

No. 2 of 2003.

Public Services (Management) (Amendment) Act 2003.

Certified on: 28.05.03



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2003

Public Services (Management)(Amendment) Act 2003,

ARRANGEMENT OF SECTIONS.

1. Interpretation (Amendment of Section 2).
2. Repeal of Section 5.
3. Retirement (Amendment of Section 11).
4. Repeal and replacement of Section 12.

“12. ACTING CHAIRMAN AND ACTING MEMBERS OF THE COMMISSION.

5. Filling of Vacancies in certain offices of Departmental Head (Amendment of Section 25).
6. Repeal and Replacement of Section 27.

“27. APPOINTMENTS TO OFFICES OF DEPARTMENTAL HEAD.

7. Acting appointments of Departmental Heads (Amendment of Section 31).
8. New Division VI.3A.

“Division 3A. – Procedures relating to appointments, revocation of appointments and suspension from office of Departmental Heads.

“31A. PROCEDURES RELATING TO SUBSTANTIVE APPOINTMENTS OF DEPARTMENTAL HEADS.

“31B. PROCEDURES RELATING TO TEMPORARY APPOINTMENTS OF DEPARTMENTAL HEADS.

“31C. PROCEDURES RELATING TO REVOCATION OF APPOINTMENTS OF DEPARTMENTAL HEADS.

“31D. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF DEPARTMENTAL HEADS.

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9. New Section 39A.

“39A. PROCEDURES RELATING TO APPOINTMENTS, REVOCATION OF APPOINTMENTS AND SUSPENSION FROM OFFICE OF THE SECRETARY TO THE NATIONAL EXECUTIVE COUNCIL AND CERTAIN OTHER OFFICERS AND POSITIONS TO AND IN RESPECT OF WHICH SECTION 193 OF THE CONSTITUTION APPLIES.

10. Repeal and replacement of Section 60.

“60. PROCEDURES RELATING TO SUBSTANTIVE APPOINTMENT OF PROVINCIAL ADMINISTRATOR.

11. New Section 60A.

“60A. PROCEDURES RELATING TO TEMPORARY APPOINTMENTS OF PROVINCIAL ADMINISTRATORS.

12. New Section 60B.

“60B. PROCEDURES RELATING TO REVOCATION OF APPOINTMENTS OF PROVINCIAL ADMINISTRATORS.

13. New Section 60C.

“60C. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF PROVINCIAL ADMINISTRATORS.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2003.

AN ACT

entitled

Public Services (Management)(Amendment) Act 2003,

Being an Act to amend the *Public Services (Management) Act 1995,*

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 (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended –

(a) in the definition of “Provincial Administrator”, by inserting after the reference “Section 73(2)” the following:-

“or (2A)”; and

(b) by inserting after the definition of “public body” the following new definition:-

“‘Public Services Commission Appointments Committee’ means the Public Services Commission Appointments Committee referred to in Section 190(2) (*establishment of the Commission*) of the *Constitution*;”.

2. REPEAL OF SECTION 5.

Section 5 of the Principal Act is repealed.

3. RETIREMENT (AMENDMENT OF SECTION 11).

Section 11(2) of the Principal Act is amended by repealing the words “The Head of State, acting on advice, given after consultation with any appropriate Permanent Parliamentary Committee” and replacing them with the following:-

“The Head of State, acting with, and in accordance with, the advice of the Public Services Commission Appointments Committee,”

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4. REPEAL AND REPLACEMENT OF SECTION 12.

Section 12 of the Principal Act is repealed and is replaced with the following:-

“12. ACTING CHAIRMAN AND ACTING MEMBERS OF THE COMMISSION.

(1) The Head of State, acting with, and in accordance with, the advice of the Public Services Commission Appointments Committee, may appoint a member of the Commission to be an Acting Chairman of the Commission –

- (a) to fill temporarily a vacancy; or
- (b) in the case of the absence from duty for any reason of the Chairman.

“(2) The Public Services Commission Appointments Committee may appoint to be an acting member of the Commission a person who is qualified under this Act to be a member of the Commission –

- (a) to fill temporarily a vacancy; or
- (b) in the case of the absence from duty for any reason of a member of the Commission.”.

5. FILLING OF VACANCIES IN CERTAIN OFFICES OF DEPARTMENTAL HEAD (AMENDMENT OF SECTION 25).

Section 25(b) of the Principal Act is repealed and is replaced with the following:-

- “(b) by an appointment in accordance with Section 193 (*appointments to certain offices*) of the *Constitution*”.

