

No. 29 of 2014.

Papua New Guinea Customs Service Act 2014.

Certified on : **21 OCT 2014**



No. 29 of 2014.

Papua New Guinea Customs Service Act 2014.

ARRANGEMENT OF SECTIONS.

PART I. - PRELIMINARY.

1. Compliance with constitutional requirements.
2. Interpretation.
 - “Chief Commissioner”
 - “Commissioners”
 - “Customs Council”
 - “Customs Law”
 - “duty revenue”
 - “expenses”
 - “financial year”
 - “General Orders”
 - “income”
 - “interim staff”
 - “officer”
 - “orders”
 - “Papua New Guinea Customs Service”
 - “public moneys”
 - “revenue laws”
 - “staff of the Papua New Guinea Customs Service”
 - “this Act”.
3. Act binds the State.
4. Functions and roles of the Minister.

PART II. - THE PAPUA NEW GUINEA CUSTOMS SERVICE AND GOVERNANCE.

Division 1. - Papua New Guinea Customs Service.

5. Establishment of the Papua New Guinea Customs Service.
6. Powers and Functions of the Papua New Guinea Customs Service.
7. The Papua New Guinea Customs Service not a Department.

Division 2. - Establishment of the Customs Council.

8. Establishment of the Customs Council.
Papua New Guinea Customs Service
9. Powers and Functions of the Customs Council.
10. Administrative orders.

Division 3. - Procedures of the Customs Council.

11. Meetings of the Customs Council.
12. Disclosure of interest.
13. Establishment of Committees.
14. Indemnity of Members.
15. Validity of conduct of the Customs Council.

Division 4. - Management of the Papua New Guinea Customs Service.

Subdivision A. - Chief Commissioner of Customs and Commissioners of the Papua New Guinea Customs Service.

16. Chief Commissioner of Customs of Papua New Guinea Customs Service.
17. Substantive vacancy in the office of the Chief Commissioner of Customs.
18. Commissioners.
19. Merit based appointment process.

Subdivision B. - Functions of the Chief Commissioner of Customs and the Commissioners.

20. Functions of the Chief Commissioner of Customs.
21. Annual Report.
22. Delegation.
23. Resignation from Office.
24. Functions of the Commissioners.

Subdivision C. - General Conditions as to Employment of the Chief Commissioner of Customs and the Commissioners.

25. Qualifications for Appointment.
26. Disqualification from office.
27. Special conditions of employment.
28. Temporary vacancy in the office of the Chief Commissioner of Customs and the Commissioners.

PART III. - STAFF OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

29. Staff of the Papua New Guinea Customs Service.
30. Temporary and casual staff.
31. Consultants.
32. Prior service.

PART IV. - FINANCIAL PROVISIONS.

33. Funds of the Papua New Guinea Customs Service.
34. Appropriation of revenue towards funds of the Papua New Guinea Customs Service.
35. Expenditure.
36. Bank accounts.
37. Accounting records.
38. Customs duty revenue accounts.
39. Application of *Public Finances (Management) Act 1995*.
40. Liability to taxation, etc.
41. Audit and application of the *Audit Act 1989*.
42. Financial orders.

PART V. - MISCELLANEOUS.

43. Chief Commissioner of Customs and Commissioners.
44. Interim staff.
45. Application of acts and other documents.
46. References to Minister, Chief Commissioner of Customs and Officers.
47. Application of Audit Committee.
48. No effect on previous acts and decisions.
49. Actions, etc., not to abate.
50. Transfer of assets.
51. Saving of contracts, etc.
52. Transfer of appropriated monies.
53. Exemption from transfer taxes, duties and fees.
54. Amendment of other Act.

PART VI. - TRANSITIONAL AND SAVINGS.

55. Protection from personal liability.
56. Confidentiality.
57. No proceedings against the Papua New Guinea Customs Service as an agent of the State.
58. Regulations.



No. of 2014.

An Act

entitled

Papua New Guinea Customs Service Act 2014,

Being an Act to provide for the establishment of the Papua New Guinea Customs Service and to define its powers and functions and 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. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act to the extent that it regulates or restricts the exercise of any one or more of the following rights or freedoms 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*;
- (b) the right to freedom of expression conferred by Section 46 of the *Constitution*;
- (c) the right to freedom of employment conferred by Section 48 of the *Constitution*;
- (d) the right to privacy conferred by Section 49 of the *Constitution*;
- (e) the right to freedom of information conferred by Section 51 of the *Constitution*;
- (f) the right to freedom of movement conferred by Section 52 of the *Constitution*;
- (g) the equality of citizens conferred by Section 55 of the *Constitution*,

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

(2) 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.

(1) In this Act, unless the contrary intention appears -

“Chief Commissioner of Customs” means -

(a) the Chief Commissioner of Customs of the Papua New Guinea Customs Service appointed under Section 16, and includes any person acting in that capacity; and

(b) any reference to the Commissioner of Customs, Chief Collector or Collector of Customs in any customs law and revenue law;

“Commissioners” means the Commissioners appointed under Section 18, and includes any person acting in that capacity;

