

No. 10 of 2007.

Employment of Non-Citizens Act 2007.

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Employment of Non-Citizens Act 2007.

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No. of 2007.

AN ACT

entitled

Employment of Non-citizens Act 2007,

Being an Act to -

- (a) provide for the regulation and control of non-citizens employed outside of the public sector; and
- (b) repeal the *Employment of Non-citizens Act 1978*; and
- (c) for related purposes.

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.

PART I. – PRELIMINARY.

1. PURPOSE OF ACT.

(1) The purposes 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 unnecessary 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.

2. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3 (*qualified rights*) of the *Constitution*, namely -

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and

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- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and
- (d) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (e) the right to freedom of movement conferred by Section 52 of the *Constitution*,

is a law that is made for the purposes of complying with Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and Basic Social Obligations and of giving effect to the public interest in public welfare.

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

3. INTERPRETATION.

- (1) In this Act, unless the contrary intention appears -
- "authorised officer" means an officer appointed under Section 47;
 - "bridging work permit" means a work permit granted under Section 23;
 - "child" means a legitimate or legitimated child or step-child, or in relation to its mother an illegitimate child, and includes an adopted child;
 - "commercial" means wholly or primarily for profit;
 - "dependent" means, in relation to a person, the spouse of that person not living apart from that person under a decree of court or a deed of separation and an unmarried child of that person under the age of 21 years;
 - "employee" means a non-citizen employed in accordance with this Act;
 - "employer" means a person by whom an employee is employed;
 - "employer's register" means a register kept by an employer under Section 39;
 - "employment" includes -
 - (a) employment under a contract of service; or
 - (b) services provided under a contract for service (including consultancy arrangements); or
 - (c) self-employment; or
 - (d) voluntary employment (including for a religious, charitable organization or non-government organisation); or
 - (e) temporary, part-time and casual employment; and
 - "employ" and "work" have the corresponding meaning;
 - "exemption" means an exemption under Section 51 of this Act; and
 - "exempt" has a corresponding meaning;
 - "general work permit" means a work permit granted under Section 22 or renewed under Section 26;
 - "National Training Council" means the body established under Section 3 of the *National Training Council Act 1991*;
 - "non-citizen" means a person other than an automatic citizen or a

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- naturalized citizen;
- "occupation" means any profession, art, business, trade, calling, following or occupation (including service for a religious or charitable organization) in which a person is or may be engaged;
- "place of origin" means a town or city in a country to which a non-citizen has right of entry and residence;
- "prescribed" means prescribed by the Regulations made under this Act;
- "proficient" means able to speak and understand sufficiently for normal conversational purposes;
- "renewal" means the renewal of a work permit concerning the same employee, the same employer and the same occupation;
- "register" means the register of work permits kept by the Secretary under Section 37;
- "self-employed" means engaged in an occupation but not employed by an employer;
- "spouse" means the husband or wife of that person and includes a de facto husband or wife;
- "the secretary" means the Head of Department administering this Act;
- "this Act" includes the Regulations made under this Act;
- "volunteer" means wholly or primarily for reward other than profit, and;
- "voluntary" has a corresponding meaning;
- "volunteer work permit" means a work permit granted under Section 22 or renewed under Section 26;
- "work permit" means -
 - (a) a general work permit granted under Section 7(1)(a); or
 - (b) a volunteer work permit granted under Section 7(1)(b); or
 - (c) a bridging work permit granted under Section 7(1)(c).

(2) For the purposes of this Act, a non-citizen or self-employed non-citizen is to be deemed to be employed in the country notwithstanding that the employment is carried on partly within and partly outside the country.

4. **ACT BINDS THE STATE.**

This Act binds the State.

5. **APPLICATION.**

- (1) The Act does not apply to a non-citizen who is -
- (a) employed within a Public Authority as defined in the *Public Employment (Non-citizens) Act 1978*; or
 - (b) employed as official personal staff under the *Official Personal Staff Act 1980*; or
 - (c) employed within the Diplomatic Corps (other than those non-citizens engaged locally) who are covered by the *Diplomatic and Consular Privileges and Immunities Act 1975*; or
 - (d) employed by organizations granted designated aid status under the *Aid Status (Privileges and Immunities) Act 1977* (other than those non-citizens engaged locally); or

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(e) granted a Resident (Long Term) entry permit under the *Migration Act 1978*.

