

No. 35 of 2020.

Higher and Technical Education Reform Act 2020.

Certified on : 14 JAN 2021



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Higher and Technical Education Reform Act 2020.

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No. of 2020.

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entitled

Higher and Technical Education Reform Act 2020,

Being an Act to provide for the transfer of public higher and technical education institutions to the Ministry for Higher Education, Research, Science and Technology, the regulation of agency institutions and related matters,

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

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL AND OTHER 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 -

- (a) the right to freedom of employment conferred by Section 48; and
- (b) the right to privacy conferred by Section 49; and
- (c) the right to freedom of information conferred by Section 51,

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

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. INTERPRETATION.

In Parts I to III, unless the contrary intention appears -

“agency institution” means a higher education institution -

- (a) that is owned, operated or administered by an education agency; and
- (b) that receives more than 50% of its annual funding from the State;

“annual funding” for an agency institution, means -

- (a) the total annual cost of running the institution including operational costs; and
 - (b) the cost of salaries and benefits of academic and non-academic staff; and
 - (c) the cost of infrastructure and grant funding,
- but does not include scholarship funding;

“Council” means the Council of the public higher education institution established under Section 143M of the *Higher Education (General Provisions)(Amendment) Act 2020*;

“Department” means the Department of Higher Education, Research, Science and Technology;

“Departmental Head” means the Departmental Head of the Department of Higher Education, Research and Technology appointed under Section 10 of the *Higher Education (General Provisions) Act 2014*;

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“education agency” means a church-based or other organisation (other than the State) -

- (a) that is registered with the Papua New Guinea Investment Promotion Authority as a company, business group or incorporated association; and
- (b) which owns, operates or administers an agency institution;

“Governing Council” means a Governing Council established under the *Education Act 1983*;

“higher education institution” means an educational institution that provides post-secondary (non-school) education leading to any award described in the Papua New Guinea National Qualifications Framework (or such other national standard as may succeed it) as a higher education or a technical and vocational award qualification;

“public higher education institution” means -

- (a) a State-owned institution; or
- (b) an agency institution;

“State-owned institution” means a higher education institution established and owned by the State and registered under Part VI of the *Higher Education (General Provisions) Act 2014*;

“teachers’ college” means a teachers’ college that, immediately before the commencement of this Act, was recognised as a member school in accordance with Part IV of the *Education Act 1983*;

“Teaching Service” has the same meaning as in the *Teaching Service Act 1988*;

“Teaching Service Commission” has the same meaning as in the *Teaching Service Act 1988*;

“technical college” means a technical college that immediately before the commencement of this Act was recognised as a member school in accordance with Part IV of the *Education Act 1983*;

“transfer date for a public higher education institution” means the date determined by the Minister in a notice under Section 5;

“transferred institution” means a public higher education institution for which a transfer date has been determined under Section 5.

3. PURPOSE OF THIS ACT.

The purpose of this Act is -

- (a) to transfer the governance and budgetary oversight of public higher education institutions to the Ministry for Higher Education, Research, Science and Technology and the Department; and
- (b) to transfer the regulatory oversight of private training institutions formerly regulated under the *National Training Council Act 1991* to the Ministry for Higher Education, Research, Science and Technology and the Department.

PART II. - TRANSFER OF PUBLIC HIGHER EDUCATION INSTITUTIONS.

Division 1. - Formal transfer of institutions.

4. APPLICATION OF PART II.

Part II applies to the transfer of a public higher education institution or group of institutions to the Department.

5. MINISTER TO DETERMINE DATE OF TRANSFER.

The date of transfer of a public higher education institution or a group of institutions must be determined by the Minister by a notice published in the National Gazette.

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6. TRANSFER OF PUBLIC HIGHER EDUCATION INSTITUTIONS.

(1) From the transfer date for a public higher education institution or group of institutions, the institution -

- (a) is deemed to be under the Ministry for Higher Education, Research, Science and Technology and the Department; and
- (b) is subject to the operation of this Act and the *Higher Education (General Provisions) Act 2014*; and
- (c) is deemed to be an approved public higher education institution in accordance with Subdivision VI.2.A of the *Higher Education (General Provisions) Act 2014*; and
- (d) must be registered by the Departmental Head in accordance with Section 33 of the *Higher Education (General Provisions) Act 2014*.

(2) From the transfer date of the public higher education institution or group of institutions, the programs offered by the institution are deemed to be accredited in accordance with Subdivision VI.3.A of the *Higher Education (General Provisions) Act 2014*.

(3) Registration and accreditation under Subsections (1) and (2) are provisional upon assessment of the institutions in accordance with the *Higher Education (General Provisions) Act 2014*.

Division 2. - Transitional provisions - Teachers' colleges and technical colleges.

7. APPLICATION OF DIVISION 2.

This Division applies to a teachers' college or technical college that is a transferred institution.

8. ARRANGEMENTS FOR EDUCATION AGENCIES.

Arrangements between the State and education agencies, in place immediately before the transfer date, must continue, subject to the operation of this Act and the *Higher Education (General Provisions) Act 2014*.

