

***Attorney-General Act 1989.***  
Consolidated: 31/10/2022



No. 17 of 1989.

***Attorney-General Act 1989.***

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No. 17 of 1989.

AN ACT

entitled

***Attorney-General Act 1989,***

Being an Act -

- (a) to implement Section 156(2) of the *Constitution* in relation to the Office of principal legal adviser to the National Executive by establishing the Office of Attorney-General to be the principal legal adviser and providing for the duties, functions and responsibilities of that Office; and
- (b) to establish the Office of Solicitor-General and provide for the duties, functions and responsibilities of that Office; and
- (ba) to establish the Office of the State Solicitor and provide for the functions and responsibilities of the Office<sup>1</sup>; and
- (c) to repeal the *Legal Aid Act* (Chapter 53) and the *Principal Legal Adviser Act* (Chapter 54); and
- (d) for related purposes,

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

**1. INTERPRETATION.**

In this Act, unless the contrary intention appears -

“Attorney-General” means the person holding the Office of Attorney-General in accordance with this Act;

“IPA”, means the Investment Promotion Authority established by Section 5 of the *Investment Promotion Authority Act 1992*;<sup>2</sup>

“NIDA” means the National Investment and Development Authority established by the *National Investment and Development Act*<sup>3</sup> (Chapter 120);

“Solicitor-General” means the person appointed as Solicitor-General under Section 10.

“State” in relation to the functions and powers of the State Solicitor and Solicitor-General, means government departments, Provincial and Local-level Governments and an arm, department, agency or instrumentality of the National Government or a Provincial Government and includes a body set up by statute or an administrative act for government or official purposes<sup>4</sup>;

<sup>1</sup> Paragraph (ba) added by No. 11 of 2013, s.1.

<sup>2</sup> The definition “IPA” added by No. 3 of 2022, s.1.

<sup>3</sup> The *National Investment and Development Act* has been repealed by No. 8 of 1992 *Investment Promotion Act 1992*. See, now Section 46 of the Investment Promotion Act 1992. See, also, Section 5 of that Act establishes the Investment Promotion Authority with similar powers to NIDA.

<sup>4</sup> The definition “State” added by No. 3 of 2022, s.1. Note, *Attorney General (Amendment) Act* 2013, No. 11 of 2013 added the same definition of “State”, however, *semble*, the latter definition impliedly repealed the former definition.

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“State Solicitor” means the person appointed as State Solicitor under 13A.<sup>5</sup>

### **2. ESTABLISHMENT OF OFFICE OF ATTORNEY-GENERAL.**

The Office of Attorney-General of Papua New Guinea is hereby established.

### **3. ATTORNEY-GENERAL TO BE PRINCIPAL LEGAL ADVISER.**

For the purposes of Section 156(2) of the *Constitution*, the Attorney-General is the principal legal adviser to the National Executive.

### **4. MINISTER AS ATTORNEY-GENERAL.**

Where the Minister responsible for the National Justice Administration is a lawyer fully admitted to practice under the *Lawyers Act 1986* he is the Attorney- General and principal legal adviser to the National Executive.

### **5. DEPARTMENTAL HEAD AS ATTORNEY-GENERAL.**

Where the Minister responsible for the National Justice Administration -

(a) is a person to whom Section 4 applies, but is out of the country or is out of speedy and effective communication or is otherwise unable to fulfill the duties of the Office of Attorney-General; or

(b) is not a lawyer fully admitted to practise under the *Lawyers Act 1986*,

the Departmental Head of the Department responsible for National Justice Administration is the Attorney-General and principal legal adviser to the National Executive.

### **6. DEPARTMENTAL HEAD AS ATTORNEY-GENERAL MAY ATTEND MEETINGS OF NATIONAL EXECUTIVE COUNCIL.**

Where the Departmental Head of the Department responsible for National Justice Administration is the Attorney-General, he is entitled to attend all meetings of the National Executive Council but -

(a) is not entitled to vote on any matter before the National Executive Council; and

(b) attends only for the purpose of providing legal advice to the National Executive Council.

### **7. DUTIES, FUNCTIONS AND RESPONSIBILITIES OF THE ATTORNEY-GENERAL.<sup>6</sup>**

(1) For the purposes of this section, the State refers to public bodies and statutory bodies as defined under the *Public Finances (Management) Act 1995*.

