

No. 36 of 2020.

Higher Education (General Provisions)(Amendment) Act 2020.

Certified on : 14 JAN 2021



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No. of 2020.

AN ACT

entitled

Higher Education (General Provisions)(Amendment) Act 2020.

Being an Act to amend the ***Higher Education (General Provisions) Act 2014***,

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) by inserting, immediately after the definition of “agency agreement”, the following new definitions in their correct alphabetical order:

““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 not including scholarship funding;

“approved national curriculum” means any curriculum approved by the Board as national curriculum in accordance with Part XA;

“approved national training package” means a training package approved by the Board as a national training package in accordance with Part XA;

“Council” means the Council of the public higher education institution established under Section 143M;

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

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

“Principal” means the Principal of the public higher education institution appointed under Section 143ZH;

“private higher education institution” means a higher education institution other than a public higher education institution;

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“Rules” means the Rules of a public higher education institution made by a Council under Section 143N;

“State-owned institution” means a higher education institution established and owned by the State and registered under Part VI;”; and

- (b) by repealing the definition of “public higher education institution” and replacing it with the following new definition:

““public higher education institution” means -

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

- (c) by repealing the definition of “self-accrediting authority” and replacing it with the following new definition:

““self-accrediting authority”, for a Papua New Guinea university or registered higher education institutions, means authority to internally accredit programs in accordance with Part VII of the Act;”.

2. OBJECTIVES OF THE ACT (AMENDMENT TO SECTION 4).

Section 4 of the Principal Act is amended by inserting, immediately after Paragraph (h), the following new paragraph:

- “(i) to promote the support of business and industry representatives, donors and leading corporate entities to ensure that programmes offered by higher education institutions are demand-driven and support national skills priorities.”.

3. NATIONAL HIGHER AND TECHNICAL EDUCATION PLAN (REPEAL AND REPLACEMENT OF SECTION 6).

Section 6 of the Principal Act is repealed and replaced with the following new section:

“6. NATIONAL HIGHER AND TECHNICAL EDUCATION PLAN.

(1) There must be a national higher and technical education plan for higher and technical education, research and technology which must be prepared by the Department, endorsed by the Board and approved by the National Executive Council on a recommendation by the Minister.

(2) The Department must, in preparing a plan under Subsection (1), consult with all relevant stakeholders, including education agencies, as to the future planning and development of higher education institutions.

(3) A plan approved under Subsection (1) may be extended, amended or replaced in the manner set out in Subsection (1).”.

4. POWERS AND FUNCTIONS OF THE BOARD (AMENDMENT OF SECTION 14).

Section 14 of the Principal Act is amended in Subsection (1) by inserting, immediately after Paragraph (j), the following new paragraphs:

- “(k) to approve a national higher and technical education plan in accordance with Section 6; and

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- (l) to approve the appointment of Council members of public higher education institutions in accordance with Section 143O; and
- (m) to approve the appointment of the Chair and Deputy Chair of public higher education institutions in accordance with Section 143P; and
- (n) to terminate the appointment of a member of a Council of a public higher education institution in accordance with Section 143R; and
- (o) to approve the Rules of public higher education institutions in accordance with Section 143ZO; and
- (p) to approve national curriculum and national training packages in accordance with Part XA.”.

5. MEMBERSHIP OF THE BOARD (AMENDMENT OF SECTION 15).

Section 15 of the Principal Act is amended -

- (a) in Subsection 4 by repealing Paragraph (f) and replacing it with the following new paragraph:

- “(f) have substantial current knowledge and experience in -
 - (i) business management; or
 - (ii) leadership and administration; or
 - (iii) institutional governance; or
 - (iv) planning; or
 - (v) finance; or
 - (vi) the practice of law; or
 - (vii) government regulation of institutions.”; and

- (b) by inserting, immediately after Subsection (4), the following new subsections:

“(4A) A member must not be -

- (a) an owner, whether in part or full, of a private higher education institution registered under this Act; or
- (b) the Chief Executive Officer of a higher education institution; or
- (c) a member of a governing body of a higher education institution; or
- (d) a current public service employee.

(4B) One member of the Board must be nominated by the Churches Education Council.

(4C) A person nominated under Subsection (4B) must also satisfy the criteria in Subsections (4) and (4A).”.

6. LEGAL STATUS OF A REGISTERED HIGHER EDUCATION INSTITUTION (AMENDMENT OF SECTION 26).

Section 26 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

- “(1) A registered higher education institution must be -
 - (a) a corporate entity with perpetual succession; or
 - (b) a public higher education institution.”.

7. HIGHER EDUCATION INSTITUTION TO REGISTER (AMENDMENT OF SECTION 27).

Section 27 of the Principal Act is amended by inserting, immediately after Subsection (4), the following new subsection:

“(5) A person or an entity found guilty of an offence under Subsection (2) is not eligible to apply for registration under Part VI until at least five years after the offence is proven.”.

8. RECORDING AND ISSUING OF CERTIFICATE (AMENDMENT OF SECTION 33).

Section 33 of the Principal Act is amended by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a Certificate of Registration in the approved form.”.

9. CLOSURE OF PUBLIC HIGHER EDUCATION INSTITUTION (AMENDMENT OF SECTION 35).

Section 35 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) The National Executive Council may, on the recommendation of the Board through the Minister and by notice in the National Gazette, close a State-owned public higher education institution on any of the following grounds:

- (a) cancellation of registration of Certificate of Registration under Subsection (2); or
- (b) there is a change in the Government Policy or change in the law necessitating such closure.”.

10. CANCELLATION (AMENDMENT OF SECTION 37).

Section 37 of the Principal Act is amended by inserting, immediately after Subsection (2), the following new subsection:

“(3) Subject to the lodgment of an appeal, the institution must return the Certificate of Registration to the Department within seven days of cancellation.”.

11. APPEAL AGAINST CANCELLATION (REPEAL AND REPLACEMENT OF SECTION 40).

Section 40 of the Principal Act is repealed and replaced with the following new section:

“40. APPEAL AGAINST CANCELLATION.

(1) A higher education institution whose Certificate of Registration or Certificate of Approval, for programme accreditation has been cancelled by the Board under Section 35 or Section 37, may lodge an appeal against the decision of the Board to the Appeals Tribunal in the approved form.

(2) If an appeal by an institution is unsuccessful, the institution must return the Certificate of Registration to the Department within seven days of the appeal decision.”.

12. PROGRAMME TO BE ACCREDITED (AMENDMENT OF SECTION 41).

Section 41 of the Principal Act is amended by repealing Paragraph (b) and replacing it with the following new paragraph:

- “(b) that programme is part of an approved national curriculum for Papua New Guinea or an approved national training package for technical and vocational education and training; or”.