6. REPEAL AND REPLACEMENT OF SECTION 27.

Section 27 of the Principal Act is repealed and is replaced with the following:-

“27. APPOINTMENTS TO OFFICES OF DEPARTMENTAL HEAD.

A Departmental Head shall be appointed in accordance with Section 193 (*appointments to certain offices*) of the *Constitution*.”.

7. ACTING APPOINTMENTS OF DEPARTMENTAL HEADS (AMENDMENT OF SECTION 31).

Section 31(1) of the Principal Act is repealed and is replaced with the following:-

“(1) Where a Departmental Head is absent from his office or unable to perform the duties of his office, or when there is a vacancy in the office of a Departmental Head, another officer may be appointed, in accordance with Section 193 (*appointments to certain offices*) of the *Constitution*, to act in the place of the officer during his absence or inability, or to fill the vacancy temporarily.”.

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8. NEW DIVISION VI.3A.

Part VI of the Principal Act is amended by inserting after Division 3 the following new Division:-

“Division 3A. – Procedures relating to appointments, revocation of appointments and suspension from office of Departmental Heads.

“31A. PROCEDURES RELATING TO SUBSTANTIVE APPOINTMENTS OF DEPARTMENTAL HEADS.

(1) The procedures relating to the substantive appointments of Departmental Heads referred to in Section 193 (1A) (*appointments to certain offices*) of the *Constitution* are as follows:-

- (a) where an office of Departmental Head becomes vacant or is likely to become vacant, the Departmental Head of the Department of Personnel Management shall, subject to Subsections (2) and (3) –
 - (i) declare that a vacancy in the office of Departmental Head exists or is about to exist; and
 - (ii) obtain from the Central Agencies Co-ordination Committee the minimum requisites for that office; and
 - (iii) notify the Commission of the vacancy; and
 - (iv) advertise for applications for the office –
 - (A) on at least two occasions in a newspaper circulated nationally; and
 - (B) in such other manner as it considers appropriate;
- (b) after consideration and assessment of the applicants and consultation with the Central Agencies Co-ordination Committee, the Departmental Head of the Department of Personnel Management shall –
 - (i) compile a list of not less than five candidates who have at least the minimum requisites for the office; and
 - (ii) submit to the Commission for its consideration –
 - (A) the list under Subparagraph (i); and
 - (B) all applications received in response to the advertisements under Paragraph (a)(iv);
- (c) an assessment of an applicant under Paragraph (b) shall be based on –
 - (i) the minimum requisites for the position; and
 - (ii) where available, any appraisal of performance and discipline under Section 24A; and
 - (iii) prescribed criteria;
- (d) the Commission shall consider the list submitted under Paragraph (b)(ii) (A) and all applications received in response

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to the advertisements under Paragraph (a)(iv) and shall –

- (i) compile therefrom a list of up to three candidates in order of preference; and
 - (ii) submit the list under Subparagraph (i) as a recommendation to the National Executive Council;
- (e) the National Executive Council may select one of the persons on the list submitted to it under Paragraph (d)(ii) for appointment and shall advise the Head of State to make the appropriate substantive appointment as Departmental Head;
- (f) where the National Executive Council does not consider any of the persons on the list submitted to it under Paragraph (d)(ii) suitable for appointment –
- (i) it shall so advise the Commission and the Departmental Head of the Department of Personnel Management; and
 - (ii) the procedure set out in Paragraph (a)(iv), (b), (c), (d) and (e) shall again be followed.”.

“(2) Where –

- (a) an office of Departmental Head becomes vacant or is likely to become vacant; and
- (b) the person holding the office or who held the office immediately before it became vacant is willing and eligible to continue in that office,

the Departmental Head of the Department of Personnel Management shall obtain from the Central Agencies Co-ordination Committee a report under Section 24A on the performance and discipline of that person, and where such report justifies the re-appointment of that person shall notify the Commission accordingly and, subject to Subsection (3)(b), the procedure specified in Subsection (1) shall not be followed.

“(3) On receipt of a notification under Subsection (2), the Commission shall recommend to the National Executive Council that the person be re-appointed and –

- (a) where the National Executive Council is agreeable to the re-appointment it shall advise the Head of State to re-appoint the person as substantive Departmental Head; or
- (b) where the National Executive Council is not agreeable to the re-appointment –
 - (i) it shall so advise the Commission and the Departmental Head of the Department of Personnel Management; and
 - (ii) the procedure specified in Subsection (1)(a), (b), (c), (d) and (e) shall be followed.

“31B. PROCEDURES RELATING TO TEMPORARY APPOINTMENTS OF DEPARTMENTAL HEADS.

