



## STATUTORY INSTRUMENT

No. 9 of 2014.

*Public Services (Management)(Employment of Provincial Administrators) Regulation 2014.*

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## STATUTORY INSTRUMENT

No. of 2014.

### ***Public Services (Management)(Employment of Provincial Administrators) Regulation 2014,***

Being a Regulation for the purpose of implementing Sections 73 of the *Organic Law on Provincial and Local Level Government* and Section 61 of the *Public Services (Management) Act 2014*,

MADE by the Head of State, acting with, and in accordance with, the advice of the National Executive Council to be deemed to have come into operation on 1<sup>st</sup> October 2014.

### **PART I. - ADMINISTRATIVE AND PROCEDURAL RESPONSIBILITIES.**

#### **1. ROLE OF PROVINCIAL EXECUTIVE COUNCIL.**

(1) Section 73 of the *Organic Law on Provincial Governments and Local-level Governments* provides that a Provincial Administrator shall be appointed by the Head of State on the advice of the National Executive Council pursuant to a resolution of a Provincial Executive Council chaired by the Governor of the Province.

(2) The PEC shall make a resolution to recommend to the National Executive Council to appoint a Provincial Administrator as a deemed Departmental Head under the *Public Services (Management) Act 2014* in accordance with Section 61 of the Act and the Regulation.

#### **2. SECRETARY, DEPARTMENT OF PERSONNEL MANAGEMENT AND SENIOR EXECUTIVE SERVICES.**

(1) Pursuant to Sections 61 and 23 of the Act, the Secretary, Department of Personnel Management (the Secretary) is responsible, together with the Provincial Governor, for the overall coordination of Provincial Administrator employment processes described in the Regulation, within set time limits, from selection to appointment on contract, performance assessment and to termination.

(2) The Secretary shall coordinate all administrative processes leading to the PEC selection of a single preferred candidate for the appointment as Provincial Administrator in accordance with the Regulation, ensuring that timely funding is made available to meet associated costs.

(3) The Secretary shall be responsible for informing the Governor on progress at various stages of the process to expedite action and ensure compliance with procedural time limits imposed by the Regulation.

(4) The Senior Executive Services is an Office within the Department of Personnel Management for the purpose of coordinating the procedures hereunder and for advising the Secretary and the Governor's Office on compliance and progress.

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(5) In complying with the procedures, time is of the essence, and all parties are bound to cooperate with the Secretary to ensure that the needs and aspirations of the Governor and PEC are met and that transactions can be completed in the shortest possible time.

(6) All time limits prescribed by the Regulation are for administrative purposes to ensure administrative action is effected in the shortest possible time and that contractual notice periods applying to an incumbent Provincial Administrator are complied with.

**3. THE MINISTER FOR PUBLIC SERVICE.**

The NEC may delegate to the Minister for Public Service as the Chairman of the MEAC, the power to advise the Head of State to appoint an acting Provincial Administrator on the recommendation of the Governor as the Chairman of the PEC.

**PART II. - JOB DESCRIPTION AND MINIMUM PERSON COMPETENCY AND PERFORMANCE REQUIREMENTS.**

**4. JOB DESCRIPTION - KEY RESULT AREAS AND PERFORMANCE INDICATORS.**

(1) The Secretary shall compile, maintain and update, in the prescribed format, the Job Description for each Provincial Administrator position.

(2) The Job Description shall meet the following requirements:

- (a) compiling the Minimum Acceptable Person Competency and Performance Requirements for the position; and
- (b) compiling the Merit Based Selection Criteria for the advertisement of vacant positions and conduct of the selection and appointment process; and
- (c) compiling the Key Result Areas for measurement of performance and the Performance Indicators for purposes of Contractual Commitments and for Performance Assessment.

(3) A copy of each Job Description shall be made available within the Department of Personnel Management and on its website, accessible at all times to each provincial administrator and to potential applicants for each provincial administrator's position.

**5. MINIMUM ACCEPTABLE PERSON COMPETENCY AND PERFORMANCE REQUIREMENTS FOR SELECTION AND APPOINTMENT.**

(1) Persons applying for Provincial Administrator positions from within or outside of the Public Service are required to satisfy the Minimum Acceptable Person Competency and Performance Requirements for Selection and Appointment prior to being considered as suitable candidates for appointment, as follows:

- (a) a serving officer of the National Public Service, or a person fit and qualified to serve as an officer of the National Public Service, as determined by the criteria hereunder; and
- (b) satisfies health and fitness requirements for occupancy of a Provincial Administrator position, as determined by a medical officer appointed or approved by the departmental head of the Department of Health; and
- (c) not less than 35 years of age and not more than 65 years of age; and
- (d) possesses a degree from a recognised university, together with post graduate training relevant to the technical requirements of the position, and a management qualification; and

