction of Boards.
11. Procedure before Boards.
12. Appointment of lawyer.
13. Protection of member, etc.
14. Contempt of Board.
15. Termination of appointment of member of Board.
16. Duration of Board.

PART III – MISCELLANEOUS.

17. Fees, etc., may be paid.
18. Publication of report.
19. Written statements.

SCHEDULE 1

Defence (Boards of Inquiry) Regulation 1978

MADE under the *Defence Act 1974*.

Dated 200 .

PART I. – PRELIMINARY.

1. INTERPRETATION.

In this Regulation, unless the contrary intention appears—

“**Board**” includes a General Board of Inquiry and a Board of Inquiry;

“**Board of Inquiry**” means a Board of inquiry constituted under Section 6;

“**Chairman**” means the Chairman of a Board;

“**convening authority**” means the authority convening a Board;

“**General Board**” means a General Board constituted under Section 3;

“**member**” means a member of a Board;

“**terms of reference**” means the matters, specified in the notice under Section 2, into which a Board is to inquire.

PART II. – BOARDS OF INQUIRY.

Division 1.

Convening of Board.

2. CONVENING OF BOARD.

(1) A convening authority may, whenever it considers that it is necessary for any reason to do so, by written notice convene a Board to inquire into any matter.

(2) The notice under Subsection (1) shall specify—

- (a) the Chairman and the person or persons (if any) constituting the Board; and
- (b) the terms of reference of the Board.

(3) Where, in the opinion of the convening authority, it is necessary to do so, it may extend the terms of reference of a Board.

(4) A Board may be—

- (a) a General Board of inquiry; or
- (b) a Board of inquiry.

Division 2.

General Boards of inquiry.

3. CONSTITUTION OF GENERAL BOARD.

(1) A General Board shall be convened by the Minister who shall appoint a Chairman who shall, subject to Subsection (2), be—

- (a) an officer of the Defence Force of the rank of Colonel or above; or
- (b) an officer of the Public Service who is a lawyer of not less than five years' standing.

(2) Where in proceedings before a General Board, the military reputation of a member of the Defence Force may be a subject of inquiry, the Chairman shall be an officer of the Defence Force.

4. PROCEEDINGS BEFORE GENERAL BOARD.

(1) Subject to Subsections (2) and (3), an inquiry before a General Board shall be open to members of the public.

(2) A General Board may, for the preservation of order, exclude a particular person or persons from an inquiry held by it.

(3) Where a General Board is of the opinion that it is—

- (a) in the interests of the defence of the State; or
- (b) in the interest of fairness to a particular person or persons,

to do so, the General Board may exclude a particular person or persons, or order that all or any evidence given before it be given in private.

(4) In proceedings before a General Board—

(a) a person who is summoned to appear; or

(b) the personal representative of a deceased person whose actions or conduct are the subject of an investigation or inquiry,

is entitled to be represented by a lawyer.

(5) The Secretary for Defence and the Commander of the Defence Force are entitled to be represented at all proceedings before a General Board.

(6) A summons to appear before a General Board shall be in Form 1.

5. REPORT TO BE FURNISHED.

A General Board shall, as soon as practicable after the conclusion of its inquiry, furnish to the convening authority a report setting out—

(a) the findings of the General Board; and

(b) any observations and recommendations the General Board thinks fit.

Division 3.

Boards of Inquiry.

6. CONSTITUTION OF BOARDS OF INQUIRY.

(1) A Board of Inquiry may be convened by—

(a) the Secretary for Defence, in respect of a matter the terms of reference of which are within his functions as specified in Section 9 of the Act; and

(b) the Commander of the Defence Force, in respect of a matter the terms of reference of which are within his functions as specified in Section 10 of the Act.

(2) A Board of Inquiry shall be constituted by—

(a) one person who shall be the Chairman; or

(b) three persons, one of whom shall be appointed as Chairman by the convening authority.

7. PROCEEDINGS BEFORE BOARD OF INQUIRY.

(1) Subject to a direction to the contrary by the convening authority, an inquiry before a Board of Inquiry shall be held in private.

(2) Subject to any direction to the contrary by a Board of Inquiry, in proceedings before it—

(a) a person who is summoned as a witness; and

(b) the Secretary for Defence and the Commander of the Defence Force, shall not be represented by a lawyer.

(3) Where, in the course of proceedings before it, it appears to a Board of Inquiry that a matter has arisen concerning the character, integrity or military reputation of the Secretary for Defence or the Commander of the Defence Force which may reflect adversely on them or either of them, the Board of Inquiry shall report the matter to the Minister.

(4) Where a Board of Inquiry is of the opinion that it is unable to deal effectively with a matter before it within the terms of reference, it may adjourn the inquiry.

(5) Where a Board of Inquiry adjourns an inquiry under Subsection (4), the Board shall notify—

- (a) the convening authority; and
- (b) the Minister,

of the adjournment and the reasons for the adjournment.

(6) A summons to appear before a Board of inquiry shall be in Form 1.

8. BOARD OF INQUIRY TO FURNISH REPORT.

A Board of Inquiry shall, as soon as practicable after the conclusion of its proceedings, furnish to the convening authority a report setting out—

- (a) the findings of the Board of Inquiry; and
- (b) any observations and recommendations the Board of Inquiry thinks fit.

