

No. 2 of 2021.

Employment of Non-Citizens (Amendment) Act 2021.

Certified on : 10 JUN 2021



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Employment of Non-Citizens (Amendment) Act 2021.

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No. of 2021.

AN ACT

entitled

Employment of Non-Citizens (Amendment) Act 2021.

Being an Act to amend the *Employment of Non-Citizens Act 2007*,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

1. REPEAL AND REPLACEMENT OF SECTION 1.

Section 1 of the Principal Act is repealed and replaced with the following new section:

“1. PURPOSE OF ACT.

The purpose of this Act is to provide a balance between the needs of the economy for foreign labour and the aspirations of Papua New Guineans for decent work by -

- (a) assisting business to attract and retain the services of qualified, skilled and experienced non-citizens without necessary impediments; and
- (b) promoting a work permit system that contributes to the creation of employment, training and skills-acquisition opportunities for all Papua New Guineans; and
- (c) promoting an integrated work permit and employment visa process managed in accordance with the Regulations.”.

2. INTERPRETATION (AMENDMENT OF SECTION 3).

Section 3 of the Principal Act is amended by inserting the following new definitions in their correct alphabetical order:

- ““Authority” means the Papua New Guinea Immigration and Citizenship Authority established under Section 3 of the *Immigration and Citizenship Service Act 2010*;
- “Chief Migration Officer” means the person appointed in accordance with Section 22 of the *Immigration and Citizenship Service Act 2010*;
- “Minister” means the Minister as determined by the Prime Minister in accordance with Section 148 of the *Constitution*, or as otherwise expressed in this Act;
- “the Secretary” means the head of the department responsible for labour and industrial relations;”.

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3. TERM OF WORK PERMITS (AMENDMENT OF SECTION 9).

Section 9 of the Principal Act is amended in Subsections (2), (3) and (4), by deleting the word "Secretary" and replacing them with "Chief Migration Officer".

4. NEW SECTION 12A.

The Principal Act is amended by inserting, immediately after Section 12, the following new section:

"12A. SECRETARY TO DETERMINE OCCUPATIONS.

(1) For the purpose of Part IV of this Act, the Secretary will administer provisions contained in Sections 12, 13, 14, 15, 16 and 17 of this Act.

(2) The Secretary shall provide certification to the Chief Migration Officer of all determinations made under Part IV of this Act for the purpose of effective administration and enforcement of this Act."

5. PROFESSIONAL REGISTRATION (AMENDMENT OF SECTION 16).

Section 16 of the Principal Act is amended by deleting the word "Secretary" and replacing it with "Chief Migration Officer".

6. LANGUAGE REQUIREMENTS (AMENDMENT OF SECTION 17).

Section 17 of the Principal Act is amended -

(a) in Subsections (1) and (2), by deleting the word "Secretary" and replacing them with "Chief Migration Officer"; and

(b) by inserting, immediately after Subsection (2), the following new subsection:

"(2A) The Chief Migration Officer may waive the requirement for language proficiency after consulting with the Secretary."

7. NEW SECTION 18A.

The Principal Act is amended by inserting, immediately after Section 18, the following new section:

"18A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act and in consultation with the Secretary."

8. APPLICATION MADE IN PRESCRIBED MANNER (AMENDMENT OF SECTION 20).

Section 20 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following new subsection:

"(2) In considering an application for a work permit, the Chief Migration Officer may request the applicant to provide such further or better particulars and documentation as the Chief Migration Officer considers necessary."

9. COMPLETE AND CORRECT APPLICATION (AMENDMENT OF SECTION 21).

Section 21 of the Principal Act is amended by deleting the word "Secretary" and replacing it with "Chief Migration Officer".

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10. REPEAL AND REPLACEMENT OF SECTION 22.

Section 22 of the Principal Act is repealed and replaced with the following new section:

“22. CHIEF MIGRATION OFFICER TO GRANT WORK PERMIT.

(1) The Chief Migration Officer may grant or refuse to grant an application for a work permit.

(2) Written notice of the grant or refusal of an application shall be given to the applicant within 42 days of the making of a complete and correct application.

(3) Where an application is refused, or a work permit is granted in terms other than those applied for, the notice under Subsection (2) shall state the grounds of the refusal to grant the work permit or of the grant in terms other than those applied for.