13. APPLICATION FOR APPROVAL FOR ACCREDITATION OF PROGRAMME (AMENDMENT OF SECTION 42).

Section 42 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

- “(1) Where a registered public higher education institution proposes to introduce a new programme or merge with an existing programme, the institution must do so in accordance with an application under Subsection (2).”.

14. NEW SECTION 42A.

The Principal Act is amended by inserting, immediately after Section 42, the following new section:

“42A. APPLICATION FOR APPROVAL TO DELIVER APPROVED NATIONAL CURRICULUM OR APPROVED NATIONAL TRAINING PACKAGE.

(1) Where a public higher education institution proposes to deliver an approved national curriculum or an approved national training package, the institution must do so in accordance with an application under Subsection (2).

- (2) The application under Subsection (1) must -
- (a) be in writing; and
 - (b) demonstrate how the institution will deliver the approved national curriculum or approved national training package in accordance with the national standards; and
 - (c) provide all the information required by the Board to be provided; and
 - (d) be made to the Departmental Head in the approved form.”.

15. ASSESSMENT OF THE APPLICATION (AMENDMENT OF SECTION 43).

Section 43 of the Principal Act is amended in Subsection (1) by deleting the word and figure “Section 41” and replacing it with “Section 42 or 42A”.

16. RECORDING AND ISSUANCE OF CERTIFICATE (AMENDMENT OF SECTION 45).

Section 45 of the Principal Act is amended in Subsection (1) by repealing Paragraph (b) and replacing it with the following new paragraph:

- “(b) issue a certificate of approval in the approved form.”.

17. NEW SECTIONS 50A AND 50B.

The Principal Act is amend by inserting, immediately after Section 50, the following new sections:

“50A. NOTIFICATION BY PUBLIC HIGHER EDUCATION INSTITUTION THAT A PROGRAMME IS NO LONGER BEING OFFERED.

(1) A registered public higher education institution must, as soon as possible, notify the Departmental Head that it intends to, or has ceased, offering an accredited programme and seek approval under this section.

(2) An application for Subsection (1) must -

- (a) be in writing; and
- (b) provide reasons as to why the institution intends to, or has, ceased to offer the accredited programme.

(3) On receipt of the application, the Departmental Head must make an assessment and cause a report and recommendation to the Board -

- (a) to approve the application; or
- (b) to approve the application with conditions; or
- (c) to reject the application.

50B. DECISION ON APPLICATION.

The Board must make a decision on the application within two months from the date of receipt of the application by the Departmental Head and must inform the applicant in writing as soon as practicable.”.

18. REGISTRATION (AMENDMENT OF SECTION 56).

Section 56 of the Principal Act is amended in Subsection (1), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a certificate of registration in the approved form.”.

19. CANCELLATION (AMENDMENT OF SECTION 65).

Section 65 of the Principal Act is amended by inserting, immediately after Subsection (2), the following new subsection:

“(3) Subject to the lodgment of an appeal, the institution must return the Certificate of Registration to the Department within seven days of cancellation.”.

20. APPEAL AGAINST CANCELLATION (REPEAL AND REPLACEMENT OF SECTION 68).

Section 68 of the Principal Act is repealed and replaced with the following new section:

“68. APPEAL AGAINST CANCELLATION.

(1) A higher education institution whose Certificate of Registration or Certificate of Approval for programme accreditation has been cancelled by the Board under Section 65, may lodge an appeal against the decision of the Board to the Appeals Tribunal in the approved form.

(2) If an appeal by an institution is unsuccessful, the institution must return the Certificate of Registration to the Department within seven days of the appeal decision.”.

21. REQUIREMENT FOR PROGRAMMES TO BE ACCREDITED (REPEAL AND REPLACEMENT OF SECTION 69).

Section 69 of the Principal Act is repealed and replaced with the following new section:

“69. REQUIREMENT FOR PROGRAMMES TO BE ACCREDITED.

(1) A private higher education institution must not offer a programme leading to a higher education award unless -

- (a) that programme is an accredited programme approved under this Part for that institution; or
- (b) that programme is part of an approved national curriculum for Papua New Guinea or an approved national training package for technical and vocational education and training; or
- (c) that programme is conducted by an agent operating under an agency agreement with a registered higher education institution whose programme it is offering; or
- (d) that institution is operating as an affiliated institution of a Papua New Guinea University in respect of the programme; or
- (e) it holds a self-accrediting authority for the programme.

(2) A higher education institution who contravenes Subsection (1), is guilty of an offence.

Penalty: Where the offence is committed by -

- (a) an individual, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 12 years, or both; or
- (b) a body corporate, a fine not exceeding K250,000.00 or imprisonment for a term not exceeding 12 years for a director, or both.

(3) A person or entity that is guilty of an offence under Subsection (2) is not eligible to apply for registration until at least five years after the date on which the offence is proven.”.

22. APPLICATION FOR ACCREDITATION OF PROGRAMMES (AMENDMENT OF SECTION 70).

Section 70 of the Principal Act is amended -

(a) in Subsection (2), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) provide all information required by the Board, including demonstrating how the proposed programme will comply with the national standards.”; and

(b) by inserting, immediately after Subsection (4), the following new subsection:

“(4A) A person or entity that is guilty of an offence under Subsection (4) is not eligible to apply for registration until, at least five years, after the date on which the offence is proven.”.

23. NEW SECTION 70A.

The Principal Act is amended by inserting, immediately after Section 70, the following new section:

“70A. APPLICATION FOR APPROVAL TO DELIVER APPROVED NATIONAL CURRICULUM OR APPROVED NATIONAL TRAINING PACKAGE.

(1) Where a private higher education institution proposes to deliver an approved national curriculum or an approved national training package, the institution must do so in accordance with an application under Subsection (2).

(2) The application under Subsection (1) must -

- (a) be in writing; and
- (b) demonstrate how the institution will deliver the approved national curriculum or approved national training package in accordance with the national standards; and
- (c) provide all the information required by the Board to be provided; and
- (d) be made to the Departmental Head on the approved form; and
- (e) be accompanied by the fee prescribed in a regulation.

(3) The application fee paid under Subsection (2)(e) is not refundable.

(4) An applicant under Subsection (1) who, knowingly or carelessly, provides information which is false or misleading or contains information which is false is guilty of an offence.

Penalty: Where the offence is committed by -

- (a) an individual, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 12 years, or both; or
- (b) a body corporate, a fine not exceeding K250,000.00 or imprisonment for a term not exceeding 12 years for a director, or both.

