

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 405.

National Intelligence Organization.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was not vested specifically in any Minister at the date of its preparation for inclusion. It seems, therefore, that under Constitution Section 148(2) the Prime Minister was politically responsible.¹

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.

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National Intelligence Organization Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 405.

National Intelligence Organization Act.

Being an Act—

- (a) to establish a National Intelligence Organization; and
 - (b) to make provision for—
 - (i) its direction; and
 - (ii) the security of information and places,
- and for related purposes.

PART I.—PPRELIMINARY.

1. Compliance with Constitutional requirements.

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

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the Constitution; and
- (b) the right to freedom of conscience, thought and religion conferred by Section 45 of the Constitution; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the Constitution; and
- (d) the right to privacy conferred by Section 49 of the Constitution; and
- (e) the right to freedom of information conferred by Section 51 of the Constitution,

is a law that is made for that purpose.

2. Interpretation.

In this Act, unless the contrary intention appears—

“active measures of foreign intervention” means clandestine or deceptive action taken by or on behalf of a foreign power to promote the interests of that power;

“activities prejudicial to security” includes activities concerning which Papua New Guinea has responsibilities to a foreign country in respect of security;

“acts of violence” includes the kidnapping or detention of a person;

“Chairman” means the Chairman of the Council;

“Committee” means the National Security Advisory Committee;

“Council” means the National Security Council established by Section 3;

“Director-General” means the Director-General of the National Intelligence Organization appointed under Section 8;

“member” means a member of the Council;

"Organization" means the National Intelligence Organization established under Section 6;

"Provincial Authorities" means the person or authority in a province authorized by the Provincial Government of that province to liaise with the Director-General for the purposes of this Act;

"security" means—

(a) the protection of Papua New Guinea from—

- (i) espionage; and
- (ii) sabotage; and
- (iii) seditious enterprises; and
- (iv) active measures of foreign intervention; and
- (v) terrorism,

whether directed from, or committed within, Papua New Guinea or not; and

(b) the carrying out of Papua New Guinea's responsibilities to any foreign country in relation to a matter contained in Paragraph (a);

"seditious enterprise" has the meaning given to it in Section 46 of the *Criminal Code*;

"State Service" means—

- (a) the National Public Service; and
- (b) the Police Force; and
- (c) the Papua New Guinea Defence Force; and
- (d) the Parliamentary Service; and
- (e) any other service declared by an Act of the Parliament to be a State service;

"terrorism" includes—

- (a) acts of violence for the purpose of achieving a political objective in Papua New Guinea or in a foreign country (including acts of violence for the purpose of influencing the policy or acts of a government in Papua New Guinea or in a foreign country); and
- (b) training, planning, preparations or other activities for the purposes of violent subversion in a foreign country or for the purposes of the commission in a foreign country of other acts of violence of a kind referred to in Paragraph (a); and
- (c) acts that are offences punishable under any law relating to internationally protected persons, the hi-jacking of aircraft or the protection of aircraft.

PART II.—NATIONAL SECURITY COUNCIL.

3. National Security Council.

- (1) The National Security Council is hereby established.
- (2) The Council shall consist of—
 - (a) the Prime Minister, who shall be Chairman; and

- (b) the Deputy Prime Minister; and
- (c) the Minister responsible for defence matters; and
- (d) the Minister responsible for foreign affairs and trade matters; and
- (e) the Minister responsible for provincial affairs matters; and
- (f) the Minister responsible for police matters; and
- (g) the Minister responsible for financial matters.

(3) The Chairman may co-opt such other Ministers to be members of the Council from time to time as he considers necessary.

(4) Where the Council is considering an application for a warrant under Part VI, the Minister responsible for justice matters shall be deemed to be a member of the Council.

4. Functions of the Council.

The functions of the Council are—

- (a) to determine and direct the action to be taken in respect of matters affecting the sovereign integrity and security of Papua New Guinea and the security of its people; and
- (b) to provide guidance and direction to those elements of Government which are responsible for—
 - (i) matters affecting the maintenance of good order in Papua New Guinea; and
 - (ii) combating subversion and espionage; and
 - (iii) providing defence against military attack or armed incursions into Papua New Guinea's sovereign territory or the use of military pressures against Papua New Guinea or activities designed to undermine the security of Papua New Guinea and its people; and
- (c) to review, direct and provide guidance for the activities of the Committee and of the Organization.

5. Meetings of the Council.

- (1) The Council shall meet at such times as are fixed by the Chairman.
- (2) The Chairman shall preside at all meetings of the Council.
- (3) The quorum for a meeting of the Council is the Chairman and two members.
- (4) Where at a meeting of the Council a decision is taken in respect of the issuing of a warrant under Part VI., any member not present at that meeting shall be advised of the decision at the earliest possible opportunity.
- (5) Subject to this section, the procedures of the Council are as decided by the Council.