Papua New Guinea Customs Service

- “Customs Council” means the governing body of the Papua New Guinea Customs Service established under Section 8;
- “Customs law” means this Act and the customs-related laws as defined under the **Customs Act 1951** and includes such other legislation concerning customs as the Parliament may enact which is administered by the Chief Commissioner of Customs;
- “duty revenue” means duty as defined under the **Customs Act 1951**, including any taxes, duties, charges, levies, fees, fines, penalties, or interests imposed by any other customs law or revenue law that the Chief Commissioner of Customs administers, and such other legislation concerning duty revenue as the Parliament may enact which is administered by the Chief Commissioner of Customs;
- “expenses” means the expenditures of the Papua New Guinea Customs Service established under Section 35;
- “financial year” refers to the Papua New Guinea Customs Service’s financial year, which shall be a calendar year commencing on the 1st day of January and ending on the 31st day of December each year;
- “General Orders” means the General Orders of the National Public Service in force at the date of coming into operation of this Act and may be deemed to be applicable as the administrative orders made by the Customs Council pursuant to this Act;
- “income” means the funds of the Papua New Guinea Customs Service under Section 33;
- “interim staff” means any staff member or members who by virtue of this Act are transferred from the National Public Service and become interim staff under Section 44;
- “officer” means a member of the staff of the Papua New Guinea Customs Service, including any casual or temporary staff, persons on secondment or attachment, or person under any exchange program;
- “orders” means the administrative orders made under Section 10;
- “Papua New Guinea Customs Service” means the Papua New Guinea Customs Service established under Section 5 of this Act;
- “public moneys” means the public moneys as defined under the **Public Finances (Management) Act 1995**;
- “revenue laws” means any of the laws relating to duty as defined under the **Customs Act 1951**, or any other taxes, charges, levies and penalties that the Chief Commissioner of Customs administers, and such other legislation concerning revenue as the Parliament may enact which is administered by the Chief Commissioner of Customs;
- “staff of the Papua New Guinea Customs Service” means a person employed with the Papua New Guinea Customs Service including any casual or temporary staff, persons on secondment or attachment, or persons under any exchange program;
- “this Act” includes any regulations made under it;

- (2) A reference in this Act to any other Act includes -
- (a) any regulation made under that Act; and
 - (b) any Act that is substituted for or that replaces that other Act; and
 - (c) any regulations made under any such substitute or replacement Act.

Papua New Guinea Customs Service

3. ACT BINDS THE STATE.

(1) This Act binds the State.

(2) Where, by or under any other Act, the Head of State, acting on advice of the Minister or the National Executive Council, gives directions as to policy, any such directions given to the Papua New Guinea Customs Service under this Act, shall not be inconsistent with the provisions of this Act and any customs laws, or any other Act the administration of which is the responsibility of the Papua New Guinea Customs Service or the Chief Commissioner of Customs from time to time.

4. FUNCTIONS AND ROLES OF THE MINISTER.

(1) Subject to Subsection (2), the principle functions of the Minister under this Act are -

- (a) to ensure the proper fulfillment of the responsibilities of the State regarding customs; and
- (b) to advise the National Executive Council regarding customs policy and strategies based on advice and recommendations from the Papua New Guinea Customs Service; and
- (c) to give directions to the Papua New Guinea Customs Service on matters or policy pertaining to customs matters to the extent permitted by law; and
- (d) to present the annual report under this Act to Parliament.

(2) The Minister shall not -

- (a) intervene in the determination of any customs duty assessment, customs duty collection, customs duty liability or customs appeal by any importer or exporter or the enforcement of the customs laws which shall be the sole responsibility of the Chief Commissioner of Customs, as mandated under the customs laws, and exercised through the Papua New Guinea Customs Service; or
- (b) interfere with the supervision or direction of the Chief Commissioner of Customs or the Commissioners or in the exercise of their powers, functions, roles, responsibilities and discretions including the day to day management of the Customs Council and the enforcement of the customs laws; or
- (c) interfere with the supervision, appointment or direction of the staff of the Papua New Guinea Customs Service or in the exercise of their powers, functions, roles, responsibilities and discretions including the day to day management of the Papua New Guinea Customs Service and the enforcement of the customs laws.

PART II. - THE PAPUA NEW GUINEA CUSTOMS SERVICE AND GOVERNANCE.

Division 1. - Papua New Guinea Customs Service.

5. ESTABLISHMENT OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

(1) The Papua New Guinea Customs Service is hereby established as a body corporate.

(2) The Papua New Guinea Customs Service -

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may acquire, hold or dispose of real or personal property; and
- (d) may sue or be sued in its corporate name; and
- (e) is capable of performing such acts as bodies corporate may, by law, perform.

Papua New Guinea Customs Service

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Papua New Guinea Customs Service affixed to a document and shall presume that it is duly affixed.

(4) Subject to this Act, the Papua New Guinea Customs Service is a government body and is entitled to the benefit of any immunity or privilege enjoyed by the State under any law.

6. POWERS AND FUNCTIONS OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

(1) The Papua New Guinea Customs Service is the agent of the State on customs matters and shall exercise the functions and perform the duties carried out by the Papua New Guinea Customs Service immediately prior to the commencement of this Act.

(2) The powers and functions of the Papua New Guinea Customs Service are to enable the Chief Commissioner of Customs -

- (a) to administer and enforce the customs laws; and
- (b) to promote compliance with the customs laws; and
- (c) to take such measures as may be required to improve service provided to importers and exporters with a view to improving efficiency and maximising revenue collection; and
- (d) to take such measures as may be required to counteract customs fraud and other forms of duty evasion; and
- (e) to advise the State on matters relating to customs and to liaise with relevant stakeholders on such matters; and
- (f) to represent the State internationally in respect of matters relating to customs; and
- (g) to carry out such functions as are given to the Papua New Guinea Customs Service under this Act or any other law.

(3) Without limiting the generality of Subsections (1) and (2), the powers of the Papua New Guinea Customs Service include -

- (a) entering into contracts; or
- (b) utilising all property of the Papua New Guinea Customs Service, whether moveable or immovable, in the interest of the State and in the better administration of the customs system; or
- (c) engaging in any activity, either alone or in conjunction with other organisations or international agencies, to promote a better understanding of customs; or
- (d) providing technical advice or assistance, including training facilities, to customs authorities of other countries; or
- (e) imposing fees for additional administrative costs incurred; or
- (f) providing training for the staff of the Papua New Guinea Customs Service or to award scholarships or otherwise pay for such training; or
- (g) doing anything incidental to any of its powers.