(4) An employer or self-employed non-citizen who is aggrieved by a decision of the Chief Migration Officer under Subsection (3) may, within 14 days of receipt of the notice of refusal, appeal to the Minister.

(5) An appeal under Subsection (4), shall -

(a) be in writing; and

(b) specify the grounds of the appeal; and

(c) be accompanied by the prescribed non-refundable fee.

(6) When considering an appeal under Subsection (4), the Minister shall obtain the recommendation of the Chief Migration Officer in respect of the appeal and consider the merits of the appeal and within 28 days of receipt of the appeal -

(a) decide whether to grant or refuse the appeal; and

(b) advise the employer or self-employed non-citizen and the Chief Migration Officer in writing of his or her decision and of the reasons for his or her decision; and

(c) if the appeal is granted, give such direction to the Chief Migration Officer as is appropriate.

(7) The Chief Migration Officer shall comply with a direction given by the Minister under Subsection (6)(c).”.

11. NEW SECTION 22A.

The Principal Act is amended by inserting immediately after Section 22, the following new section:

“22A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act and in consultation with the Secretary.”.

12. BRIDGING WORK PERMIT (AMENDMENT OF SECTION 23).

Section 23 of the Principal Act is amended in Subsection (1)(e) by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

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13. NEW SECTION 24A.

The Principal Act is amended by inserting, immediately after Section 24, the following new section:

“24A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

14. APPLICATION FOR RENEWAL IN PRESCRIBED MANNER (AMENDMENT OF SECTION 25).

Section 25 of the Principal Act is amended by repealing Subsection (2), and replacing it with the following new subsection:

“(2) In considering an application for renewal, the Chief Migration Officer may request the applicant to provide such further or better particulars and documentation as the Chief Migration Officer considers necessary.”.

15. REPEAL AND REPLACEMENT OF SECTION 26.

Section 26 of the Principal Act is repealed and replaced with the following new section:

“26. CHIEF MIGRATION OFFICER MAY GRANT APPLICATION FOR RENEWAL.

(1) In considering an application for renewal, the Chief Migration Officer may take into account -

- (a) the conduct of the employer or the non-citizen or the self-employed non-citizen; and
- (b) the commitment of the employer to the training and development of Papua New Guineans; and
- (c) any other matters the Chief Migration Officer considers relevant, and may renew the permit by the issue of a new permit for a further period as set out in Section 9.

(2) Written notice of the grant or refusal of an application for renewal shall be given to the applicant within 42 days of the making of a complete and correct application.

(3) Where an application for renewal is refused, or is granted in terms other than those applied for, the notice under Subsection (2) shall state the grounds of the refusal to grant the renewal or of the grant in terms other than those applied for.

(4) An employer or self-employed non-citizen who is aggrieved by a decision of the Chief Migration Officer to refuse to grant an application for a renewal of a work permit may, within 14 days of receipt of the notice of refusal, appeal to the Minister.

- (5) An appeal lodged under Subsection (4) shall -
- (a) be in writing; and

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- (b) specify the grounds of the appeal; and
- (c) be accompanied by the prescribed non-refundable fee.

(6) The Minister shall obtain the recommendation of the Chief Migration Officer in receipt of the appeal and consider the merits of the appeal and within 28 days of receipt of the appeal -

- (a) decide whether to grant or refuse the appeal; and
- (b) advise the employer or self-employed non-citizen and the Chief Migration Officer in writing of the reasons for the decision; and
- (c) when granting an appeal give such direction to the Chief Migration Officer as is appropriate.

(7) The Chief Migration Officer shall comply with a direction given by the Minister under Subsection (6)(c).”.

16. COMPLETE AND CORRECT APPLICATION (AMENDMENT OF SECTION 28).

Section 28 of the Principal Act is amended by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

17. NEW SECTION 29A.

The Principal Act is amended by inserting, immediately after Section 29, the following new section:

“29A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

18. REPEAL AND REPLACEMENT OF SECTION 31.

Section 31 of the Principal Act is repealed and replaced with the following new section:

“31. CANCELLATION OF WORK PERMITS.

(1) Where the Chief Migration Officer is satisfied that -

- (a) the application for a work permit contained information that was false or misleading in any material particular; or
- (b) there has been a contravention of any conditions of the work permit; or
- (c) a non-citizen or self-employed non-citizen in respect of whom a work permit has been granted is not a fit and proper person to continue to have a work permit; or
- (d) a non-citizen or employer or self-employed non-citizen is otherwise in breach of this Act,

the Chief Migration Officer may cancel the work permit.