PART III.—NATIONAL INTELLIGENCE ORGANIZATION.

6. Establishment of National Intelligence Organization.

- (1) The National Intelligence Organization is hereby established.
- (2) The Organization shall consist of the Director-General of Intelligence and such other staff as are provided for in this Act.
- (3) The Director-General of Intelligence is the head of the Organization.

7. Functions of the Organization.

The functions of the Organization are to collect, collate and process intelligence information and to provide to the National Executive Council, Departments and other bodies or persons approved by the National Executive Council, timely, accurate and impartial assessments, forecasts and reports in respect of—

- (a) matters affecting the maintenance of good order in the country; and
- (b) the combating of seditious enterprises, espionage and sabotage and the provision of warning of potential military attack, armed incursions into the territory of Papua New Guinea or the use of military pressures against Papua New Guinea; and
- (c) the preservation of national sovereignty and the detection of any attempts by a foreign power or person to engage in political, military or economic activities contrary to Papua New Guinea's interests; and
- (d) the prospects for world and regional, political, economic and social stability insofar as these could have implications for, or could affect, Papua New Guinea; and
- (e) future trends of the availability of resources and of prices as these could have implications for Papua New Guinea.

PART IV.—DIRECTOR-GENERAL.**8. Director-General.**

(1) There shall be a Director-General of Intelligence who shall be—

- (a) appointed by notice in the National Gazette by the Head of State, acting on advice, given after consultation with the Leader of the Opposition; and
- (b) appointed for such period as the Head of State, acting on advice, determines, but in the case of an appointee from outside the National Public Service, for a period of not less than five, or more than seven, years; and
- (c) the Chief Executive Officer of the Organization; and
- (d) the head of the staff of the Organization.

(2) Subject to the *Salaries and Conditions Monitoring Committee Act*, the Director-General shall be paid such salary and allowances as are determined by the Prime Minister after consultation with the Public Services Commission.

(3) For the period of his appointment the Director-General shall be an officer of the Public Service.

9. Revocation of Appointment.

The Head of State, acting on advice, may revoke the appointment of the Director-General for demonstrated inability, misbehaviour or physical or mental incapacity.

10. Functions, etc., of Director-General.

(1) The functions of the Director-General are—

- (a) to control the Organization; and
- (b) to be responsive to the Committee; and
- (c) to provide assessments, forecasts and reports as required by this Act; and

- (d) to make enquiries and provide assessments, forecasts and reports as he, on his own initiative, considers necessary; and
- (e) to be responsible for the content of all assessments, forecasts and reports under this Act; and
- (f) to keep the Committee informed on the content of assessments, forecasts and reports under this Act; and
- (g) at his discretion, to keep Provincial Authorities informed of the security situation in their respective provinces and to liaise and co-operate with them on internal security intelligence matters; and
- (h) to advise the Prime Minister of intelligence matters which, in the national interest, should be brought to the notice of the Leader of the Opposition.

(2) Subject to Subsection (3), the Director-General is not subject to direction in respect of the content of, or conclusions to be reached in, any assessments, forecasts or reports under this Act.

(3) The Committee may direct the Director-General that certain aspects of a specific matter shall be considered in any matter under consideration by the Organization.

(4) The Director-General shall take all step to ensure that—

- (a) the work of the Organization is limited to that which is necessary for the purpose of the discharge of its and his functions; and
- (b) the Organization is kept free from any influence or considerations not relevant to its functions and that nothing is done that might promote any suggestion that it is concerned to further or protect the interests of any particular section of the community, or with any matters other than the discharge of its or his functions.

11. Powers of Director-General.

(1) Subject to this Act, the Director-General has, in addition to the powers conferred on him by this Act, power to do all things that are necessary or convenient to be done for or in connexion with the performance of his functions, and, in particular, has power—

- (a) subject to Subsection (2)—to obtain full access to information relating to international matters that are of political, military, strategic, social or economic significance to Papua New Guinea or which concern internal security in Papua New Guinea, being information in the possession of any State Service, Department or Statutory Authority; and
- (b) to enter into intelligence exchange, co-operation and liaison arrangements with the appropriate authorities of such foreign countries as the Prime Minister may, from time to time, approve; and
- (c) subject to Subsection (3)—to issue the assessments, forecasts and reports of the Organization and send them to such State Services, Departments and Statutory Authorities as he considers necessary.

(2) The Director-General is not entitled to information where the furnishing of such information would contravene the provision of any law of the State or of a province.

