

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 397.

Higher Education.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Education at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in, or in relation to, this Chapter to—

“the Departmental Head”— should be read as references to the Chairman of the Commission for Higher Education;

“the Department”— should be read as references to the Department of Education.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER No. 397.

Higher Education Act.

Being an Act to make provision for the establishment of a Commission for Higher Education to foster—

- (a) the rational development of higher education with regard to the needs and resources of Papua New Guinea; and
- (b) the rationalization and co-ordination of institutions of higher education so that the most effective use can be made of the resources available for higher education,

and for related purposes.

PART I. — PRELIMINARY.

1. Compliance with Constitutional requirements.

(1) This Act to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the Constitution, namely the right to privacy conferred by Section 49 of the Constitution, is a law that is made for that purpose.

(2) For the purposes of Section 29 of the *Organic Law on Provincial Government* it is declared that this Act relates to a matter that is of national interest.

2. Interpretation.

In this Act, unless the contrary intention appears—

“agency” means a Department or an organization or person conducting and institution of higher education;

“Chairman” means the Chairman of the Commission;

“church” includes mission;

“Commission” means the Commission for Higher Education established under Section 5;

“Commissioner” means a member of the Commission and includes the Chairman;

“Declared institution” means an institution of higher education in receipt of government funds declared under Section 3 to be an institution to which this Act applies;

“higher education” means all types of education of post-Grade 10 level, but does not include National High Schools or similar institutions or religious institutions;

“identity” means the character of a declared institution as determined by the agency responsible for the declared institution and includes the statement of philosophy as published from time to time by the agency;

“institution of higher education” means an institution at which higher education is provided;

“programme” means a combination of subjects, the successful completion of study in which will lead to the granting of an academic award;

"religious institution" means—

- (a) an institution in which instruction is wholly or mainly of a religious or doctrinal nature; or
- (b) an institution conducted by a church for the exclusive training of its own personnel;

"subject" means a distinct and formally assessed part of a programme;

"this Act" includes the regulations.

3. Application.

(1) The Minister may, in accordance with decisions of the National Executive Council, by notice in the National Gazette, declare an institution of higher education to be an institution to which this Act applies.

(2) Notwithstanding Subsection (1), Sections 27 and 30 apply to all institutions of higher education whether declared or not.

(3) This Act does not restrict or authorize the establishment or maintenance of a religious institution.

(4) This Act does not derogate the right of an agency responsible for a declared institution to promote a particular identity within that declared institution.

(5) The Minister shall ensure that agencies administering declared institutions exercise their powers and functions under this Act and any other law relating to higher education with due respect for the identity and the philosophy of all agencies.

PART II. — OBJECTS OF HIGHER EDUCATION.

4. Objects of higher education.

(1) Bearing in mind the National Goals and Directive Principles of the Constitution, and subject to this section, the objects and purposes of higher education, by means of the maximum involvement and co-operative effort by persons and bodies interested in higher education in the country (including the State, the teaching profession, churches and the community as a whole) and the maximum utilization of the resources available from all sources, are—

- (a) for the integral human development of the person; and
- (b) to develop and encourage the development of a system of higher education fitted to the requirements of the country and its people; and
- (c) to establish, preserve and improve standards of education throughout the country; and
- (d) to make the benefits of such education available as widely as possible,

as far as this can be done by legislative and administrative measures, and in such a way as to foster among other things a sense of common purpose and nationhood and the importance and value of higher education.

(2) In achieving the objects and purposes referred to in Subsection (1)—

- (a) the desirability of making due allowance for reasonable diversity of educational methods, provided that standards of educational achievement are not sacrificed; and
- (b) the right to define, develop and preserve the identity and character of declared institutions of a particular nature, whether of a religious or other

nature (not being based on distinctions of race or colour, or other criteria unacceptable in a democratic society); and

(c) the basing of education in declared institutions on both noble traditions and Christian principles; and

(d) the role of agencies as partners in higher education,

are and shall be, to such extent as is reasonably practicable and not inconsistent with the basic aims of this Act, specifically recognized.

(3) This Act does not restrict or authorize the making of regulations restricting the giving of religious and doctrinal instruction in declared institutions, but no declared institution is entitled to exclude a student solely on the grounds of religious or doctrinal affiliation.

(4) The general principles set out in this section are the principles to be observed in the administration of higher education and this Act.

PART III. — COMMISSION FOR HIGHER EDUCATION.

5. Commission for higher education.

The Commission for Higher Education is hereby established.

6. Membership of the Commission.

(1) The Commission shall consist of—

(a) the Chairman, who shall be appointed by the Head of State, acting on advice, given after consultation with the Public Services Commission, by notice in the National Gazette; and

(b) not less than four nor more than seven Commissioners each of whom shall have expertise or experience in higher education, administration, planning, finance or legislation and of whom—

(i) at least one shall be a woman; and

(ii) one shall be chosen from a panel nominated by an association or associations jointly, recognized by the Minister as representing the interests of church agencies,

who shall be appointed by notice in the National Gazette by the National Executive Council after consideration of recommendations made by the Minister.

