

Chapter 381.

Probation Act 1979.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 381.

Probation Act 1979.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Probation Act 1979,

Being an Act to establish a probation service, to provide for social rehabilitation of offenders and for related purposes.

PART I. – PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

This Act, 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) freedom of assembly and association conferred by Section 47 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for that purpose.

2. INTERPRETATION.

In this Act unless the contrary intention appears–

“**Chief Probation Officer**” means the Chief Probation Officer referred to in Section 5(1)(a);

“**court**” does not include a Village Court;

“**declared area**” means an area declared under Section 3;

“**period of probation**” means a period specified in a probation order in accordance with Section 16(2) and, includes, where the period has been extended under this Act, the extension;

“probationer” means a person in relation to whom a probation order is in force;

“probation officer” means a person referred to in Section 5(b);

“probation order” means an order made under Section 16(2);

“relevant court” in relation to an application, or other matter, connected with a probation order, means a court exercising the same jurisdiction as the court that made the order;

“Senior Probation Officer” means a person referred to in Section 5(b);

“Service” means the Probation Service established by this Act;

“this Act” includes the regulations;

“voluntary probation officer” means a person appointed under Section 6(1).

3. APPLICATION.

(1) This Act applies to a declared area.

(2) The Minister, acting in accordance with the advice of the Departmental Head and the Chief Probation Officer, may, by notice in the National Gazette, declare an area of the country to be a declared area for the purposes of this Act.

PART II. – PROBATION SERVICE AND OFFICERS.

4. ESTABLISHMENT OF PROBATION SERVICE.

The Probation Service is hereby established.

5. APPOINTMENT OF OFFICERS.

For the purposes of the Service, there shall be—

- (a) a Chief Probation Officer; and
- (b) such number of Senior Probation Officers and probation officers as are required,

who shall be officers or employees of the Public Service.

6. APPOINTMENT OF VOLUNTARY PROBATION OFFICERS.

(1) Subject to Subsection (2), the Chief Probation Officer may, by writing, appoint a person to be a voluntary probation officer.

(2) An appointment under Subsection (1) shall not be made where the person is the holder of an office or appointment that is inconsistent with the exercise of the powers, or the performance of the duties and functions, of a probation officer.

(3) The Chief Probation Officer may delegate his power of appointment under Subsection (1), including the power to revoke an appointment, to a Senior Probation Officer and to a probation officer.

(4) An appeal against a revocation of appointment by a delegate under Subsection (3) lies to the Chief Probation Officer who may confirm, vary or rescind the revocation.

7. TERMS AND CONDITIONS OF VOLUNTARY PROBATION OFFICERS.

¹(1) A voluntary probation officer shall be deemed to be a worker employed by the State for the purposes of the *Workers Compensation Act* 1978.

(2) A voluntary probation officer shall not be entitled to a salary or other remuneration for services rendered by him under this Act but may be reimbursed such expenses as are necessarily incurred by him in the proper performance of his duties and functions and at such rates as are determined by the Departmental Head in consultation with the Departmental Head of the Department of Personnel Management.

¹ Section 7 amended by *Public Service (Management)(Consequential Amendments) Act* 1986 (No. 29 of 1986), s66; amended by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s1.

8. DUTIES OF THE CHIEF PROBATION OFFICER.

The Chief Probation Officer shall be responsible for the efficient management of the Service and in particular shall—

- (a) be responsible for preparation of such reports of investigation and supervision as are necessary; and
- (b) assign probation officers to serve in such areas and for such cases as he determines; and
- (c) direct and supervise the work of probation officers and other employees assigned to him; and
- (d) formulate and implement methods of investigation, supervision of probationers, record keeping and reporting; and
- (e) conduct training courses for staff of the Service; and
- (f) develop policies and procedures for probation work.

9. DUTIES OF SENIOR PROBATION OFFICER.

It is the duty of a Senior Probation Officer—

- (a) to supervise the work of probation officers as the Chief Probation Officer directs; and
- (b) to perform such other duties as the Chief Probation Officer directs.

10. DUTIES OF PROBATION OFFICER.

It is the duty of a probation officer—

- (a) to supervise, advise, assist and where possible to befriend, a probationer under him for the purposes of social rehabilitation of that probationer; and
- (b) to perform such duties as are assigned to him under this Act or any other law; and
- (c) to perform such other duties as the Chief Probation Officer directs.

11. DUTIES OF VOLUNTARY PROBATION OFFICER.

It is the duty of a voluntary probation officer—

- (a) to advise, assist and where possible to befriend, a probationer as directed by a probation officer; and
- (b) when required by a probation officer to do so—to prepare and submit written reports to that probation officer in respect of a probationer; and
- (c) generally to assist a probation officer in the performance of his duties.