(3) Where—

- (a) the National Executive Council; or
- (b) the Council; or

(c) the Committee;

has commissioned a specific assessment, forecast or report, the Director-General shall not, without the consent of the commissioning authority, issue the assessment, forecast or report to other than the commissioning authority.

12. Collection of intelligence information outside the country.

(1) Subject to Subsection (2), the Director-General shall authorize the Organization to collect intelligence information outside the country by overt means only.

(2) Where the Director-General receives written authority to do so from the Prime Minister in respect of a particular matter, he may authorize the Organization to collect intelligence information outside the country by other than overt means.

13. Reports.

(1) The Director-General shall, before 31 March in each year, present to the Prime Minister a report on the work carried out by the Organization during the previous year.

(2) The Director-General—

(a) may, at any time where he considers it necessary or desirable to do so; and

(b) shall, where required to do so by this Act,

present to the Prime Minister a report on the work of the Organization, either in general or in reference to a specific matter.

PART V.—STAFF.

14. General staff.

(1) Subject to this Act, any staff required for the Organization shall be officers or employees of the Public Service.

(2) For the purposes of the Public Service Act, the Director-General shall, in respect of the staff referred to in Subsection (1), be deemed to be the Departmental Head within the meaning of that Act.

(3) A person is not eligible for employment in the Organization unless he obtains security clearance to the satisfaction of the Director-General.

15. Other staff.

(1) The Director-General may—

(a) make arrangements with—

(i) a Departmental Head; or

(ii) the head of a statutory authority; or

(iii) the head of a State Service,

for the services of a person, approved by the Director-General, who is employed in the Public Service or in the statutory authority or who is a member of the State Service, as the case may be, to be made available to assist in the performance of the functions of the Organization; or

(b) with the consent of the Public Services Commission, engage persons to perform services for the Organization.

(2) A person made available under Subsection (1)(a) shall perform such duties as are assigned to him by the Director-General and is, in the performance of those duties, subject to the direction of the Director-General.

(3) A person engaged under Subsection (1)(b) shall be engaged on such terms and conditions as are determined by the Public Services Commission.

(4) A person—

(a) made available under Subsection (1)(a); or

(b) engaged under Subsection (1)(b),

shall, while so made available or so engaged, be deemed to be employed under this Act.

PART VI.—SPECIAL POWERS.

16. Interpretation of Part VI.

In this Part, unless the contrary intention appears—

“address” means any premises or place (including a post office box or bag service) to which postal articles may be addressed;

“agent” in relation to the Post and Telecommunication Corporation, includes any person performing services for the Commission otherwise than under a contract of service and an employee of such a person;

“examination” includes any act or process for the purpose of producing sounds, images or information from a record;

“listening device” means any instrument, device or equipment capable of being used, whether above or in conjunction with any other instrument, device or equipment, to record or listen to spoken words;

“postal article” includes letters, postcards, letter-cards, newspapers, packets or parcels and all other articles transmissible by post and includes a telegram when transmitted by post;

“premises” includes any land, place, vehicle, vessel or aircraft;

“record”, when used as a noun, means—

(a) a document (including any written or printed material); or

(b) an object (including a sound recording, magnetic tape or disc, micro-film, photograph or film) by which words, images or sounds are recorded or stored or from which information can be obtained.

17. Director-General may request warrant under this Part.

(1) Where the Director-General considers it necessary that a warrant be issued under this Part, he shall apply to the Council for the issue of the appropriate warrant.

(2) An application for a warrant under this Part may be written or oral, but where it is not written, the Director-General shall, as soon as is practicable, forward to the Council a written request for the issue of the warrant.

(3) An application for a warrant under this Part shall specify the facts and other grounds on which the Director-General considers it necessary that the warrant should be issued, and, where appropriate, the grounds on which the Director-General suspects a person of being engaged in, or having been engaged in, or of being likely to be engaged in, activities prejudicial to national security.

18. Authority of the Organization under a warrant to be exercised only by Director-General, etc.

The authority of the Organization under a warrant issued under this Part shall be exercised on behalf of the Organization only by the Director-General and persons approved by him for the purpose.

19. Searches.

(1) It is unlawful for any officer, employee or agent of the Organization to search, for the purposes of the Organization, any person, unless that officer, employee or agent—

- (a) has obtained the consent of that person to the search; or
- (b) does so in accordance with a warrant issued under this Part.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding 12 months or both.

(2) It is unlawful for any officer, employee or agent of the Organization to search, for the purposes of the Organization, any premises, unless that officer, employee or agent—

- (a) has obtained the consent of the owner of those premises; or
- (b) does so in accordance with a warrant issued under this Part.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding 12 months or both.