(2) The duties, functions and responsibilities of the Attorney-General are -

(a) to carry out the duties of the principal legal adviser to the National Executive Council and related duties in accordance with Section 8; and

(b) to exercise the duties, functions and responsibilities conferred upon the Attorney-General or upon the principal legal adviser by the *Constitution* and other laws; and

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<sup>5</sup> The definition “State Solicitor” added by No. 11 of 2013, s.2

<sup>6</sup> Section 7 repealed and replaced by No. 3 of 2022, s.2.

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- (c) to exercise the functions vested in the Office of the Attorney-General by virtue of the underlying law including the bringing of proceedings known as relator proceedings; and
- (d) to exercise powers delegated to him by the National Executive Council or a Committee of the National Executive Council; and
- (e) in accordance with Section 11, to recommend to the Judicial and Legal Services Commission to appoint a lawyer to be the Solicitor-General; and
- (f) in accordance with Section 13D, to recommend to the Judicial and Legal Services Commission to appoint a lawyer to be the State Solicitor; and
- (g) in accordance with Section 15, to grant a certificate that a barrister or solicitor practising outside the country is authorised to appear before the National and Supreme Courts; and
- (h) in accordance with Section 16, to grant a certificate to the Investment Promotion Authority; and
- (i) to brief-out to a lawyer or firm of lawyers, within or outside the country, to appear for the State in accordance with Section 7B; and
- (j) to vet and approve lawyers bills for brief-outs in accordance with Section 7C; and
- (k) to recommend to the Minister responsible for finance matters the payment by the State of ex-gratia sum of money, in cases where it appears nevertheless that the State should compensate a person as an act of grace; and
- (l) to vet and approve any out-of-court settlement by the State in accordance with Section 7D; and
- (m) to receive and to act upon the advice of the Attorney-General's Advisory Committee established under Section 7A.

(3) For the avoidance of doubt, a lawyer or firm of lawyers under Subsection (2) excludes the Solicitor-General and State Solicitor.

### **7A. ATTORNEY-GENERAL'S ADVISORY COMMITTEE.<sup>7</sup>**

(1) The Attorney-General's Advisory Committee is hereby established.

(2) The functions of the Attorney-General's Advisory Committee include providing advice to the Attorney-General on the following:

- (a) brief-out matters under Section 7B; and
- (b) vetting of lawyers bills under Section 7C; and
- (c) out-of-court settlement under Section 7D.

(3) The Attorney-General's Advisory Committee shall consist of -

- (a) the Secretary for Justice as the Chairperson (if the Secretary is not the Attorney-General); and
- (b) the Solicitor-General; and
- (c) the State Solicitor; and
- (d) two senior officers of the department at the Deputy Secretary level.

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<sup>7</sup> Section 7A added by No. 3 of 2022, s.3.

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(4) The proceedings of the Attorney-General's Advisory Committee shall be as prescribed.

(5) Any form of communication between the Attorney-General and the Attorney-General's Advisory Committee is privileged and non-justiciable.

### **7B. BRIEF-OUT MATTERS.<sup>8</sup>**

(1) A brief-out by the Attorney-General under Section 7(2)(i) shall be made on the recommendation of the Attorney-General's Advisory Committee.

(2) A lawyer or a firm of lawyers appearing for the State in any matter without a brief-out shall be deemed to be acting without instructions of the Attorney-General.

Penalty:           A fine not less than K500,000.00.

### **7C. LAWYERS BILL.<sup>9</sup>**

(1) Lawyers bill for brief-out shall only be settled after it has been vetted and approved by the Attorney-General on the recommendation of the Attorney-General's Advisory Committee.

(2) Where a State instrumentality pays legal bills without the approval of the Attorney-General, the head of the State instrumentality is personally liable to pay a fine of K50,000.00.

### **7D. OUT-OF-COURT SETTLEMENT.<sup>10</sup>**

The State shall not be liable for the payment of any out-of-court settlement, whether under deed of agreement or a contract, unless it has been approved by the Attorney-General on the recommendation of the Attorney-General's Advisory Committee.

## **8. LEGAL ADVICE AND OPINION.**

(1) The Attorney-General, as the principal legal adviser, shall tender legal advice and opinion to the National Executive following a request to do so and shall of his own initiative give such advice where it appears to him necessary or appropriate for legal advice to be given on a matter.

(2) The Attorney-General may tender or offer legal advice or opinion to the National Executive Council on a matter coming before the Council.

(3) The Attorney-General may tender or offer legal advice or opinion to a Minister on a matter relating to the portfolio of that Minister.

