

Chapter 342.  
***Public Employment (Non-citizens) Act 1978.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 342.

*Public Employment (Non-citizens) Act 1978.*

**ARRANGEMENT OF SECTIONS.**

**PART I – PRELIMINARY.**

1. Matter of national interest.
2. Interpretation.
  - “the commencement date”
  - “employment”
  - “non-citizen”
  - “overseas mission”
  - “public authority”
  - “the repealed Act”
  - “this Act”

**PART II – EMPLOYMENT OF NON-CITIZENS IN PUBLIC AUTHORITIES.**

3. Interpretation of Part II.
4. Application of Part II.
5. Minister may declare public authorities.
6. Duties of Departmental Head of the Department of Personnel Management.
7. Promotion of localization.
8. Contract of engagement.
- 8A. Change from employment under registered industrial award, etc., to individual contract.
9. Non-citizens not to have recourse to arbitration procedures.
10. Powers, duties, etc., of non-citizen in respect of his employment.
11. Transitional provisions.

**PART III – OVERSEAS LOCALLY ENGAGED STAFF.**

12. Engagement of staff in overseas mission.

**PART IV – MISCELLANEOUS.**

13. Directions.
14. Regulations.



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Public Employment (Non-citizens) Act 1978,***

Being an Act to regulate the employment by the State of non-citizens in the Public Service, Parliamentary Service, Police Force, Teaching Service and other bodies and in overseas missions, and for related purposes.

**PART I. – PRELIMINARY.**

**1. MATTER OF NATIONAL INTEREST.**

For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

**2. INTERPRETATION.**

In this Act, unless the contrary intention appears–

“**the commencement date**” means 5 October 1978, being the date on which the *Public Employment (Non-Citizens) Act 1978* came into force;

“**employment**” includes employment on a temporary basis, on a part-time basis or on a consultancy basis;

“**non-citizen**” means a person other than an automatic citizen or a naturalized citizen;

“**overseas mission**” means any office or residence maintained by the State outside Papua New Guinea;

“**public authority**” means–

- (a) the Public Service; and
- (b) the Parliamentary Service established under Section 2 of the *Parliamentary Service Act 1997*; and
- (c) the Police Force; and

- (d) the Teaching Service in so far as it relates to auxiliary members or associate auxiliary members employed in educational institutions, as defined in the *Teaching Service (Auxiliary Members) Act 1973*, run by the State; and
- (e) any other body declared by the Minister under Section 4 to be a public authority for the purposes of this Act;

**“the repealed Act”** means the *Police Force (Non-citizens) Act 1976*;

**“this Act”** includes the regulations.

**PART II. – EMPLOYMENT OF NON-CITIZENS IN PUBLIC AUTHORITIES.**

**3. INTERPRETATION OF PART II.**

For the purposes of this Part, “non-citizen to whom this Part applies” means a non-citizen employed or to be employed in a public authority.

**4. APPLICATION OF PART II.**

This Part applies to all non-citizens employed or to be employed in a public authority.

**5. MINISTER MAY DECLARE PUBLIC AUTHORITIES.**

The Minister may, by notice in the National Gazette, declare a body, whether corporate or unincorporate and whether established by statute or otherwise, to be a public authority for the purposes of this Act but shall not declare a body to be a public authority where a written agreement, whether made before or after the commencement date, between the State and the body, specifically provides that this Act shall not apply to the body.

**6. DUTIES OF DEPARTMENTAL HEAD OF THE DEPARTMENT OF PERSONNEL MANAGEMENT.**

<sup>1</sup>Notwithstanding any other law, other than a Constitutional law, the Departmental Head of the Department of Personnel Management shall, in accordance with the general direction of the Head of State, acting on advice–

- (a) determine the salaries and terms and conditions of service; and
- (b) be responsible for the recruitment and engagement, of non-citizens to whom this Act applies.

**7. PROMOTION OF LOCALIZATION.**

<sup>2</sup>The Departmental Head of the Department of Personnel Management shall–

- (a) develop programs for the replacement of non-citizens by citizens; and
- (b) encourage and promote training programs to enable citizens to acquire qualifications and experience necessary to localize all aspects of public authorities.