(3) For the purposes of Subsection (2), "owner" includes lessee, tenant and any person who, in the opinion of the Director-General, is lawfully resident in or in control of the premises.

20. Warrant for search and entry, etc.

(1) Where, on receipt by the Council of an application by the Director-General for a warrant under this section, the Council is satisfied that there are reasonable grounds for believing that there are in any premises any records without access to which by the Organization the collection of intelligence by the Organization in accordance with this Act in respect of a matter that is important in relation to national security would be seriously impaired, the Council may, by warrant under the hand of the Chairman and two members, authorize the Organization to do such of the following acts and things as the Council considers appropriate in the circumstances:—

- (a) to enter the premises; and
- (b) to search the premises for and the purpose of finding records relevant to that matter, and for that purpose to open any safe, box, drawer, parcel, envelope or other container in which there is reasonable cause to believe that any such records may be found; and
- (c) to inspect or otherwise examine any records found in the premises and to make copies or transcripts of any record so found that appears to be relevant to the collection of intelligence by the Organization in accordance with this Act; and
- (d) to remove any record so found for the purposes of its inspection or other examination, and the making of copies or transcripts, in accordance with the warrant and to retain a record so removed for such time as is reasonable for those purposes; and
- (e) to stop and search any person found in the premises.

(2) The Council shall not issue a warrant under this section on a ground that relates to a seditious enterprise in Papua New Guinea unless it is satisfied that a person or organization occupying or using, or that has recently occupied or used, the premises specified in the warrant is engaged in activities constituting, or in preparation for, a seditious enterprise in Papua New Guinea.

(3) A warrant under this section shall specify—

- (a) the premises to which it relates; and
- (b) whether entry may be made at any time of the day or night or only during specified hours; and
- (c) whether entry may be made, and containers opened, without first seeking permission, and if so, on what conditions (if any); and
- (d) the period for which the warrant is to remain in force, being a period not exceeding seven days.

(4) Where, in terms of Subsection (3)(c), a warrant specifies that entry may not be made without first seeking permission, and permission is not granted, entry shall not be made without further warrant authority.

(5) Subsection 3(d) shall not prevent—

- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; or
- (b) the issue of a further warrant in respect of the same premises.

(6) Where a person is to be searched under Subsection (1)(e)—

- (a) a person conducting the search may, subject to this subsection, touch the body and clothing of the person being searched; and
- (b) the search shall be conducted with due regard to decency; and
- (c) a person conducting the search shall not use any greater force than is reasonable in the circumstances; and
- (d) if that person is a female, the search shall, subject to Paragraph (e), only be carried out in the presence of an adult female; and
- (e) if that person is a female reasonably believed to be carrying a firearm, or other effective weapon, the person may, notwithstanding the absence of an adult female, be searched for the purposes of locating and seizing the weapon.

21. Use of listening devices.

It is unlawful for any officer, employee or agent of the Organization, to use, for the purposes of the Organization, a listening device for listening to or recording words while they are being spoken by another person unless—

- (a) the officer, employee or agent is a person, or is included in a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard; or
- (b) in the case of the recording of words otherwise than by a person, or a member of a class or group of persons, by whom the speaker of the words intends, or should reasonably expect, the words to be heard the officer, employee or agent records the words with the consent of the speaker; or

- (c) the officer, employee or agent does so in accordance with a warrant issued under this Part.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding 12 months or both.

22. Warrant authorizing use of listening device in respect of a person.

(1) Where, on receipt by the Council of an application by the Director-General for the issue of a warrant under this section authorizing the use of a listening device in relation to a person, the Council is satisfied that—

- (a) that person is engaged in, or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) the use by the Organization of a listening device to listen to or record words spoken by or to that person will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Council may, by warrant under the hand of the Chairman and two members, authorize the Organization to use a listening device for the purpose of listening to or recording words spoken by or to that person.

(2) A warrant under this section—

- (a) may specify conditions or restrictions subject to which it is to be used; and
- (b) may authorize the Organization to enter any premises in which the person is, or is likely to be, for the purposes of installing, maintaining, using or recovering a listening device; and
- (c) shall, where entry to any premises is authorized, specify—
- (i) whether entry may be made at any time of the day or night, or only during specified hours; and
- (ii) whether entry may be made without first seeking permission, and if so, on what conditions (if any); and
- (d) shall specify the period for which the warrant is to remain in force.

(3) Subsection (2)(d) shall not prevent—

- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; or
- (b) the issue of a further warrant in respect of the same person.