12. EXTENT OF DUTIES.

(1) A probation officer shall not, in the performance of his duties and functions under this Act or under any other law, perform those duties and functions for a purpose other than for the furtherance of the principal purpose for which the Service is established, namely the social rehabilitation of offenders.

(2) Whether the performance of a duty or function in any general or particular circumstances is for the furtherance of the principal purpose referred to in Subsection (1) is as determined by the Chief Probation Officer.

13. POWERS OF PROBATION OFFICER.

(1)² ³In this section, “**offence**” does not include an offence for which a mandatory minimum sentence is provided for by any law.

(2) Where a court requests assistance in determining the most suitable method of dealing with a person convicted of an offence before it, the Chief Probation Officer may in his discretion—

- (a) report, or order a probation officer to report, to that court on the personal history and character of the person; and
- (b) advise, or order a probation officer to advise, the court—
 - (i) whether that person is likely to respond satisfactorily to probation; and
 - (ii) of any conditions that may be imposed on the release on probation of that person.

(3) A probation officer may commence, appear in or continue any proceedings in any court on behalf of any other probation officer.

14. FURTHER POWERS, DUTIES AND FUNCTIONS.

The Chief Probation Officer and Senior Probation Officer may exercise any powers, or perform any duties and functions, of a probation officer.

15. REPORTS TO A PERSON OR BODY OTHER THAN A COURT.

The Chief Probation Officer may report to any person or body, not being a court, for the purposes of assisting that person or body review a sentence.

² Section 13(1) replaced and repealed by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s2.

³ Section 13(1) replaced and repealed by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s2.

PART III. – PROBATION.**16. PROBATION ORDER.**

⁴(1) In this section, “**offence**” does not include an offence for which a mandatory minimum sentence is provided for by any law.

(2) Subject to Subsection (3), where a person, is convicted of an offence punishable by imprisonment or a fine or both imprisonment and a fine, the court convicting him may by probation order–

- (a) impose a sentence but suspend committing him to imprisonment or a fine or both imprisonment and a fine; or
- (b) defer sentencing him to imprisonment or a fine or both imprisonment and a fine,

and release him on probation for a period specified in the order, being a period of not less than six months and not more than five years.

(3) [*Repealed.*]

(4) Subsection (2) does not prevent the court–

- (a) imposing and requiring the payment by the probationer of a fine authorized by law; or
- (b) in accordance with any law–disqualifying the probationer from holding or obtaining a licence to drive a motor vehicle under the *Motor Traffic Act 1950*.

(5) A probation order takes effect from such date as may be determined by the Court or, where the Court makes no determination as to the date, from the date of the making of the order.

(6) Subsection (2) shall not be construed as derogating from the powers of any court conferred by any other law to release a person on probation for such period and on such conditions as are specified in that law.

(7)⁵ ⁶Notwithstanding Subsection (6), where a law provides for–

- (a) probation; or
- (b) a person to be placed on probation,

this Act shall apply in the absence of any express provisions to the contrary in that law.

17. CONDITIONS OF PROBATION.

(1) A probation order shall–

⁴ Section 16 amended by *Probate (Amendment) Act 1990* (No. 19 of 1990), s3.

⁵ Section 16(7) added by *Probate (Amendment) Act 1990* (No. 19 of 1990), s3(e).

⁶ Section 16(7) added by *Probate (Amendment) Act 1990* (No. 19 of 1990), s3(e).

- (a) specify the address to which the probationer is to go and remain on release until he is contacted by a probation officer; and
- (b) require the probationer to report to a probation officer as and when he is required by the probation officer to do so; and
- (c) require the probationer to keep the peace and to be of good behaviour; and
- (d) direct that—
 - (i) the probationer shall not change his address, other than the address referred to in Paragraph (a), unless he has given to a probation officer reasonable notice of his intention to do so and the reasons for the proposed change; and
 - (ii) where by virtue of the change of address, the probationer has moved to another declared area—he shall, within 48 hours of arrival, report to a probation officer in that area and advise that officer of the nature and place of his employment and of his new address in that area; and
- (e) direct that the probationer shall give to a probation officer reasonable notice of his intention to change his employment and advise him of the nature and place of his proposed employment; and
- (f) require that the probationer shall, for the purposes of this Act, allow a probation officer to enter his home during reasonable hours.

(2) In Subsection (1)(a), (b), (e) and (f), “**probation office**” includes a voluntary probation officer.

18. ADDITIONAL CONDITIONS.

⁷(1) In addition to the conditions set out in Section 17(1), the court may impose all or any of the following conditions:—

- (a) that a probationer shall not, except with the permission of a probation officer and in accordance with such directions as the probation officer may give, leave any specified area;
- (b) that a probationer shall pay, within such period and by such instalments as the court determines, damages for injury, or compensation for loss, suffered by any person by virtue of the offence for which the probationer is convicted or shall carry out work in restitution for such injury, compensation or loss;
- (c)⁸ that a probationer shall travel to and reside in a specific area;
- (d)⁹ that a probationer shall perform community work under the provisions of any law;

⁷ Section 18 amended by *Probate (Amendment) Act 1990* (No. 19 of 1990), s4.