Division 4.

Boards Generally.

9. MEETINGS OF BOARDS.

A Board shall meet at such times and at such places as the Chairman directs.

10. JURISDICTION OF BOARDS.

A Board may conduct an inquiry and exercise its powers and functions within or outside the country.

11. PROCEDURE BEFORE BOARDS.

(1) Subject to the Act and this Regulation, the practice and procedure of a Board is as the Chairman directs.

(2) In inquiring into any matter a Board is not bound to observe strict legal procedure or to apply technical rules of evidence but may admit and consider as it thinks fit such information as is available and relevant to the inquiry.

(3) A person summoned to appear before a Board shall take an oath or make an affirmation in Form 2 or 3.

12. APPOINTMENT OF LAWYER.

The convening authority may, where it thinks fit, appoint a lawyer to assist a Board.

13. PROTECTION OF MEMBER, ETC.

(1) A member has, in the exercise of his duty as a member, the same protection and immunity as a Judge.

(2) A witness or a lawyer appearing before a Board has the same protection, and in addition to the penalties provided under this Regulation, is subject to the same liabilities as a witness or lawyer in any case tried before the National Court.

14. CONTEMPT OF BOARD.

(1) A person who—

- (a) wilfully insults a member of a Board; or
- (b) wilfully interrupts the proceedings of a Board; or
- (c) is in any other manner guilty of wilful contempt of a Board,

may be removed by order of the Chairman from the place of sitting of the Board.

(2) The removal of a person under Subsection (1) does not prevent the continuance of any proceedings before a Board.

15. TERMINATION OF APPOINTMENT OF MEMBER OF BOARD.

(1) The appointment of a member of a Board is terminated where—

- (a) the member dies; or
- (b) the convening authority by written notice terminates the appointment on the grounds of the member's physical or mental incapacity to act as a member.

(2) Where the appointment of a member is terminated under Subsection (1), the convening authority may appoint in his place another person to be a member.

(3) Where more than one person constitutes a Board, and the appointment of a member is terminated, the Board shall be deemed to be a properly constituted Board, and no act or proceedings of the Board is invalid by reason only of a vacancy in its membership.

16. DURATION OF BOARD.

(1) Subject to this section, a Board continues to exist until the end of two months after it has furnished its report to the convening authority.

s. 16.

Defence (Boards of Inquiry) Regulation 1978

(2) The convening authority may, at any time it thinks fit, dissolve a Board.

(3) Where, during the period referred to in Subsection (1), a Board is required by the convening authority to provide it with a further report, the Board shall continue until the end of one month after it has furnished its further report to the convening authority.

(4) Where a Board has furnished its report, and the convening authority—

(a) considers that the Board still exists; and

(b) requires a further report in respect of certain matters being inquired into,

it may, by written notice—

(c) direct the Board to re-open its inquiry; and

(d) specify the matters into which the Board is to make further inquiries.

PART III. – MISCELLANEOUS.

17. FEES, ETC., MAY BE PAID.

(1) The Secretary for Defence may authorize the payment of such fees and allowances as he thinks fit, to members.

(2) Any person, other than—

(a) a member of the Defence Force; or

(b) a person employed in the Department,

who is summoned and appears at proceedings before a Board, shall be paid allowances by way of expenses for—

(c) the amount he reasonably and necessarily incurs for his conveyance to and from the place of sitting of the Board; and

(d) an amount not exceeding K14.70 per day during the period of his actual attendance at the proceedings.

18. PUBLICATION OF REPORT.

Where the Minister consents to the publication of a report of a Board, no action or proceeding in respect of the publishing of that report may be brought against—

(a) the State or its agents or servants; or

(b) a Minister; or

(c) a member of the Board.

19. WRITTEN STATEMENTS.

Where, in proceedings before a Board, the Chairman is satisfied that the interests of any person may be affected, he may permit that person to submit a written statement containing any information relevant to the inquiry.

Sch. 1

Defence (Boards of Inquiry) Regulation 9999

SCHEDULE 1

PAPUA NEW GUINEA.

Defence Act 1974.

Form 1 – Summons to a person to Appear.

Act, Sec. 52(1)(a). Form 1.Reg., Sec. 4(6) and 7(6).

To: *(name)* of *(address)*

You are summoned to appear before a General Board/Board of Inquiry* at . . . on . . .
20... to give such evidence as you know concerning the matter of: . . .

and to bring with you and produce for examination the following documents:—

or such of them as are in your possession or control.

Chairman of Board.

*Strike out whichever is inapplicable.

PAPUA NEW GUINEA.

Defence Act 1974.

Form 2 – Oath of Witness.

Act, Sec. 52(1)(b). Form 2.Reg., Sec. 11(3).

The evidence you shall give to the Board concerning the matter in question shall be the truth, the whole truth and nothing but the truth.

So help you God!

PAPUA NEW GUINEA.

Defence Act 1974.

Form 3 – Affirmation of Witness.

Act, Sec. 52(1)(b). Form 3.Reg., Sec. 11(3).

I, . . . (*name*) do solemnly, sincerely and truly declare and affirm that the evidence I shall give to the Board concerning the matter in question shall be the truth, the whole truth and nothing but the truth.

Defence (Boards of Inquiry) Regulation 1978