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- (e) of good character and repute, with no previous criminal record, and as witnessed by suitable references from at least three persons of standing in the community; and
- (f) free of criminal charges or outstanding court cases of a nature likely to seriously injure the professional standing and reputation of the officer, as verified by a current Police clearance; and
- (g) free of any outstanding investigations or disciplinary proceedings under any laws; and
- (h) not disbarred by virtue of any constitutional or statutory restriction under the *Leadership Code* or the *Defence Act 1974*; and
- (i) the candidate possesses proven skills, experience and competencies gained through relevant private or public sector experience in the following fields:
  - (i) management of staff, with a minimum of three years at a level not lower than Deputy Administrator, Deputy Secretary, or Deputy Managing Director or deemed equivalent level in another public or private sector organisation; and
  - (ii) policy formulation and development, strategic/corporate planning, and project management; and
  - (iii) financial budgeting and manpower planning; and
  - (iv) negotiating and public relations skills, with an ability to make convincing public presentations of technical information; and
  - (v) general knowledge of the Government political structures and provincial administration systems, the *Constitution*, the *Organic Law on Provincial and Local-level Governments* and knowledge of the *Public Finances (Management) Act 1995* and the *Public Services (Management) Act 2014*, and the General Orders in particular; and
  - (vi) able to maintain a firm position on principle and policy and to uphold the Public Service Code of Business Ethics and Conduct; and
- (j) able to demonstrate leadership qualities as described in the National Public Service "Leadership and Management Capability Framework"; and
- (k) possesses other competencies (physical and mental skills and abilities) relevant to the position, as prescribed in the Job Description; and
- (l) the candidate has provided a dissertation in writing as suitability for the appointment, and the contribution the candidate can make to the Provincial Government priority programs; and
- (m) has satisfied all of the requirements specified from time to time in the National Gazette.

**PART III. - ADVERTISING AND MERIT-BASED SELECTION AND APPOINTMENT PROCEDURES FOR SUBSTANTIVE APPOINTMENTS.**

**6. SECTION 73 OF THE ORGANIC LAW ON PROVINCIAL AND LOCAL-LEVEL GOVERNMENTS - SUMMARY OF PROCEDURES.**

(1) The procedures for the substantive appointment of a Provincial Administrator must be merit-based and subject to open and transparent assessment prior to a recommendation being made to the Minister for Public Service acting on behalf of the National Executive Council.

(2) A substantive office holder who, prior to declaration of the vacancy, stated their willingness to continue in that office shall have their performance appraised per the Regulation and the Provincial Executive Council shall determine whether to re-appoint that person without advertisement of the position.

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(3) The NEC shall not introduce new candidates into the appointment process but may in its sole discretion reject the MEAC recommendation and direct that the position be re-advertised in order to conduct the merit-based selection process.

(4) The merit-based procedures as detailed in the Regulation pursuant to Section 61 of the Act are summarised as follows:

- (a) where an office of Provincial Administrator becomes vacant, the Secretary shall, in consultation with the Governor, declare the vacancy and advertise the vacancy in an appropriate medium of communication for a period of not less than two weeks; and
- (b) the Secretary shall assess all applicants for the position against the advertised minimum person specification for appointment and present a list of not less than three and not more than five candidates to the PEC; and
- (c) the PEC shall select one preferred candidate from the list provided by the Secretary within 30 days from the date of receipt of the shortlist from the Secretary and submit its resolution to the Minister for Public Service; and
- (d) the Minister shall present a submission prepared by the Secretary, recommending the list of the preferred candidate in the PEC resolution to the NEC for appointment, and the NEC shall advise the Head of State to make the appointment; and
- (e) the NEC may delegate to the Minister for Public Service the power and authority to advise the Head of State on the appointment of the Provincial Administrator.

**7. REVIEW OF INCUMBENT PROVINCIAL ADMINISTRATOR'S PERFORMANCE FOR RE-APPOINTMENT PRIOR TO ADVERTISEMENT OF THE VACANCY.**

(1) The Secretary shall firstly inform the incumbent Provincial Administrator not less than 6 months prior to expiry of the appointment and request the incumbent to state in writing whether or not they wish to be considered for re-appointment, subject to receipt of satisfactory performance appraisals during the period of the contract.

(2) The incumbent Provincial Administrator shall consult the Governor and shall respond to the Secretary within 14 days and shall state whether or not they wish to be reappointed and shall submit satisfactory Performance Appraisal Reports as prescribed by these Regulations to support their application.

(3) The Secretary shall consult the Governor as to the performance of the incumbent during the period of the contract and no later than four months prior to contract expiry the Governor shall obtain a resolution from the Provincial Executive Council and shall inform the Minister whether or not to re-appoint the incumbent Provincial Administrator.

(4) In the event that the Provincial Executive Council resolves to re-appoint the incumbent Provincial Administrator on the advice of the Governor through the Minister, the Secretary shall prepare a submission to the NEC describing their performance record over the period of the expiring contract with a recommendation to re-appoint, no later than three months prior to expiry of the contract.

(5) In this event, the Secretary shall not advertise the position and the incumbent Provincial Administrator shall be informed of the NEC Decision to effect reappointment by the Head of State, acting on advice.

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**8. VACANCY IN THE OFFICE OF PROVINCIAL ADMINISTRATOR.**

(1) Vacancy in this context means a position that is substantively vacant for any of the following reasons:

- (a) expiry of contract period and non-renewal; or
- (b) pre-mature termination of contract for any reason; or
- (c) creation of a new provincial administrator position.

