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Organic Law on Certain Constitutional Office-holders.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



Organic Law on Certain Constitutional Office-holders.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Organic Law on Certain Constitutional Office-holders,

Being an Organic Law—

- (a) to implement Section 223(1) (*general provision for constitutional office-holders*) of the *Constitution* by making provision, where provision is not made by the *Constitution*, for and in respect of the qualifications, appointment and terms and conditions of employment of constitutional office-holders; and
- (b) under Section 267 (*transitional laws*) of the *Constitution* to provide, in relation to constitutional offices for the immediate filling of those offices.

PART I. – PRELIMINARY.

1. DEFINITIONS.

In this Law, unless the contrary intention appears—

“the appointing authority” means—

- (a) in the case of the Public Prosecutor, the Public Solicitor and the Chief Magistrate—the Judicial and Legal Services Commission; and
- (b) in the case of the Clerk of the National Parliament—the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Speaker and the appropriate Permanent Parliamentary Committee; and
- (c) in the case of the Auditor-General—the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee;

“constitutional office-holder” means—

- (a) the Public Prosecutor; and
- (b) the Public Solicitor; and
- (c) the Chief Magistrate; and
- (d) the Clerk of the National Parliament; and
- (e) the Auditor-General,

and **“constitutional office”** has a corresponding meaning.

2. APPLICATION OF OTHER LAW TO CONSTITUTIONAL OFFICE-HOLDERS.

For the avoidance of doubt it is hereby declared that the provisions of the *Organic Law on the Rights and Independence of Constitutional Office-holders* applies to the constitutional office-holders to whom this Law applies.

PART II. – THE PUBLIC PROSECUTOR AND THE PUBLIC SOLICITOR.

3. QUALIFICATIONS FOR APPOINTMENT.

Subject to Section 14, a person is qualified for appointment as the Public Prosecutor or as the Public Solicitor–

- (a) if he is a lawyer who has practised as a lawyer–
 - (i) in Papua New Guinea; or
 - (ii) in a country with a legal system that, in the opinion of the Judicial and Legal Services Commission, is substantially similar to the legal system of Papua New Guinea; or
 - (iii) in Papua New Guinea and in a country referred to in subparagraph (ii),

for a period of not less than three years after obtaining full admission to practise as a lawyer; and

- (b) where he is a person to whom subparagraph (ii) refers and he has not been admitted to practise as a lawyer in Papua New Guinea, if he is so qualified to be so admitted.

4¹. **[REPEALED.]**

¹ Section 4 repealed by the *Organic Law on Certain Constitutional Office-holders (Amendment No. 1 - Consequential Amendment) Law* (No. 27 of 1991), s1.

PART III. – THE CHIEF MAGISTRATE.

5. QUALIFICATIONS FOR APPOINTMENT.

A person who–

- (a) is qualified for appointment as a Judge of the National Court; or
- (b) is a graduate in law of a University in Papua New Guinea and has not less than five years experience in the country as a full-time Magistrate,

is qualified for appointment as the Chief Magistrate.

6². [REPEALED.]

² Section 6 repealed by the *Organic Law on Certain Constitutional Office-holders (Amendment No. 1 - Consequential Amendment) Law* (No. 27 of 1991), s2.

PART IV. – THE CLERK OF THE NATIONAL PARLIAMENT.

7. APPOINTMENT.

The Clerk of the National Parliament shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council after receiving reports from the Speaker and the appropriate Permanent Parliamentary Committee.

8. QUALIFICATIONS FOR APPOINTMENT.

(1) Subject to Section 14, a person is qualified for appointment as the Clerk of the National Parliament if he is qualified for appointment as an officer of the National Public Service.

(2) A non-citizen is not qualified for appointment as the Clerk of the National Parliament.

9³. [REPEALED.]

³ Section 9 repealed by the *Organic Law on Certain Constitutional Office-holders (Amendment No. 1 - Consequential Amendment) Law* (No. 27 of 1991), s3.

PART V. – THE AUDITOR-GENERAL.**10. QUALIFICATIONS FOR APPOINTMENT AND DISQUALIFICATIONS FROM OFFICE.**

(1) Subject to Section 14, a person is qualified for appointment as the Auditor-General if he possesses such professional accountancy qualifications as, in the opinion of the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving a report from the Public Services Commission, are appropriate.

(2) The Auditor-General shall not directly or indirectly accept or receive any benefit from, or participate in, any enterprise, institution, fund or any other body–

- (a) that holds a concession from the National Government; or
- (b) that is assisted in any way by the National Government; or
- (c) in the management of which the National Government has a share; or
- (d) that is subject to–
 - (i) the control of the National Government; or
 - (ii) inspection and audit by the Auditor-General.

(3) Nothing in Subsection (2) prevents the Auditor-General from obtaining normal bank loans from a bank which is wholly or partly owned by the National Government or in which the National Government has an interest.

(4) In this section, “**the National Government**” includes an instrumentality or authority of the National Government.

11⁴. [**REPEALED.**]

⁴ Section 11 repealed by the *Organic Law on Certain Constitutional Office-holders (Amendment No. 1 - Consequential Amendment) Law* (No. 27 of 1991), s4.

PART VI. – GENERAL.

12. DECLARATION OF OFFICE.

Before entering upon the duties of his office, a constitutional office-holder shall make the Declaration of Office before the Chief Justice or a person appointed by the Chief Justice.