23. Warrant authorizing use of listening device in respect of premises.

(1) Where, on receipt by the Council of an application by the Director-General for the issue of a warrant under this section authorizing the use of a listening device in relation to particular premises, the Council is satisfied that—

- (a) those premises are used, or are likely to be used or frequented by a person engaged in, or reasonably suspected by the Director-General of being engaged in or of being likely to engage in, activities prejudicial to security; and
- (b) the use of the Organization of a listening device to listen to or record words spoken by or to persons in those premises will, or is likely to, assist the

Organization in carrying out its function of obtaining intelligence relevant to security,

the Council may, by warrant under the hand of the Chairman and two members, authorize the Organization to use a listening device for the purpose of listening to or recording words spoken by or to that person while the person is in those premises.

(2) A warrant under this section—

- (a) may specify conditions or restrictions subject to which it is to be used; and
- (b) may authorize the Organization to enter those premises for the purpose of installing, maintaining, using or recovering a listening device; and
- (c) shall, where entry to any premises is authorized, specify—
 - (i) the premises to which it relates; and
 - (ii) whether entry may be made at any time of the day or night, or only during specific hours; and
 - (iii) whether entry may be made without first seeking permission and if so, on what conditions (if any); and
- (d) shall specify the period for which the warrant is to remain in force.

(3) Subsection (2)(d) shall not prevent—

- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; or
- (b) the issue of a further warrant in respect of the same premises.

24. Access to postal article.

(1) Subject to Subsection (2), it is unlawful—

- (a) for any officer, employee or agent of the Organization, acting in his capacity as such, to seek from any person employed in connexion with the postal services under the *Post and Telegraph Act*, or
- (b) for any person employed in connexion with the postal services under the *Post and Telegraph Act* to provide to any officer, employee or agent of the Organization,

access to a postal article that is in the course of the post, or information concerning the contents or cover of any postal article, except in pursuance of, or for the purposes of, a warrant under this Part.

Penalty: Imprisonment with hard labour for a term not exceeding seven years.

(2) Subsection (1) does not apply in relation to a postal article addressed to, or appearing to be intended to be received by or on behalf of the Organization.

25. Warrant to intercept postal article addressed to specified person.

(1) Where, on receipt by the Council of an application for a warrant under this section in relation to a person, the Council is satisfied that—

- (a) the person is engaged in or is reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organization to postal articles posted by or on behalf of, or addressed to or intended to be received by, that person, while the articles are

in the course of the post, will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Council may, by warrant under the hand of the Chairman and two members, authorize the Organization to do such of the following acts and things as the Council considers appropriate in the circumstances with respect to postal articles in the course of the post that were posted by or on behalf of, or are addressed to that person, or are reasonably suspected by a person authorized by the Organization to be intended to be received by that person:—

- (c) to inspect and make copies of any such postal articles; and
 - (d) to open any such postal articles; and
 - (e) to inspect and make copies of the contents of any such postal articles.
- (2) A warrant under this section shall specify—
- (a) the person in respect of whom it is issued; and
 - (b) the period for which it is to remain in force, being a period not exceeding 90 days.
- (3) Subsection (2)(b) shall not prevent—
- (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; and
 - (b) the issue of a further warrant in respect of the same person.
- (4) Where the Council issues or revokes a warrant under this section it shall—
- (a) immediately cause the Post and Telecommunication Corporation to be informed of the issue of the warrant or of the revocation; and
 - (b) cause a copy of the warrant or of the instrument of revocation, certified in writing by the Chairman to be a true copy, to be forwarded as soon as practicable to the Post and Telecommunication Corporation.

26. Warrant to intercept postal article on specified premises.

(1) Where, on receipt by the Council of an application for a warrant under this section in relation to an address, the Council is satisfied that—

- (a) some or all of the postal articles that are being, or are likely to be, sent by post to that address are or will be intended to be received by a person (whether of known identity or not) engaged in or reasonably suspected by the Director-General of being engaged in, or of being likely to engage in, activities prejudicial to security; and
- (b) access by the Organization to postal articles posted to that address and intended to be received by that person, while the articles are in the course of the post, will, or is likely to, assist the Organization in carrying out its function of obtaining intelligence relevant to security,

the Council may, by warrant under the hand of the Chairman and two members, authorize the Organization to do such of the following acts and things as the Council considers appropriate in the circumstances with respect to postal articles in the course of the post that are addressed to that address, or are reasonably suspected by a person authorized by the Organization to be intended to be received by the person referred to in Paragraph (a):—

- (c) to inspect and make copies of any such postal articles; and
- (d) to open any such postal articles; and
- (e) to inspect and make copies of the contents of any such postal articles.