(2) The Department of Personnel Management Senior Executive Services shall maintain in computerised format a Provincial Administrator Register of all Provincial Administrator positions showing occupancy details by name, date of birth, appointment date, and period, expiry date, number of previous appointments and performance history.

(3) The Department of Personnel Management Senior Executive Services shall monitor the Provincial Administrator Register and shall inform the Secretary at the prescribed intervals of a vacancy becoming due in the office of Provincial Administrator, to enable the Secretary to commence the procedures to fill the vacancy.

(4) The Senior Executive Services shall ensure that incumbent Provincial Administrators are informed and that their performance reports have been provided to the Secretary for assessment, as provided by the Regulation.

**9. ADVERTISING OF VACANCIES.**

(1) The Secretary shall advertise the vacant position in the prescribed standard advertising format displaying the minimum person competency and performance requirements and invite suitable persons to apply within a prescribed time limit, with all applicant information provided in confidence.

(2) The advertisement shall be placed in an appropriate medium of communication as determined by the Secretary for a period of not less than two weeks.

(3) The Secretary for the Department of Personnel Management shall meet the cost of the advertisements and other administrative expenses relating to the Provincial Administrators' position.

(4) The Secretary may delegate to the Director for Senior Executive Services the authority to endorse the advertisement of Provincial Administrators position.

(5) Following the advertisement, a Provincial Administrators position which attracts less than three suitable applications shall be re-advertised and in the event that the position has been re-advertised on two occasions and still there are less than three suitable applicants, Secretary shall resolve the matter with the Minister for Public Service.

(6) In order to be considered in the selection process by the Department of Personnel Management, an applicant must satisfy all requirements for the position and the conditions specified in the advertisement.

(7) A Pre-Selection Committee is hereby established to be chaired by a Deputy Secretary of the Department of Personnel Management reporting to the Secretary, to receive all applications to the advertisement and to coordinate the Applicant Assessment Process thereafter.

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(8) The Pre-Selection Committee shall comprise of designated officers at deputy secretary level or their delegates but not at the level lower than the First Assistant Secretary from the Central Agency Departments as follows:

- (a) department of Personnel Management; and
- (b) department of Prime Minister and National Executive Council; and
- (c) department of Treasury; and
- (d) department of Justice and Attorney General; and
- (e) department of Provincial and Local Level Government; and
- (f) department of National Planning and Monitoring.

(9) The quorum of the Pre-Selection Committee is four (4) including the Chairman and the Committee shall be assisted by the Director for Senior Executive Services who will provide technical and administrative support.

(10) The Secretary may determine the need to engage a Human Resource Specialist as an adviser to the Pre-Selection Committee to offer independent advice.

(11) The Pre-Selection Committee shall execute an oath of confidentiality in the prescribed format and shall exercise due diligence in performing its functions.

**10. MERIT-BASED SELECTION CRITERIA AND APPLICANT ASSESSMENT PROCESS.**

(1) The Senior Executive Services shall, on receipt of applications, ensure that the following information and certification is provided in the application:

- (a) date of birth and age; and
- (b) two signed copies of the applications; and
- (c) two character references from persons with standing in the community; and
- (d) two professional references of which one shall be from the previous employer and the other from the current employer.

(2) a failure to provide this information or meet the minimum acceptable person specification described in the advertisement and job description shall disbar the application from consideration.

(3) The Senior Executive Services shall prepare the merit-based assessment profile for each applicant listing the assessment factor in the following format:

- (a) secondary, tertiary and vocational qualifications supported by certificates and testimonials; and
- (b) experience covering applicants whole career; and
- (c) management competency in listed generic fields; and
- (d) technical competency in portfolio related fields; and
- (e) special aptitudes; and
- (f) performance assessment records if a serving officer.

(4) Each of the assessment factors (a) to (f) have been given a standard weighting reflecting the relative importance to achieving the objectives of the position and fulfilling the performance targets set by the Government.

(5) Utilising the merit-based matrix compiled for each applicant, the Pre-Selection Committee shall allocate a points score against each of the assessment factors in the merit-based ranking matrix.



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**11. DEPARTMENT OF PERSONNEL MANAGEMENT SHORT LISTING PROCEDURES.**

(1) The Secretary may, in consultation with the Governor, determine the need to outsource the short listing process to a professional recruitment company and the short listing results shall be subject to the scrutiny and review of the Pre-Selection Committee and the Secretary.

(2) The resulting points rated rank order of applicants shall be compiled with a dossier of supporting documentation for quality control checks within the Department of Personnel Management to be conducted by the Chairman of the Pre-Selection Committee and justified to the Secretary to ensure internal consistency in the rank order.

(3) The Secretary shall determine from the rank order of applicants a short list of not less than three and not more than five applicants for the position to finalize a Pre-Selection Report to the PEC.

**12. SHORTLISTED APPLICANTS CHARACTER AND STANDING CHECKS.**

(1) The Secretary, prior to submitting the final list of candidates to the PEC, shall ensure all shortlisted applicants are cleared by the Police Commissioner, the Ombudsman Commission, Public Prosecutor and the Previous Employer.