(5) A person or entity that is guilty of an offence under Subsection (4) is not eligible to apply for registration until, at least five years, after the date on which the offence is proven.

(6) For the purposes of this section, “false” or “misleading” includes false or misleading because of the omission of a statement.”.

24. ASSESSMENT OF THE APPLICATION (AMENDMENT OF SECTION 71).

Section 71 of the Principal Act is amended by repealing Subsection (1) and replacing it with the following new subsection:

“(1) On receipt of an application under Section 70 or 70A, the Departmental Head must -

- (a) cause an assessment of the application; and
- (b) where he is satisfied of the information provided, complete the assessment and prepare a report and submit it to the Board.”.

25. RECORD OF ACCREDITED PROGRAMMES (AMENDMENT OF SECTION 73).

Section 73 of the Principal Act is amended in Subsection (1) by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a Certificate of Approval in the approved form.”.

26. REQUIREMENT TO HOLD A SELF-ACCREDITING AUTHORITY (REPEAL AND REPLACEMENT OF SECTION 80).

Section 80 of the Principal Act is repealed and replaced with the following new section:

“80. REQUIREMENT TO HOLD A SELF-ACCREDITING AUTHORITY.

(1) All Papua New Guinea universities have self-accrediting authority.

(2) A registered higher education institution may seek self-accrediting authority under this part.

(3) Self-accrediting authority under this part does not prevent -

(a) a professional licensing or accreditation body from determining programme accreditation requirements for a particular industry or profession; or

(b) the Department from requiring additional programme accreditation for specific purposes.

(4) Where a higher education institution is awarded self-accreditation authority for one or more programmes, such authority applies only to the field of study or Papua New Guinea National Qualifications Framework Level for which the institution holds the self-accrediting authority.

(5) No person or entity must hold itself out as having self-accrediting authority unless the institution holds such authority under this Act.

(6) A person or entity that contravenes Subsections (4) or (5) is guilty of an offence.

Penalty: Where the offence is committed by -

(a) an individual, a fine not exceeding K50,000.00, or imprisonment for a term not exceeding 12 years, or both; or

(b) a body corporate, a fine not exceeding K250,000.00 or imprisonment for a term not exceeding 12 years for a director, or both.

(7) A person or entity that is guilty of an offence under Subsection (6) is not eligible to apply for registration until, at least five years, after the date on which the offence is proven.”.

27. APPLICATION FOR SELF-ACCREDITING AUTHORITY (AMENDMENT OF SECTION 82).

Section 82 of the Principal Act is amended by inserting, immediately after Subsection (3), the following new subsection:

“(3A) A person or entity that is guilty of an offence under Subsection (3) is not eligible to apply for registration until, at least five years, after the date on which the offence is proven.”.

28. RECORD OF SELF-ACCREDITING AUTHORITY (AMENDMENT OF SECTION 85).

Section 85 of the Principal Act is amended, in Subsection (1), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a Certificate of Approval for self-accrediting authority in the approved form.”.

29. CANCELLATION OF CERTIFICATE OF APPROVAL (AMENDMENT OF SECTION 97).

Section 97 of the Principal Act is amended by inserting, immediately after Subsection (2), the following new subsection:

“(3) Subject to the lodgment of an appeal, the institution must return the Certificate of Approval to the Department within seven days of cancellation.”.

30. APPEAL AGAINST CANCELLATION (REPEAL AND REPLACEMENT OF SECTION 99).

Section 99 of the Principal Act is repealed and replaced with the following new section:

“99. APPEAL AGAINST CANCELLATION.

(1) An institution whose self-accrediting authority has been cancelled by the Board under Section 97, may lodge an appeal against the decision of the Board to the Appeals Tribunal in the approved form.

(2) If an appeal by an institution is unsuccessful, the institution must return the Certificate of Approval to the Department within seven days of the appeal decision.”.

31. RESTRICTION ON NAME AND USE OF THE TITLE “UNIVERSITY” (AMENDMENT OF SECTION 100).

Section 100 of the Principal Act is amended by inserting, immediately after Subsection (3), the following new subsection:

“(4) A person or entity that is guilty of an offence under Subsection (3) is not eligible to apply for registration until, at least five years, after the date on which the offence is proven.”.

32. UNIVERSITY GOVERNING BODY (REPEAL AND REPLACEMENT OF SECTION 103).

Section 103 of the Principal Act is repealed and replaced with the following new section:

“103. UNIVERSITY GOVERNING BODY.

In addition to complying with the responsibilities prescribed in its enabling legislation, the governing body of a Papua New Guinea university must also work within the plans, policies and financial provisions that are consistent with this Act and any other relevant and applicable laws.”.

33. NATIONAL EXECUTIVE COUNCIL TO MAKE OR APPROVE CERTAIN APPOINTMENTS (REPEAL OF SECTION 109).

Section 109 of the Principal Act is repealed.

34. CERTIFICATE OF REGISTRATION, ETC. (AMENDMENT OF SECTION 111).

Section 111 of the Principal Act is amended in Subsection (1), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a certificate of registration as a university in the approved form.”.

35. APPLICATION FOR REGISTRATION OF A PRIVATE PAPUA NEW GUINEA UNIVERSITY (OTHER THAN A PUBLIC UNIVERSITY) (AMENDMENT OF SECTION 114).

Section 114 of the Principal Act is amended by inserting, immediately after Subsection (3), the following new subsection:

“(3A) A person or entity that is guilty of an offence under Subsection (3) is not eligible to apply for registration until, at least five years, after the date on which the offence is proven.”.

36. GROUNDS OF OBJECTION (AMENDMENT OF SECTION 116).

Section 116 of the Principal Act is amended, in Subsection (3), by repealing Paragraph (a) and replacing it with the following new paragraph:

“(a) send to the applicant a copy of the objection with 14 days of it being received by the Department; and”.

37. ENACTMENT OF UNIVERSITY ACT IF REQUIRED (AMENDMENT OF SECTION 119).

Section 119 of the Principal Act is amended -

(a) in the heading by deleting the words “**IF REQUIRED**”; and

(b) by repealing Subsection (1) and replacing it with the following new subsection:

“(1) If the National Executive Council grants approval for the establishment of a new private Papua New Guinea university, the Departmental Head must direct the governing body of the university to cause a Bill for an Act to establish the university to be prepared and submitted to the Minister to table it in Parliament for enactment.”.