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<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

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(4) Where legal issues arise or might arise, legal advice must be provided by the Attorney-General to Ministers and the National Executive Council, either in his capacity as principal legal adviser to the National Executive Council or under Subsection (2) or (3) to the exclusion of all other lawyers unless the Attorney-General, in his absolute discretion, authorises the giving of legal advice by any other person.<sup>11</sup>

(5) Where the State Solicitor provides legal advice to a Minister upon request by that Minister, the State Solicitor must do so in consultation with the Attorney-General.<sup>12</sup>

### **8A. LEGAL SERVICE INSTRUCTIONS.**<sup>13</sup>

(1) The Attorney-General may, at any time, issue instructions, not inconsistent with this or any other Act, in relation to the acquisition by the State, its agents and instrumentalities, of legal services of the type provided by the State Solicitor.

(2) All officers and employees of the State, its agents and instrumentalities must comply with instructions issued under Subsection (1).

(3) A person who refuses or fails to comply with instructions issued under Subsection (1) commits a disciplinary offence in accordance with the terms and conditions of his employment.

### **9. DELEGATION.**

The Attorney-General may delegate in writing all or any of his duties, functions, responsibilities or powers under this Act or any other law (except this power of delegation).

### **9A. REPORTING.**<sup>14</sup>

(1) The Solicitor-General and State Solicitor shall provide regular reports to the Attorney-General in relation to the performance of their functions.

(2) Any form of communication between the Attorney-General, and either the Solicitor-General or the State Solicitor is privileged and non-justiciable.

### **10. ESTABLISHMENT OF THE OFFICE OF THE SOLICITOR-GENERAL.**<sup>15</sup>

(1) There is established within the National Public Service, the Office of the Solicitor-General.

- (2) The Office of the Solicitor-General consists of -
- (a) the Solicitor-General; and
  - (b) such numbers of deputies who are appointed under the *Public Services (Management) Act 1995*; and
  - (c) other officers and staff who must be officers or employees of the National Public Service.

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<sup>11</sup> Subsection (4) repealed and replaced by No. 11 of 2013, s.4.

<sup>12</sup> Subsection (5) added by No. 11 of 2013, s.4.

<sup>13</sup> Section 8A added by No. 11 of 2013, s.5.

<sup>14</sup> Section 9A added by No. 3 of 2022, s.4.

<sup>15</sup> Section 10 repealed and replaced by No. 3 of 2022, s.5.

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(3) Subject to Section 26(3) of the *Constitution* (*Application of Division 2*), the Office of the Solicitor-General is declared to be an office to and in relation to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

### **11. APPOINTMENT OF THE SOLICITOR-GENERAL.<sup>16</sup>**

(1) The Solicitor-General is appointed by the Judicial and Legal Services Commission on the recommendation of the Attorney-General following the appointment process as prescribed.

(2) The Solicitor-General holds office in accordance with the terms and conditions of a contract of employment with the State.

(3) The Solicitor-General is appointed for a term of five years and is eligible for re-appointment.

### **12. QUALIFICATIONS FOR APPOINTMENT AS SOLICITOR-GENERAL.**

No person is eligible to be appointed as Solicitor-General unless he is a lawyer fully admitted to practise in accordance with the *Lawyers Act 1986*, who has practised as a lawyer within the country for a period of at least five years prior to his appointment as Solicitor-General.

### **13. FUNCTIONS OF THE SOLICITOR-GENERAL.<sup>17</sup>**

(1) The primary functions of the Solicitor-General are to -

- (a) appear as an advocate for the State before the courts in Papua New Guinea, unless otherwise instructed by the Attorney-General; and
- (b) provide legal representation as advocate in all court-annexed alternative dispute resolution matters for and on behalf of the State; and
- (c) perform any other functions consistent with his advocacy functions.

(2) All officers and employees of the State, its agents or instrumentalities must -

- (a) co-operate with; and
- (b) comply with any instructions issued by,

the Solicitor-General when the Solicitor-General is performing the functions or exercising the powers of his office under this Act or any other law.

(3) A person who fails or refuses to comply with Subsection (2) commits a disciplinary offence under the terms and conditions of his employment.

(4) The Solicitor-General may, in writing, delegate all or any of his powers and functions, except his power of delegation, under this Act or any other law, to a Deputy Solicitor-General.

(5) Any delegation under Subsection (4) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the Solicitor-General.

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<sup>16</sup> Section 11 repealed and replaced by No. 3 of 2022, s.6.