(2) Shortlisted applicants who have conviction record as verified by Police, criminal case pending in the national court as verified by the State Prosecutor and Leadership case before the Ombudsman Commission will automatically be removed from the list.

(3) Under such circumstance the Secretary may proceed to review the candidates list and approve the next best candidate to satisfy the minimum candidate shortlist requirements.

**13. MEDICAL AND FITNESS REQUIREMENTS FOR SHORTLISTED APPLICANTS.**

(1) The Secretary, in consultation with the Secretary for the Department of Health, may appoint two legally certified and qualified medical practitioners to assess the medical and fitness suitability of the shortlisted applicants before submitting the final list to the PEC.

(2) An incumbent Provincial Administrator who wishes to be considered for re-appointment may be required to undergo medical clearance from a legally certified and qualified medical practitioner approved in one above by the Secretary, Department of Personnel Management.

(3) Shortlisted applicants who failed the medical clearance test will automatically be removed from the list, in which case, the Secretary may approve for the next best candidates to satisfy the minimum shortlist requirements.

**14. INTERVIEW PROCEDURES FOR SHORTLIST APPLICANTS.**

(1) All candidates ranked in the final shortlist may be interviewed by the Pre-Selection Committee in accordance with the provisions of this Section.

(2) Secretary may delegate the interview process to an independent Professional Human Resource Practitioners to interview the shortlisted applicants recommended by the Pre-Selection Committee before making a final recommendation to the PEC.

(3) The minimum acceptable person specification and requirements of the position as detailed in the National Gazette shall be utilised in conducting the interview, and the shortlisted candidates shall be assessed against the following competency based criteria:

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- (a) knowledge of the mission, functions and objectives of the Administration; and
- (b) knowledge of basic laws applying in the Public Service; and
- (c) achievements in previous employment; and
- (d) plans for Administrations performance over the four years; and
- (e) leadership ability and management skills; and
- (f) ability to express and conduct themselves professionally.

(4) The Senior Executive Services may compile, for the Pre-Selection Committee, an interview profile for each of the shortlisted candidates highlighting the strengths and weaknesses in each of the assessed criteria (a) to (f).

**15. FINAL PRE-SELECTION REPORT.**

(1) The Senior Executive Services shall compile a final Pre-Selection Report containing the following information:

- (a) the National Gazette advertisement; and
- (b) the candidate assessment profiles; and
- (c) the rank order matrix; and
- (d) the interview profiles; and
- (e) the final short list in order of merit.

(2) The Pre-Selection Report (marked "Strictly Confidential for Members of the PEC Only") shall be delivered to the Governor by the Secretary to enable PEC to review the short listed candidates and to select and recommend one preferred candidate to NEC for appointment.

(3) Any discrepancies as perceived by the PEC in the information provided by the Secretary are to be referred back to the Secretary for resolution within the set time limits.

**16. PEC ADJUDICATION OF CANDIDATE SHORT LIST IN THE PRE-SELECTION REPORT.**

(1) On receipt of the Pre-Selection Report from the Secretary, the PEC shall assess the candidates in the short list.

(2) The PEC shall complete the adjudication and final selection of a suitable candidate in the shortest possible time and no later than two weeks following receipt of the Pre-Selection Report from the Secretary.

**17. PEC CANDIDATE RECOMMENDED TO THE NATIONAL EXECUTIVE COUNCIL.**

(1) The PEC shall present the resolution to appoint the preferred candidate in a standard format, in a submission to NEC prepared by the Secretary.

(2) All other considerations unrelated to the processes described in this Regulation shall have no bearing on the recommendation of the PEC to the NEC.

(3) In considering the recommendation made under Subsection (2), the NEC may -

- (a) approve the recommendation; or
- (b) reject the recommendation and direct the re-advertisement of the position,

but the NEC shall not introduce any new candidate not already included in the PEC recommendation which would be in breach of Section 193 of the *Constitution*.

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- (4) In the event that the NEC approves a PEC recommendation -
- (a) the NEC shall, through the Minister, advise the Head of State to make the appointment in the National Gazette, (the appointment becomes official when it is published in the National Gazette); and
  - (b) the Minister shall officially inform the Governor of the appointment; and
  - (c) on receipt of the National Gazette, the Secretary shall officially inform the appointee and any previous occupant of the appointment; and
  - (d) the Secretary shall arrange for any necessary official "hand-over take-over ceremony" as soon as possible.

(5) The NEC may delegate to the Minister for Public Service the power and authority under Subsections (3) to (4) to advise the Head of State on behalf of the NEC on the appointment of the Provincial Administrator.

(6) All permanent appointments shall be made by the Head of State acting on advice through the procedures described in this Part III, Sections 1 to 9 of the Regulation and in no other way.