(2) The Chairman shall be—

(a) appointed for a period not exceeding five years; and

(b) appointed on such terms and conditions as are determined by the Head of State, acting on advice; and

(c) eligible for re-appointment.

(3) The Commissioners, other than the Chairman, shall be—

(a) appointed for a period not exceeding three years; and

(b) appointed on such terms and conditions as are determined by the Minister; and

(c) eligible for re-appointment.

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Council as to the amount or proportion of finances available for higher education; and

- (vii) appropriate arrangements for the co-ordination and management of declared institutions under Part V; and
- (viii) general policies in relation to higher education of citizens resident abroad, and of non-citizen students enrolled in programmes in declared institutions.

(2) The recommendations concerning the national plan for higher education referred to in Subsection (1)(b)(i) shall include recommendations as to—

- (a) the range and level of programmes needed to meet national requirements; and
- (b) the declared institutions at which various programmes should be conducted; and
- (c) the number of students that should be enrolled in each programme and the number and level of Government scholarships or other awards that should be made available for each course or type of course; and
- (d) the establishment of new declared institutions or the amalgamation or closure of existing ones.

(3) The Commission shall review progress towards implementation of the national plan for higher education determined under Section 12, and shall report on such progress as provided for in Section 16.

14. Executive responsibilities of the Commission.

The Commission is responsible for—

- (a) implementing, so far as lies within its powers, Government policy in relation to higher education; and
- (b) determining, in consultation with the institutions of higher education involved and on behalf of all Departments and State instrumentalities, the relative status of academic awards given by declared institutions of higher education and accredited by their respective Ministers; and
- (c) promoting co-ordination and co-operation between declared institutions where it is in the best interests of the development of higher education to do so; and
- (d) assisting, in consultation with declared institutions and other bodies concerned, the preparation and execution of such plans for the development of declared institutions as may from time to time be required in order to ensure that they are fully adequate to national needs; and
- (e) monitoring, in respect of the national plan for higher education referred to in Section 12, enrolment patterns and programme offerings at declared institutions; and
- (f) collecting, examining and making available, information related to declared institutions; and
- (g) reviewing proposals for financial assistance for declared institutions to be made to the State and advising the Budget Priorities Committee of its views; and
- (h) so far as is practicable, regularly visiting each declared institution and each co-ordinating body appointed under Part V; and

- (i) appointing committees (which shall, where appropriate, reflect the principles of partnership of all higher education agencies) to carry out such duties as it thinks fit and conferring appropriate powers on such committees; and
- (j) undertaking and encouraging research in higher education.

15. Publication of handbooks.

The Commission shall, from time to time, publish handbooks to guide declared institutions on planning and the formulation of financial requests.

16. Reports.

The Commission shall, as soon as is practicable after 1 January in each year, give to the Minister for presentation to the Parliament, a report on the operations of the Commission, and of this Act, and on higher education in the country during the immediately preceding year, including progress towards implementation of the national plan for higher education.

PART IV. — SPECIAL FUNCTIONS OF THE CHAIRMAN.

17. Functions in relation to agencies.

The Chairman is responsible for ensuring that the principle of partnership of all agencies is upheld in practise in accordance with this Act and any other law relating to higher education matters.

18. Functions in relation to the Office of Higher Education.

- (1) An Office of Higher Education is hereby established.
- (2) The functions of the Office of Higher Education are to provide services for the Commission and such other functions as are determined by the Minister.
- (3) Any staff required for the Office of Higher Education shall be officers or employees of the Public Service.
- (4) For the purposes of the *Public Service Act* the Chairman shall, in relation to the officers and employees of, and to offices in, the Office of Higher Education, be deemed to be the Departmental Head.

19. Consultants, etc.,

Out of moneys lawfully available to it for the purpose, the Commission may, with the permission of the Consultancy Steering Committee, engage consultants and obtain expert advice on matters in respect of which the Commission has functions under this Act.

PART V. — CO-ORDINATING BODIES FOR HIGHER EDUCATION.

20. Establishment of co-ordinating bodies.

- (1) The Commission shall encourage the establishment of co-ordinating bodies to provide advice to the Commission as to any or all of the group activities of a group of declared institutions, and such bodies shall include representatives of the declared institutions affected.
- (2) Where the Minister considers it desirable in the national interest or in the interest of higher education to do so, he may, by notice in the National Gazette, declare an existing body to be a co-ordinating body for the purpose of providing advice to the Commission.

(3) Where a body referred to in Subsection (1) is not a body already in existence, the Minister may, by notice in the National Gazette, and after consultation¹, establish a co-ordinating body for the purpose of providing advice to the Commission.

PART VI. — GOVERNING COUNCILS FOR DECLARED INSTITUTIONS.