38. CERTIFICATE OF REGISTRATION, ETC. (AMENDMENT OF SECTION 120).

Section 120 of the Principal Act is amended, in Subsection (1), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a certificate of registration as a university in the approved form.”.

39. DECISION ON APPLICATION (AMENDMENT OF SECTION 126).

Section 126 of the Principal Act is amended, in Subsection (5), by repealing Paragraph (b) and replacing it with the following new paragraph:

“(b) issue a certificate of recognition in the approved form.”.

40. CANCELLATION OF CERTIFICATE OF RECOGNITION (AMENDMENT OF SECTION 130).

Section 130 of the Principal Act is amended -

- (a) in Subsection (2) by repealing Paragraph (a) and replacing it with the following new paragraph:

“(a) give effect to the cancellation making appropriate changes to the register established under Section 9; and”; and

- (b) by inserting, immediately after Subsection (2), the following new subsection:

“(2A) Subject to the lodgment of an appeal, the institution must return the Certificate of Recognition to the Department within seven days of cancellation.”.

41. APPEAL AGAINST CANCELLATION (REPEAL AND REPLACEMENT OF SECTION 132).

Section 132 of the Principal Act is repealed and replaced with the following new section:

“132. APPEAL AGAINST CANCELLATION.

(1) An overseas higher education institution whose Certificate of Recognition is cancelled by the Board under Section 128 or 130 may lodge an appeal against the decision of the Board to the Appeals Tribunal in the approved form.

(2) If an appeal by an institution is unsuccessful, the institution must return the Certificate of Recognition to the Department within seven days of the appeal decision.”.

42. ADMINISTRATION OF APPEALS TRIBUNAL (AMENDMENT OF SECTION 138).

Section 138 of the Principal Act is amended by repealing Subsection (4) and replacing it with the following new subsection:

“(4) The Appeals Tribunal must send a notice of appeal to the Board in the approved form.”.

43. NEW PARTS XA AND XB.

The Principal Act is amended by inserting, immediately after Part X, the following new parts:

“PART XA. - NATIONAL CURRICULUM AND NATIONAL TRAINING PACKAGES.

143A. DEVELOPMENT OF NATIONAL CURRICULUM AND NATIONAL TRAINING PACKAGES.

(1) The Department may develop or facilitate the development of national curriculum and national training packages -

- (a) in subject areas of national importance; or
(b) as identified as national skills priorities.

(2) National curriculum and national training packages must be developed in consultation with -

- (a) relevant institutions including their governing bodies; and

- (b) professional accreditation organisations; and
- (c) relevant industry and business bodies; and
- (d) other interested stakeholders.

(3) The Department may engage the assistance of advisory bodies, consultants, organisations or experts as it deems necessary, to develop or facilitate the development of, national curriculum and national training packages.

(4) The Departmental Head must refer to the Board for approval, the national curriculum and national training package developed by the Department.

143B. ASSESSMENT OF PROPOSED NATIONAL CURRICULUM AND NATIONAL TRAINING PACKAGES.

(1) The Board must, when assessing proposed national curriculum and national training packages, use the criteria in the national standards.

(2) The Board must prepare and submit a report based on the assessment to the Minister through the Departmental Head.

143C. DETERMINING NATIONAL CURRICULUM AND NATIONAL TRAINING PACKAGES.

(1) The Minister may, upon approval by the Board, determine national curriculum or national training packages by publishing a notice in the National Gazette.

(2) The notice in Subsection (1) must advise interested parties on how they can access copies of the approved national curriculum or national training packages.

143D. USE OF NATIONAL CURRICULUM OR NATIONAL TRAINING PACKAGES.

(1) The Minister may, from time to time, determine that for certain subject matter areas, only approved national curriculum or national training packages are to be delivered in public and private higher education institutions.

(2) A determination by the Minister under Subsection (1) must be made by the Minister publishing a notice in the National Gazette.

- (3) A determination by the Minister under this section must only be made -
- (a) after the Minister has consulted the Departmental Head; and
 - (b) after a recommendation for such a determination is approved by the Board.

(4) A person or entity that acts in contravention of a determination made under this section is guilty of an offence.

Penalty: Where the offence is committed by -

- (a) an individual, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 12 years, or both; or
- (b) a body corporate, a fine not exceeding K250,000.00 or imprisonment for a term not exceeding 12 years for a director, or both.

143E. AMENDMENT OF NATIONAL CURRICULUM AND NATIONAL TRAINING PACKAGES.

(1) The Department may recommend amendment or variation of national curriculum or national training packages in consultation with -

- (a) relevant institutions; and
- (b) professional accreditation organisations; and
- (c) key industry and business organisations; and
- (d) other interested stakeholders.

(2) The Departmental Head must refer to the Board for approval -

- (a) any recommended amendment or variation to approved national curriculum; and
- (b) national training packages developed by the Department.

(3) The Board must, when assessing proposed amendments or variations to approved national curriculum or national training packages, use the criteria in the national standards.

(4) The Board must prepare and submit a report based on the assessment, to the Minister through the Departmental Head.

143F. DETERMINING AMENDED NATIONAL CURRICULUM AND NATIONAL TRAINING PACKAGES.

(1) The Minister may, upon approval by the Board, determine amended national curriculum or national training packages by publishing a notice in the National Gazette.

(2) The notice in Subsection (1) must advise interested parties on how they can access copies of the amended national curriculum or national training packages.

PART XB. - GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS.

Division 1. - Application of Part XB.

143G. APPLICATION OF PART XB.

Divisions 3 to 7 of Part XB apply to a public higher education institutions from the transfer date for that institution under the *Higher and Technical Education Reform Act 2020*.

Division 2. - Arrangements with education agencies.

143H. ARRANGEMENTS WITH EDUCATION AGENCIES.

(1) The Department may, on behalf of the State, negotiate arrangements with education agencies in relation to the nature and level of State support for agency institutions.

(2) The Department must negotiate arrangements under Subsection (1) in a spirit of co-operation, recognising the contribution that education agencies have made, and continue to make, to the development of higher education in Papua New Guinea.

(3) The Minister must refer arrangements under Subsection (1) to the National Executive Council for approval.

(4) The Department and the Board must, in all dealings under the Act, recognise -

- (a) the right of parents and citizens to obtain the education they wish for their children and themselves; and
- (b) the desirability for diversity of educational methods provided, national standards are maintained; and
- (c) the right to define, develop and preserve the identity and character of institutions of a particular nature, whether of a religious or other nature, provided such distinctions are not based on race, color or other criteria unacceptable in a democratic society; and
- (d) the central role of Christian principles in Papua New Guinean society.

Division 3. - Objectives, functions and powers.