7. THE PAPUA NEW GUINEA CUSTOMS SERVICE NOT A DEPARTMENT.

Subject to this Act, the Papua New Guinea Customs Service is not a Department of the National Public Service and the provisions of the *Public Services (Management) Act 1995* do not apply to the Papua New Guinea Customs Service.

Papua New Guinea Customs Service

Division 2. - Establishment of the Customs Council.

8. ESTABLISHMENT OF THE CUSTOMS COUNCIL.

(1) There is established a governing body of the Papua New Guinea Customs Service known as the Customs Council.

(2) The Customs Council shall consist of the Chief Commissioner of Customs and the Commissioners.

(3) The Customs Council shall exercise the powers and functions of the Customs Council under this Act.

9. POWERS AND FUNCTIONS OF THE CUSTOMS COUNCIL.

(1) The Customs Council shall -

- (a) determine an overall governance structure for the Papua New Guinea Customs Service; and
- (b) make such orders relating to the general good governance of the Papua New Guinea Customs Service and any other related matter pursuant to this Act; and
- (c) approve strategic plans relating to the operations and administration of the Papua New Guinea Customs Service; and
- (d) monitor the Papua New Guinea Customs Service's performance and compliance in the exercise of its powers and functions; and
- (e) report, subject to the confidential provisions in the customs laws, on the operations of the Papua New Guinea Customs Service to such Audit Committees as established under the *Public Finances (Management) Act 1995*.

(2) The Customs Council has, in addition to the powers otherwise conferred on it by this Act or any other law, the power to do all things necessary or convenient to be done for or in connection with, the performance of its functions.

(3) The powers of the Customs Council do not include the powers of the Chief Commissioner of Customs conferred by the customs laws.

(4) In consistent with Section 20(4), the Commissioners shall not exercise any powers and functions under this section that contravenes a directive of the Chief Commissioner of Customs.

10. ADMINISTRATIVE ORDERS.

(1) The Customs Council shall make such orders for any matters required or permitted by this Act to be made, or that are necessary or desirable to be made, for carrying out or giving effect to this Act for the good governance of and the better management and control of the staff, finances and assets of the Papua New Guinea Customs Service.

(2) The General Orders of the National Public Service shall, on the date of coming into operation of this Act, may be deemed to be applicable and applied as the administrative orders made by the Customs Council pursuant to this Act until such time it is amended and replaced.

Papua New Guinea Customs Service

- (3) Without limiting the generality of Subsection (1), the orders made under this section may relate to any of the following:
- (a) the terms and conditions of the employment of the staff of the Papua New Guinea Customs Service; or
 - (b) the organisation, pay structures and personnel emoluments of the staff of the Papua New Guinea Customs Service; or
 - (c) selection and appointment of staff of the Papua New Guinea Customs Service; or
 - (d) training and career path development for the staff of the Papua New Guinea Customs Service; or
 - (e) criteria and procedures for the disciplining of staff of the Papua New Guinea Customs Service; or
 - (f) codes of ethics and conduct of the staff of the Papua New Guinea Customs Service, including codes relating to the specialised functions of any member or category or group of the staff of the Papua New Guinea Customs Service; or
 - (g) the management, protection and control of the property and assets of the Papua New Guinea Customs Service; or
 - (h) the procedures of the Customs Council; or
 - (i) the reporting requirements of the Customs Council and the Chief Commissioner of Customs; or
 - (j) the financial procedures connected with the expenditure and income of the Papua New Guinea Customs Service; or
 - (k) the tender and procurement procedures of the Papua New Guinea Customs Service.

Division 3. - Procedures of the Customs Council.

11. MEETINGS OF THE CUSTOMS COUNCIL.

- (1) At a meeting of the Customs Council -
- (a) the Chief Commissioner of Customs shall preside; and
 - (b) a quorum includes the Chief Commissioner of Customs and a Commissioner; and
 - (c) all members present are entitled to one vote; and
 - (d) matters arising shall be decided by a majority of the votes of the members present and voting; and
 - (e) in the event of any equality of votes on any matter, the Chief Commissioner of Customs has a casting as well as a deliberate vote.
- (2) The Customs Council shall keep records, minutes and determine its own procedures.

12. DISCLOSURE OF INTEREST.

(1) A member of the Customs Council, who has a direct or indirect interest in a matter being considered or about to be considered by the Customs Council, shall disclose the nature of the interest at a meeting as soon as he is aware of the relevant facts and such a disclosure shall be recorded in the minutes of the meeting.

(2) The member making the disclosure shall be excused from the discussion of the matter and shall not participate in any debate, deliberation, decision or vote of the Customs Council in relation to the matter and shall be disregarded for the purposes of determining whether a quorum is present.

Papua New Guinea Customs Service

13. ESTABLISHMENT OF COMMITTEES.

(1) The Customs Council may establish, vary or terminate such number of committees as it considers necessary to advise it on any matters.

(2) The Customs Council shall appoint persons that it considers necessary to the committees and specify the functions and procedures of a committee and determine appropriate remuneration if required.

14. INDEMNITY OF MEMBERS.

A member of the Customs Council shall not be liable for any actions, suits, proceedings, claims or demands in any jurisdiction arising out of any act, matter of thing done or omission, by that member in good faith and without negligence for the purpose of carrying out or giving effect to this Act.