<sup>17</sup> Section 13 repealed and replaced by No. 3 of 2022, s.7.

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**13A. ESTABLISHMENT OF THE OFFICE OF STATE SOLICITOR.<sup>18</sup>**

- (1) There is established within the National Public Service, the Office of the State Solicitor.
- (2) The office of the State Solicitor consists of -
  - (a) the State Solicitor; and
  - (b) such number of deputies who are appointed under the *Public Services (Management) Act 1995*; and<sup>19</sup>
  - (c) other officers and staff who must be officers or employees of the National Public Service.

**13B. FUNCTIONS OF THE STATE SOLICITOR.<sup>20</sup>**

- (1) The primary functions of the State Solicitor are -
  - (a) to provide legal advice and opinion to the State and its agencies and instrumentalities in all matters affecting the State; and
  - (b) to be the legal representative of the State in all matters affecting the State including negotiations entered into by the State; and
  - (c) to provide legal clearance on all matters in which the State is a party, in so far as it relates to -
    - (i) contracts of employment for appointments made by the Head of State; and
    - (ii) consultancy agreements; and
    - (iii) commercial agreements; and
    - (iv) international treaties, conventions and agreements which are bilateral or multilateral or any other public international instruments; and
    - (v) lease agreements; and
    - (vi) memorandums of agreement; and
    - (vii) memorandums of understanding; and
    - (viii) any other documents that seek to legally bind the State; and
  - (d) to consider and provide legal clearance on the necessity of -
    - (i) proposed legislation; and
    - (ii) proposed amendments to existing legislation; and
    - (iii) proposed regulations; and
    - (iv) proposed amendments to existing regulations,before submission to the National Executive Council for its approval; and
  - (e) to make appearance on behalf of the State before tribunals outside of the National Judicial System; and
  - (f) to perform any other functions consistent with his advisory functions.

(2) In the exercise of his functions, the State Solicitor may only accept instructions from the State, its agencies and its instrumentalities, the Attorney- General and such other entities as may be prescribed by regulation.

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<sup>18</sup> Section 13A added by No. 11 of 2013, s.6.

<sup>19</sup> Paragraph (b) repealed and replaced by No. 3 of 2022, s.8.

<sup>20</sup> Section 13B added by No.11 of 2013, s.6.

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(3) The State Solicitor may, at any time, for the purpose of the performance of his functions under this Act or any other law -

- (a) require, where necessary, any person to provide information relative to his functions; and
- (b) require, where necessary, any person to produce documents within his possession or subject to his control where such documents are relevant to the functions of the State Solicitor; and
- (c) make and retain copies of any document produced under Paragraph (b).

(4) All officers and employees of the State, its agents or instrumentalities must -

- (a) co-operate with; and
- (b) comply with any instructions issued by,

the State Solicitor when the State Solicitor is performing the functions or exercising the powers of his or her office under this Act or any other Act.

(5) A person who fails or refuses to comply with Subsection (4) commits a disciplinary offence and must be dealt with in accordance with the terms and conditions of his employment.

### **13C. DELEGATION BY THE STATE SOLICITOR.**<sup>21</sup>

(1) The State Solicitor may, in writing, delegate all or any of his powers and functions, except this power of delegation, under this Act or any other Act, to a Deputy State Solicitor.

(2) Any delegation under Subsection (1) is revocable, in writing, at will, and no such delegation affects the exercise of a power or the performance of a function by the State Solicitor.

### **13D. APPOINTMENT OF STATE SOLICITOR.**<sup>22</sup>

(1) The State Solicitor is appointed by the Judicial and Legal Services Commission on the recommendation of the Attorney-General, following the appointment process as prescribed, and holds office in accordance with the terms and conditions of a contract of employment with the State.<sup>23</sup>

(2) The State Solicitor is appointed for a term of five years and is eligible for reappointment.

### **13E. LEADERSHIP CODE.**<sup>24</sup>

Pursuant to Section 26(3) of the *Constitution* (*Application of Division 2*), the Office of the State Solicitor is declared to be an office to and in relation to which Division III.2 (*Leadership Code*) of the *Constitution* applies.

[Section 14 repealed by No. 36 of 2021, s.2.]

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Subsection (1) repealed and replaced by No. 3 of 2022, s.9.

<sup>24</sup> Section 13E added by No. 11 of 2013, s.6.

