

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***National Economic and Fiscal Commission Act 1996,***

Being an Act to implement Subdivision V.4.A of the *Organic Law on Provincial Governments and Local-level Governments* 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) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to freedom of information conferred by Section 51 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order.

**2. Interpretation.**

In this Act, unless the contrary intention appears—

"Acting Chairman" means the Deputy Chairman holding office as the Acting Chairman of the Commission in accordance with Section 19;

"Chief Executive Officer" means the Chairman holding office as the Chief Executive Officer of the Commission in accordance with Section 20(2);

"Deputy Chairman" means the Deputy Chairman of the Commission appointed in accordance with Section 117(4) of the Organic Law;

"*ex-officio* member" means a member of the Commission holding office in accordance with Section 117(2)(g) or (h) of the Organic Law;

"member" means a member of the Commission;

"the Chairman" means the Chairman of the Commission appointed in accordance with Section 117(2)(a) and (3) of the Organic Law;

"the Commission" means the National Economic and Fiscal Commission established and constituted in accordance with Section 117 of the Organic Law;

"the Organic Law" means the *Organic Law on Provincial Governments and Local-level Governments*;

"this Act" includes the Regulations made under this Act.

**PART II.—THE NATIONAL ECONOMIC AND FISCAL COMMISSION.**

**3. The National Economic and Fiscal Commission.**

The National Economic and Fiscal Commission established by Section 117(1) of the Organic Law shall be as constituted in accordance with Section 117(2) of the Organic Law.

#### **4. Conditions of appointment.**

(1) Subject to this section, and to the Organic Law, the terms and conditions of appointment of members of the Commission, other than the Chairman and the *ex-officio* members, are as determined by the Prime Minister after consultation with the Minister responsible for finance matters.

(2) Subject to Subsection (4), a member of the Commission, other than the Chairman and the *ex-officio* members, shall receive—

- (a) a general allowance of K6,000.00 per annum; and
- (b) an allowance of K130.00 for each day or part of a day—
  - (i) on which he attends a meeting of the Commission; or
  - (ii) on which he is, as certified by the Chairman, engaged full time in his duties as a member; and
- (c) an incidental allowance of K20.00 for each day or part of a day on which he is required, in the course of his duties as a member, to be absent from his home.

(3) Within such reasonable limits as are determined by the Chairman and notified in advance to each member, other than the Chairman and the *ex-officio* members, or by notice in the National Gazette, the reasonable expenses of travelling and accommodation on the business of the Commission shall be met by the Commission.

(4) Any amount specified in Subsection (2) shall be varied in accordance with any variation of allowances for boards and commissions as provided for by the *Boards (Fees and Allowances) Act 1955*.

#### **5. Resignation from office.**

(1) The Deputy Chairman of the Commission may resign his office by written notice to the Chairman.

(2) A member of the Commission, other than the Chairman and the *ex-officio* members, may resign his office by written notice to the National Executive Council.

#### **6. Vacation of office.**

- (1) If a member, other than the Chairman or an *ex-officio* member—
  - (a) becomes permanently incapable of performing his duties; or
  - (b) resigns his office in accordance with Section 5; or
  - (c) is absent, except with the consent of the Minister, from three consecutive meetings of the Commission; or
  - (d) fails to comply with Section 8; or
  - (e) becomes bankrupt, or applies to take the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
  - (f) is convicted of an offence punishable under a law by a term of imprisonment, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Head of State, acting on the advice of the National Executive Council, shall terminate his appointment.

(2) The Minister may, at any time, by written notice, advise a member, other than the Chairman and an *ex-officio* member, that he intends to terminate his appointment on the grounds of inefficiency, incapacity or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister, who shall consider the reply, and, where appropriate, terminate the appointment.

(4) Where the member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

## **7. Vacancy not to affect powers or functions.**

The exercise of a power or the performance of a function of the Commission is not invalidated by reason only of a vacancy in the membership of the Commission.

## **8. Disclosure of interest by members.**

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under Subsection (1), shall be recorded in the minutes of the Commission and the member—

- (a) shall not take part, after the disclosure, in any deliberation or decision of the Commission in relation to the matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

## **9. Meetings of the Commission.**

(1) Subject to this section, the Commission shall meet at least three times in each year at such times and places as are fixed by the Chairman.

(2) Where he thinks it necessary or desirable to do so, the Minister may call a meeting of the Commission.

(3) At a meeting of the Commission—

- (a) five members are a quorum; and
- (b) the Chairman or in his absence the Deputy Chairman, shall preside, and in the absence of both the Chairman and the Deputy Chairman, the members present shall appoint a Chairman from amongst their own number; and
- (c) all matters arising shall be determined by the majority of votes of the members present and voting; and
- (d) the member presiding shall have a deliberative and, in the event of an equality of votes on a matter, also a casting vote.