15. VALIDITY OF CONDUCT OF THE CUSTOMS COUNCIL.

An act or decision of the Customs Council is not invalid by reason of -

- (a) a defect or irregularity in, or in connection with, the appointment or removal of a member of the Customs Council; or
- (b) a vacancy in, or absence from, an office of the Chief Commissioner of Customs or a Commissioner.

Division 4. - Management of the Papua New Guinea Customs Service.

Subdivision A. - Chief Commissioner of Customs and Commissioners of the Papua New Guinea Customs Service.

16. CHIEF COMMISSIONER OF CUSTOMS OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

(1) There shall be a Chief Commissioner of Customs of the Papua New Guinea Customs Service who shall -

- (a) be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, following a merit-based appointment process pursuant to the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) hold office under a contract of employment for such period, of not less than five years or more than seven years, as the Head of State, acting on advice, determines; and
- (c) subject to this Act, the customs laws or any other law, not otherwise be subject to the direction and control of any person.

(2) The office of the Chief Commissioner of Customs is hereby declared to be an office to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

(3) The salary, allowances and benefits (financial and otherwise) of the Chief Commissioner of Customs shall be determined in accordance with the *Salaries and Remuneration Commission Act 1988*.

17. SUBSTANTIVE VACANCY IN THE OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS.

(1) Where there is a substantive vacancy in the office of the Chief Commissioner of Customs through removal or dismissal under this Act, or expiration of contract, the Head of State shall as soon as practicable appoint a Chief Commissioner of Customs in accordance with this Act.

(2) Where a permanent Chief Commissioner of Customs is yet to be appointed, the Head of State shall appoint a Chief Commissioner of Customs, or appoint a Commissioner to act as the Chief Commissioner of Customs in accordance with this Act.

(3) Where the Chief Commissioner of Customs' employment contract has lapsed, the Chief Commissioner of Customs shall continue to act as the Chief Commissioner of Customs until such time as the Head of State makes an appointment pursuant to Subsection (2), or appoints a substantive Chief Commissioner of Customs in accordance with this Act.

18. COMMISSIONERS.

(1) The Papua New Guinea Customs Service shall have -
(a) a Commissioner responsible for border protection; and
(b) a Commissioner responsible for trade facilitation,
who shall constitute the Commissioners under this Act.

(2) The Commissioners shall -

- (a) be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council, upon recommendation of the Chief Commissioner of Customs, following a merit-based appointment process pursuant to the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*; and
- (b) hold office under a contract of employment for such period, of not less than three years or more than five years, as the Head of State, acting on advice, determines; and
- (c) subject to this Act, the customs laws or any other law, not otherwise be subject to the direction and control of any person.

(3) The office of a Commissioner is hereby declared to be an office to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

(4) The salary, allowance and benefits (financial and otherwise) of the Commissioners shall be determined in accordance with the *Salaries and Remuneration Commission Act 1988*.

19. MERIT BASED APPOINTMENT PROCESS.

For the purpose of Section 13 of the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*, the Departmental Head of the Department responsible for personnel management matters shall co-ordinate the merit-based appointment process in the appointment of the Chief Commissioner of Customs and the Commissioners.

Papua New Guinea Customs Service

Subdivision B. - Functions of the Chief Commissioner of Customs and the Commissioners.

20. FUNCTIONS OF THE CHIEF COMMISSIONER OF CUSTOMS.

(1) The Chief Commissioner of Customs shall manage and perform the functions and exercise the powers and duties conferred on the Chief Commissioner of Customs, the Customs Council and the Papua New Guinea Customs Service under this Act and the customs laws.

(2) The Chief Commissioner of Customs -

- (a) is responsible for the administration and management of the Papua New Guinea Customs Service and its staff; and
- (b) is responsible for the border protection, trade facilitation and collection of customs duties under the customs laws on behalf of the State; and
- (c) is responsible to the Minister for the proper administration and management of the functions and affairs of the Papua New Guinea Customs Service; and
- (d) is responsible to the Minister for the provision of annual reports as required under this Act and the customs laws and such other reports relating to customs or the operations of the Papua New Guinea Customs Service as may be required; and
- (e) may, at such intervals as are required by the Departmental Head of the Department responsible for financial management under Section 50 of the *Public Finances Management Act 1995*, submit to that Departmental Head, a performance and management plan of the Papua New Guinea Customs Service; and
- (f) is responsible for performing such other functions as required of the Customs Council and the Papua New Guinea Customs Service under this Act.

(3) The Chief Commissioner of Customs -

- (a) in performing or exercising any functions or powers under this Act and the customs laws, shall advise the State on matters relating to customs and shall liaise with relevant stakeholders on such matters; and
- (b) has the sole right and responsibility to supervise and direct the Commissioners in the exercise of their functions and duties as the Commissioners; and
- (c) has the entire right and responsibility to supervise, appoint and direct the staff of the Papua New Guinea Customs Service in the exercise of all powers, functions and discretions in respect of the administration and enforcement of this Act and the customs laws, and may delegate this function to a Commissioner or a staff member of the Papua New Guinea Customs Service; and
- (d) shall manage the Papua New Guinea Customs Service and direct its affairs based on the principles of good governance and in good faith to achieve the functions and objectives of the Papua New Guinea Customs Service.

(4) The functions of the Chief Commissioner of Customs include the functions of the Customs Council under this Act for purposes of the administration of this Act.