**PART IV. – PROCEDURES FOR ACTING APPOINTMENTS.**

**18. ACTING APPOINTMENT.**

(1) An acting appointment is required immediately for relief purposes for a period not less than ten (10) days and not more than three (3) months for any of the reasons listed below -

- (a) expiry of contract term and non-renewal; or
- (b) pre-mature termination of contract for any reason; or
- (c) duty-related travel; or
- (d) any form of leave; or
- (e) disciplinary reasons; or
- (f) creation of new departmental head position.

(2) Where Subsection (1) applies, the Secretary shall, pursuant to Section 61 of the *Public Services (Management) Act 2014*, consult with the Governor who shall indicate from the list of three (3) candidates from within the Provincial Administration his preferred (who meets the minimum acceptable person competency and performance requirements for selection and appointment) nominee to fill the temporary vacancy.

(3) The Minister for Public Service shall, in accordance with the delegation of power made by the NEC to make appointments of Provincial Administrators, advise the Head of State to make the acting appointment.

(4) In consultation with the Chairman of the PEC, the Secretary shall, from time to time, maintain a list of three preferred candidates from within the Provincial Administration most preferably at the level not lower than Deputy Administrator level or equivalent.

(5) Where the position of the Provincial Administrator is substantively vacant, the acting appointee is entitled to payment of higher duty allowance (new salary minus current salary) together with allowances (except contract gratuity) applicable to the position.

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(6) Where the position of the Provincial Administrator is not substantively vacant, the appointee shall be paid higher duty allowances (new salary minus current salary) together with office related allowances (telephone and entertainment) applicable to the position.

**PART V. - FIXED PERIOD CONTRACTS OF EMPLOYMENT.**

**19. APPOINTMENT OF PROVINCIAL ADMINISTRATORS ON CONTRACT.**

(1) By virtue of Section 27 of the Act, all Provincial Administrators (as deemed departmental heads) shall be employed on fixed period contracts of four years duration, on terms and conditions of employment determined by the NEC, subject to the determinations of the Salaries and Remuneration Commission from time to time.

(2) The Secretary shall prepare a contract of employment in the prescribed format in compliance with this regulation as approved by the NEC for execution by the Head of State, the Governor and the appointee, to be witnessed by the Secretary.

(3) The Contract, the NEC Decision and the National Gazette will be referred to the State Solicitor who shall within fourteen days provide legal clearance for the contract to be executed by the Head of State.

(4) The Secretary shall brief the appointee on specific job requirements and terms and conditions of the contract prior to execution and shall arrange through the Secretary to the National Executive Council, for the signing of the contract.

(5) The Secretary is responsible, on behalf of the State, for advising a Provincial Administrator and the Governor on the interpretation of the contract terms and conditions.

(6) The contractual provisions governing Provincial Administrator performance are prescribed by Part VI of the Regulation.

**20. PROCEDURES ON CONTRACT TERMINATION.**

(1) Pursuant to Section 31 of the Act, in the event that on expiry of the contract period the incumbent Provincial Administrator is not reappointed, his service in the Public Service is terminated on conclusion of a three month notice period from the end of the contract.

(2) The longest period that the terminated Provincial Administrator is to remain on the payroll is three months from the end of the contract period, however, during the three month period, the terminated Provincial Administrator may opt to leave service and be paid in lieu of the balance of the period.

(3) A Provincial Administrator who is re-deployed or appointed to a lower office than departmental head or deemed departmental head within the Public Service shall continue to maintain the salaries and allowances at his or her previous substantive position for the duration of the new contract.

(4) A Provincial Administrator who refuses to sign a Contract of Employment for whatever reason shall have his or her employment terminated forthwith by the Head of State upon recommendation from the PEC.

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(5) On leaving service, the terminated Provincial Administrator shall be paid only accrued service related entitlements, including money in lieu of leave, money in lieu of furlough, and repatriation benefits. (Reference must be made to Part VII).

**PART VI. - CONTRACTUAL PERFORMANCE COMMITMENTS AND PERFORMANCE APPRAISAL PROCEDURES.**

**21. RESPONSIBILITY FOR THE PERFORMANCE MANAGEMENT SYSTEM.**

(1) Pursuant to Section 26 of the Act, the Secretary, Department of Personnel Management is responsible for advising the Governor on the administration of the Government's performance management system, including the assessment and recording of the performance of individual provincial administrators under their contracts of employment.

(2) The Secretary is the principal adviser to the Governor and the Provincial Executive Council on performance management and shall consult the Secretary for the Department of Provincial Governments and Local-level Governments from time to time in respect to compliance with standards for the delivery of services in accordance with National Government targets and priorities.

(3) The Secretary shall ensure that the time limits imposed by the contractual terms and conditions on performance reviews and assessments as outlined in the Regulation are programmed and complied with and the results communicated to the PEC.

(4) The Senior Executive Services of the Department of Personnel Management shall coordinate the performance management system and advise the Secretary in accordance with the Regulation.

**22. JOB DESCRIPTION AND PERFORMANCE COMMITMENTS.**

(1) Utilising the key result areas and performance indicators in the provincial administrator job description, as varied from time to time, the Senior Executive Services shall, within three months of commencement of a new contract and every twelve months thereafter, facilitate the drafting of the Provincial Administrator's contractual performance commitments matrix.