(4) The Commission shall cause minutes of its meetings to be recorded and kept,

and the Chairman shall cause copies of the minutes to be sent to the Minister.

(5) Subject to this Act and to the Organic Law, the procedures of the Commission are as determined by the Commission.

#### **10. Declaration of Office.**

Before entering upon the duties of his office, a member of the Commission shall make the Declaration of Office in the form specified in Schedule 1 before the Head of State or a person appointed by the Head of State for the purpose.

#### **11. Powers of the Commission.**

The Commission has, in addition to the powers specifically conferred on it by this Act or any other law, power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

#### **12. Power to summon persons.**

- (1) The Commission may—
  - (a) by summons under the hand of the Chairman, or in his absence the Acting Chairman, require the attendance of any person; and
  - (b) by notice in writing, signed by the Chairman, or in his absence the Acting Chairman, require the production of any book, paper or document relevant to the matter before the Commission; and
  - (c) inspect any book, paper or document produced before the Commission and make copies of or extracts from such book, paper or document that are relevant to the matter before the Commission.
- (2) A summons shall be—
  - (a) in the form specified in Schedule 2; and
  - (b) served on the person either personally or by being left at or sent by post to his usual place of business or abode.
- (3) A person who—
  - (a) having been served, in accordance with Subsection (2)(b), with a summons referred to in Subsection (1)(a), fails to attend before the Commission without lawful excuse to attend in obedience to that summons; or
  - (b) being called or examined before the Commission—
    - (i) fails to answer any questions relevant to a matter before the Commission; or
    - (ii) without lawful excuse fails to produce any book, paper or document mentioned in a notice in Subsection (1)(b),

is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or a term of imprisonment not exceeding six months.

(4) It is a defence to a prosecution for an offence against this section of failing to produce a book, paper or document that the book, paper or document was not relevant to

the matter before the Commission.

(5) A statement made by a person in an answer to a question put to him in respect of a matter before the Commission, is not admissible in evidence in any proceedings against the person in court, other than proceedings for an offence arising out of the falsity of the answer.

### **13. Giving of information in private.**

(1) Where a person appearing before the Commission so requests, any information given by him relating to a professional or trade secret, or to the profits or financial position, of himself or of any other person may be taken by the Commission in private and shall not be disclosed or published without the consent of the person entitled to the non-disclosure.

(2) A person, who discloses or publishes information in contravention of this section, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

## **PART III.—THE CHAIRMAN OF THE NATIONAL ECONOMIC AND FISCAL COMMISSION.**

### **14. Conditions of employment.**

Subject to the *Salaries and Conditions Monitoring Committee Act* 1988, the salary and other conditions of employment of the Chairman of the Commission are as determined by the Minister.

### **15. Disqualification from Office.**

A person is not qualified to be, or to remain, the Chairman of the Commission if he is—

- (a) a member of the Parliament; or
- (b) a member of a Provincial Assembly; or
- (c) a member of a Local-level Government; 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 or imprisonment.

### **16. Special Conditions of employment.**

- (1) The Chairman 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) except on leave granted by the Minister, or because of illness, absent himself

from duty for more than 14 consecutive days or for more than 28 days in any period of 12 months; or

(d) subject to Subsection (3), acquire by way of gift or otherwise, or use or hold in any other manner, any interest in any property in 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) or (d) prevents the Chairman from holding office—

(a) in a professional body in relation to which his qualifications are relevant; or

(b) as a nominee of Papua New Guinea in a corporation in which Papua New Guinea has a fiscal interest where—

(i) no direct or indirect financial benefit is received by the Chairman as such a nominee; or

(ii) any direct or indirect financial benefit received by the Chairman as such a nominee is paid by him to the Consolidated Revenue Fund.

(3) The Chairman may purchase, lease or otherwise acquire land in the same manner and subject to the same conditions as any other citizen.

### **17. Resignation.**

(1) The Chairman may resign his office by giving three months' notice in writing of his intention to do so to the Head of State.

(2) The period of three months referred to in Subsection (1) commences on the date specified in the notice, or if no date is so specified, on the date of the notice.

### **18. Retirement.**

(1) Subject to Subsection (2), a person who has attained the age of 60 years shall not be appointed or re-appointed as the Chairman 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 60 years.

(2) The Head of State, acting on advice, may, for special reasons in an appropriate case, appoint or re-appoint a person who is over 60 years of age to be the Chairman but in no case shall the person continue to act as Chairman after he has attained the age of 65 years.

### **19. Acting Chairman.**

If the Chairman is—

(a) on leave of absence; or

(b) absent from the country; or

(c) out of speedy and effective communication; or

(d) otherwise unable to perform, or is not readily available to perform the duties of his office,

the Deputy Chairman shall—

(e) become the Acting Chairman of the Commission; and

- (f) exercise the powers and perform the functions and responsibilities of the Chairman.