(2) This Act does not apply to an employer or employees exempted from all of the provisions of this Act under Section 51.

PART II. – EMPLOYMENT PROHIBITED WITHOUT VALID WORK PERMIT.

6. PROHIBITION OF EMPLOYMENT WITHOUT VALID WORK PERMIT.

(1) A person who employs a non-citizen in an occupation is guilty of an offence, unless a work permit has been granted to that employer in respect of that non-citizen and that occupation, and the work permit is still valid in respect of that non-citizen and that occupation.

Penalty: A fine not exceeding K20,000.00.

(2) A non-citizen who is employed by a person in an occupation is guilty of an offence, unless a work permit has been granted to that employer in respect of that non-citizen and that occupation, and the work permit is still valid in respect of that non-citizen and that occupation.

Penalty: A fine not exceeding K10,000.00.

(3) A self employed non-citizen who is employed in an occupation is guilty of an offence, unless a work permit has been granted to that non-citizen in respect of that occupation, and the work permit is still valid in respect of that non-citizen and that occupation.

Penalty: A fine not exceeding K10,000.00.

PART III. – TYPES, PURPOSE, TERM AND LIMITATIONS OF WORK PERMITS.

7. TYPES OF WORK PERMITS.

(1) A work permit may be –
(a) a general work permit; or
(b) a volunteer work permit; or
(c) a bridging work permit.

(2) The Regulation shall prescribe the forms of the work permits.

8. PURPOSE OF WORK PERMITS.

(1) A general work permit is to be granted for work of a commercial nature.

(2) A volunteer work permit is to be granted for work of a voluntary nature.

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(3) A bridging work permit is to be granted for the purpose specified in Section 23.

9. TERM OF WORK PERMITS.

(1) A work permit, except a bridging work permit, may be granted for a short term or for a long term.

(2) A short term work permit may be granted for a period of up to 6 months from the date it is granted by the Secretary.

(3) A long term work permit may be granted for a period from 6 months up to 5 years from the date it is granted by the Secretary.

(4) A bridging work permit may be granted for a period of up to 60 days from the date it is granted by the Secretary.

10. WORK PERMIT LIMITED TO SPECIFIED OCCUPATION, ETC.,

(1) A work permit allows -

- (a) a specified employer to employ a specified non-citizen in a specified occupation; or
- (b) a specified self-employed non-citizen to engage in a specified occupation.

(2) A work permit is not transferable in respect of the employer or the non-citizen, or the occupation.

11. WORK PERMITS MAY BE SUBJECT TO CONDITIONS.

(1) A work permit may be subject to such conditions (if any) as are specified in the work permit.

(2) A person who breaches the conditions in a work permit is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

PART IV. - RESERVED AND ADVERTISED OCCUPATIONS, LANGUAGE AND SKILLS REQUIREMENTS, ETC.,

12. OCCUPATIONS RESERVED FOR CITIZENS.

(1) The Regulation may prescribe occupations which are reserved for citizens.

(2) A work permit is not to be granted to a non-citizen in respect of an occupation reserved under Subsection (1).

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13. OCCUPATIONS TO BE ADVERTISED.

(1) The Regulation may prescribe occupations which must be advertised within Papua New Guinea, in relation to which a work permit must be obtained in accordance with this Act.

(2) A work permit shall not be granted to a non-citizen in respect of an occupation prescribed under Subsection (1), until such time as the Secretary is satisfied, that -

- (a) the requirement to advertise referred to in Subsection (1) has been complied with; and
- (b) there is no suitable citizen who can be employed in the occupation.

14. REVIEW OF RESERVED AND ADVERTISED OCCUPATIONS.

(1) The Secretary shall, on or before the expiration of two years from the date of coming into operation of this Act, and from time to time as the Secretary thinks fit, review the lists of prescribed occupations under Sections 12 and advertised occupations under Section 13.