- (2) A warrant under this section shall specify—
 - (a) the address in respect of which it is issued; and
 - (b) the period for which it is to remain in force, being a period not exceeding 90 days.
- (3) Subsection (2)(b) shall not prevent—
 - (a) the revocation by the Council of the warrant at any time before the expiration of the period specified; and
 - (b) the issue of a further warrant in respect of the same premises.
- (4) Where the Council issues or revokes a warrant under this section it shall—
 - (a) immediately cause the Post and Telecommunication Corporation to be informed of the issue of the warrant or of the revocation; and
 - (b) cause a copy of the warrant or of the instrument of revocation, certified in writing by the Chairman to be a true copy, to be forwarded as soon as practicable to the Post and Telecommunication Corporation.

27. Post and Telecommunication Corporation to assist where warrant issued.

The Post and Telecommunication Corporation shall give all reasonable assistance to a person acting in pursuance of a warrant issued under Section 25 and 26.

28. Discontinuance of action in pursuance of warrant.

Where, before a warrant under this Part ceases to be in force, the Director-General is satisfied that the grounds on which the warrant was issued have ceased to exist, he shall immediately inform the Council and take such steps as are necessary to ensure that action in pursuance of the warrant (other than recovery of a listening device) is discontinued.

29. Destruction of copy or record which is not required.

Where the Director-General is satisfied that any record or copy made by virtue of a warrant under this Part is not required for the purposes of the performance of functions or exercise of powers under this Act, he shall cause the record or copy to be destroyed.

30. Director-General to furnish report in respect of each warrant.

The Director-General shall furnish to the Council in respect of each warrant issued under this Part a written report on the extent to which the action taken under the warrant has assisted the Organization in carrying out its function of obtaining information relevant to security.

31. Hindering or obstructing a person acting in pursuance of a warrant.

A person who, without reasonable excuse, obstructs or hinders a person acting in pursuance of a warrant under this Part is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding 12 months.

32. Improperly obtaining a warrant.

It is unlawful for the Director-General, by misrepresentation of facts, improperly to obtain a warrant under this Part.

Penalty: A fine of K2 000.00 or imprisonment for a term not exceeding 12 months or both.

33. Disclosure of facts relating to warrant, etc.

(1) Subject to Subsection (2), a person who, being in possession of any facts or information relating to—

- (a) an application for a warrant; or
- (b) a warrant; or
- (c) the execution of a warrant,

under this Part, discloses except with the prior written consent of the Prime Minister, such facts or information to a person other than a person directly involved in—

- (d) the application for the warrant; or
- (e) the issuing of the warrant; or
- (f) the execution of the warrant,

is guilty of an offence.

Penalty: A fine not exceeding K2 000.00 or imprisonment for a term not exceeding 12 months or both.

(2) Subsection (1) does not apply after a warrant has been fully executed or has expired—

- (a) to a person who was the subject of the warrant; or
- (b) to any person other than a person who was directly involved in—
 - (i) the application for the warrant; or
 - (ii) the issuing of the warrant; or
 - (iii) the execution of the warrant.

PART VII.—SECURITY OF INFORMATION AND PLACES.**34. Interpretation of Part VII.**

In this Part, unless the contrary intention appears—

“adverse or qualified security assessment” means a security assessment in respect of a person that contains any opinion or advice, or any qualification of any opinion or advice, or any information, that is or could be prejudicial to the interests of that person;

“Government Authority” includes State Services, Departments, statutory authorities, and corporations wholly owned by the State;

“right of controlled access” means controlling or limiting access to any information or place on security grounds to persons—

- (a) who have a need to know that information or who need to enter specified places; and
- (b) who may reasonably be expected to respect the confidentiality of that information and the activities that are conducted in, or the contents of, a specified place;

“security assessment” means a written statement furnished by the Organization to a Minister or Government Authority expressing any recommendation, opinion or advice on, or otherwise referring to, the question whether it would be consistent with the requirements of security for a particular person to be

denied the right of controlled access, or for other administrative action to be taken in respect of such a person.

35. Director-General to provide guidance on security of information and places.

The Director-General shall provide guidance and advice from time to time as to the nature of information and places to which access should be controlled or limited and the measures which should be adopted to preserve the security of such information and such places.

36. Responsibility to determine security to information and places.

It is the responsibility of—

- (a) Ministers; and
- (b) Departmental Heads; and
- (c) Chief Executives of other Government Authorities,

to determine what information and places relative to their respective functions and responsibilities shall be subject to controlled or limited access and the measures which shall be adopted to preserve the security of such information and places.

37. Duties of Director-General where security measures not taken.

Where, in the opinion of the Director-General, the appropriate measures are not being taken by a Minister or Government Authority to preserve the security of particular items of information or places, he shall—

- (a) in the first instance, give a written report of the circumstances and of the appropriate measures to be taken to the Minister or Government Authority concerned; and
- (b) in the event of no remedial action being taken following a report under Paragraph (a) give a written report to the Prime Minister.