143I. OBJECTIVES OF PUBLIC HIGHER EDUCATION INSTITUTIONS.

- (1) The objectives of public higher education institutions are -
 - (a) to be quality-focused and having strong and effective governance and management and to provide programmes of study that are in accordance with national standards and any approved national curriculum or national training packages; and
 - (b) to manage finances transparently, efficiently and cost effectively; and
 - (c) to be strongly engaged with the wider education community; and
 - (d) to understand the economic and social needs of the nation by building coalitions with key industry, professional and civil society organisations and ensuring that programmes of study support these needs; and
 - (e) to work closely with the Department to ensure that Government strategic planning and policy initiatives are robustly implemented; and
 - (f) to ensure that contemporary teaching and training principles and methodologies are implemented; and
 - (g) to provide the greatest opportunity for students to engage in study through the use of technology and innovative educational practices; and
 - (h) to recognise the importance of quality education in Papua New Guinea's wider development goals particularly in the area of human resource development; and
 - (i) to not discriminate on the basis of gender, race or religion and to actively promote principles of gender equity and social inclusion.

143J. FUNCTIONS OF PUBLIC HIGHER EDUCATION INSTITUTIONS.

- (1) The functions of a public higher education institutions are -
 - (a) to provide facilities for study and education in all subjects and programmes of study approved by the Council and to give instruction and training in all branches of learning and skills approved by the Council; and

- (b) to award and confer certificates, diplomas, degrees and such other awards as may be approved by the Council with such awards to be signed by the Chair of the Council and the Principal; and
- (c) to provide the Department with the names of all graduating students including awards to be offered; and
- (d) to engage with the wider education community to ensure that the institution's programmes of study are consistent with national education and skills priorities; and
- (e) to work closely with the Department to ensure that all programmes of study offered by the institution comply with the national standards and any approved national curriculum or national training packages; and
- (f) to develop affiliations with other educational institutions to deliver additional courses and programmes of study as approved by the Council; and
- (g) to develop strong relationships with industry and business representatives, donors and potential corporate sponsors; and
- (h) to develop robust policies for the recognition of qualifications and attainment of learning from other educational institutions and the implementation of the national standards.

143K. POWERS OF PUBLIC HIGHER EDUCATION INSTITUTIONS.

A public higher education institution has the power to do all things necessary or convenient in connection with -

- (a) the attainment of the objectives of the Act; and
- (b) the functions of the institution in accordance with this Act; and
- (c) any other relevant law and any policies determined by the National Executive Council, the Board, the Minister or the Department.

Division 4. - Governing Councils of public higher education institutions.

143L. INTERPRETATION.

In this division -

“Chair” means the Chair of a Council appointed under Section 143P;

“committee” means a committee of a Council established under Section 143W;

“Deputy Chair” means the Deputy Chair of a Council appointed under Section 143P;

“member” means a member of the Council established under Section 143O.

143M. ESTABLISHMENT OF COUNCILS.

A Council is hereby established for each public higher education institutions as the governing body of the institution.

143N. FUNCTIONS OF COUNCILS.

(1) The functions of each Council are -

- (a) to promote and ensure attainment of the objectives of the Act and the institution; and
- (b) to determine the strategic vision and direction of the institution and monitor its performance; and

- (c) to provide oversight of the administration of the revenue, property and personnel of the institution; and
- (d) to formulate policies and planning guidelines for the effective management of the institution; and
- (e) to consider matters referred to it for approval by the Academic Board; and
- (f) to instill a performance-based culture that promotes an ethical, disciplined and productive institution which delivers quality educational services; and
- (g) to ensure that the institution has current and effective policies in relation to gender equality and social inclusion for students and staff; and
- (h) in consultation with the Department, to enter into arrangements with external organisations including private training institutions, donor partners and corporate entities to provide targeted training in areas of national skills priority; and
- (i) to approve the Strategic Plan, Business Plan, Annual Audited Financial and Performance Report and the budget of the institution for each financial year; and
- (j) to provide all financial performance and other information as reasonably requested by the Department in accordance with any approved forms; and
- (k) to make Rules for the institution in accordance with Section 143ZN; and
- (l) to exercise such other powers and perform such other duties as are conferred on it by this Act; and
- (m) to provide oversight of all matters relating to the institution not otherwise provided for under this Act; and
- (n) to take such action to promote quality education in Papua New Guinea.

(2) If the institution is a State-owned institution, the functions under Subsection (1)(b) and (c) are subject to any directions by the Minister or Departmental Head.

143O. MEMBERSHIP OF COUNCILS.

- (1) The Council of a State-owned institution must consist of -
 - (a) the Principal, *ex-officio*; and
 - (b) one member nominated by the Departmental Head of the Department; and
 - (c) one member of the full-time academic staff of the institution elected by the staff; and
 - (d) two external members with current experience in financial or legal matters nominated by a peak organisation representing business interests in Papua New Guinea; and
 - (e) two external members with current experience in the management of significant commercial enterprises or in business management nominated by a peak organisation representing business interests in Papua New Guinea; and
 - (f) one external member nominated by a professional association representing graduates of the institution; and

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- (g) one external member nominated by a professional recognition authority responsible for the professional recognition of graduates of the institution; and
 - (h) one external member nominated by the Provincial Government in which the institution is located.
- (2) The Council of an agency institution must consist of -
- (a) the Principal, *ex-officio*; and
 - (b) one member nominated by the Departmental Head of the Department; and
 - (c) one member of the full-time academic staff of the institution elected by the staff; and
 - (d) one external member with current experience in financial or legal matters or with current experience in the management of significant commercial enterprises nominated by a peak body representing business interests in Papua New Guinea; and
 - (e) one external member nominated by a professional association representing graduates of the institution; and
 - (f) one external member nominated by a professional recognition authority responsible for the professional recognition of graduates of the institution; and
 - (g) one external member nominated by the Provincial Government in which the institution is located; and
 - (h) up to eight members nominated by the education agency operating the institution.
- (3) So far as is practicable, there must be a gender balance in the membership of a Council.
- (4) A nominee under Subsections (1)(b) and 2(b), must be an officer of First Assistant Secretary level.
- (5) If the institution under Subsections (1)(f) and (2)(e) is a teachers' college, the member must be a nominee of the Papua New Guinea Teachers' Association.
- (6) The members referred to in Subsections (1)(b) to (h) and (2)(b) to (h) -
- (a) must be appointed by the Board in accordance with this section; and
 - (b) must hold office for a term not exceeding three years; and
 - (c) must hold office on such terms and conditions as determined under the *Boards (Fees and Allowances) Act 1955*; and
 - (d) must be ordinarily resident in Papua New Guinea; and
 - (e) are eligible for reappointment.
- (7) The Council must, for a State-owned institution, provide a report and names of nominees to the Departmental Head.
- (8) An education agency institution must, in consultation with the Council, provide a report and names of nominees to the Departmental Head.