(2) Where it is proposed to cancel a work permit under Subsection (1), the Chief Migration Officer shall serve on the non-citizen and employer, or self-employed non-citizen, a notice -

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- (a) advising the non-citizen and employer, or self-employed non-citizen, of the Chief Migration Officer's intention to cancel the work permit and the reasons for the intended action; and
- (b) requiring the non-citizen and employer, or self-employed non-citizen, within 14 days of the date of service of the notice to make written representations to the Chief Migration Officer as to why the work permit should not be cancelled.

(3) The Chief Migration Officer shall consider any representations made under Subsection (2)(b) before taking any action to cancel the work permit under Subsection (1).

(4) Subsections (2) and (3) do not apply if the Chief Migration Officer is satisfied that the cancellation of a work permit is required in the national interest provided any cancellation of a work permit in the national interest shall not be biased, arbitrary or capricious.

(5) A non-citizen and employer or self-employed non-citizen who is aggrieved by a decision of the Chief Migration Officer to cancel a work permit may, within 14 days of receipt of the notice of refusal, appeal to the Minister.

- (6) An appeal under Subsection (5) shall -
- (a) be in writing; and
 - (b) specify the grounds of the appeal; and
 - (c) be accompanied by the prescribed non-refundable fees.

(7) The Minister shall obtain the recommendation of the Chief Migration Officer in respect of the appeal and consider the merits of the appeal and within 28 days of receipt of the appeal.

(8) The Chief Migration Officer shall comply with a direction given by the Minister under Subsection (7)(c)."

19. TERMINATION OF EMPLOYMENT (AMENDMENT OF SECTION 32).

Section 32 of the Principal Act is amended by repealing Subsections (1) and (2), and replacing them with the following new subsections:

"(1) Notwithstanding the provisions of any other law or of any term or condition of any contract or agreement, an employer shall terminate the employment of a non-citizen who is in the employer's employment within 14 days of the employer being notified in writing by the Chief Migration Officer that -

- (a) the non-citizen ceases to be the holder of a valid entry permit under the *Migration Act 1978*; or
- (b) a work permit in respect of that non-citizen has been cancelled under Section 31.

(2) Every employer who, under Subsection (1), terminates the employment of a non-citizen must, by notice in writing, inform the Chief Migration Officer of that termination within 14 days of the termination of employment."

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20. REPEAL AND REPLACEMENT OF SECTION 33.

Section 33 of the Principal Act is repealed and replaced with the following new section:

“33. REVOCATION AND VARIATION OF CONDITIONS, ETC.

- (1) The Chief Migration Officer may, by written notice at any time, vary or revoke any conditions or impose new or additional conditions in the work permit.
- (2) Where it is proposed to take any action under Subsection (1), the Chief Migration Officer shall serve on the non-citizen and employer, or self-employed non-citizen, a notice -
- (a) advising the non-citizen and employer, or self employed non-citizen, of the Chief Migration Officer’s intention to take such action and the reasons for the intended action; and
 - (b) requiring the non-citizen and employer, or self-employed non-citizen, within 14 days of the date of service of the notice to make written representations to the Chief Migration Officer as to why the action should not be taken.
- (3) The Chief Migration Officer shall consider any representations made under Subsection (2)(b) before taking any action under Subsection (1).
- (4) An employer or self-employed non-citizen who is aggrieved by a decision of the Chief Migration Officer under Subsection (1) may, within 14 days of receipt of the notice of variation, revocation or imposition, appeal to the Minister.
- (5) An appeal under Subsection (4) shall -
- (a) be in writing; and
 - (b) specify the grounds of the appeal; and
 - (c) be accompanied by the prescribed non-refundable fee.
- (6) The Minister shall obtain the recommendation of the Chief Migration Officer in respect of the appeal and consider the merits of the appeal and within 28 days of receipt of the appeal -
- (a) decide whether to grant or refuse the appeal; and
 - (b) advise the employer or self-employed non-citizen and the Chief Migration Officer in writing of the decision and of the reasons for the decision.”.

21. REPEAL AND REPLACEMENT OF SECTION 34.

Section 34 of the Principal Act is repealed and replaced with the following new section:

“34. WORK PERMIT AND WORK PERMIT CARD.