**8. CONTRACT OF ENGAGEMENT.**

A non-citizen to whom this Part applies shall enter into a written contract of employment with the State which shall specify *inter alia*–

- (a) the office to which he is appointed; and
- (b) the salary to be paid to him; and
- (c) the period of employment; and

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<sup>1</sup> Section 6 repealed and replaced by the *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s55.

<sup>2</sup> Section 7 amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s56.

(d) the terms and conditions of employment.

**8A. CHANGE FROM EMPLOYMENT UNDER REGISTERED INDUSTRIAL AWARD, ETC., TO INDIVIDUAL CONTRACT.**

<sup>3</sup>(1) For the purposes of this section, “basic conditions of service” means salary, leave entitlements and education allowances, but does not include leave fares, period of employment or recourse to arbitration or reconciliation procedures.

(2) Where—

(a) immediately prior to entering into a written contract of employment under Section 8, a person to whom this Part applies was employed in the same or similar employment under a registered industrial agreement, award or determination; and

(b) the written contract of employment does not alter the basic conditions of service,

the change of status to an employee under contract does not constitute a break or change in the employee’s service or conditions of service, and all rights and privileges to accrued leave and gratuity will be retained.

(3) Where a person to whom this Part applies—

(a) has been employed under a registered agreement, award or determination; and

(b) is offered a written contract of employment under Section 8 for the same or similar employment which does not alter the basic conditions of service; and

(c) declines to enter into that written contract of employment,

he shall, notwithstanding anything contained in the registered agreement, award or determination or in any other law, be deemed to have resigned of his own accord and shall not be entitled to receive benefits which could be regarded as relief for redundancy.

**9. NON-CITIZENS NOT TO HAVE RECOURSE TO ARBITRATION PROCEDURES.**

(1) A non-citizen to whom this Part applies shall, in respect of his salary or any other term or condition of his employment, have no access to conciliation or arbitration procedure under any law.

(2) Subsection (1) does not derogate from any remedies available to the non-citizen under the common law in respect of his salary or any other term or condition of his employment.

**10. POWERS, DUTIES, ETC., OF NON-CITIZEN IN RESPECT OF HIS EMPLOYMENT.**

(1) Subject to—

(a) the provisions of this Act; and

(b) the terms of his contract of employment; and

(c) Subsection (2),

<sup>3</sup> Section 8A added by No. 16 of 1983.



a non-citizen to whom this Part applies shall have, in relation to the office to which he is appointed, the powers, duties, functions, responsibilities and protections of a citizen employed in that office.

(2)<sup>4</sup> <sup>5</sup>A non-citizen to whom this Part applies shall, as directed by the Departmental Head of the Department of Personnel Management, be responsible for the training of citizens.

## 11. TRANSITIONAL PROVISIONS.

(1) A person to whom this Part applies who, immediately before—

(a) the commencement date, was employed by a public authority; or

(b) a declaration under Section 4 of a body as a public authority, was employed by that body,

shall be deemed to have been employed under this Act, but on the terms and conditions that were applicable to him immediately before the commencement date or such a declaration, as the case may be, except that Section 9 applies notwithstanding any such term or condition to the contrary.

(2) A person appointed to an office under the repealed Act shall be deemed to have been appointed to that office under this Act.

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<sup>4</sup> Section 10(2) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s57.

<sup>5</sup> Section 10(2) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s57.

**PART III. – OVERSEAS LOCALLY ENGAGED STAFF.**

**12. ENGAGEMENT OF STAFF IN OVERSEAS MISSION.**

<sup>6</sup>The Departmental Head of the Department of Personnel Management shall–

- (a) determine the salaries, allowances and other terms and conditions of; and
- (b) recruit and engage,

non-citizens to be employed in or in connection with an overseas mission.

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<sup>6</sup> Section 12 amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s58.

**PART IV. – MISCELLANEOUS.**

**13. DIRECTIONS.**

<sup>7</sup>The Departmental Head of the Department of Personnel Management may give to officers in the public authorities and to persons employed in or in connection with an overseas mission directions not inconsistent with this Act as to any matter that is necessary or desirable for the efficient implementation of this Act.

**14. REGULATIONS.**

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 or that are necessary or convenient to be prescribed for carrying out and giving effect to this Act and in particular for prescribing penalties of fines not exceeding K100.00 for offences against the regulations.

Office of Legislative Counsel, PNG

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<sup>7</sup> Section 13 amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s59.