(9) The Departmental Head must provide a report and names of nominees to the Board for approval.

(10) The Board must appoint the preferred nominee if the Board is satisfied that the nominee -

- (a) is a person of good reputation in the community and recognised as a person qualified, experienced and competent to represent the persons or groups or interests;
- (b) is of sound mind and judgment and able to contribute to the business of the Council; and
- (c) does not have a criminal record or has not been charged with an offence which is likely to denigrate their standing as a Council member; and
- (d) does not have any personal interest which is likely to be in conflict with the interests or objectives of the institution; and
- (e) is ordinarily a resident of Papua New Guinea.

143P. CHAIR AND DEPUTY CHAIR.

(1) The Board must, on the recommendation of the Departmental Head, appoint a member of each Council to be Chair of the Council and another member to be Deputy Chair of the Council.

(2) The Departmental Head must, in making a recommendation under Subsection (1), take into account -

- (a) for a State-owned institution, any recommendations from the Council of the institution; and
- (b) for an agency institution, any recommendations from the relevant education agency and the Council of the institution.

(3) If the Departmental Head rejects a recommendation from a Council or education agency, the Departmental Head must -

- (a) provide written reasons; and
- (b) enter into negotiations with the Council or education agency to resolve the matter.

(4) If the Chair is absent or otherwise unable to act, the Deputy Chair has all the powers and functions of the Chair under this Act.

(5) The Chair and the Deputy Chair must hold office until expiration of the period of their respective appointments or until they cease to be members, whichever first occurs.

143Q. LEAVE OF ABSENCE.

The Departmental Head may grant leave of absence to a member on such terms and conditions, consistent with this Act, as the Departmental Head determines.

143R. VACATION OF OFFICE.

(1) A member may, other than an *ex-officio* member, resign his office by writing signed by the member and delivered to the Board through the Departmental Head.

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(2) The Board must, on recommendation of the Departmental Head, terminate the appointment of a member if the member -

- (a) becomes permanently incapable of performing his duties; or
- (b) resigns his office in accordance with Subsection (1); or
- (c) is absent, except with the written consent of the Departmental Head, for three consecutive meetings of the Council; or
- (d) fails to comply with Section 143V; or
- (e) becomes bankrupt, or applies to the benefit of any law for the benefit of bankrupt or insolvent debtors, compounds with his creditors, or makes an assignment for their benefit; or
- (f) is convicted of an offence punishable under a law by a term of imprisonment of at least one year; or
- (g) ceases to be ordinarily resident in Papua New Guinea.

(3) Where a recommendation in Subsection (2) relates to a member of the Council of an agency institution, such recommendation must only be made after consultation with the relevant education agency.

(4) The Departmental Head may, at any time, by written notice, advise a member that he intends to make a recommendation to the Board to terminate the member's appointment on the grounds of inefficiency, incapacity or misbehavior.

(5) Where a recommendation in Subsection (4) relates to a member of the Council of an agency institution, such recommendation must only be made after consultation with the relevant education agency.

(6) A member may, within 14 days of receipt of a notice under Subsection (4), make a submission in response to the Departmental Head.

(7) The Departmental Head must, on receipt of a response from the member, consider the response and make a decision to proceed or dispense with a recommendation to the Board.

(8) The Departmental Head must, in accordance with Subsection (6), convey his decision to -

- (a) the Chair of the Council and the member, in the case of a member of a State-owned institution; and
- (b) the relevant education agency, the Chair of the Council and the member, in the case of a member of an agency institution.

(9) If a member does not reply in accordance with Subsection (4), the Departmental Head may make recommendation to the Board for the member's appointment to be terminated from the date of the Departmental Head's notice.

(10) The Board must determine any recommendation referred to it under this section and advise its decision through the Departmental Head -

- (a) to the Chair of the Council and the member, in the case of a State-owned institution; and
- (b) to the relevant education agency, the Chair of the Council and the Member, in the case of an agency institution.

143S. FILLING OF VACANCIES.

- (1) If there is a vacancy in the membership of a Council (other than *ex-officio* members) -
- (a) an appointment to fill the vacancy must be made as soon as practicable, and in any case, not later than three months after the date on which the vacancy occurs; and
 - (b) the appointment must be made in accordance with Section 143O; and
 - (c) the person so appointed must hold office, subject to the Act, for the residue of his predecessor's term of office; and
- (2) If the vacancy occurs within three months of the expiration of the term of office, the vacancy must remain unfilled for the remainder of the term.

143T. VACANCY MUST NOT AFFECT POWERS OR FUNCTIONS.

The exercise of a power or the performance of a function of a Council is not invalidated by reason only of a vacancy in the membership of a Council.

143U. MEETINGS OF A COUNCIL.

- (1) Each Council must meet as often as the business of the institution requires, and at such times and places as the Chair directs, but in any event, not less than four times in each calendar year.
- (2) At a meeting of a Council -
- (a) half of the total number of members for the time being constitute a quorum; and
 - (b) the Chair, or in his absence, the Deputy Chair, must preside, and if both the Chair and Deputy Chair are absent, the members present must appoint a Chair for that meeting from their own number; and
 - (c) matters arising must be decided by majority vote of the members present and voting; and
 - (d) the Chair presiding has a deliberative vote, and in the event of an equality of votes on any matter, also a casting vote.
- (3) Subject to this Act, the procedures of meetings of each Council are to be determined by the Council.

143V. DISCLOSURE OF INTEREST.

- (1) A member who has a direct or indirect interest in a matter being considered or about to be considered by a Council must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the member's interest at a meeting of the Council.
- (2) The disclosure must be recorded in the minutes of the meeting of the Council and the member -
- (a) must not take part, after the disclosure, in any deliberations or decision of the Council in relation to the matter; and
 - (b) must be disregarded for the purpose of constituting a quorum of the Council for any deliberation or decision on the matter.

143W. COMMITTEES OF A COUNCIL.

(1) A Council may, from time to time, establish committees of the Council to advise the Council on such matters as the Council considers necessary.

(2) The Council may, in establishing a committee under Subsection (1) -

(a) appoint such persons (including members) as it considers necessary; and

(b) specify the functions and procedures of the committee.

(3) A member of a committee who is not a member of the Council, may receive fees and allowances under the *Boards (Fees and Allowances) Act 1955*.