- (1) Where the Chief Migration Officer grants an application under Parts VI and VII the Chief Migration Officer shall -
- (a) issue a work permit, in the prescribed form, to the applicant; and
 - (b) issue a work permit card, in the prescribed form, to the non-citizen.

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(2) Where the Chief Migration Officer grants an application under Parts VI and VII the Chief Migration Officer shall, in the case of a self-employed non-citizen, issue a work permit and a work permit card to the self-employed non-citizen.”.

22. NEW SECTION 34A.

The Principal Act is amended by inserting, immediately after Section 34, the following new section:

“34A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

23. RETURN OF WORK PERMIT AND WORK PERMIT CARD (AMENDMENT OF SECTION 36).

Section 36 of the Principal Act is amended in Subsection (1), by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

24. REGISTER OF WORK PERMIT (AMENDMENT OF SECTION 37).

Section 37 of the Principal Act is amended in Subsection (1), by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

25. REPEAL AND REPLACEMENT OF SECTION 38.

Section 38 of the Principal Act is repealed and replaced with the following new section:

“38. DUPLICATE WORK PERMIT AND WORK PERMIT CARD.

(1) Where the Chief Migration Officer is satisfied that a work permit or work permit card has been lost, defaced or destroyed, the Chief Migration Officer may issue a duplicate -

- (a) on payment of a prescribed fee; and
- (b) where the work permit or work permit card has been defaced, on the surrender to the Chief Migration Officer of the work permit or work permit card.

(2) A duplicate shall be signed by the Chief Migration Officer and endorsed as a duplicate work permit or work permit card.”.

26. EMPLOYER’S REGISTER (AMENDMENT OF SECTION 39).

Section 39 of the Principal Act is amended by repealing Subsections (3) and (4), and replacing them with the following new subsections:

“(3) The Chief Migration Officer, or an authorised officer may at any reasonable time enter any premises and inspect an employer’s register.

(4) Any person who without reasonable excuse (proof of which is on the person) fails to produce the employer’s register when required to do so by the Chief Migration Officer or an authorised officer, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.”.

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27. NEW SECTION 40A.

The Principal Act is amended by inserting, immediately after Section 40, the following new section:

“40A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

28. STATEMENT OF ARRANGEMENT FOR REPATRIATION (AMENDMENT OF SECTION 44).

Section 44 of the Principal Act is amended by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

29. APPOINTMENT OF AUTHORISED OFFICERS (AMENDMENT OF SECTION 47).

Section 47 of the Principal Act is amended by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

30. NEW SECTION 47A.

The Principal Act is amended by inserting, immediately after Section 47, the following new section:

“47A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

31. WORK PERMIT TRUST ACCOUNT (AMENDMENT OF SECTION 50).

Section 50 of the Principal Act is amended by -

(a) repealing Subsection (3) and replacing it with the following new subsection:

“(3) There shall be paid out of the Work Permit Trust Account such amounts as the Chief Migration Officer considers appropriate for the purposes of improving and making more effective the administration and implementation of this Act.”; and

(b) repealing Subsection (5) and replacing it with the following new subsection:

“(5) The Work Permit Trust Account shall be administered by the Chief Migration Officer who shall -

- (a) authorise all payments out of the Trust Account only for the purposes specified in Subsection (3) and for the purposes allowed by Subsection (4); and
- (b) maintain such records pertaining to the Trust Account as are required by the departmental head of the department responsible for financial management matters; and
- (c) furnish monthly statements and summaries of the account to the First Assistant Secretary (Public Accounts) of the department responsible for financial management matters.”.

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32. NEW SECTION 50A.

The Principal Act is amended by inserting, immediately after Section 50, the following new section:

“50A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

33. EXEMPTION (AMENDMENT OF SECTION 51).

Section 51 of the Principal Act is amended in Subsection (1), by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

34. NEW SECTION 51A.

The Principal Act is amended by inserting, immediately after Section 51, the following new section:

“51A. CHIEF MIGRATION OFFICER TO ADMINISTER.

This Part shall be administered by the Chief Migration Officer in accordance with the Regulations under this Act, and in consultation with the Secretary.”.

35. GOOD CORPORATE CITIZENS OF PAPUA NEW GUINEA (AMENDMENT OF SECTION 52).

Section 52 of the Principal Act is amended by repealing Subsection (1), and replacing it with the following new subsection:

“(1) The Minister, acting on advice of the Secretary and the Chief Migration Officer, may declare by notice published in the National Gazette, an employer to be a good corporate citizen in Papua New Guinea.”.