(2) The Senior Executive Services shall consult the Governor and the incumbent Provincial Administrator and shall utilise the PEC determined annual work and budget plans in conjunction with the longer term Corporate Plan to identify the priority service delivery and development targets and standards in the Province to which the Provincial Administrator shall be committed.

(3) The Secretary, Department of Personnel Management shall facilitate consultation with the Governor in ratifying the provincial administrator's performance commitments and sign off.

**23. PERFORMANCE APPRAISAL PROCEDURES.**

(1) For each year of a Provincial Administrator's four year appointment there shall be Performance Commitments Matrix signed off by the key signatories to the performance appraisal process, being the Provincial Governor, the Secretary for Treasury and the Secretary for Personnel Management.

(2) The performance appraisal procedure is tied to the annual budget cycle and to the commitments made by a Provincial Administrator in the Annual Management Plan.

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(3) A Performance Appraisal Form shall be completed in respect to each Performance Commitments Matrix.

**24. USE OF PERFORMANCE APPRAISAL ON ANNUAL BASIS.**

(1) The Senior Executive Services shall ensure that for each budgetary year of a Provincial Administrator's four year appointment there shall be a completed Performance Appraisal Form.

(2) The Governor may utilize a performance appraisal at any time during the period of the contract to give a formal warning to a Provincial Administrator to comply with their performance commitments and to improve their performance.

(3) The Provincial Administrator's performance based contract provides that a report may be brought to the PEC for the purpose of recommending termination of appointment on grounds of poor performance.

**25. USE OF PERFORMANCE APPRAISAL FOR CONTRACT RENEWAL.**

(1) Pursuant to Part III, Section 2, six months prior to the end of a Provincial Administrator's appointment the Senior Executive Services shall assemble all completed Performance Appraisal Forms (not less than two).

(2) The Secretary shall provide a report to be signed off by the Governor to recommend whether or not to re-appoint the Provincial Administrator based upon the overall performance outcomes against commitments.

**PART VII. - CONTRACT TERMINATION AND SUSPENSION PROCEDURES.**

**26. REVOCATION OF APPOINTMENT OF PROVINCIAL ADMINISTRATORS.**

(1) An appointment made by the Head of State, acting on advice, shall be revoked only in accordance with a resolution of the Provincial Executive Council, ensuring that the provisions of the Regulation and Contract are complied with.

(2) An appointment shall be revoked only in accordance with the criteria and the procedures contained within a contract of employment, entered into between the Head of State and the Provincial Administrator, made pursuant to Section 29 of the *Public Services (Management) Act 2014*.

(3) The grounds, criteria and the procedure for termination prescribed by a contract of employment shall include the following provisions:

(a) breach of contract and termination for cause (Under a Contract of Employment), the following disciplinary action -

(i) conduct described under the contract provisions as serious disciplinary offences, following the laying of charges by the Governor and assessment of guilt, as provided for in a disciplinary procedure which preserves the principles of natural justice; and

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- (ii) contractual compensation where no payments are to be made in respect to ex-gratia benefits, gratuities, and money in lieu of notice, which are to be forfeited to the State and only payment of normal service related benefits shall be in order, subject to any surcharge arrangements that may be in place to recover monies owed to the State; and
- (b) breach of contract for poor performance (Under a Contract of Employment) where no disciplinary action was involved -
  - (i) following consistent poor performance by a Provincial Administrator over a period of not less than 6 months, whereby, as a result of a decision of the PEC, the Governor has issued a warning in writing to a Provincial Administrator to improve his performance or to overcome weakness in conduct within a period of not less than 6 months; and
  - (ii) the Governor, in consultation with the Secretary, shall provide a performance report to the PEC as to the change in performance of the Provincial Administrator and whether or not there has been compliance with the Governor's directive to improve performance; and
  - (iii) the Minister for Public Service, having received a resolution from the PEC determining that the Provincial Administrator's performance has not improved adequately, shall provide a report to NEC and NEC shall advise the Head of State to terminate the Provincial Administrator for poor performance; and
  - (iv) contractual compensation where no payments are to be made in respect to ex-gratia benefits, and gratuities, which are to be forfeited to the State. Payment of money in lieu of notice and normal service related benefits shall be in order, subject to any surcharge arrangements that may be in place to recover monies owed to the State; and
- (c) reasons not resulting from poor work performance or requiring disciplinary action or other breach of contract ("In the Interests of the State"), the reasons for termination must be in the interest of the State as employer, as determined by resolution of the Provincial Executive Council dependent upon the circumstances, and shall not be contrary to the contract provisions, or to the public interest; and
- (d) tests for validity of termination of employment "In the Interest of the State" -
  - (i) the following criteria shall be satisfied by any resolution made by a Provincial Executive Council "in the interest of the State":
    - (A) termination is legal in terms of the grounds provided by the contract and does not breach any law; and
    - (B) the State will not become exposed to any unnecessary financial or legal liability resulting from the termination, and any monies payable to the Provincial Administrator would not exceed those specified in a contract for such termination; and
    - (C) there is a real, and not imagined, assumed, or fictitious threat to the security of the State (if security is the alleged reason); and
    - (D) termination will in fact advance the interests of Papua New Guinea as determined by the National Executive Council; and
    - (E) termination will in fact save the State from incurring further costs or unnecessary expenses; and