⁸ Section 18(1)(c) added by *Probation (Amendment) Act 1990* (No. 19 of 1990), s4(a).

(e)¹⁰ that a probationer shall pay, within such period and by such instalments as the court determines, compensation according to custom to any person or persons.

(2) Subsection (1) does not prevent the court imposing such other conditions as are necessary in the circumstances of the case for ensuring compliance by the probationer with the conditions of the order and for his good conduct and welfare.

(3)^{11 12} Where a probationer is performing community work or work by way of restitution, the probationer shall be deemed to be employed by the State for the purposes of the *Workers Compensation Act* 1978.

19. VARIATION AND DISCHARGE OF PROBATION ORDERS.

(1) Subject to Subsection (6), a relevant court may, on application by a probationer, suspend or vary the conditions of the probation order which relates to that probationer.

(2) A probationer who has served not less than half the period of probation may, subject to Subsection (6), apply to a relevant court for the discharge of the probation order relating to him and the court may discharge the order.

(3) Subject to Subsection (6), a probation officer may, in relation to a probation order, apply to a relevant court for—

- (a) suspension or variation of the conditions of the order; or
- (b) imposition of additional conditions; or
- (c) extension of the period of probation where that period is less than five years; or
- (d) the discharge of the order.

(4) On the hearing of an application under Subsection (3), the court, having regard to the information before it in relation to the probationer, may—

- (a) do all, or any of the following things:—
 - (i) suspend or vary any conditions of the probation order;
 - (ii) impose any additional conditions;
 - (iii) subject to Subsection (5)—extend the period of probation; or
- (b) discharge the order.

(5) A period of probation shall not be extended beyond the period of five years from the date when the probation order in which that period is specified first took effect.

⁹ Section 18(1)(d) added by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s4(a).

¹⁰ Section 18(1)(e) added by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s4(a).

¹¹ Section 18(3) added by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s4(d).

¹² Section 18(3) added by *Probation (Amendment) Act* 1990 (No. 19 of 1990), s4(d).

(6) Except with the written consent of the Chief Probation Officer, an application under Subsection (1), (2) or (3) shall not be made to a court unless that court exercises jurisdiction in a declared area.

20. BREACH OF CONDITIONS OF PROBATION.

(1) A probationer who contravenes, or fails to comply with, a condition of a probation order that relates to him commits an offence.

(2) An offence under Subsection (1) may be heard by a relevant court or a court exercising jurisdiction superior to the relevant court and the court may, on conviction of the probationer—

- (a) extend the period of probation where that period is less than five years; or
- (b) vary any condition of the probation order; or
- (c) impose additional conditions; or
- (d) where in accordance with Section 16(2)(a) sentence to imprisonment was suspended—commit the probationer to imprisonment for the whole or part of that sentence; or
- (e) where in accordance with Section 16(2)(b) sentence was deferred—sentence the probationer to imprisonment for the offence for which he was originally convicted; or
- (f)¹³ impose the penalty of a fine of not exceeding K200.00 or imprisonment for a term not exceeding four months.

(3) Section 19(5) applies to an extension under Subsection (2)(a).

(4) Where the court has proceeded in accordance with Subsection (2)(d) or (e), the court shall discharge the probation order.

21. ARREST OF PROBATIONERS.

(1) A member of the Police Force who, on reasonable grounds, believes that a probationer has committed a breach of a condition of a probation order relating to that probationer may, subject to the *Arrest Act 1977* and the *Bail Act 1977*, arrest him without a warrant.

(2) If, on information, it appears to a relevant court that a probationer has committed a breach of, or has failed to comply with, a condition of the probation order relating to him, the court may—

- (a) issue a summons requiring the probationer to appear before it; or
- (b) where the information is on oath—issue a warrant for his arrest.

¹³ Section 20(2)(f) added by *Probate (Amendment) Act 1990* (No. 19 of 1990), s5.

22. SUBSEQUENT SENTENCE.

(1) Where a probationer is sentenced to imprisonment for a subsequent offence, other than an offence under Section 20, the period of probation shall continue to run while the probationer is under that imprisonment, and on release he shall serve the unexpired period of probation (if any).

(2) Subsection (1) does not prevent a court dealing with the probationer in accordance with Section 20 for an offence under that section.

PART IV. – MISCELLANEOUS.

23. NOTICE OF PROCEEDINGS RELATING TO PROBATION ORDER.

(1) In this section, “**matter**” does not include a bail application.