38. Responsibility to determine persons to have right of controlled access.

(1) Subject to this section, it is the responsibility of—

- (a) Ministers; and
- (b) Departmental Heads; and
- (c) Chief Executives of Government Authorities,

to determine those persons who shall have a right of controlled access to information and places relevant to their functions and responsibilities.

(2) A—

- (a) Minister; or
- (b) Departmental Head; or
- (c) Chief Executive of a Government Authority,

shall not—

- (d) grant a right of controlled access to; or
- (e) employ in a position in which he is required to have access to information or to a place which is secure,

a person unless a security assessment, other than an adverse or qualified security assessment, has been obtained in respect of that person.

(3) Where a—

- (a) Minister; or
- (b) Departmental Head; or
- (c) Chief Executive of a Government Authority,

is of the opinion that a person in respect of whom a security assessment, other than an adverse or qualified security assessment, has been obtained, is being unreasonably denied controlled or limited access to information or places, he may refer the matter to the National Executive Council who shall decide whether such access should be given.

39. Director-General to provide security assessments.

(1) The Director-General shall, on request by a—

- (a) Minister; or
- (b) Departmental Head; or
- (c) Chief Executive of a Government Authority,

provide a security assessment in respect of any person for whom a right of controlled access is sought.

(2) Where it comes to the notice of the Director-General that a person who has a right of controlled access should not, on security grounds, have such a right, he shall provide a written adverse or qualified security assessment to the—

- (a) Minister; or
- (b) Departmental Head; or
- (c) Chief Executive of a Government Authority,

who is responsible for that person's right of controlled access or whose functions and responsibilities could be affected by that person.

(3) On receipt of an adverse or qualified security assessment under Subsection (2) in respect of any person, the—

- (a) Minister; or
- (b) Departmental Head; or
- (c) Chief Executive of the Government Authority,

concerned, shall take such steps as are necessary to ensure that the person in respect of whom the adverse or qualified security assessment has been provided, is denied access to controlled information and places.

40. Procedure where appropriate action is not taken in respect of adverse or qualified security assessments.

Where the Director-General is satisfied that a person in respect of whom an adverse or qualified security assessment has been provided continues to obtain a right of controlled access, he shall report the circumstances in writing to the Prime Minister.

41. Special security assessment.

Where a foreign government or agency—

- (a) makes available or provides information, equipment, stores, materials or things to or in Papua New Guinea on a specially restricted basis; and

(b) requires guarantees that such information, equipment, stores, materials or things be seen or handled only by persons with a right of controlled access, the Director-General shall furnish a special security assessment, and only those persons who have such an assessment may be accorded a right of controlled access to such information, equipment, stores, materials or things.

42. Review of adverse or qualified security assessment.

Where the Director-General provides an adverse or qualified security assessment in respect of a person, he shall cause the Organization to review, from time to time and on a request by a responsible authority, the status of that assessment and shall give written notice to a responsible authority where a person, previously the subject of an adverse or qualified security assessment may be granted a right of controlled access.

43. Prime Minister to take appropriate action on receipt of report under this Part.

On receipt of a report from the Director-General under this Part, the Prime Minister shall consult with appropriate Ministers and direct such administrative action, as he sees fit, be taken to remove any perceived threat to the security of information or places.

PART VIII.—SECRECY.

44. Declaration of secrecy.

(1) Before entering on his duties under this Act—

- (a) the Director-General; and
- (b) each officer and employee of the Organization,

shall make the declaration of secrecy as prescribed in Schedule 1.

(2) The declaration of secrecy referred to in Subsection (1) shall be made—

- (a) in the case of the Director-General—before the Prime Minister or a person authorized by the Prime Minister for the purpose; and
- (b) in any other case—before the Director-General or an officer authorized by the Director-General for the purpose.

45. Information confidential.

(1) For the purposes of this section "Government Authority" has the meaning given to it under Section 34.

(2) Subject to Subsection (3), the information—

- (a) contained in any assessment, forecast or report by the Organization; and
- (b) coming to the knowledge of any person who is required to make the declaration of secrecy under Section 44 in connexion with the preparation of any assessment, forecast or report,

is confidential, and shall not be divulged to any person or authority other than the recipient without the express approval of the Director-General.

(3) The—

- (a) Prime Minister; or
- (b) Council; or

(c) Committee,

may, notwithstanding any direction by the Director-General, direct that an assessment, forecast or report be granted wider distribution than that authorized by the Director-General.