The procedures relating to the temporary appointments of Departmental Heads

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referred to in Section 193(1B)(*appointments to certain offices*) of the *Constitution* are as follows:-

- (a) where the need to make a temporary appointment of a Departmental Head arises, the Departmental Head of the Department of Personnel Management shall notify the Commission accordingly;
- (b) the Commission shall –
 - (i) consult with the Central Agencies Co-ordination Committee and with the Minister responsible for the Department concerned; and
 - (ii) submit the name of a person to the National Executive Council as a recommendation for appointment as a Departmental Head;
- (c) the National Executive Council shall advise the Head of State to make the appropriate temporary appointment as Departmental Head of the person recommended under Paragraph (b)(ii).

“31C. PROCEDURES RELATING TO REVOCATION OF APPOINTMENTS OF DEPARTMENTAL HEADS.

The procedures relating to the revocation of appointments of Departmental Heads referred to in Section 193(1C)(*appointments to certain offices*) of the *Constitution* are as follows:-

- (a) the Commission –
 - (i) may, on its own volition; or
 - (ii) shall, on receipt of a request from the National Executive Council for revocation of the appointment of a Departmental Head accompanied by a written statement by the Minister specifying the grounds for requesting the revocation (being grounds consistent with the grounds for revocation of appointment in a contract of employment entered into by that Departmental Head under Section 28),
refer the matter to the Departmental Head of the Department of Personnel Management –
 - (iii) to investigate the allegations and circumstances; and
 - (iv) to report thereon to the Commission within 30 days from the date of reference;
- (b) the Departmental Head of the Department of Personnel Management shall –
 - (i) investigate the allegations and circumstances relating to any matter referred to him under Paragraph (a); and
 - (ii) report thereon to the Commission within the 30 day period referred to in Paragraph (a)(iv);
- (c) the Commission shall –
 - (i) consider the report made to it under Paragraph (b)(ii); and
 - (ii) make, or cause to be made, and consider such further investigations (if any) as it considers necessary; and

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- (iii) on the basis of the report and the results of such further investigations (if any), recommend to the National Executive Council whether or not the appointment of the Departmental Head should be revoked;
- (d) where the Commission recommends the revocation of appointment of a Departmental Head, the National Executive Council shall advise the Head of State to revoke the appointment.

“31D. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF DEPARTMENTAL HEADS.

The procedures relating to the suspension from office of Departmental Heads referred to in Section 193(1D)(*appointments to certain offices*) of the *Constitution* are as follows:-

- (a) the Commission –
 - (i) may, on its own volition; or
 - (ii) shall, at the request of the Minister responsible for Public Service matters,
investigate any activities, conduct or performance of a Departmental Head which would constitute grounds for revocation of appointment under a contract of employment entered into by that Departmental Head under Section 28;
- (b) where, as a result of its investigation, the Commission is of the opinion that the Departmental Head should be suspended from office it shall so recommended to the National Executive Council;
- (c) on receipt of a recommendation under Paragraph (b), the National Executive Council shall advise the Head of State to suspend the Departmental Head from office.”.

9. NEW SECTION 39A.

Part X of the Principal Act is amended by inserting after Section 39 the following new section:-

“39A. PROCEDURES RELATING TO APPOINTMENTS, REVOCATION OF APPOINTMENTS AND SUSPENSION FROM OFFICE OF THE SECRETARY TO THE NATIONAL EXECUTIVE COUNCIL AND CERTAIN OTHER OFFICERS AND POSITIONS TO AND IN RESPECT OF WHICH SECTION 193 OF THE CONSTITUTION APPLIES.

- (1) The procedures relating to the substantive appointments of –
 - (a) the Secretary to the National Executive Council; and
 - (b) offices and positions referred to in Section 193(1)(h) (*appointments to certain offices*) of the *Constitution*, referred to in Section 193(1A)(*appointments to certain offices*) of the *Constitution* are those set out in Section 31A relating to Departmental Heads and in

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applying these procedures references to a Departmental Head (other than references to the Departmental Head of the Department of Personnel Management) shall be read as references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case may be.

“(2) The procedures relating to temporary appointments of –
(a) the Secretary to the National Executive Council; and
(b) offices and positions referred to in Section 193(1)(h)(*appointments to certain offices*) of the *Constitution*, referred to in Section 193(1B)(*appointments to certain offices*) of the *Constitution* are those set out in Section 31B relating to Departmental Heads and in applying these procedures references to a Departmental Head (other than a reference to the Departmental Head of the Department of Personnel Management) shall be read as references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case requires.