Papua New Guinea Customs Service

21. ANNUAL REPORT.

The Chief Commissioner of Customs shall within four months after 31 December in each year, furnish to the Minister, for presentation to Parliament, a report on the progress, performance and finances of the Papua New Guinea Customs Service in relation to its functions during the year ended 31 December previously, including but not limited to the following matters:

- (a) the audited financial statements for that year, which may include a formal audit opinion on those financial statements; or
- (b) a disclosure of all funding received by source, and expended by the Papua New Guinea Customs Service by type of expenditure; or
- (c) any orders made by the Customs Council during the year ending 31 December previously; or
- (d) a report on the operation and enforcement of the customs laws including any breaches of the customs laws; or
- (e) the total annual revenue collections in customs duties; or
- (f) the staff and resources; or
- (g) any other information the Customs Council considers relevant.

22. DELEGATION.

(1) The Chief Commissioner of Customs may, by written instrument, delegate to the Commissioners or any other staff of the Papua New Guinea Customs Service any of his powers or functions under this Act, except this power of delegation.

(2) The Customs Council may by unanimous decision and subject to any orders made for the purpose of this section, delegate to any staff of the Papua New Guinea Customs Service, any of its functions and powers under this Act, except this power of delegation.

(3) A delegation under Subsections (1) and (2) -

- (a) may be subject to such conditions or restrictions as are specified in the instrument of delegation; and
- (b) may be specified to be restricted to a particular matter or class of matters; and
- (c) is revocable at will by the Chief Commissioner of Customs or by resolution of the Customs Council in writing; and
- (d) does not affect or prevent the performance of a function or the exercise of a power by the Chief Commissioner of Customs or the Customs Council.

23. RESIGNATION FROM OFFICE.

(1) The Chief Commissioner of Customs may resign from office by giving to the Minister three months' notice in writing of his intention to do so.

(2) The period of three months specified in Subsection (1) is deemed to commence on the twenty-second day after the receipt by the Minister of the notice except where the Minister, acting with, and in accordance with, the advice of a majority of the members of the Appointments Committee, by notice in writing to the member fixes an earlier date for the commencement of that period.

(3) The Chief Commissioner of Customs may withdraw his resignation at any time before the period of three months referred to in Subsection (1) commences.

24. FUNCTIONS OF THE COMMISSIONERS.

The Commissioners shall exercise -

- (a) the powers and functions of the Customs Council; and
- (b) the powers and functions delegated by the Chief Commissioner of Customs under this Act and the customs laws; and
- (c) such other powers and functions as provided for under any law or as determined from time to time.

Subdivision C. - General Conditions as to Employment of the Chief Commissioner of Customs and the Commissioners.

25. QUALIFICATIONS FOR APPOINTMENT.

A person is not eligible for appointment as Chief Commissioner of Customs or a Commissioner unless -

- (a) that person is a person of integrity, independence of mind and good reputation; and
- (b) he has knowledge of or industry experience in commerce, economics, law, public administration or taxation administration and satisfies the minimum person specification contained in the *Regulatory Statutory Authorities (Appointments to Certain Offices) Act 2004*.

26. DISQUALIFICATION FROM OFFICE.

A person is not qualified to be, or to remain, as Chief Commissioner of Customs or a Commissioner if that person is -

- (a) a member, or candidate for election as a member of the National Parliament, a member of a Provincial Government or a member of a Local-level Government or a Local-level Government Special Purposes Authority; or
- (b) an office-holder, or candidate for election as an office-holder, in a registered political party; or
- (c) an undischarged bankrupt or insolvent; or
- (d) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (e) under sentence of death or imprisonment or has previously been sentenced to death or a term of imprisonment; or
- (f) found guilty of misconduct in office under the *Organic Law on the Duties and Responsibilities of Leadership*.

27. SPECIAL CONDITIONS OF EMPLOYMENT.

(1) The Chief Commissioner of Customs or a Commissioner shall not -

- (a) actively engage in politics; or
- (b) absent themselves from duty for more than 14 consecutive days or more than 28 days in a period of 12 months except on the grounds of illness or on approved leave.

(2) The Chief Commissioner of Customs or a Commissioner shall not, directly or indirectly engage in any paid employment outside the duties of their respective offices under this Act and the customs laws.

28. TEMPORARY VACANCY IN THE OFFICE OF THE CHIEF COMMISSIONER OF CUSTOMS AND THE COMMISSIONERS.

(1) Where the Chief Commissioner of Customs takes a temporary leave of absence from office for any purpose or is temporarily unable to perform his duties by reason of illness or otherwise, the Chief Commissioner of Customs shall appoint a Commissioner to act as the Chief Commissioner of Customs during any such period of absence from duty.

(2) Where a Commissioner takes a temporary leave of absence from office for any purpose or is temporarily unable to perform his duties by reason of illness or otherwise, the Chief Commissioner of Customs may appoint a member of the staff of the Papua New Guinea Customs Service to act in place of that Commissioner during any such period of absence from duty.

PART III. - STAFF OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

29. STAFF OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

(1) The Chief Commissioner of Customs may appoint persons to be the staff of the Papua New Guinea Customs Service to give effect to this Act and the customs laws, and to carry out the functions of the Papua New Guinea Customs Service.

(2) The persons appointed under Subsection (1) constitute the staff of the Papua New Guinea Customs Service.

(3) The staff of the Papua New Guinea Customs Service are not officers of the National Public Service.

(4) The Customs Council shall -

- (a) make orders in relation to the terms and conditions of employment of the staff of the Papua New Guinea Customs Service subject to the *Salaries and Conditions Monitoring Committee Act 1988*; and
- (b) make further orders in accordance with this part to govern the eligibility, qualification, process of selection, method of appointment, discipline, suspension and dismissal of the staff of the Papua New Guinea Customs Service.