143X. DIRECTIONS BY THE MINISTER OR DEPARTMENTAL HEAD.

(1) The Minister or the Departmental Head may, after consultation with a Council, give to the Council, directions consistent with Government policies and programmes and not inconsistent with the provisions of this Act.

(2) The Council must -

(a) exercise its powers and perform its functions and duties under this Act; and

(b) give effect to any directions under Subsection (1).

(3) A direction under Subsection (1) must only be in relation to matters of Government policy and must not extend to matters of staffing or other internal matters other than in accordance with this Act.

(4) If a direction is in relation to an agency institution, such a direction may only be made after consultation with the relevant education agency.

143Y. DELEGATION OF POWERS.

A Council may, by written instrument, delegate all or any of its powers and functions other than -

(a) this power of delegation; and

(b) the power to make Rules under Section 143N.

143Z. PROTECTION FROM PERSONAL LIABILITY.

A member of a Council (or of a committee of a Council) or an officer, employee or agent of a public higher education institution is not personally liable for any act or default of that person, or the institution, done or omitted to be done in good faith in the operation of the institution or for the objectives of the Act or the institution.

143ZA. STRATEGIC PLAN AND BUSINESS PLAN.

(1) A Council must, in consultation with the Department, prepare a Strategic Plan outlining the goals, objectives, policies, strategies, activities, resource needs and targets for the institution for each period of five years.

(2) The Strategic Plan must -

(a) align with the national higher and technical education plan; and

(b) align with all relevant Government policies as determined by the National Executive Council, the Minister and the Department; and

(c) be in accordance with any approved form for the Plan.

(3) The Departmental Head must present a Strategic Plan to the Minister for approval.

(4) The Council must, in each calendar year, prepare an annual business plan for the institution outlining how the institution may achieve its strategic objectives for the coming year.

(5) The Council must, by 31st July each year, submit the annual business plan for the institution, commencing 1st January the following year, to the Departmental Head who must forward the plan to the Minister for approval.

143ZB. ANNUAL AUDITED FINANCIAL AND PERFORMANCE REPORT.

(1) The Council must, by 30th June each year, submit an annual audited financial and performance report to the Departmental Head in accordance with any approved form for the year ending 31st December previously.

(2) The Departmental Head must, as soon as practicable after receiving a report under Subsection (1), forward the annual report to the Minister.

Division 5. - Academic Board.

143ZC. INTERPREATION.

In this Division -

“member” means a member of the Academic Board established under Section 143ZD.

143ZD. ESTABLISHMENT OF ACADEMIC BOARD.

(1) An Academic Board is hereby established for each public higher education institutions.

(2) The Academic Board is the principal academic body of the institution.

143ZE. FUNCTIONS OF ACADEMIC BOARD.

(1) Subject to this Act and any directions by the Council, the functions of the Academic Board are -

- (a) to determine proper standards of instruction, examinations and assessments and to regulate and promote the academic life of the institution; and
- (b) to approve academic or training programmes; and
- (c) to recommend for Council approval, policies and procedures in relation to -
 - (i) the quality of academic or training programmes; and
 - (ii) student related functions including admissions, expulsions, discipline, examinations and certification; and
 - (iii) assurance of quality of teaching and learning; and
 - (iv) studentships, scholarships, exhibitions, medals and prizes; and
 - (v) affiliation with other educational institutions; and

- (vi) schemes for the constitution and organisation of teaching departments; and
- (vii) advanced standing and recognition of examinations or assessments of other institutions; and
- (d) to appoint examiners for all examinations or assessments in accordance with procedures set out in the rules; and
- (e) to institute programs of continued professional development as relevant and at all levels; and
- (f) to assist in the development of rules for consideration by the Council; and
- (g) to prepare an annual report on the Academic Board's work for presentation to the Council by 28 February of the following year reported on; and
- (h) to perform such other functions as may be directed by the Council.

143ZF. MEETINGS AND GOVERNANCE OF ACADEMIC BOARD.

The Council must determine the meeting and governance arrangements for the Academic Board which must be set out in the Rules.

143ZG. MEMBERSHIP AND APPOINTMENT OF ACADEMIC BOARD.

(1) The Academic Board of each public higher education institutions must consist of -

- (a) the Principal, *ex-officio*; and
- (b) the Deputy Principal Academic (or similar position), *ex-officio*; and
- (c) the institution Departmental Heads (or similar positions), *ex-officio*; and
- (d) the Registrar (or similar position), *ex-officio*; and
- (e) the Librarian (or similar position), *ex-officio*; and
- (f) two institution departmental staff members appointed in accordance with procedures determined by the Council in the rules; and
- (g) two independent members with relevant experience and knowledge of the industries served by graduating students nominated by a peak industry body.

(2) The Principal must be the Chair of the Academic Board and the members must elect a Deputy Chair.

(3) Members mentioned in Subsection (1)(f) and (g) must -

- (a) be appointed by the Council on recommendation of the Principal; and
- (b) hold office for three years; and
- (c) be eligible for reappointment.

(4) The Academic Board must meet at least four times in each calendar year.

(5) At a meeting of an Academic Board -

- (a) half of the total number of members for the time being constitute a quorum; and
- (b) the Chair, or in his absence, the Deputy Chair, must preside, and if both the Chair and Deputy Chair are absent, the members present must appoint a Chair for that meeting from their own number; and

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- (c) matters arising must be decided by majority vote of the members present and voting; and
- (d) the Chair presiding has a deliberative vote, and in the event of an equality of votes on any matter, also a casting vote.

(6) Subject to this Act, the procedures of meetings of each Academic Board are to be determined by the Academic Board.

Division 6. - Staff of public higher education institutions.

143ZH. APPOINTMENT OF PRINCIPAL.

There must be a Principal of each public higher education institutions, whose manner of appointment, salary, terms and conditions of employment must be in accordance with the ***Public Services (Management) Act 1995*** (as amended) and the General Orders.

143ZI. FUNCTIONS OF THE PRINCIPAL.

- (1) The Principal is the chief executive officer and head of staff of the public higher education institution.
- (2) The Principal is responsible for -
 - (a) the efficient performance of the functions of the institution in accordance with the policy directions of the Council, Departmental Head or Minister; and
 - (b) reporting to the Council on the performance and management of the institution; and
 - (c) giving effect to the decisions of the Council and ensuring that the institution complies with this Act, the rules and any other relevant laws; and
 - (d) building the profile of the institution within the community and establishing and strengthening relations with business and industry representatives, donors and other higher education institutions; and
 - (e) carrying out such other functions and duties as are required under this Act and his contract of employment.