9. GOVERNING COUNCIL ARRANGEMENTS.

(1) The Governing Council of a transferred institution immediately before a transfer date must -

- (a) continue to govern the institution for a period of up to six months from the transfer date; and
- (b) work with the Department to effect the appointment of a new Council in accordance with Part XB of the *Higher Education (General Provisions)(Amendment) Act 2020*.

(2) During the transition period mentioned in Subsection (1)(a), the members of the existing Governing Council are entitled to such fees and entitlements as they had been before the transfer date.

10. TEACHING SERVICE MEMBERS IN TEACHERS' COLLEGES AND TECHNICAL COLLEGES (INCLUDING PRINCIPAL).

(1) A person who, on the day before the transfer date, is a member of the Teaching Service and appointed to a transferred institution, remains appointed to the transferred institution from the transfer date.

(2) The terms and conditions of employment of an employee under Subsection (1), applying on the day immediately before the transfer date, continue in force and are binding on the employee and the transferred institution until replaced by a contract of employment under the *Higher Education (General Provisions) Act 2014*.

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- (3) A transferred institution may, not before 12 months after the transfer date, offer a contract of employment to a transferred employee.
- (4) In the event that a transferred employee is not offered a contract of employment under Subsection (3), or if a transferred employee does not wish to enter into a contract of employment -
- (a) the transferred employee must be given at least 90 days' notice, in writing, that ongoing employment at the institution will cease; and
 - (b) the Teaching Service Commission must, within 90 days of the employee being notified in accordance with Subsection (4)(a), either -
 - (i) redeploy the employee to a school or other institution; or
 - (ii) retrench the employee from the Teaching Service; or
 - (iii) retire the employee from the Teaching Service.
- (5) A transferred employee who enters into a contract of employment under this section -
- (a) ceases to be a member of the Teaching Service from the date of the contract of employment with the transferred institution; and
 - (b) ceases to accrue any further benefits in relation to his former employment as a member of the Teaching Service from the date of the contract of employment with the transferred institution.
- (6) The entering into of a contract of employment under this section will represent continuous service in relation to all entitlements accrued by the transferred employee under prior employment with the Teaching Service Commission and such entitlements are the liabilities of the State.

11. DEPARTMENT OF EDUCATION STAFF WORKING AT TRANSFERRED INSTITUTIONS.

(1) A person who, on the day before the transfer date, is an employee of the Department of Education and whose substantive position is within a transferred institution, that person remains appointed to the transferred institution from the transfer date.

(2) The terms and conditions of employment of an employee under Subsection (1), applying on the day immediately before the transfer date, continue in force and is binding on the employee and the transferred institution until replaced by a contract of employment under the *Higher Education (General Provisions) Act 2014*.

(3) A transferred institution may, not before 12 months after the transfer date, offer a contract of employment to a transferred employee.

- (4) In the event that a transferred employee is not offered a contract of employment under Subsection (3), or if a transferred employee does not wish to enter into a contract of employment -
- (a) the transferred employee must be given at least 90 days' notice, in writing, that ongoing employment with the institution will cease; and
 - (b) the Department of Education must, within 90 days of the employee being notified in accordance with Subsection (4)(a), either -
 - (i) re-appoint the employee to another position within the Department of Education; or
 - (ii) retrench the employee; or
 - (iii) retire the employee.

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(5) The entering into of a contract of employment under this section will represent continuous service in relation to all entitlements accrued by the transferred employee under prior employment with the Department of Education and such entitlements are the liabilities of the State.

12. DEPARTMENTAL STAFF OF DEPARTMENT OF EDUCATION AFFECTED BY THIS ACT.

The Department and the Department of Education will use their best endeavours to transfer or redeploy staff of the Department of Education affected by this Act.

13. TRANSFER OF FILES AND OTHER DOCUMENTS IN RELATION TO TRANSFERRED INSTITUTION.

(1) On the transfer date, the Department of Education must transfer to the Department, all files, documents and other materials relevant to the operation and management of the transferred institution,

(2) The files, documents and materials mentioned in Subsection (1) include all computer and other electronic files held by the Department of Education.

14. TRANSFER OF LAND, ASSETS AND LIABILITIES.

(1) On the transfer date of a State-owned institution, the Department of Education must transfer, all land, assets, liabilities, rights and entitlements in relation to a State-owned transferred institution to the Department.

(2) On the transfer date, the Department of Education must transfer all monies which were, immediately before the transfer date, allocated to or standing to the credit of a transferred institution, to the Department.

(3) If in any contract, instrument or other document, reference is made to a transferred institution immediately before the transfer date, such reference is to be taken for all purposes as a reference to a transferred institution under this Act.

(4) Proceedings commenced in a court in relation to a transferred institution that are pending or in progress immediately before the transfer date, may be continued, completed and enforced under this Act.