#### **PART IV.—SECRETARIAT.**

##### **20. The National Economic and Fiscal Commission Secretariat.**

(1) There is established a Secretariat for the Commission comprising the Chairman, the staff of the Commission and the persons appointed in accordance with Sections 25 and 26.

- (2) The Chairman—
  - (a) is the Chief Executive Officer of the Commission; and
  - (b) is the head of the staff of the Secretariat.

##### **21. Functions of the Chief Executive Officer.**

- (1) The Chief Executive Officer shall—
  - (a) manage the affairs of the Commission in accordance with the policy and direction of the Commission; and
  - (b) advise the Commission on any matters concerning the Commission referred to him by the Commission; and
  - (c) carry out and perform the duties required of him under this Act and under his contract of employment.
- (2) The Chief Executive Officer has such other duties as the Commission may from time to time determine.

##### **22. Staff of the Commission.**

- (1) The Chief Executive Officer may appoint to be officers and employees of the Commission such persons as he considers necessary for the purpose of giving effect to this Act.
- (2) The Chief Executive Officer and the officers and the employees appointed under Subsection (1) constitute the staff of the Commission.
- (3) Where the Chief Executive Officer, an officer or an employee of the Commission was, immediately before his appointment, an officer of the Public Service, his service as an employee of the Commission shall be counted as service in the Public Service for the purpose of determining his rights (if any) in respect of—
  - (a) leave of absence on the grounds of illness; and
  - (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

##### **23. Contracts of Employment.**

(1) The Chief Executive Officer, and such other officers and employees of the Commission as the Commission may approve, shall be employed under, and, subject to the *Salaries and Conditions Monitoring Committee Act 1988*, hold office in accordance with the terms and conditions of, written contracts of employment.

- (2) A contract of employment—
  - (a) in the case of the Chief Executive Officer, shall be executed by the Head of State, acting on advice, and by the Chief Executive Officer; and
  - (b) in the case of an officer or employee, shall be executed by the Chief Executive Officer on behalf of the Commission, and by the officer or employee concerned.

#### **24. Conditions of Employment of other officers.**

Subject to the *Salaries and Conditions Monitoring Committee Act* 1988, an officer or employee of the Commission to whom Section 23 does not apply, holds office on such terms and conditions as the Commission determines.

#### **25. Temporary and casual employees.**

(1) The Chief Executive Officer may appoint such temporary and casual employees as are necessary for the purposes of the Commission.

(2) An employee appointed under Subsection (1) shall be employed on such terms and conditions as the Commission determines.

#### **26. Consultants.**

The Commission may, from time to time—

- (a) after consultation with—
  - (i) the Minister responsible for the Commission; and
  - (ii) the Departmental Head of the Department responsible for personnel matters; and
- (b) within the limit of funds lawfully available for the purpose,

employ such consultants as, in the opinion of the Commission, are necessary for purposes of the Commission.

### **PART V.—MISCELLANEOUS.**

#### **27. Immunity.**

An action or proceeding, civil or criminal, does not lie against a member of the Commission for, or in respect of, an act or thing done in good faith by the member of the Commission in his capacity as a member of the Commission.

#### **28. Reports.**

- (1) The Commission shall furnish to the Minister—
  - (a) by 31 March in each year, a report on the progress and the performance of the Commission in relation to its functions for the year ending 31 December preceding; and
  - (b) such other reports in relation to the functions of the Commission as are requested by the Minister.
- (2) As soon as is practicable, after he has received the report referred to in

Subsection (1)(a), the Minister shall—

- (a) forward the report to the Speaker for presentation to the Parliament; and
- (b) give copies of the report to other relevant Ministries, Departments and Statutory Authorities and the Provincial Governments and Local-level Governments concerned.

**29. Regulations.**

The Head of State, acting on advice, may make regulations, 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 or giving effect to this Act.

**SCHEDULE 1.**

Form

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***National Economic and Fiscal Commission Act 1996.***

Act, Sec. 10.

**DECLARATION BY A MEMBER.**

I, .....do solemnly and sincerely promise and declare that, according to the best of my skill and ability, I will faithfully, impartially and truly execute the Office and perform the duties of the Chairman/Deputy Chairman/a member\* of the National Economic and Fiscal Commission.

\* Delete whichever is inapplicable.

**SCHEDULE 2.**

Form

**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

***National Economic and Fiscal Commission Act 1996.***

Act, Sec. 12.

**SUMMONS TO APPEAR.**

TO: .....

YOU are summoned to appear before the National Economic and Fiscal Commission on .....20....., at .....a.m./p.m. at (insert place), then and thereto give information and then thereto produce (specify the documents required) and you are required to continue in attendance as directed by the Commission or the Chairman of the Commission until your attendance is no longer required.

Date: \_\_\_\_\_

**CHAIRMAN**