(2) When conducting the review under Subsection (1), the Secretary shall consult with the National Training Council.

(3) Following a review under Subsection (1), the Secretary is to recommend to the Minister any additions or variations to, or deletions from, the lists of occupations prescribed under Sections 12 and advertised occupations under Section 13.

(4) Where a non-citizen has been employed in an occupation in relation to which a work permit is still valid, and that occupation -

- (a) becomes a reserved occupation under Section 12; or
- (b) must be or has been advertised under Section 13,

the non-citizen may continue to be employed in that occupation until the expiration of the work permit, notwithstanding that the occupation has become reserved or must be or has been advertised.

15. GENERAL REQUIREMENTS AS TO SKILLS.

(1) Where, in the opinion of the Secretary, it is necessary for an employee to possess certain qualifications, skills and experience in respect of a particular type of occupation, the Secretary may direct that the employee give evidence of those qualifications, skills and experience prior to the granting of a work permit.

(2) The Regulation may prescribe certain requirements as to qualifications, skills, and experience for occupations.

16. PROFESSIONAL REGISTRATION.

Where it is necessary by law for an employee to register with a professional body in order for the employee to be employed in a particular occupation, the Secretary shall

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not grant a work permit in respect of that employee and that occupation, until such time as written proof of registration has been provided.

17. LANGUAGE REQUIREMENTS.

(1) The Secretary may not grant a work permit unless the Secretary is satisfied that a non-citizen is proficient in English, *Pisin* or *Hiri Motu*.

(2) Notwithstanding Subsection (1), the Secretary may grant a work permit to a non-citizen who does not have the required language proficiency if, in the opinion of the Secretary, there is good cause or it is in the national interest to grant the work permit.

(3) The Regulation may prescribe further matters in relation to language requirements.

PART V. – APPLICATION FOR WORK PERMITS, ETC.,

18. APPLICATION FOR WORK PERMIT.

(1) An employer, prior to engaging a non-citizen in any occupation, shall make an application for a work permit.

(2) A self-employed non-citizen, before commencing in any occupation, shall make an application for a work permit.

19. NON-CITIZEN MUST BE OUTSIDE OF THE COUNTRY.

(1) Subject to Subsection (2), a work permit shall not be granted unless the non-citizen, or self-employed non-citizen, is outside of Papua New Guinea at the time of granting of the work permit.

(2) Notwithstanding Subsection (1) -

- (a) if there is a valid work permit in respect of a non-citizen or a self employed non-citizen; and
- (b) an application for another work permit has been made in respect of that non-citizen or self-employed non-citizen,

a work permit may be granted irrespective of whether or not the non-citizen or self-employed non-citizen is inside or outside of Papua New Guinea.

20. APPLICATION MADE IN PRESCRIBED MANNER.

(1) An application for a work permit shall -

- (a) be in the prescribed form; and
- (b) contain the prescribed particulars; and
- (c) be accompanied by such documents as are prescribed; and
- (d) be accompanied by a notification of the place of origin, to which place the employer is liable, under Part X, for the for repatriation of the non-citizen and his or her dependents on the termination of the employment of the non-citizen; and
- (e) be accompanied by the prescribed non-refundable fee.

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(2) In considering an application for a work permit, the Secretary may request the application provide such further or better particulars and documentation as the Secretary considers necessary.

21. COMPLETE AND CORRECT APPLICATION.

An application for a work permit is deemed to be made only when the Secretary accepts the application as complete and correct.

PART VI. – GRANTING OF WORK PERMITS.

22. SECRETARY TO GRANT WORK PERMIT.

(1) The Secretary 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 Secretary 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 Secretary 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 Secretary 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 Secretary as is appropriate.

(7) The Secretary shall comply with a direction given by the Minister under Subsection (6)(c).

23. BRIDGING WORK PERMIT.

(1) Where -

- (a) a valid work permit is about to expire; and
- (b) the -

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- (i) non-citizen is to be employed in a different occupation or by a different employer; or
- (ii) self-employed non-citizen is to be engaged in a different occupation; and
- (c) the application for another work permit has not been determined; and
- (d) the delay in determining the application has not been caused by the applicant; and
- (e) without a work permit, the non-citizen or self-employed non-citizen would be required under Section 19(1) to be outside of Papua New Guinea,

the Secretary may grant a bridging work permit to the applicant.