“(3) The procedures relating to the revocation of appointments of –
(a) the Secretary to the National Executive Council; and
(b) offices and positions referred to in Section 193(1)(h) (*appointments to certain offices*) of the *Constitution*, referred to in Section 193(1A) (*appointments to certain offices*) of the *Constitution* are those set out in Section 31C relating to Departmental Heads and in applying these procedures references to a Departmental Head (other than references to the Departmental Head of the Department of Personnel Management) shall be read as references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case may be.

“(4) The procedures relating to the suspension from office of –
(a) the Secretary to the National Executive Council; and
(b) offices and positions referred to in Section 193(1)(h) (*appointments to certain offices*) of the *Constitution*, referred to in Section 193(1A) (*appointments to certain offices*) of the *Constitution* are those set out in Section 31D relating to Departmental Heads and in applying the procedures references to a Departmental Head (other than references to the Departmental Head of the Department of Personnel Management) shall be read as references to the Secretary to the National Executive Council or to the office or position referred to in Paragraph (b) of this Subsection, as the case may be.”.

10. REPEAL AND REPLACEMENT OF SECTION 60.

Section 60 of the Principal Act is repealed and is replaced with the following:-

“60. PROCEDURES RELATING TO SUBSTANTIVE APPOINTMENT OF PROVINCIAL ADMINISTRATOR.

(1) The procedures relating to the substantive appointments to offices of Provincial Administrators referred to in Section 73(2) of

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the *Organic Law on Provincial Governments and Local-level Governments* are as follows:-

- (a) where an office of Provincial Administrator becomes vacant or is likely to become vacant, the Departmental Head of the Department of Personnel Management shall, subject to Subsections (2) and (3) –
- (i) declare that a vacancy in the office of Provincial Administrator exists or is about to exist; and
 - (ii) obtain from the Central Agencies Co-ordination Committee the minimum requisites for that office; and
 - (iii) notify the Commission and the Provincial Executive Council concerned of the vacancy; and
 - (iv) advertise for applications for the office –
 - (A) on at least two occasions in a newspaper circulated nationally; and
 - (B) in such other manner as it considers appropriate;
- (b) after consideration and assessment of the applicants and consultation with the Central Agencies Co-ordination Committee, the Departmental Head of the Department of Personnel Management shall –
- (i) compile a list of not less than five candidates who have at least the minimum requisites for the office; and
 - (ii) submit to the Commission for its consideration –
 - (A) the list under Subparagraph (i); and
 - (B) all applications received in response to the advertisements under Paragraph (a)(iv);
- (c) an assessment of an applicant under Paragraph (b) shall be based on –
- (i) the minimum requisites for the position; and
 - (ii) where available, any appraisal of performance and discipline under Section 24A; and
 - (iii) prescribed criteria;
- (d) the Commission shall consider the list submitted under Paragraph (b)(ii)(A) and all applications received in response to the advertisements under Paragraph (a)(iv) and shall –
- (i) compile therefrom a list of up to three candidates in order of preference; and
 - (ii) submit the list under Subparagraph (i) as a recommendation to the Provincial Executive Council concerned;

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- (e) the Provincial Executive Council shall –
 - (i) from the list submitted to it under Paragraph (d)(ii) submit to the National Executive Council a list in order of preference for appointments as Provincial Administrator and the National Executive Council shall make an appointment from the list; or
 - (ii) where it does not consider any of the persons on the list submitted to it under Paragraph (d)(ii) suitable for appointment, so advise the Commission and the Departmental Head of the Department of Personnel Management and the procedure set out in Paragraph (a)(iv), (b), (c), (d) and (e)(i) shall be followed.

- (2) Where –
 - (a) an office of Provincial Administrator becomes vacant or is likely to become vacant; and
 - (b) the person holding the office or who held the office immediately before it became vacant is willing and eligible to continue in that office,

the Departmental Head of the Department of Personnel Management shall obtain from the Central Agencies Co-ordination Committee a report under Section 24A on the performance and discipline of that person, and where such report justifies the re-appointment of that person shall notify the Commission accordingly and, subject to Subsection (3)(b), the procedure specified in Subsection (1) shall not be followed.

- “(3) On receipt of a notification under Subsection (2), the Commission shall recommend to the Provincial Executive Council that the person be re-appointed and –
- (a) where the Provincial Executive Council is agreeable to the re-appointment, it shall advise the National Executive Council to re-appoint the person as substantive Provincial Administrator; or
 - (b) where the Provincial Executive Council is not agreeable to the re-appointment –
 - (i) it shall so advise the Commission and the Departmental Head of the Department of Personnel Management; and
 - (ii) the procedure specified in Subsection (1)(a), (b), (c), (d) and (e) shall be followed.”

