

No. 5 of 2018.

Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority Act
2018.

Certified on: 21 MAY 2018



No. 5 of 2018.

*Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority
Act 2018.*

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No. 5 of 2018.

AN ACT

entitled

Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority Act 2018,

Being an Act -

- (a) to establish the Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority; and
- (b) to co-ordinate and supervise restoration in the declared emergency areas of Western, Enga, Southern Highlands and Hela Provinces following the 2018 earthquake disaster; and
- (c) to make provision for the functions and powers of the Authority, and for related purposes.

MADE by the National Parliament to be deemed to have come into operation on 1 March 2018.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

- (1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely -
- (a) the right to privacy conferred by Section 49; and
 - (b) the right to freedom of information conferred by Section 51; and
 - (c) the right to freedom of movement conferred by Section 52,
- is a law that is made for the purpose of giving effect to the public interest in public safety, public order and public welfare.

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

- (3) It is hereby declared that this Act is an Act to which Section 31(1)(b) of the *Organic Law on Provincial Governments and Local-level Governments* applies in that it deals with a matter of national importance in the national interest.

2. INTERPRETATION.

- (1) In this Act, unless the contrary intention appears -
- “Authority” means the Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority established under Section 5;
 - “Chairman” means the Chairman of the Authority appointed under Section 8;

- “declared emergency areas” means areas of Western, Enga, Southern Highlands and Hela Provinces (WESH) affected by the earthquake and declared as emergency areas as described in Schedule 1;
- “declared national emergency” means the national emergency declared in relation to WESH Provinces on 1 March 2018 and as extended where necessary;
- “Deputy Chairman” means the Deputy Chairman of the Authority appointed under Section 8;
- “member” means a member of the Authority;
- “person responsible” means a person appointed by a public authority under Section 18(1), and, in relation to a public authority, means the person appointed by that public authority;
- “public authority” means any -
- (a) department; or
 - (b) State service; or
 - (c) subject to Subsection (2), authority or instrumentality or other body, incorporate or unincorporated (other than a Provincial Government), established by or under a constitutional law or an Act of Parliament for governmental or administrative purposes or any body which supplies electricity, water, sewerage, gas, drainage, communications, or other similar services to the public;
- “this Act” includes the regulations;
- “WESH” means Western, Enga, Southern Highlands and Hela Provinces.

(2) Where any question arises as to whether an authority or instrumentality or other body is a public authority, the Minister may, by notice in the National Gazette, declare it to be a public authority for the purposes of this Act.

3. APPLICATION.

- (1) This Act binds the State.
- (2) This Act applies to and in relation to the declared emergency areas.
- (3) This Act applies notwithstanding the provisions of any other law to the contrary.

4. APPLICATION OF LEADERSHIP CODE.

Pursuant to Section 26(3) of the *Constitution*, the office of a member of the Authority is declared to be a public office to and in relation to which Division III.2 (*leadership code*) of the *Constitution* applies.

PART II. - ESTABLISHMENT AND FUNCTIONS, ETC., OF THE AUTHORITY.

5. ESTABLISHMENT OF THE AUTHORITY.

- (1) The Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority is established.

- (2) The Authority -
- (a) is a body corporate with perpetual succession; and
 - (b) shall have a common seal; and
 - (c) may acquire, hold and dispose of property; and
 - (d) may sue and be sued in its corporate name.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the Authority affixed to a document and shall presume that it was duly affixed.

6. FUNCTIONS OF THE AUTHORITY.

The functions of the Authority are -

- (a) to oversee and co-ordinate all restoration activities in the WESH Provinces necessary as a result of the earthquake; and
- (b) to co-ordinate the planning and implementation of -
 - (i) clean up tasks in declared emergency areas; and
 - (ii) the restoration of essential services in declared emergency areas; and
 - (iii) all activities relevant to the relocation, where necessary, of population from declared emergency areas to areas not affected; and
 - (iv) the development of long term activities to replace infrastructure and other facilities destroyed by the earthquake; and
- (c) to liaise with public bodies, the WESH Provincial Governments, non-government organisations and private entities in identifying and negotiating sources of funding for short to medium term restoration activities; and
- (d) to co-ordinate the development of specifications for contracts for restoration and rehabilitation works and the advertising, evaluation and awarding of such contracts; and
- (e) to supervise and monitor the implementation of all contracts relating to restoration and rehabilitation works; and
- (f) to perform such other functions as are necessary to assist in the restoration activities.