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- (F) termination is not motivated by personal interests of a Governor (as opposed to the interests of the State as determined by the National Executive Council), or following a change in Government, to replace a Provincial Administrator on political grounds, without relating the termination to the Provincial Administrator's performance; and
  - (G) all relevant independent advice and/or recommendations required by normal contractual processes and by law have been obtained and support or endorse the proposed action; and
  - (H) all lawful consultations or recommendations required for the termination have been obtained; and
  - (I) termination is strictly made in accordance with the grounds specified for that purpose in a contract of employment; and
  - (J) the principles of natural justice have been adhered to by all Parties; and
- (ii) contractual compensation (Termination of Employment "In the Interest of the State"), where the Provincial Administrator is terminated from the Public Service in accordance with provisions of the *Public Services (Management) Act 2014* and the contract, the greater of the following two payments shall be made:
- (A) payment of salary and allowances accrued to the end of the contracted period, subject to a maximum period of 18 months inclusive of notice period, together with benefits accrued under the contract and normal Public Service accruals for long service leave, and recreational leave; or
  - (B) Public Service ex-gratia retrenchment benefits, together with other monies and accrued service related entitlements; and
  - (C) the Provincial Administrator is not permitted to seek premature termination of the contract under this provision in order to secure contractual compensation. An attempt to do so shall be construed as improper conduct; and
- (e) redundancy of the position and resulting retrenchment -
- (i) termination due to abolishment of the position occupied by a Provincial Administrator as a result of legislative change or abolishment of position, or other grounds for redundancy and retrenchment; and
  - (ii) contractual compensation, provided that the officer is terminated from the Public Service in accordance with provisions of the *Public Services (Management) Act 2014*, the greater of the following two payments shall be made:
    - (A) payment of salary and allowances to the end of the contracted period, subject to a maximum period of 18 months inclusive of notice period, together with normal Public Service accruals for long service leave, and recreational leave and other monies accrued under the contract; or
    - (B) Public Service ex-gratia retrenchment benefits, together with other monies and service related entitlements accrued under the contract; and
- (f) normal retirement or medical retirement -
- (i) as provided under the *Public Services (Management) Act 2014*, the General Orders and contract relating to age for early and compulsory retirement; and



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- (ii) contractual compensation accrued payments under the contract related to service only to date of retirement, together with three months payment in lieu of notice; and
- (g) resignation on own accord -
  - (i) where Provincial Administrator gives notice of his/her intention to leave following expiry of a mutually agreed period of notice; and
  - (ii) contractual compensation: Accrued payments under the contract related to service only, to date of resignation; and
- (h) termination of employment on normal expiry of contract of employment of the Provincial Administrator -
  - (i) payment shall be made of salary and allowances in lieu of the three months notice period, together with normal Public Service accruals for recreational leave and long service leave (furlough); or
  - (ii) normal public service retrenchment benefits is payable only if termination of employment falls within a government approved public service redundancy and retrenchment exercise.

**27. SUSPENSION OF PROVINCIAL ADMINISTRATORS ON DISCIPLINARY GROUNDS AND DISCIPLINARY PROCEDURES IN CONTRACTS.**

(1) A Governor may suspend a Provincial Administrator from office on disciplinary grounds, only in accordance with a resolution of the PEC, ensuring that the provisions of these Regulations and the Provincial Administrator's contract are complied with.

(2) A suspension may only be effected in accordance with the criteria and the procedures contained within a contract of employment approved by the National Executive Council and entered into between the Head of State and the Provincial Administrator.

(3) The grounds or the criteria and the procedure for suspension prescribed by a contract of employment shall include the following provisions:

- (a) where allegations of serious misconduct have been made against a Provincial Administrator by his or her Governor, dependent upon the circumstances and the nature of the allegations, which may require instantaneous removal from office, the Governor shall give to the Provincial Administrator in writing an opportunity to respond to the allegations within a seven day period; and
- (b) on receipt of the Provincial Administrator's response to the allegations the Governor who is the Chairman of the PEC shall provide a written report to the Minister for Public Service which contains evidence to support any allegations, or evidence that leads to a reasonable belief that the allegations are true; and
- (c) the Minister for Public Service shall on advise of the Secretary, Department of Personnel Management determine whether the evidence support the suspension of the Provincial Administrator on disciplinary grounds, if not the Minister shall advise the Governor Accordingly; and
- (d) where the Minister determines there sufficient grounds to support the suspension of the Provincial Administrator the Minister shall advise the Governor and the Governor shall lay a report before the Provincial Executive Council to recommend suspension; and
- (e) the Governor shall provide the PEC's resolution to the National Executive Council to effect suspension, and by delegation of the NEC the Minister shall advise the Head of State effect suspension from office on full pay to enable investigations to be conducted, and or disciplinary charges to be laid; and

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- (f) in the event that it is necessary to effect the suspension prior to a Decision being made by the NEC, suspensory action taken by a Governor shall be ratified by the Minister no later than 30 days following the action.