(2) A bridging work permit shall be in the prescribed form and subject to such conditions as are specified in the work permit.

PART VII. – RENEWAL OF WORK PERMITS.

24. RENEWAL OF WORK PERMITS.

(1) The employer of a non-citizen, or a self-employed non-citizen, may apply to the Secretary for renewal of a work permit.

(2) The application for renewal shall be made prior to the expiration of the work permit.

25. APPLICATION FOR RENEWAL IN PRESCRIBED MANNER.

- (1) An application for renewal shall –
- (a) be in the prescribed form; and
 - (b) contain the prescribed particulars; and
 - (c) be accompanied by such documents as are prescribed; and
 - (d) be accompanied by a notification of the place of origin, to which place the employer is liable, under Part X, for the repatriation of the non-citizen and his or her dependents on the termination of the employment of the non-citizen; and
 - (e) be accompanied by the prescribed non-refundable fee.

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

26. SECRETARY MAY GRANT APPLICATION FOR RENEWAL.

(1) In considering an application for renewal, the Secretary 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

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(c) any other matters the Secretary 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 Secretary 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
 - (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 Secretary 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 Secretary in writing of the decision and of the reasons for the decision; and
- (c) when granting an appeal give such direction to the Secretary as is appropriate.

(7) The Secretary shall comply with a direction given by the Minister under Subsection (6)(c).

27. WORK PERMIT EXPIRES PRIOR TO RENEWAL.

Where -

- (a) an application for a renewal of a work permit has been made; and
- (b) the application for the renewal has not been determined before the expiry date of the work permit,

the work permit remains valid for 60 days from the date of expiry of the work permit, or until the application is determined, whichever occurs first.

28. COMPLETE AND CORRECT APPLICATION.

An application for renewal is deemed to be made only when the Secretary accepts the application as complete and correct.

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PART VIII. – CANCELLATION ETC., OF WORK PERMITS.

29. VALID ENTRY PERMIT.

A work permit becomes invalid, and ceases to have any effect, if the non-citizen or self-employed non-citizen ceases to be the holder of a valid entry permit under the *Migration Act 1978*.

30. CONTINUING EMPLOYMENT.

A work permit becomes invalid, and ceases to have any effect, if the employment of the non-citizen is terminated for any reason.

31. CANCELLATION OF WORK PERMITS.

(1) Where the Secretary 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 Secretary may cancel the work permit.

(2) Where it is proposed to cancel a work permit under Subsection (1), the Secretary 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 Secretary'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 Secretary as to why the work permit should not be cancelled.

(3) The Secretary 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 Secretary is satisfied that 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 Secretary to cancel a work permit may, within 14 days of receipt of the notice of refusal, appeal the Minister.

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- (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 fee.

(7) The Minister shall obtain the recommendation of the Secretary in respect of the appeal and consider the merits of the appeal and within 28 days of receipt of the appeal -

(8) The Secretary shall comply with a direction given by the Minister under Subsection (7)(c).

32. TERMINATION OF EMPLOYMENT.

(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 Secretary that -

- (a) the non-citizen ceases to be the holder or 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 Secretary of that termination within 14 days of the termination of employment.

(3) The termination of the employment of a non-citizen under Subsection (1) shall not be -

- (a) capable of negotiation with an industrial organization representing the non-citizen;
- (b) a matter in respect of which any form of industrial action may be taken by that industrial organization; or
- (c) the subject of a trade dispute or of conciliation proceedings or any method of redress; or
- (d) an industrial matter within the meaning of the *Industrial Organizations Act 1962*.

33. REVOCATION AND VARIATION OF CONDITIONS, ETC.,

(1) The Secretary 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 Secretary 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 Secretary's intention to take such action and the reasons for the intended action; and

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- (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 Secretary as to why the action should not be taken.

(3) The Secretary 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 Secretary 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 Secretary 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 Secretary in writing of the decision and of the reasons for the decision; and

PART IX. – WORK PERMIT AND WORK PERMIT CARD.