30. TEMPORARY AND CASUAL STAFF.

The Chief Commissioner of Customs may appoint temporary or casual staff as are necessary to assist or carry out the functions of the Papua New Guinea Customs Service on such terms and conditions as are approved by the Customs Council.

31. CONSULTANTS.

The Chief Commissioner of Customs may engage such consultants, as are necessary for the purpose of carrying out temporary and specialised tasks on behalf of the Papua New Guinea Customs Service, on such terms and conditions as approved by the Customs Council.

Papua New Guinea Customs Service

32. PRIOR SERVICE.

Where a person is appointed as -

- (a) the Chief Commissioner of Customs; or
- (b) a Commissioner; or
- (c) a member of the staff of the Papua New Guinea Customs Service,

was, immediately before the appointment, an officer of or employed in the Public Service or a public body within the meaning of the ***Public Services (Management) Act 1995***, that person's service as that officer or employee shall be counted as service to the Papua New Guinea Customs Service.

PART IV. - FINANCIAL PROVISIONS.

33. FUNDS OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

(1) The funds of the Papua New Guinea Customs Service shall consist of any one or more of the following:

- (a) an amount appropriated by Parliament and paid to the Papua New Guinea Customs Service; or
- (b) grants that the Papua New Guinea Customs Service may receive; or
- (c) subject to Section 34, any percentage of customs duty revenue which is approved by the Minister; or
- (d) such monies as may otherwise vest in or accrue to the Papua New Guinea Customs Service.

(2) Notwithstanding relevant provisions of the ***Public Finances (Management) Act 1995***, any funds received by the Papua New Guinea Customs Service in respect of a financial year which are not expended by the end of that financial year shall be available to the Papua New Guinea Customs Service to meet its expenditure in the ensuing financial year.

(3) The funds of the Papua New Guinea Customs Service are as specified under this section and do not include revenue in customs duty collected as a result of the administration of the customs laws by the Chief Commissioner of Customs except for that approved under Subsection (1)(c).

34. APPROPRIATION OF REVENUE TOWARDS FUNDS OF THE PAPUA NEW GUINEA CUSTOMS SERVICE.

For the purposes of Section 33(1)(c), the allocation to the funds of the Papua New Guinea Customs Service, of revenue in customs duty collected under the customs laws administered by the Chief Commissioner of Customs, shall be appropriated and the amount of such allocation, as may be approved by the Minister, shall not exceed 2% of the total revenue collections in any year.

35. EXPENDITURE.

The funds of the Papua New Guinea Customs Service may be expended for any one or more of the following purposes:

- (a) in payment or discharge of expenses, obligations and liabilities of the Papua New Guinea Customs Service; or
- (b) in payment of the remuneration of the staff of the Papua New Guinea Customs Service; or
- (c) for such other purposes as are consistent with the functions of the Papua New Guinea Customs Service.

Papua New Guinea Customs Service

36. BANK ACCOUNTS.

The Papua New Guinea Customs Service shall open and maintain such bank accounts as are necessary and shall at all times maintain at least one such account to receive the funds under Section 33 and pay its expenses under Section 35.

37. ACCOUNTING RECORDS.

The Papua New Guinea Customs Service shall -

- (a) keep proper records and books of account of its income, expenses and transfers; and
- (b) prepare a statement of accounts for each financial year; and
- (c) keep and maintain proper accounting records and the accounting records are subject to audit by the Auditor General.

38. CUSTOMS DUTY REVENUE ACCOUNTS.

(1) Subject to Subsections (2) and (3), all customs duty revenue collected under the customs laws administered by the Chief Commissioner of Customs shall be paid into the Consolidated Revenue Fund as required under the *Public Finances (Management) Act 1995*.

(2) The Chief Commissioner of Customs shall pay -

- (a) such custom duty revenue as may be directed to be paid into such accounts as are established to receive such duties and on such occasions as are required under any law for the purposes of the Sovereign Wealth Fund established under Section 212A of the *Constitution*; and
- (b) such amounts that may be distributed under any revenue laws.

(3) The payments under Subsections (1) and (2) shall be less than such amounts as the Minister approves under Section 33(1)(c).

39. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

(1) Without limitation to any function or power of the Papua New Guinea Customs Service under this Act, Part VIII (other than Sections 51, 55, 56, 57 and 58) of the *Public Finances (Management) Act 1995* applies to and in relation to the Papua New Guinea Customs Service.

(2) The Minister may declare a sum for the purposes of Section 59(1) of the *Public Finances (Management) Act 1995* or where no declaration is made, the sum of K500,000.00 as specified.

(3) The Papua New Guinea Customs Service may make orders for the purposes of Section 63 of the *Public Finances (Management) Act 1995*, and until such time as an order is made, the relevant provisions of the Financial Instructions issued under Section 117 of that Act shall apply to the preparation of the reports and financial statements of the Papua New Guinea Customs Service.

(4) The Papua New Guinea Customs Service is not a trading enterprise for purposes of the *Public Finances (Management) Act 1995*.

40. LIABILITY TO TAXATION, ETC.

The Papua New Guinea Customs Service is a public authority for the purposes of Section 24(1) of the *Income Tax Act 1959*.

Papua New Guinea Customs Service

41. AUDIT AND APPLICATION OF THE *AUDIT ACT 1989*.

(1) Part III of the *Audit Act 1989* applies to the Papua New Guinea Customs Service.

(2) Notwithstanding Subsection (1), the Papua New Guinea Customs Service may from time to time appoint such auditors as may be required by the Chief Commissioner of Customs, to audit the accounts of the Papua New Guinea Customs Service or any other matter except the customs duty revenue accounts of the Papua New Guinea Customs Service which shall be subject to audit only by the Auditor General.