21. Declared institutions to which this Part applies.

Where the Minister is satisfied that—

(a) it is desirable that a declared institution be administered by a governing council in accordance with this Part; and

(b) a governing council has not been appointed under this or any other Act, the Minister may, by notice in the National Gazette, declare that institution to be an institution to which this Part applies.

22. Establishment of governing councils.

(1) In consultation with the Minister responsible, an agency shall establish a governing council for each declared institution of higher education for which it is responsible.

(2) In the event of an agency not fulfilling the requirement of Subsection (1), the Minister responsible may instruct the agency concerned to appoint a governing council.

(3) An agency shall submit, for approval by the Minister responsible, the constitution, membership, procedures, functions and responsibilities of the governing council of its declared institution of higher education.

(4) A governing council shall include a representative or representatives of the agency conducting the declared institution and such representatives may constitute a majority of the council.

(5) In performing and carrying out its functions and responsibilities, a governing council shall work, within the framework of plans, policies and financial provisions laid down by the Minister and the agency conducting the institution.

PART VII. — SALARIES AND CONDITIONS OF SERVICE.

23. Salaries and Conditions of Service.

(1) The Commission shall make recommendations to the Salaries and Conditions Monitoring Committee established under the *Salaries and Conditions Monitoring Committee Act* on the salaries and conditions of teachers in declared institutions.

(2) Before making recommendations under Subsection (1) the Commission—

(a) shall engage in consultation on the terms of its proposed recommendations with such of the following as are appropriate in the circumstances:—

(i) the Councils of Universities and Colleges; and

(ii) the Association of Colleges; and

(iii) the University and College Teachers' Associations as the organizations representing the interests of university and college teachers; and

(iv) the Public Services Commission; and

(v) the Teaching Services Commission; and

¹sic.

- (vi) other professional associations; and
- (b) may engage in consultations on the terms of its proposed recommendations with such other persons or organizations as it thinks fit.

PART VIII. — MISCELLANEOUS.

24. Scholarships.

The Minister may, out of moneys lawfully available for the purpose, make scholarships available to students in declared institutions on such terms and conditions as he determines.

25. Proposals for introduction or extension of certain institutions and courses.

Where it is proposed to introduce or extend a programme of higher education, or to establish or extend an institution of higher education, financed or proposed to be financed wholly or partly by the State, full details shall be given to the Commission in sufficient time to allow it to report, through the Minister, to the National Public Expenditure Plan and the Budget Priorities Committee, as appropriate, on the proposal, before any commitment is entered into.

26. Information concerning certain institutions and courses.

(1) The Minister may specify the information that shall be submitted to the Commission concerning programmes or declared institutions financed or to be financed wholly or partly by the State in order to allow the Commission to perform its functions.

(2) The information referred to in Subsection (1) shall be submitted in such form, manner and detail, and at such times, as are specified by the Minister in the notice.

27. Commission may obtain information.

(1) The Commission or a person authorized by it, may require any person who has, either solely or in association with other persons, the management or control of an institution of higher education or authority to supply it with any information concerning higher education at that institution.

(2) A person who, without reasonable excuse (proof of which is on him), refuses or fails to supply any information required under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K500.00

(3) It is a defence to a charge of an offence against Subsection (2) if the defendant proves that the information was not relevant to the performance of the functions, or the carrying out of the responsibilities, of the Commission.

28. Commission to work within national plans.

In performing its functions under this Act, it is the duty of the Commission to work within the framework of the Government's programme and budgets, and with regard to the resources of Papua New Guinea.

29. Consultation with interested bodies.

In performing its functions under this Act, the Commission shall consult with all interested persons and authorities on matters which affect the functional responsibilities of those persons and authorities.

30. Prohibition on conferring of certain diplomas.

(1) In this section, "unrecognized diploma" means a degree, diploma, certificate or other such distinction of a kind, or seemingly of a kind, usually granted by a university or institution of higher education, or having a name or an abbreviation that suggests that it has been granted by a university or institution of higher education, but does not include a degree, diploma, certificate or other distinction which is—

- (a) approved by the Commission; or
- (b) authorized by or under an Act; or
- (c) of a religious nature,

and which is granted in accordance with the conditions (if any) of the approval or authorization.

(2) A person or institution granting an unrecognized diploma is guilty of an offence.

Penalty: A fine not exceeding K500.00

(3) Where an academic qualification is required by law for any purpose, an unrecognized diploma shall not be treated as, or be counted towards, the qualification.

31. Regulations.

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

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 397.

Higher Education.

APPENDIX I.

SOURCE OF THE HIGHER EDUCATION ACT.

Part A. — Previous Legislation.

Higher Education Act 1983 (No. 12 of 1983).

Part B. — Cross References.

Section, etc. of Revised Edition.	Previous Reference ¹ .
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¹Unless otherwise indicated, references are to the Act set out in Part A.