34. WORK PERMIT AND WORK PERMIT CARD.

(1) Where the Secretary grants an application under Parts VI and VII the Secretary 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.

(2) Where the Secretary grants an application under Parts VI and VII the Secretary 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.

35. PRODUCTION OF WORK PERMIT AND WORK PERMIT CARD.

(1) A work permit and work permit card shall be produced by the employer or the non-citizen employee or the self-employed non-citizens, as the case may be, when required to do so by an authorized officer.

(2) A person who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

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36. RETURN OF WORK PERMIT AND WORK PERMIT CARD.

(1) If a work permit is cancelled or the employment is terminated, the employer and the non-citizen employee, and the self-employed non-citizen, as the case may be, shall return the work permit or work permit card, as the case may be, to the Secretary within 14 days of the cancellation or termination.

(2) A person who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

37. REGISTER OF WORK PERMITS.

(1) The Secretary shall keep or cause to be kept, a register to be known as the Register of Work Permits, into which shall be entered particulars of -

- (a) every work permit and work permit card issued under Section 34; and
- (b) every work permit cancelled under Part VIII; and
- (c) such other particulars as are prescribed.

(2) The Register of Work Permits, or a document purporting to be, or to be a copy of, or an extract from, the Register of Work Permits kept under Subsection (1) is *prima-facie* evidence of the matter contained in it.

38. DUPLICATE WORK PERMIT AND WORK PERMIT CARD.

(1) Where the Secretary is satisfied that a work permit or work permit card has been lost, defaced, or destroyed, the Secretary 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 Secretary of the work permit or work permit card.

(2) A duplicate shall be signed by the Secretary and endorsed as a duplicate work permit or work permit card.

39. EMPLOYER'S REGISTER.

(1) Every employer shall keep or cause to be kept in the prescribed manner at the employer's sole or principal place of business a register of non-citizen employees in respect of whom a work permit has been granted under Parts VI and VII.

(2) The employer's register shall contain -

- (a) all current work permits granted in respect of non-citizen employees employed by the employer; and
- (b) any notice of cancellation of a work permit Part VIII; and
- (c) any other prescribed information.

(3) The Secretary, or an authorised officer may at any reasonable time enter any premises and inspect an employer's register.

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(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 Secretary or an authorised officer is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

PART X. – REPATRIATION.

40. REPATRIATION ON TERMINATION OF CONTRACT.

If the employment of a non-citizen is terminated for any reason, including but not limited to, termination by -

- (a) the employer; or
- (b) the non-citizen; or
- (c) agreement between the parties; or
- (d) expiration of the employment contract; or
- (e) reason of the inability of the employee to comply with the provisions of the employment contract on account of illness or accident; or
- (f) death of the non-citizen; or
- (g) cancellation of the work permit under Section 31,

the employer, at the time of termination, shall be responsible for the expenses of repatriation of the non-citizen to the place of origin.

41. REPATRIATION BY LAW.

Every non-citizen who is employed in Papua New Guinea and who is ordered to leave Papua New Guinea in accordance with the provisions of any law for the time being in force in Papua New Guinea, shall be repatriated at the expense of the employer, at the time of the order, to the place of origin.

42. REPATRIATION OF DEPENDENTS.

If any dependent of any non-citizen has been brought to the place of employment by the employer or by any person acting on behalf of the employer, such dependent shall be repatriated to the place of origin at the expense of the employer when the non-citizen is repatriated

43. EXPENSES OF REPATRIATION.

(1) The expenses of repatriation includes reasonable traveling, subsistence and accommodation expenses –

- (a) between the date of termination of the employment and the date of repatriation; and
- (b) during the journey to the place of origin.

(2) If a non-citizen or any dependant of a non-citizen dies during the period of employment, or before completion of repatriation under this Act, the employer shall pay the reasonable expenses of all services necessary for the preparation and transportation of the deceased's body to the place of origin.

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44. STATEMENT OF ARRANGEMENT FOR REPATRIATION.