(4) For the purposes of Subsection (2), "recipient" includes any member of a Department or Government Authority or staff to which the assessment, forecast or report is addressed or for which it was compiled, and who has the need to know the information contained in it and who has a right of controlled access.

(5) For the purposes of Subsection (3), a certificate under the hand of the Prime Minister that the Committee has made a direction under Subsection (3) is conclusive evidence of such direction.

46. Assessments, etc., privileged.

(1) Subject to Subsection (3), an assessment, forecast or report prepared under this Act shall not be used as evidence in any proceedings in a court without the prior written consent of the Director-General.

(2) Subject to Subsection (3), a person employed under this Act shall not be required to divulge, whether by producing documents or otherwise—

- (a) the contents of any assessment, forecast or report prepared under this Act; or
- (b) any information coming to his knowledge during the preparation of any assessment, forecast or report prepared under this Act,

to a court or other person having power to summon witnesses.

(3) The Director-General may, by written notice authorize—

- (a) the use as evidence of an assessment, forecast or report prepared under this Act; and
- (b) a person employed under this Act to divulge matters referred to in Subsection (2).

47. Identity of officers, etc., not to be divulged.

A person who, except with the written consent of the Minister or of the Director-General—

- (a) publishes or causes to be published—
 - (i) in a newspaper or other publication; or
 - (ii) by radio broadcast or television; or
- (b) otherwise makes public,

any matter stating, or from which it could reasonably be inferred that a person—

- (c) having a particular name or otherwise identified; or
- (d) residing at a particular address,

is an officer (not including the Director-General), employee or agent of the Organization, or is in any way connected with such an officer, employee or agent, is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding 12 months, or both.

48. Protection of sources of information.

(1) Where the Director-General is of the opinion that it is necessary or expedient to protect the identity of the source of any information received in connexion with the work of the Organization, he may—

- (a) refuse to divulge the identity of such source or such other information likely to lead to the identification of such source; and
- (b) issue a certificate to the effect that such identification or other information shall not be divulged.

(2) Where a certificate has been issued under Subsection (1) (b), no officer or employee of the Organization shall be compelled in any court to disclose the identity or information referred to in the certificate.

PART IX.—OTHER OFFENCES.

49. Offences by persons employed under this Act.

(1) A person who is or has been employed under this Act who, except in the course of his duty under this Act, divulges—

- (a) the contents of an assessment, forecast or report prepared under this Act; or
- (b) any information coming to his knowledge during his employment under this Act;

is guilty of an offence.

Penalty: A fine not exceeding K10 000.00 or imprisonment for a term not exceeding 10 years, or both.

(2) A person who, while acting in pursuance of a warrant issued under Part VI, fails to comply with the terms and conditions of that warrant is guilty of an offence.

Penalty: A fine not exceeding K1 000.00 or imprisonment for a term not exceeding two years, or both.

50. Other offences.

(1) A person who—

- (a) wilfully obstructs; or
- (b) seeks to obstruct; or
- (c) causes any other person to obstruct,

any person employed under this Act in the execution of his duty or any person acting in pursuance of a warrant under Part VI is guilty of an offence.

Penalty: A fine not exceeding K5 000.00 or imprisonment for a term not exceeding five years, or both.

51. Personating officer or employee of the Organization.

A person who—

- (a) personates an officer or employee of the Organization on an occasion when the officer or employee is required to do any act or attend in any place by virtue of his employment; or

(b) falsely represents himself to be an officer or employee of the Organization and assumes to do any act or attend in any place for the purpose of doing any act by virtue of that employment,

is guilty of an offence.

Penalty: A fine not exceeding K5 000.00 or imprisonment for a term not exceeding five years, or both.

PART X.—MISCELLANEOUS.

52. 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 that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

SCHEDULE 1.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

National Intelligence Organization Act,

Sec. 44(1).

DECLARATION OF SECRECY.

I,
do promise and declare that I will not, except as allowed by law, divulge any information which has come to my knowledge in the execution of my duties under the National Intelligence Organization Act,

DATED , 19 .

Signed in my presence (Signature.)

Witness

Address of witness.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 405.

National Intelligence Organization.

APPENDIX 1.

SOURCE OF THE NATIONAL INTELLIGENCE ORGANIZATION ACT.

Part A.—Previous Legislation.

National Intelligence Organization Act 1984 (No. 27 of 1984).

Part B.—Cross References.

Section, etc., in Revised Edition	Previous Reference ¹ .	Section, etc., in Revised Edition	Previous Reference ¹ .
1	1	28	28
2	2	29	29
3	3	30	30
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23	23	50	50
24	24	51	51
25	25	52	52
26	26	Schedule 1.	Schedule
27	27		

¹Unless otherwise indicated, references are to the Act set out in Part A.