(3) The Papua New Guinea Customs Service shall pay from its own funds such fees as may be charged by either the Auditor General or any auditor appointed under Subsection (2).

42. FINANCIAL ORDERS.

The Customs Council shall make further orders in relation to any matter under this Part to govern its application.

PART V. - MISCELLANEOUS.

43. CHIEF COMMISSIONER OF CUSTOMS AND COMMISSIONERS.

(1) The person who held the substantive position of Commissioner of Customs of the Papua New Guinea Customs Service, immediately before the coming into operation of this Act shall -

(a) be the Chief Commissioner of Customs under this Act; and

(b) hold office as the Chief Commissioner of Customs on and from the date of coming into operation of this Act,

on such terms and conditions as determined by the National Executive Council pursuant to this Act.

(2) The person who, immediately before the coming into operation of this Act held the position of Deputy Commissioner Border Security, shall act in the position of the Commissioner specified under Section 18(1)(a), on and from the date of coming into operation of this Act until such time the substantive appointment is made in accordance with this Act.

(3) The person who, immediately before the coming into operation of this Act held the position of Deputy Commissioner Regional Operation, shall act in the position of the Commissioner specified under Section 18(1)(b) on and from the date of coming into operation of this Act until such time the substantive appointment is made in accordance with this Act.

(4) The National Executive Council shall determine the duration of the appointment and the terms and conditions of the Chief Commissioner of Customs pursuant to Section 16.

44. INTERIM STAFF.

(1) A person who, was employed as a permanent or probationary officer in the Papua New Guinea Customs Service under the *Public Services (Management) Act 1995*, immediately before the coming into operation of this Act, shall on the date of coming into operation of this Act -

(a) be employed as an interim staff member in a similar position in the Papua New Guinea Customs Service, on terms and conditions not less than the terms and conditions applicable to that position held under the provisions of the *Public Services (Management) Act 1995* and the Public Service General Orders; and

Papua New Guinea Customs Service

- (b) retain and continue to accrue in the Papua New Guinea Customs Service all rights and entitlements of that former position held under the provisions of the ***Public Services (Management) Act 1995*** and the Public Service General Orders.

(2) An Interim staff member shall remain and continue as interim staff member until such time appointed by the Chief Commissioner of Customs to the staff of the Papua New Guinea Customs Service pursuant to Section 29, or otherwise.

(3) In the event of any ambiguities, inconsistencies or disputes in determining the designation, duties and functions of the staff of the Papua New Guinea Customs Service, the decision of the Chief Commissioner of Customs is final.

(4) The Chief Commissioner of Customs shall as soon as practicable following the date of coming into operation of this Act, provide to the interim staff members a certificate of service and entitlements, for the following purposes:

- (a) to provide a written guarantee of the interim staff member's accrued service and service related entitlements under the ***Public Services (Management) Act 1995*** at a date immediately before the coming into operation of this Act, which are to be carried over undiminished in accordance with this Act; and
- (b) to specify the interim staff member's terms and conditions of employment under this Act as at the day on which this Act comes into operation, inclusive of the accrued service and service related entitlements carried over undiminished from the National Public Service, and treated as though they had accrued under this Act; and
- (c) any contract of employment on which an interim staff member was engaged in force on the coming into operation of this Act continues in force on the same terms and conditions.

(5) The quantum of entitlements and benefits due and payable to a staff member shall not be less in value than the quantum of entitlements and benefits that would have been payable had they accrued at a future date under the ***Public Services (Management) Act 1995*** for the same period of continuous service.

(6) On coming into operation of this Act, nothing in this section restricts or limits the Chief Commissioner of Customs from exercising all or any of the powers or functions available under this Act in relation to the interim staff member.

(7) The Papua New Guinea Customs Service shall continue to pay superannuation contributions for the interim staff of the Papua New Guinea Customs Service to the superannuation fund approved by the State, and nothing in this Act shall affect their existing superannuation rights, entitlements and benefits.

(8) Nothing in the process of transfer of the staff from the National Public Service shall create or taken to be -

- (a) a breach of any contract of employment; or
- (b) an interruption to employment; or
- (c) a right to payment in respect of accrued leave entitlements; or
- (d) a retrenched, severance or redundancy.

Papua New Guinea Customs Service

(9) Any disciplinary proceedings, claims or actions in process under the *Public Services (Management) Act 1995* or the Public Services General Orders in respect to an interim staff member that was commenced before the coming into operation of this Act, shall be continued under this Act as though commenced under this Act.

45. APPLICATION OF ACTS AND OTHER DOCUMENTS.

Where -

(a) any Act, or subordinate enactment other than this Act; or

(b) any document or instrument wherever executed,

contains a reference, express or implied, to the Papua New Guinea Customs Service, that reference shall, on the coming into operation of this Act unless the contrary intention appears, be read and construed and have effect as a reference to the Papua New Guinea Customs Service as established under this Act.

46. REFERENCES TO THE MINISTER, CHIEF COMMISSIONER OF CUSTOMS AND OFFICERS.

(1) Where -

(a) any customs laws, Act or subordinate enactment other than this Act; or

(b) any document or instrument wherever made or executed,

contains a reference, express or implied to the Minister, that reference shall, on the coming into operation of this Act unless the contrary intention appears, be read and construed and have effect as a reference to the Minister responsible for the Papua New Guinea Customs Service.

(2) Where -

(a) any customs laws, Act or subordinate enactment other than this Act; or

(b) any document or instrument wherever made or executed,

contains a reference, express or implied, to the Commissioner of Customs, Chief Collector of Customs or Collector of Customs or customs officers or any similar reference, that reference shall, on the coming into operation of this Act, unless the contrary intention appears, be read and construed and have effect as a reference to the Chief Commissioner of Customs under this Act.