Where a non-citizen and the non-citizen's accompanying dependents are entitled to repatriation, the employer shall, as soon as practicable after the termination of the contract, present to the Secretary a statement in the prescribed form setting out the arrangements made for the repatriation of the non-citizen and the non-citizen's accompanying dependants.

45. DISCHARGE OF REPATRIATION OBLIGATIONS.

If the employer fails to fulfill the employer's obligation in respect of repatriation, that obligation shall be discharged by or under the directions of the Minister and any sum so expended may be recovered from the employer as a debt due to the State and, notwithstanding any law to the contrary, shall be a first charge on the property of the employer.

46. REPATRIATION OFFENCE.

A person who fails to comply with this Part is guilty of an offence.

Penalty: A fine not exceeding K10,000.00.

PART XI. – AUTHORISED OFFICERS, ETC.,

47. APPOINTMENT OF AUTHORISED OFFICERS.

The Secretary may, by notice in the National Gazette, appoint persons to be authorised officers for the purpose of this Act.

48. POWERS OF AUTHORISED OFFICERS.

- (1) An authorised officer may at all reasonable times –
- (a) enter and inspect any premises, place, aircraft, vehicle or vessel on or in which there is employed, or the authorised officer reasonably believes to be employed, a non-citizen to whom this Act applies; and
 - (b) examine any work done by the non-citizen and inspect any machinery, equipment and facilities the authorised officer considers necessary in order to ascertain whether the provisions of this Act have been complied with; and
 - (c) require any person to give any information or to answer any question relating to the employment of the non-citizen to whom this Act applies; and
 - (d) require any person to produce any register, record, notice, list, contract or other document (including passport) which is in the person's possession or custody or under the control of such person and require any person to give an explanation of any entry therein; and
 - (e) examine and copy any, or any part of, such register, record, notice, list, contract or other document (including passport) which appears to the authorised officer to have relevance to the

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authorised officer's to have relevance to the authorised officer's inspection or enquiry.

(2) An authorised officer exercising or intending to exercise any of the powers under this section shall, when requested, produce written evidence of this or her appointment as an authorised officer.

(3) An authorised officer entering any premises under Subsection (1) may be accompanied, if necessary, by an interpreter.

(4) Any person who -

- (a) refuses or fails without reasonable cause (proof of which is on the person), to give any information or to produce any register, record, notice, list, contract or other document, or who gives any information that the person knows to be false in any material particular when required to do so under Subsection (1); or
- (b) hinders or obstructs an authorised officer in the exercise or performance of the authorised officer's powers or functions under this Act; or
- (c) impersonates an authorised officer,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months.

49. IMUNITY OF AUTHORISED OFFICERS.

An authorised officer is not liable for any damage occasioned by carrying out the provisions of this Act unless the damage was occasioned maliciously or without reasonable cause.

PART XII. – WORK PERMIT TRUST ACCOUNT.

50. WORK PERMIT TRUST ACCOUNT.

(1) The Work Permit Trust Account established under Section 22 of the repealed *Employment of Non-citizens Act 1978* continues in existence under that name.

(2) There shall be paid into the Work Permit Trust Account 50% of all fees and penalties paid under this Act.

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

(4) Payments made out of the Work Permit Trust Account, which are not for the purposes of improving and making more effective the administration and implementation of this Act, shall require the prior written approval of the Departmental Head of the Department responsible for treasury matters.

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- (5) The Work Permit Trust Account shall be administered by the Secretary who shall -
- (a) authorize 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.

PART XIII. – MISCELLANEOUS.

51. EXEMPTION.

- (1) The Minister, acting on the advice of the Secretary, may by notice published in the National Gazette, exempt –
- (a) an employee, or class of employees; or
 - (b) a self-employed non-citizen, or class of self-employed non-citizens; or
 - (c) an employer, or class of employers,
- from all or any of the provisions of this Act.

(2) An exemption under Subsection (1) may be made unconditionally or subject to such conditions as are specified in the notice.

(3) A notice under Subsection (1) shall state the reasons for the exemption.

52. GOOD CORPORATE CITIZENS OF PAPUA NEW GUINEA.

(1) The Minister, acting on the advice of the Secretary, may declare by notice in the National Gazette an employer to be a Good Corporate Citizen of Papua New Guinea.