11. NEW SECTION 60A.

The Principal Act is amended by inserting after Section 60 the following new section:-

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“60A. PROCEDURES RELATING TO TEMPORARY APPOINTMENTS OF PROVINCIAL ADMINISTRATORS.

The procedures relating to temporary appointments to offices of Provincial Administrators referred to in Section 73(2A) of the *Organic Law on Provincial Governments and Local-level Governments* are as follows:-

- (a) where the need to make a temporary appointment of a Provincial Administrator arises, the Departmental Head of the Department of Personnel Management shall notify the Commission and the Provincial Executive Committee concerned accordingly;
- (b) the Commission shall –
 - (i) consult with the Provincial Executive Committee concerned and with the Minister responsible; and
 - (ii) submit the name of a person to the Provincial Executive Council as a recommendation for appointment as the Provincial Administrator;
- (c) the Provincial Executive Council shall advise the National Executive Council to make the appropriate temporary appointment as Provincial Administrator of the person recommended under Paragraph (b)(ii).”.

12. NEW SECTION 60B.

The Principal Act is amended by inserting after Section 60A the following new section:-

“60B. PROCEDURES RELATING TO REVOCATION OF APPOINTMENTS OF PROVINCIAL ADMINISTRATORS.

The procedures relating to the revocation of appointments of Provincial Administrators referred to in Section 73(2B) of the *Organic Law on Provincial and Local-level Governments* are as follows: –

- (a) the Commission –
 - (i) may, on its own volition; or
 - (ii) shall, on receipt of a request from the Provincial Executive Council for revocation of a Provincial Administrator accompanied by a written statement by the Provincial Executive Council specifying the grounds for requesting the revocation (being grounds consistent with the grounds for revocation of appointment in a contract of employment entered into by that Provincial Administrator),

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- refer the matter to the Departmental Head of the Department of Personnel Management –
- (iii) to investigate the allegations and circumstances; and
 - (iv) to report thereon to the Commission within 30 days from the date of reference;
- (b) the Departmental Head of the Department of Personnel Management shall –
- (i) investigate the allegations and circumstances relating to any matter referred to him under Paragraph (a); and
 - (ii) report thereon to the Commission within the 30 day period referred to in Paragraph (a)(iv);
- (c) the Commission shall –
- (i) consider the report made to it under Paragraph (b)(ii); and
 - (ii) make, or cause to be made, and consider such further investigations (if any) as it considers necessary; and
 - (iii) on the basis of the report and the result of such further investigations (if any), recommend to the Provincial Executive Council whether or not the appointment of the Provincial Administrator should be revoked;
- (d) where the Commission recommends the revocation of appointment of a Provincial Administrator, the Provincial Executive Council shall recommend to the National Executive Council that the appointment of the Provincial Administrator be revoked and the National Executive Council shall revoke the appointment.”.

13. NEW SECTION 60C.

The Principal Act is amended by inserting after Section 60B the following new section:-

“60C. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF PROVINCIAL ADMINISTRATORS.

The procedures relating to the suspension from office of Provincial Administrators referred to in Section 73(2C) of the *Organic Law on Provincial Governments and Local-level Governments* are as follows:-

- (a) the Commission –
- (i) may on its own volition; or
 - (ii) shall, at the request of the Minister responsible for Public Service matters,

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“60C. PROCEDURES RELATING TO SUSPENSION FROM OFFICE OF PROVINCIAL ADMINISTRATORS.

The procedures relating to the suspension from office of Provincial Administrators referred to in Section 73(2C) of the *Organic Law on Provincial Governments and Local-level Governments* are as follows:-

- (a) the Commission –
 - (i) may on its own volition; or
 - (ii) shall, at the request of the Minister responsible for Public Service matters, investigate any activities, conduct or performance of a Provincial Administrator which would constitute grounds for revocation of his appointment under a contract of employment entered into by that Provincial Administrator;
- (b) where, as a result of its investigation, the Commission is of the opinion that the Provincial Administrator should be suspended from office it shall so recommend to the Provincial Executive Council;
- (c) on receipt of a recommendation under Paragraph (b), the Provincial Executive Council shall recommend to the National Executive Council that the Provincial Administrator be suspended from office and the National Executive Council shall suspend the Provincial Administrator from office.”.

I hereby certify that the above is a fair print of the *Public Services (Management)(Amendment) Act 2003* which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Public Services (Management)(Amendment) Act 2003* was made by the National Parliament on 12 March 2003.

Speaker of the National Parliament.