36. REPEAL AND REPLACEMENT OF SECTION 53.

Section 53 of the Principal Act is repealed and replaced with the following new section:

“53. DELEGATION.

(1) Subject to Subsection (2), the Chief Migration Officer may by writing, delegate to an officer all or any of the Chief Migration Officer’s powers, functions and duties under this Act except this power of delegation.”.

37. GUIDELINES (AMENDMENT OF SECTION 55).

Section 55 of the Principal Act is amended by deleting the word “Secretary” and replacing it with “Chief Migration Officer”.

38. REPEAL AND REPLACEMENT OF SECTION 57.

Section 57 of the Principal Act is repealed and replaced with the following new section:

“57. GENERAL PENALTY.

Any person who fails to comply with a provision of this Act in respect of which a specific penalty is not provided, is guilty of an offence.

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Penalty: A fine not exceeding K10,000.00.”.

39. INFRINGEMENT NOTICES (AMENDMENT OF SECTION 58).

Section 58 of the Principal Act is amended by repealing Subsection (1), and replacing it with the following new subsection:

“(1) The Chief Migration Officer, may serve an infringement notice, in the prescribed form, on a person if it appears to the Chief Migration Officer that the person has committed an offence under Sections 6, 11, 35, 36 and 39.”.

40. REPEAL AND REPLACEMENT OF SECTION 59.

Section 59 of the Principal Act is repealed and replaced with the following new section:

“59. INSTITUTION OF PROSECUTION OR PROCEEDINGS.

(1) Subject to approval of the Public Prosecutor, the Chief Migration Officer or any officer authorised by the Chief Migration Officer, may -

- (a) institute any prosecutions or proceedings for a breach or contravention of any provision of this Act; and
- (b) appear in any prosecution or proceeding referred to in Paragraph (a).

(2) Where a prosecution or proceeding is instituted by an authorised officer under Subsection (1), the prosecution or proceeding must, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Chief Migration Officer.

(3) Production of written evidence purporting -

- (a) to be signed by the Chief Migration Officer; and
- (b) to authorise an officer to institute any prosecution or proceeding under this Act,

is admissible in the prosecution or proceeding and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceeding.

(4) A prosecution or proceeding under this Act may be instituted -

- (a) in the National Court; or
- (b) in the District Court where the penalty amount does not exceed K10,000.00.

(5) A prosecution or proceeding under this Act may be instituted in the name of the Chief Migration Officer.

(6) The prosecution or proceeding under this Act may be commenced, prosecuted and proceeded with in accordance with rules of practice of the National Court or the District Court, as the case requires.”.

41. REPEAL AND REPLACEMENT OF SECTION 60.

Section 60 of the Principal Act is repealed and replaced with the following new section:

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“60. VERIFICATION OF STATEMENTS.

All applications, statement, representations or information made or furnished to the Chief Migration Officer under or for the purpose of this Act must, if the Chief Migration Officer so requires, be certified by a Justice of the Peace or Commissioner of Oaths or be verified by statutory declaration in such form as the Chief Migration Officer requires or as is prescribed.”.

42. SAVING OF WORK PERMITS AND APPLICATIONS (AMENDMENT OF SECTION 64).

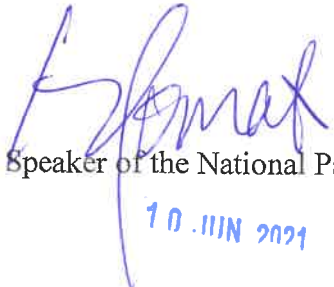
Section 64 of the Principal Act is amended by inserting, immediately after Subsection (3), the following new subsection:

“(4) All work permit records created prior to the commencement of this Act shall be retained by the departmental head responsible for labour and industrial relations and be made available to the Chief Migration Officer upon request.”.

I hereby certify that the above is a fair print of the *Employment of Non-Citizens (Amendment) Act 2021*, which has been made by the National Parliament.


Clerk of the National Parliament.
10 JUN 2021

I hereby certify that the *Employment of Non-Citizens (Amendment) Act 2021*, was made by the National Parliament on 21 April 2021.


Speaker of the National Parliament.
10 JUN 2021