(2) The Regulation may prescribe benefits for a Good Corporate Citizen which shall not be inconsistent with the provisions of this Act.

53. DELEGATION.

(1) Subject to Subsection (2), the Secretary may be writing, delegate to an officer all or any of Secretary's powers, functions and duties under this Act (except this power of delegation).

(2) The Secretary shall not delegate the power under Part VIII to cancel a work permit.

54. COMPLIANCE WITH LAW.

(1) A work permit granted under this Act does not of itself relieve an employer or a non-citizen from compliance with any other law.

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(2) An employer or a non-citizen who is granted a work permit under this Act shall comply with any other law applying to the non-citizen and employer and such compliance is deemed to be a condition of every work permit granted under this Act.

55. GUIDELINES.

The Secretary may, by written notice, issue guidelines, not inconsistent with this Act, for the benefit of employers or self-employed persons seeking to make application for work permits.

56. OFFENCES BY OFFICERS OF A COMPANY.

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, the person, as well as the corporation, shall be deemed to have committed the offence.

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.

Penalty: A fine not exceeding K1,000.00.

58. INFRINGEMENT NOTICES.

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

(2) an infringement notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the amount specified in the notice which must not exceed the maximum penalty specified by this Act or the Regulation for the offence.

(3) The Regulation shall prescribe further matters or particulars in relation to the infringement notices.

59. INSTITUTION OF PROSECUTION OR PROCEEDINGS.

(1) Subject to the approval of the Public Prosecutor, the Secretary or any officer authorised by the Secretary, 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 shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Secretary.

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- (3) Production of written evidence purporting -
 - (a) to be signed by the Secretary; and
 - (b) to authorize 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 Secretary.

- (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.

60. VERIFICATION OF STATEMENTS.

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

61. REGULATION.

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make Regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that the necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing -

- (a) different fees for different types of work permits; and
- (b) penalties of fines not exceeding K5,000.00 for any offence against the Regulation.

PART XIV. – REPEAL, SAVING AND TRANSITIONAL PROVISIONS.

62. REPEAL.

The *Employment of Non-citizens Act 1978* is hereby repealed.

63. SAVING OF REGULATIONS.

A Regulation made under the repealed Act, to the extent that it -

- (a) was in operation immediately before the coming into operation of this Act; and
- (b) is not inconsistent with this Act,

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is, on that coming into operation, saved and continued in operation as if it was a Regulation made under this Act until such time as it is repealed or replaced by a Regulation made under this Act.

64. SAVING OF WORK PERMITS AND APPLICATIONS.

(1) All work permits made or granted under the repealed Act, to the extent that they -

(a) were in operation immediately before the coming into operation of this Act; and

(b) are not inconsistent with this Act,

are, on that coming into operation, saved and continue in operation, as if they were work permits granted under this Act, until they expire or are otherwise terminated according to law.

(2) An application for a work permit made under the repealed Act, and is pending immediately before the coming into operation of this Act, shall continue to be dealt with in accordance with the repealed Act as if the repealed Act is still in operation.

(3) A work permit granted in accordance with Subsection (2) shall be deemed to be a work permit granted under this Act.

65. REFERENCES TO FORMER ACT, ETC.,

A reference in any law or in any instrument to the repealed Act or a provision of the repealed Act shall, on and after the coming into operation of this Act, unless the context otherwise requires, be read and construed as a reference to this Act or to the corresponding provision of this Act.

66. ACTIONS NOT TO ABATE.

Where immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by or against a person or body under the repealed Act, it -

(a) does not, on the commencement of this Act, abate or discontinue or in any way be affected by a provision of this Act; and

(b) may be prosecuted, continued and enforced by, against or in favour of the person or body as if this Act had not been made.

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I hereby certify that the above is a fair print of the ***Employment of Non-citizens Act 2007*** which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the ***Employment of Non-citizens Act 2007*** was made by the National Parliament on 25 April 2007 by an absolute majority in accordance with the ***Constitution***.

Speaker of the National Parliament.