(2) Notice of an application under Section 19(3) shall be delivered to the probationer by the probation officer either before, or as soon as possible after, the application is lodged with the court.

(3) Immediately after an application under Section 19(1) or (2) is lodged with the court, a copy of that application shall be served by the court on the Chief Probation Officer and another copy on the probation officer under whose supervision the probationer has been placed.

(4) Where a probationer is brought before—

(a) a court in respect of an offence under Section 20; or

(b) a court (including a Village Court) in respect of any other offence,

the court before which he is brought shall, before the matter is determined, notify the Chief Probation Officer and the probation officer under whose supervision that probationer is, of the fact that the probationer has been brought before it in respect of the matter.

24. DISTRIBUTION OF ORDER.

A copy of a probation order or of an order discharging or varying a probation order shall, as the case requires, be given by the court making the order—

(a) to the probationer on the day on which it is made; and

(b) to the Chief Probation Officer and to the probation officer under whose supervision the probationer is to be or has been placed; and

(c)¹⁴ to the Chairman of the Village Court in the area in which the probationer resides.

25. PRE-SENTENCE AND OTHER REPORTS.

(1) A report under Section 13 or any other report that a probation officer may make to a court in relation to a probationer is not a public record and shall be kept by the court receiving it as a separate record.

(2) A report referred to in Subsection (1) shall be available for inspection or use—

(a) by a court where the proceedings before it relate to the person the subject of the report; and

(b) by a person assisting the court in his professional capacity in relation to those proceedings; and

¹⁴ Section 24(c) added by *Probate (Amendment) Act 1990* (No. 19 of 1990), s6.

- (c) by an official of a correctional institution acting in his official capacity in relation to those proceedings; and
- (d) by the person the subject of the report or his legal representative—within the precincts of the court; and
- (e) where applicable by the prosecution—within the precincts of the court; and
- (f) by the Departmental Head or a person authorized by him in writing for that purpose; and
- (g) by a probation officer in the course of his duties; and
- (h) by a person authorized in writing by the Chief Probation Officer for the purposes of research, study or statistical data and on such conditions as the Chief Probation Officer specifies.

(3) A person who publishes or discloses the contents of, or makes available, a report to any person otherwise than in accordance with Subsection (2) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding two months.

26. APPEAL BY PROBATIONER.

(1) A probationer may appeal or seek leave to appeal in respect of the offence for which he is convicted as if his release on probation were a sentence and where a fine has, in addition, been imposed, the fine shall for the purposes of the appeal or leave to appeal be deemed to form part of that sentence.

(2) While an appeal or application under Subsection (1) is pending, the probationer shall continue to serve his period of probation in accordance with the conditions of the probation order.

27. DISCHARGE ON EXPIRY OF PERIOD OF PROBATION.

¹⁵(1) A probation order is deemed to be discharged on the expiry of the period of probation and the person in relation to whom the order applies is discharged in respect of the offence for which he was originally convicted as if he had been sentenced in respect of that offence and had served the sentence.

(2) Notwithstanding Subsection (1), proceedings may be instituted against a person referred to in Subsection (1)—

- (a) for any contravention of; or
- (b) for failure to comply with,

a condition of a probation order under Section 20(1), within a period of six months after the expiration of the probation order in respect of a breach occurring during the

¹⁵ Section 27 amended by *Probate (Amendment) Act 1990* (No. 19 of 1990), s7.

period of probation, and the court may on conviction impose any of the penalties under Section 20(2).

28. ASSISTANCE AND INFORMATION TO BE GIVEN TO OFFICERS.

(1) Subject to any other law, the Chief Probation Officer, a Senior Probation Officer and a probation officer has a right to receive assistance and information from the State, a Provincial Government, an individual or other body, for the proper performance of his duties and functions under this Act.

(2) A person who unlawfully withholds information required by or hinders or obstructs a Chief Probation Officer, a Senior Probation Officer, a probation officer or a voluntary probation officer, in the performance of his duties, is guilty of an offence.

Penalty: A fine not exceeding K50.00.

29. REPORTS.

As soon as possible after the close of each calendar year the Chief Probation Officer shall, in respect of that year, submit a report to the Minister in relation to—

- (a) the number of persons released on probation; and
- (b) the number of probation orders discharged; and
- (c) the number of probationers convicted for breaches of probation orders including convictions for other offences committed by probationers; and
- (d) the effect of the operation of this Act with respect to probation; and
- (e) the particulars of the activities of the Service.

30. IMMUNITY.

The Chief Probation Officer, a Senior Probation Officer, a probation officer or a voluntary probation officer is not liable to any action, suit or other proceeding for any act or thing done or omitted to be done by him in good faith in the exercise of any power or the performance of any duty or function conferred or imposed on him by or under this Act.

31. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters that by this Act are permitted or required to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.