7. POWERS OF THE AUTHORITY.

(1) The Authority has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this Act and may require a public authority to provide to it such particulars, as the Authority may determine, relating to that public authority or its functions which affect any of the functions of the Authority.

- (2) Where in the opinion of the Authority -
- (a) any information, books or records (including digital) in the possession of or under the authority of a public authority is or are relevant to the exercise or performance of the powers or functions of the Authority under this Act or to the achievement of the purposes of this Act; and
 - (b) it is desirable that the information be given to the Authority or that the books or records be made available for inspection by the Authority,

the Authority may issue to the person responsible in that public authority a written notice to that effect under the hand of the Chairman specifying the relevant information, books and records and specifying the place and time at which such information, books and records (including digital) are to be furnished or produced.

(3) Where a notice under Subsection (2) has been furnished to the person to whom it is issued, the person shall furnish or produce for inspection at the place and time specified in the notice such information, books and records as are specified in the notice and copies of or extracts from any information, books and records so furnished may be made and retained by the Authority.

(4) The provisions of Subsection (3) do not affect the operation of any law by or under which any information, book or record is to be kept confidential.

8. MEMBERSHIP OF THE AUTHORITY.

(1) The Authority shall consist of the following members:

- (a) a prominent person who shall be the Chairman; and
- (b) four officers of the National Public Service, at least two of whom shall be Departmental Heads; and
- (c) four members (one member each) of the provincial executives of the WESH Provincial Governments.

(2) The members of the Authority -

- (a) shall be appointed by the National Executive Council; and
- (b) hold office on such terms and conditions by the National Executive Council; and
- (c) shall be entitled, in the case of members who are not officers of the National Public Service, to such fees and allowances as are fixed from time to time under the *Boards (Fees and Allowances) Act* (Chapter 299).

(3) The National Executive Council shall appoint the person under Subsection (1)(a) to be the Chairman.

(4) The National Executive Council shall appoint one of the members under Subsection (1)(b) to be the Deputy Chairman.

9. LEAVE OF ABSENCE.

The Minister may grant leave of absence to a member of the Authority.

10. DECLARATION OF OFFICE.

A member shall, before commencing the duties of his office, make or subscribe before the Minister, or a person authorised by the Minister for that purpose, an oath or affirmation of office in the form specified in Schedule 2.

11. RESIGNATION.

A member may resign from office upon written notice signed by him and delivered to the Minister.

12. VACANCY NOT TO AFFECT POWERS AND FUNCTIONS.

The exercise of a power or the performance of a function of the Authority under this Act is not invalidated by reason of a vacancy in the membership of the Authority.

13. DISCLOSURE OF INTERESTS.

(1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Authority shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of the interest at a meeting of the Authority.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the meeting of the Authority and, unless the Minister or the Authority determines otherwise, the member shall not -

- (a) be present during any deliberation of the Authority with respect to that matter; or
- (b) take part in any decision of the Authority with respect to that matter.

14. MEETINGS OF THE AUTHORITY.

(1) The Authority shall hold such meetings as are necessary for the efficient performance of its functions and the exercise of its powers and at such times and places as it determines or as the Chairman or, in his absence, the Deputy Chairman directs, but in any event, shall meet not less frequently than once a month.

(2) The Chairman -

- (a) may, at any time, convene a meeting of the Authority; and
- (b) shall, on receipt of a written request signed by not less than three other members of the Authority, convene a meeting of the Authority.

(3) Subject to Subsection (4), the Chairman shall preside at all meetings of the Authority.

(4) Where the Chairman is not present at a meeting of the Authority, the Deputy Chairman shall preside.