(3) Where -

(a) any customs laws, act or subordinate enactment other than this Act; or

(b) any document or instrument wherever made or executed,

contains a reference, express or implied, an officer or any similar reference, that reference shall, on the coming into operation of this Act, unless the contrary intention appears, be read and construed and have effect as a reference to a member of the staff of the Papua New Guinea Customs Service.

47. APPLICATION OF AUDIT COMMITTEES.

The Audit Committees established by the Commissioner of Customs in accordance with the *Public Finances (Management) Act 1995* shall, on coming into operation of this Act, continue to apply to the Papua New Guinea Customs Service.

48. NO EFFECT ON PREVIOUS ACTS AND DECISIONS.

The validity of any act or decision done or made by the Commissioner of Customs before the coming into operation of this Act and every such act or decision shall be taken to be valid and effectual and to have continuing effect as if those acts or decisions were made or done under this Act.

49. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any arbitration, action or proceeding was pending or existing by, against or in favour of the Commissioner of Customs under any law or any customs laws, such arbitration, action or proceeding does not, on that coming into operation, abate or discontinue, but it may be, prosecuted, continued or enforced by, against or in favour of the Chief Commissioner of Customs under that other law or that customs law.

50. TRANSFER OF ASSETS.

(1) All assets held by the Commissioner of Customs or held by the State on behalf of the Commissioner of Customs, immediately before the coming into operation of this Act, shall be transferred to and become assets of the Papua New Guinea Customs Service as established under this Act.

(2) For the purposes of Subsection (1), "assets" means fixed assets and includes real estate, physical plants and facilities, leasehold improvements, equipments, machineries, vehicles, boats and fixtures.

51. SAVING OF CONTRACTS, ETC.

(1) All contracts, agreements, deeds, bonds or other instruments entered into with, made with or addressed to the Commissioner of Customs of Papua New Guinea Customs Service immediately before the coming into operation of this Act, are, insofar as they relate to the functions of the Papua New Guinea Customs Service under this Act, binding on and of full force and effect against or in favour of the Papua New Guinea Customs Service as fully and effectually as if, instead of the Commissioner of Customs, the Papua New Guinea Customs Service were a party to them or bound by them or entitled to the benefit of them.

(2) All existing contracts, agreements, deeds, bonds or other instruments entered into by the State on behalf of the Commissioner of Customs, including but not limited to office lease agreements, immediately before the coming into operation of this Act, is binding on the State.

52. TRANSFER OF APPROPRIATED MONIES.

All monies, including any unspent funds appropriated to the Papua New Guinea Customs Service, which were, immediately before the coming into operation of this Act, standing at the credit of, or on accounts opened for the Commissioner of Customs are, on that coming into operation, transferred to equivalent accounts opened under this Act by the Chief Commissioner of Customs.

53. EXEMPTION FROM TRANSFER TAXES, DUTIES AND FEES.

No stamp duty, income tax, provincial tax, fee or duty is payable on any agreement, contract, transfer, conveyance, order, lease or license made for the purpose of this Act in establishing the Papua New Guinea Customs Service or any subsequent transfer of assets between them to give effect to the purposes of this Act or government policy.

54. AMENDMENT OF OTHER ACT.

The Act specified in Column 1 of Schedule 1 is amended to the extent specified in Column 2 and 3 of that Schedule.

PART VI. - TRANSITIONAL AND SAVINGS.

55. PROTECTION FROM PERSONAL LIABILITY.

A member of the staff of the Papua New Guinea Customs Service or any other person acting under the direction of the Chief Commissioner of Customs, is not liable for any act of default of himself or of the Papua New Guinea Customs Service done or omitted to be done in good faith in the operations of the Papua New Guinea Customs Service, or for the purposes of the Papua New Guinea Customs Service.

56. CONFIDENTIALITY.

(1) Subject to this Act, the Chief Commissioner of Customs, the Commissioners or a member of the staff of the Papua New Guinea Customs Service shall regard and deal with, as confidential, all documents and information relating to the affairs of the Papua New Guinea Customs Service, or of any other person which has been obtained by them in the performance of their duties or the exercise of their functions under this Act.

(2) A person who contravenes Subsection (1) commits an offence and is liable to a fine not exceeding K10,000.00 or to imprisonment for a term not exceeding 12 months.

57. NO PROCEEDINGS AGAINST THE PAPUA NEW GUINEA CUSTOMS SERVICE AS AGENT OF STATE.

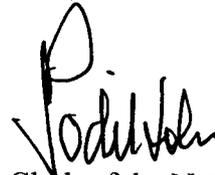
No action, suit, judgment or order shall be brought, executed or enforceable, through the courts or otherwise, against the Papua New Guinea Customs Service as an agent of the State in respect of any matter relating to any customs duty dispute, customs duty assessment objections or customs appeals under the customs laws for which the Chief Commissioner of Customs is acting or exercising the powers pursuant to the customs laws.

58. REGULATIONS.

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

Papua New Guinea Customs Service

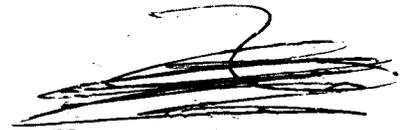
I hereby certify that the above is a fair print of the *Papua New Guinea Customs Service Act 2014* which has been made by the National Parliament.



Acting Clerk of the National Parliament.

21 OCT 2014

I hereby certify that the *Papua New Guinea Customs Service Act 2014* was made by the National Parliament on 4 September 2014, by an absolute majority in accordance with the Constitution.



Speaker of the National Parliament.

21 OCT 2014