13. TERM OF OFFICE.

A constitutional office-holder shall be appointed–

- (a) in the case of any citizen of Papua New Guinea appointed to office for the first time within 10 years after Independence Day–for a term of three years; and
- (b) in the case of any other citizen–for a term of six years; and
- (c) in the case of a non-citizen–for a term of three years,

and is eligible for re-appointment.

14. DISQUALIFICATIONS FROM OFFICE.

A person is not qualified to be, or to remain, a constitutional office-holder if he is–

- (a) a member of the Parliament; or
- (b) a member of a Provincial legislature; or
- (c) a member of a Local-level Government or a Local-level Government Special Purposes Authority; or
- (d) an office-holder in a registered political party; or
- (e) an undischarged bankrupt or insolvent; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under sentence of death of imprisonment.

15. CONDITIONS OF EMPLOYMENT GENERAL TO ALL CONSTITUTIONAL OFFICE-HOLDERS.

(1) A constitutional office-holder shall not–

- (a) actively engage in politics; or
- (b) subject to Subsection (2), engage either directly or indirectly in the management or control of a corporation or other body of persons carrying on business for profit; or
- (c) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner any interest in, any property of Papua New

Guinea or solicit, accept or receive any other benefit in addition to his terms and conditions of employment.

(2) Nothing in Subsection (1)(b) prevents a constitutional office-holder from holding office in a professional body in relation to which his qualifications are relevant.

(3) Subject to any Organic Law made for the purposes of Division III.2 (*leadership code*), a constitutional office-holder who is a citizen may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

16. RESIGNATION.

(1) A constitutional office-holder may resign by giving three months' notice in writing of his intention to do so to the appointing authority.

(2) The period of three months specified in Subsection (1) shall be deemed to commence on the twenty-second day after the receipt by the appointing authority of the notice except where the appointing authority, by notice in writing to the constitutional office-holder, fixes an earlier date for its commencement.

(3) A constitutional office-holder may withdraw his resignation at any time before the notice commences.

17. RETIREMENT.

(1) Subject to Subsection (2), a person who has attained the age of 55 years shall not be appointed or re-appointed to a constitutional office, and a person shall not be appointed or re-appointed for a period that extends beyond the date on which he will attain the age of 55 years.

(2) The appointing authority may, in its deliberate judgement, in a particular case, extend the retiring age specified in Subsection (1) to, but not beyond, 60 years.

18. ACTING CONSTITUTIONAL OFFICE-HOLDER.

A person who is qualified under this Law for appointment as constitutional office-holder may be appointed to be an acting constitutional office-holder—

- (a) to fill temporarily a vacancy; or
- (b) in the case of the absence from duty for any reason of a constitutional office-holder.

19. ANNUAL REPORTS.

(1) A constitutional office-holder shall, at least once during each period of 12 months and at such times as are fixed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, give to the Head of State, for presentation to the National Parliament, a report on the work of his

constitutional office, with such recommendations as to improvement as he thinks proper.

(2) Nothing in Subsection (1) prevents a constitutional office-holder from making, on his own initiative or at the request of the National Parliament or of the National Executive Council, other reports of the work of his constitutional office.

PART VII. – TRANSITIONAL.**20. FIRST PUBLIC PROSECUTOR.**

The person in office immediately before Independence Day as the Chief Crown Prosecutor or acting Chief Crown Prosecutor is the first Public Prosecutor or acting Public Prosecutor, as the case may be, on the same terms and conditions that were applicable to him immediately before that day.

21. FIRST PUBLIC SOLICITOR.

The person in office immediately before Independence Day as the Public Solicitor or acting Public Solicitor is the first Public Solicitor or acting Public Solicitor, as the case may be, on the same terms and conditions that were applicable to him immediately before that day.

22. FIRST CLERK OF THE NATIONAL PARLIAMENT.

The person in office immediately before Independence Day as the Clerk of the pre-Independence House of Assembly or acting Clerk of that House of Assembly is the first Clerk of the National Parliament or acting Clerk of the National Parliament, as the case may be, on the same terms and conditions that were applicable to him immediately before that day.

23. FIRST AUDITOR-GENERAL.

The person in office immediately before Independence Day as the Auditor-General or acting Auditor-General is the first Auditor-General or acting Auditor-General, as the case may be, for the balance of his term of office remaining unexpired immediately before that day, and on the same terms and conditions that were applicable to him immediately before that day.

24. TERM OF OFFICE OF FIRST CONSTITUTIONAL OFFICE-HOLDERS.

(1) The persons appointed as the first constitutional office-holders shall remain in office—

- (a) in the case of the first Public Prosecutor—until the third anniversary of Independence Day or until the date on which a Public Prosecutor is appointed under Section 176 (*establishment of offices*) of the *Constitution*, whichever is the earlier; and
- (b) in the case of the first Public Solicitor—until the third anniversary of Independence Day or until the date on which a Public Solicitor is appointed under Section 176 (*establishment of offices*) of the *Constitution*, whichever is the earlier; and
- (c) in the case of the first Clerk of the National Parliament until the third anniversary of Independence Day or until the date on which a Clerk of

the National Parliament is appointed under Section 7, whichever is the earlier.

(2) Nothing in this section or Section 23 prevents a first constitutional office-holder from being re-appointed as a constitutional office-holder.

Office of Legislative Counsel, PNG