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**15. EMPLOYMENT OF BARRISTERS, ETC., PRACTISING OUTSIDE THE COUNTRY.**

(1) The Attorney-General may, in his discretion, issue to a barrister or solicitor who -

- (a) is a non-citizen; and
- (b) ordinarily practises as a barrister or solicitor outside the country; and
- (c) is not ordinarily resident in the country,

a certificate in the prescribed form authorising that barrister or solicitor to appear in a case before the National or Supreme Court.

(2) A barrister or solicitor who -

- (a) is a non-citizen; and
- (b) ordinarily practises as a barrister or solicitor outside the country; and
- (c) is not ordinarily resident in the country,

is not entitled to appear before the National or Supreme Court in any case without a certificate under Subsection (1).

(3) An application for a certificate under Subsection (1) shall be made by the lawyer proposing to instruct the barrister or solicitor in respect of whom the application is made and shall be accompanied by -

- (a) evidence that the barrister or solicitor has obtained a work permit under the *Employment of Non-citizens Act*<sup>25</sup> (Chapter 374); and
- (b) evidence of the qualifications and experience of the barrister or solicitor; and
- (c) a certificate to the effect that there is no lawyer who -
  - (i) is a citizen; or
  - (ii) is normally resident in the country,available and competent to appear in the case; and
- (d) such other information as the Attorney-General may require.

(4) In determining whether or not to grant a certificate under Subsection (1), the Attorney-General shall have regard to -

- (a) the academic and practise qualifications of the barrister or solicitor; and
- (b) the degree of difficulty of any legal issues which might reasonably be expected to arise in the matter in which it is proposed to instruct the barrister or solicitor to appear; and
- (c) whether the matter is one in which, in the opinion of the Attorney- General, a competent lawyer practising within the country could be expected to appear; and
- (d) any other relevant matter.

(5) A certificate under Subsection (1) authorizes the barrister or solicitor named in the certificate to appear in all applications, interlocutory or final, in the case specified in the certificate.

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<sup>25</sup> *Employment of Non-citizens Act* (Chapter 374) has been repealed by *Employment of Non-citizens Act 2007*.

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(6) The provisions of this section are in addition to, and not in derogation of, the requirements of the *Lawyers Act 1986*.

### **16. LEGAL PRACTICE BY NON-CITIZEN LAWYERS.**

(1) Notwithstanding the provisions of the *National Investment and Development Act*<sup>26</sup> (Chapter 120), a person applying under that Act for -

- (a) registration; or
- (b) renewal or extension of the registration; or
- (c) variation of terms and conditions of the registration,

of a foreign enterprise for the purpose of practising law in the country shall provide to the Attorney-General at the time of applying for registration with NIDA<sup>27</sup> -

- (d) copies of all documents which he has submitted to NIDA in support of his application; and
- (e) such other documents and such other information as the Attorney- General may require.

(2) NIDA shall not grant registration to a foreign enterprise to practise law in the country without a certificate of approval in the prescribed form of the Attorney-General.

(3) The Attorney-General shall consider the documents and other information submitted to him under Subsection (1) and shall, within a reasonable time of such consideration, grant a certificate of approval to NIDA or notify NIDA and the applicant of his refusal to do so.

(4) Notwithstanding the provisions of the *National Investment and Development Act*<sup>28</sup> (Chapter 120), the Attorney-General shall keep under continuing review a foreign enterprise registered under that Act and permitted to practise law in the country in accordance with that Act.

(5) The Attorney-General may from time to time issue to NIDA guidelines concerning the establishment in the country of foreign enterprises practising law.

### **17. REPEAL.**

The *Legal Aid Act* (Chapter 53) and the *Principal Legal Adviser Act* (Chapter 54) are repealed.

### **17A. TRANSITIONAL PROVISION.**<sup>29</sup>

The incumbent Solicitor-General is deemed to hold Office for a period of five years and is eligible for re-appointment on the coming into operation of this Act.

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<sup>26</sup> See Footnote 2.

<sup>27</sup> See, the *Investment Promotion Act 1992*.

<sup>28</sup> See Footnote 2.

<sup>29</sup> Section 17A added by No. 3 of 2022, s.10.

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**18. REGULATIONS.**

The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all things 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 and in particular for prescribing fees and for prescribing penalties of fines not exceeding K500,000.00 for offences against the Regulations.<sup>30</sup>

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Office of the Commissioner-Revised Laws, PNG

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<sup>30</sup> Section 18 amended by No. 3 of 2022, s.11.