(5) At a meeting of the Authority -

- (a) the Chairman or Deputy Chairman and four members are a quorum; and
- (b) matters arising shall be decided by a majority of votes of the members of the Authority present and voting; and
- (c) the person presiding has a deliberative and, in the event of an equality of votes on any matter, also a casting vote.

(6) The Authority shall cause minutes of its meetings to be recorded and kept.

(7) Subject to this Act, the procedures of the Authority are as determined by the Authority.

15. REPORTS.

(1) The Authority shall furnish to the Minister a report on the progress and performance of the Authority in relation to its functions as and when required by the Minister, and the Minister shall table such report at the first sitting of the National Parliament after the date of his receipt of it.

(2) The Authority shall also furnish to the Minister such other reports as the Minister may require at such intervals as the Minister may determine.

16. SECRETARIAT AND SUPPORT STAFF.

(1) There shall be a Chief Executive Officer of the Authority to be appointed by the National Executive Council at the Grade 20 Public Service classification and hold office on such terms and conditions as determined by the National Executive Council.

(2) The Chief Executive Officer in consultation with the Department of Prime Minister and National Executive Council may establish the Secretariat of the Authority and may appoint suitably qualified persons to act as employees of the Secretariat, for purposes of giving effect to this Act and carrying out the functions of the Authority.

(3) A person appointed under Subsection (2), who is not an officer of the National Public Service, shall be paid such fees and allowances as are determined by the Minister after consultation with the Salaries and Conditions Monitoring Committee.

(4) A person appointed under Subsection (2) who is an officer of the National Public Service -

- (a) shall be deemed to have been seconded to the support staff of the Authority; and
- (b) shall, during his period of deemed secondment, be paid his salary and other entitlements by the Department by which, immediately prior to his deemed secondment, he was employed.

(5) The service on the support staff of the Authority of an officer shall be counted as service in the National Public Service for the purpose of determining his rights (if any) in respect of -

- (a) leave of absence on the grounds of illness; and
- (b) furlough or pay in lieu of furlough (including pay to dependants on the death of the officer).

PART III. - OBLIGATIONS OF PUBLIC AUTHORITIES.

17. GENERAL OBLIGATIONS.

All public authorities and all governing bodies (by whatever name known), executives, Departmental Heads, officers and employees of public authorities shall assist and co-operate with the Authority in the performance of the functions and the exercise of its powers under this Act.

18. PUBLIC AUTHORITY TO APPOINT PERSON TO BE RESPONSIBLE FOR LIAISON WITH THE AUTHORITY.

(1) For the purposes of ensuring and facilitating co-operation with the Authority, a public authority shall appoint a person employed by it for the purposes of this Act.

(2) A person appointed under Subsection (1) shall be of a level of not less than that of Assistant Secretary within the National Public Service or the equivalent or of a level not less than that of a senior manager.

(3) A person appointed under Subsection (1) is responsible for -

- (a) liaison between the public authority by which he is employed and the Authority; and
- (b) ensuring that all directions and correspondence from the Authority are brought, as expeditiously as possible, to the appropriate person within that public authority.

(4) The management of a public authority shall ensure that every assistance is given to the person responsible to enable him to carry out his duties under this Act.

19. FAILURE TO CO-OPERATE WITH THE AUTHORITY AMOUNTS TO MISCONDUCT.

(1) Where a public authority fails to co-operate with the Authority in the performance, by the Authority, of its functions and the exercise of its powers under this Act -

- (a) in the case of a public authority other than a Department - every person involved in the failure to co-operate is guilty of misconduct or misbehaviour; and
- (b) in the case of a Department - the Departmental Head and every officer concerned is guilty of negligence in the discharge of his duties under Section 51(e) of the *Public Services (Management) Act 2014*.

(2) For the purposes of Subsection (1)(a), where misconduct or misbehaviour is a ground for dismissal or removal from office, every person who is guilty of misconduct or misbehaviour is liable to dismissal or removal from office.