15. SAVING OF THE EDUCATION ACT 1983.

The *Education Act 1983* as was in force before the commencement of this Act and the *Education (Amendment) Act 2020* remain in force for a teachers' college and a technical college until the transitional arrangements under this division are completed.

Division 3. - Transitional provisions for transferred institutions other than Teachers' colleges and technical colleges.

16. APPLICATION OF DIVISION 3.

This Division applies to transferred institutions other than teachers' colleges and technical colleges.

17. ARRANGEMENTS FOR EDUCATION AGENCIES.

Arrangements between the State and education agencies in place immediately before the transfer date, must continue, subject to the operation of this Act and the *Higher Education (General Provisions) Act 2014*.

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18. GOVERNING BODY ARRANGEMENTS.

- (1) The governing body of a transferred institution immediately before a transfer date must -
- (a) continue to govern the institution for a period of up to six months from the transfer date; and
 - (b) work with the Department to effect the appointment of a new Council in accordance with Part XB of the *Higher Education (General Provisions)(Amendment) Act 2020*.

(2) During the transition period mentioned in Subsection (1)(a), the members of the existing governing body are entitled to such fees and entitlements as they had been before the transfer date.

19. STAFF OF TRANSFERRED INSTITUTIONS (INCLUDING PRINCIPAL).

(1) A person who, on the day before the transfer date, was appointed to a position at a transferred institution, remains appointed to the transferred institution from the transfer date.

(2) The terms and conditions of employment of an employee under Subsection (1), applying on the day immediately before the transfer date, continue in force and are binding on the employee and the transferred institution until replaced by a contract of employment in accordance with the *Higher Education (General Provisions) Act 2014*.

(3) A transferred institution may, not before 12 months after the transfer date, offer a contract of employment to a transferred employee.

(4) In the event that a transferred employee is not offered a contract of employment under Subsection (3), or if a transferred employee does not wish to enter a contract of employment -

- (a) the transferred employee must be given at least 90 days' notice, in writing, that ongoing employment with the institution will cease; and
- (b) the department or government agency with responsibility for the institution before the transfer date must, within 90 days of the employee being notified under Subsection (4)(a), either -
 - (i) transfer or redeploy the employee; or
 - (ii) retrench the employee; or
 - (iii) retire the employee.

(5) The entering into of a contract of employment under this section will represent continuous service in relation to all entitlements accrued by the transferred employee under prior employment with the department or government agency immediately before the transfer date and such entitlements are the liabilities of the State.

20. DEPARTMENTAL OR GOVERNMENT AGENCY STAFF AFFECTED BY THIS ACT.

The department or government agency formerly responsible for the transferred institution and the Department must use all best endeavours to transfer or redeploy any staff of the department or Government agency affected by this Act.

21. TRANSFER OF FILES AND OTHER DOCUMENTS IN RELATION TO THE TRANSFERRED INSTITUTION.

(1) On the transfer date, the department or government agency formerly responsible for the transferred institution must transfer to the Department, all files, documents and other materials relevant to the operation and management of the transferred institution.

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(2) The files, documents and materials mentioned in Subsection (1) include all computer and other electronic files held by the department or government agency formerly responsible for the transferred institution.

22. TRANSFER OF LAND, ASSETS AND LIABILITIES.

(1) On the transfer date of a State-owned institution, the department or government agency formerly responsible for the institution must transfer all land, assets, liabilities, rights and entitlements in relation to the institution to the Department.

(2) On the transfer date, the department or government agency formerly responsible for the transferred institution must transfer all monies which were, immediately before the transfer date, allocated to or standing to the credit of the transferred institution, to the Department.

(3) If in any contract or other document, reference is made to the transferred institution immediately before the transfer date, such reference is to be taken for all purposes as a reference to the transferred institution under this Act.

(4) Proceedings commenced in a court in relation to a transferred institution that are pending or in progress immediately before the transfer date, may be continued, completed and enforced under this Act.

PART III. - TRANSFER OF REGULATORY OVERSIGHT OF PRIVATE TRAINING INSTITUTIONS FROM THE NATIONAL TRAINING COUNCIL TO THE DEPARTMENT.

23. TRANSFER OF REGISTRATION AND ACREDITATION FUNCTIONS.

(1) In accordance with Division VI.4 of the *Higher Education (General Provisions) Act 2014* and the *National Training Council (Amendment) Act 2020*, regulatory responsibility for the registration of private training institutions and the accreditation of their programs is transferred from the National Training Council to the Department.

(2) The National Training Council and the Department must work cooperatively to effect the transfer with minimal disruption to client institutions and stakeholders.

(3) The National Training Council and the Department must use best endeavours to transfer or redeploy any staff of the National Training Council affected by this Act.

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I hereby certify that the above is a fair print of the *Higher and Technical Education Reform Act 2020* which has been made by the National Parliament.



Clerk of the National Parliament.

14 JAN 2021

I hereby certify that the *Higher and Technical Education Reform Act 2020* was made by the National Parliament on 22 August 2020.



Acting Speaker of the National Parliament.

14 JAN 2021