(4) The disciplinary process shall be stated in the contract terms and conditions and shall contain the following details:

- (a) in effecting a decision to suspend a Provincial Administrator, the Governor (or Minister for Public Service as delegated by the NEC) may either lay disciplinary charges coincident with the suspensory action, or notify the Provincial Administrator that investigations will be conducted in order to lay disciplinary charges at a later date; and
- (b) investigations shall be conducted initially by an independent committee under the chairmanship of the Secretary for the Department of Personnel Management or delegate, and the recommendations of the Committee shall be made within the time limit as determined by the Minister in consultation with the Governor; and
- (c) the Independent Investigations Committee shall comprise of one representative preferably at deputy secretary level from the following Central Agency Departments:
  - (i) department of Personnel Management; and
  - (ii) department of Prime Minister and NEC; and
  - (iii) department of Justice and Attorney General; and
  - (iv) department of Finance; and
  - (v) department of Provincial and Local Level Government; and
- (d) in the event that the investigations confirm the Provincial Administrator has a case to answer, then the Governor shall lay charges against the Provincial Administrator in a prescribed manner; and
- (e) the Provincial Administrator shall respond to the Governor within a fourteen calendar day period, stating whether or not he or she admits or denies the charges, and any mitigating circumstances surrounding the allegations; and
- (f) a legal opinion shall be obtained by the Chairman PEC as to the culpability of the Provincial Administrator and shall make a recommendation to the Minister on appropriate disciplinary action -
  - (i) re-instatement to office as Provincial Administrator if considered substantially innocent of misconduct in office; or
  - (ii) termination of appointment in the following manner:
    - (A) in the interest of the State, if considered guilty of misconduct to a degree not warranting termination for cause, resulting in either:
      - 1. redeployment on the same terms and conditions to another position of similar standing for the balance of the contract period; or
      - 2. termination from State service and payment of salaries and allowances for a 3 month notice period under the contract plus service related benefits; or
      - 3. termination from State service and payment of salaries and allowances for balance of contract subject to a maximum of an 18 month period including notice period under the contract plus service related benefits; or
    - (B) for cause, if considered guilty of substantial misconduct with either
      - 1. payment of service related benefits; or
      - 2. with forfeiture of service related benefits; and

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- (g) throughout disciplinary proceedings, the Secretary for the Department of Personnel Management shall be responsible for advising the Chairman of the PEC on the procedures and interpretation of Provincial Administrator contracts under these Regulations.

- (5) A provincial administrator may take paid leave of absence from Office where the provincial administrator is-
- (a) charged by the Police for a criminal offence which impacts upon his or her work performance; or
  - (b) cited for contempt of court for any reason; or
  - (c) referred by the Public Prosecutor under the *Organic Law to a Leadership Tribunal*, prior to the Tribunal sitting to hear the case; and for no other reason, the MEAC shall determine whether or not the departmental head must take paid leave of absence from office (not to count against accrued leave entitlements), in the public interest and the departmental head shall comply with such requirement, pending the outcome of the referred matter, or until dealt with under the disciplinary provisions of the contract.

**PART VIII. – TRANSITIONAL PROVISIONS.**

**28. TRANSITIONAL PROVISIONS FOR VARIATION OF PROVINCIAL ADMINISTRATOR CONTRACTS.**

(1) The standard terms and conditions of provincial administrator contracts as at 30 September, 2014 provide that the Head of State, acting on advice of the National Executive Council, may vary the terms and conditions of a contract by mutual agreement or by the giving of three months' notice.

(2) The National Executive Council has delegated to the Minister for Public Service, as Chairman of the Ministerial Executive Appointments Committee, the responsibility to advise the Head of State to vary the terms and conditions of each contract of employment to comply with the Act and the Regulations effective on and from 1 October, 2014.

(3) The contractual variation will not have any effect to vary the start and end dates of each contract in operation as at 1 October, 2014 and the contractual variation will confirm the new procedures for the appointment and removal of a provincial administrator on the recommendation of the Ministerial Executive Appointments Committee, on the recommendation of the Provincial Governor.

(4) The variation includes the application of the performance management system and the execution of performance commitments by the provincial administrator and the Provincial Governor, on behalf of the Provincial Executive Council to come into effect on and from 1 January, 2015.

(5) The Secretary to the Ministerial Executive Appointments Committee shall prepare the varied contract documents for approval by the Ministerial Executive Appointments Committee for execution by the Head of State and witnessed by the Secretary.

(6) A refusal by the Provincial Administrator to execute a varied contract shall be automatic ground for termination of a provincial administrator to execute the varied shall be automatic ground for termination of the provincial administrator's contract by the payment of three months' pay in lieu of the notice period which shall be effected by the Head of State acting on advice.

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(7) In the event that a provincial administrator is to be terminated for refusing a variation of the contract, the Minister for Public Service shall resolve the matter with the Provincial Governor and the Minister for Inter-Government Relations.

MADE this 15<sup>th</sup> day of October, 2014.

  
GOVERNOR-GENERAL.