(3) For the purposes of Subsection (1)(b), the Departmental Head and every person who is guilty of negligence shall be dealt with under Section 51(m) and (n) of the *Public Services (Management) Act 2014*.

(4) For the purposes of Subsection (1), a public authority or a person employed by a public authority fails to co-operate with the Authority if it or he fails, within a reasonable time -

- (a) to comply with a notice issued by the Authority under Section 7(2); or
- (b) to comply with a direction by the Authority; or
- (c) to answer correspondence from the Authority; or
- (d) otherwise, to assist the Authority in the performance of its functions to the extent that such assistance is within the functions and powers of that public authority or person.

20. OBLIGATIONS OF CONTROLLER.

During the declared national emergency, the Controller, Deputy Controller and Assistant Controllers appointed in relation to the declared national emergency shall assist and co-operate with the Authority in the performance of the functions and exercise of the powers of the Authority under this Act.

PART IV. - FINANCE.

21. APPLICATION OF *PUBLIC FINANCES (MANAGEMENT) ACT 1995*.

Part VIII of the *Public Finances (Management) Act 1995* applies to and in relation to the Authority.

PART V. - MISCELLANEOUS.

22. TAX EXEMPTION ON IMPORTED GOODS.

All goods imported for purposes of restoration and rehabilitation works by the WESH Restoration Authority in the declared emergency areas of WESH Provinces shall be exempted from customs import duties and excise duties at the points of import and disposal commencing 1 March 2018 and for a period of four years pursuant to the Authority's endorsed restoration and rehabilitation work program.

23. PROTECTION FROM PERSONAL LIABILITY.

The Chairman, Deputy Chairman or a member of the Authority is not personally liable for any act or default of himself or the Authority done or omitted to be done in good faith in the course of the operations of the Authority or for the purposes of this Act.

24. CONFIDENTIALITY.

(1) The Authority shall take all reasonable steps to protect, from unauthorised use or disclosure, information given to it in confidence in connection with the performance of its functions or the exercise of its powers.

(2) For the purposes of Subsection (1), the disclosure of information as required and permitted by any law or court of competent jurisdiction shall be considered authorised use and disclosure of the information.

(3) For the purposes of Subsection (1), the disclosure of information by a person for the purposes of performing that person's functions as a -

- (a) person providing secretarial services to the Authority under Section 16; or
- (b) member of the support staff of the Authority; or
- (c) member of the Authority,

shall be considered authorised use and disclosure of the information.

25. REGULATIONS.

The Head of State, acting on advice, may make Regulations, not inconsistent with this Act, prescribing all matters that by this Act are permitted or required to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and generally for achieving the purposes of this Act, and in particular for prescribing fees and for penalties of fines not exceeding K1,000.00 for offences against the Regulations.

SCHEDULE 1.

Sec. 2(1).

DECLARED EMERGENCY AREAS.

Areas of Western Province, Enga Province, Southern Highlands Province and Hela Province affected by the earthquake on 25 February 2018, and declared as emergency areas for the purposes of this Act.

SCHEDULE 2.

Sec. 10.

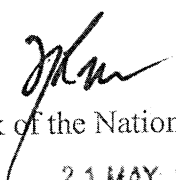
DECLARATION OF OFFICE.

I, do promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the Office of member of the Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority.

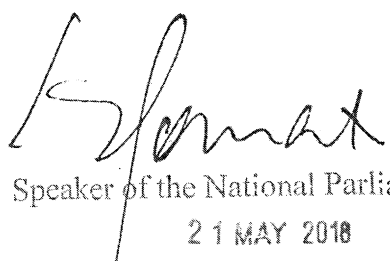
Made this day of 20.....

Before me

I hereby certify that the above is a fair print of the *Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority Act 2018* which has been made by the National Parliament.


Clerk of the National Parliament.
21 MAY 2018

I hereby certify that the *Western, Enga, Southern Highlands and Hela Provinces (WESH) Restoration Authority Act 2018* was made by the National Parliament on 27 March 2018, by an absolute majority as required by the *Constitution*.


Speaker of the National Parliament.
21 MAY 2018