143ZJ. APPOINTMENT OF TEACHING AND OTHER STAFF.

The appointment, salary, terms and conditions of employment of full-time staff of a public higher education institution must be in accordance with the ***Public Services (Management) Act 1995*** and the General Orders.

143ZK. CONTRACT OF EMPLOYMENT.

The Principal and full-time staff of a public higher education institution must be employed under a contract of employment which -

- (a) in the case of the Principal, must be executed by the Chair of the Council and by the Principal; and
- (b) in the case of all other staff, must be executed by the Principal on behalf of the Council and by the staff concerned.

143ZL. ELIGIBILITY FOR RE-APPOINTMENT.

A person may be re-appointed to any office or position in a public higher education institution if the person is otherwise capable of holding that office or position.

143ZM. SHORT-TERM NATIONAL CONTRACT EMPLOYEES.

(1) A Principal may, with approval from the Council, and in consultation with the Departmental Head of the department responsible for personnel matters, appoint such short-term employees as is necessary for a public higher education institution to perform its functions.

(2) The appointment of a short-term employee under Subsection (1) must be in accordance with General Order 10 or any other relevant General Orders.

Division 7. - Council rules.

143ZN. RULES.

- (1) A Council may make rules with respect to -
- (a) the management, good governance and discipline of students of the institution; and
 - (b) procedures in relation to Council meetings; and
 - (c) the subjects and programmes of study to be undertaken at the institution; and
 - (d) the process for the admission, attendance and expulsion of students; and
 - (e) the times, places and manner of holding lectures, classes and examinations and the number and character of such lectures, classes and examinations; and
 - (f) the granting of certificates, diplomas and other awards; and
 - (g) the granting of scholarships, bursaries and other prizes; and
 - (h) matters in relation to advanced standing and recognition of existing qualifications; and
 - (i) the governance and operation of the Academic Board; and
 - (j) such other matters as are authorised under this Act or that are necessary or convenient for giving effect to this Act.

(2) The Department may prepare a set of template rules that may be adopted by a Council.

143ZO. APPROVAL AND PUBLICATION OF RULES.

(1) All rules must be approved by the Board on the recommendation of the Departmental Head and published by the Department.

- (2) A rule must not operate retrospectively if it -
- (a) affects the rights of a person in a prejudicial manner; or
 - (b) imposes liabilities on a person in respect to anything done or omitted to be done before the rule comes into effect.

(3) A rule made in contravention of Subsection (2) is invalid and has no effect.

(4) Rules made in a calendar year must be numbered in sequential arithmetic series beginning with number 1.”.

44. STATE INTERVENTION UNDER SPECIFIC CIRCUMSTANCES (REPEAL AND REPLACEMENT OF SECTION 152).

Section 152 of the Principal Act is repealed and replaced with the following new section:

“152. STATE INTERVENTION UNDER SPECIFIC CIRCUMSTANCES.

(1) Where, in the opinion of the Departmental Head, a public higher education institution under this Act, including a public university, is -

- (a) being so negligently, inefficiently or badly conducted as not to be in the interests of higher education institutions in the country; or
- (b) in financial difficulty due to gross mismanagement; or
- (c) unable to perform its functions effectively due to dissention among members of the governing body; or
- (d) unable to resolve a student revolt or strike within a reasonable period and that the strike or revolt results in or is likely to result in -
 - (i) injury or death of a person; or
 - (ii) the destruction of a public property, other than minor damage; or
 - (iii) a serious threat to the public; or
- (e) unable to resolve a staff revolt or strike and that the revolt or strike results or is likely to result in -
 - (i) the institution not discharging its duties imposed on it by or under this Act or any other law relating to higher education or university matters; or
 - (ii) an unprecedented academic staff resignation; or
 - (iii) injury or death of a person; or
 - (iv) the destruction of public property, other than minor damage; or
 - (v) a serious threat to the public; or
- (f) not properly carrying out the duties imposed on it by or under this Act or any other law relating to higher education or university matters, the Departmental Head may advise the Minister and the Minister may direct the governing body or administration of the institution to provide a report describing the nature of the problem and the measures the institution has taken or is taking to resolve it.

(2) Where the governing body or administration of an institution fails to provide the report to the satisfaction of the Minister within a time prescribed in the direction, the Minister must, in consultation with the Departmental Head, take appropriate actions or measures that are necessary as appears to be best calculated to promote the interest of the institution.

(3) The Minister may, in the best interest of the institution referred to in Subsection (2), exercise one or more of the following powers:

- (a) appoint an independent arbitrator to resolve the issue; or
- (b) revoke or suspend the membership of the governing body; or
- (c) appoint an interim governing body; or
- (d) suspend the Chief Executive Officer; or
- (e) appoint an acting Chief Executive Officer as the interim academic and administrative head of the institution to exercise general supervision and control over the affairs of the institution.

(4) Any interim arrangements invoked under Subsection (3) must remain in place until the Minister is satisfied that the issue giving rise to the intervention has been resolved.

(5) The Minister may, upon resolution of the issue giving rise to the intervention -

- (a) in the case of a suspension, reinstate the original governing body or Chief Executive Officer; or
- (b) in the case of a revocation, direct the institution to appoint a new governing body or Chief Executive Officer (as the case may be) in accordance with this Act or any other legislation governing the institution.”.

45. SUSPENSION OF POWERS AND FUNCTIONS OF THE GOVERNING BODY (REPEAL AND REPLACEMENT OF SECTION 153).

Section 153 of the Principal Act is repealed and replaced with the following new section:

“153. SUSPENSION OF POWERS AND FUNCTIONS OF THE GOVERNING BODY.

(1) Where the Minister suspends the powers of an existing governing body, the suspension deprives the members of their powers and functions during the suspension period.

- (2) The suspension or revocation of a power or function does not affect -
- (a) any right, privilege, obligation or liability acquired, accrued or incurred under or in respect of the suspended or revoked power or function; or
 - (b) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation or liability which may be carried on or enforced as if the suspension or revocation had not taken place.”.

46. SAVINGS OF CONTRACTS, ETC. (REPEAL AND REPLACEMENT OF SECTION 157).

Section 157 of the Principal Act is repealed and replaced with the following new section:

“157. SAVINGS OF CONTRACTS, ETC.

All contracts and agreements (other than contracts of employment), entered into, made with or addressed to the former Office of Higher Education are, to the extent that they were, immediately before the coming into operation of this Act, binding on and of full force and effect against or in favor of the former Office of Higher Education, on this Act coming into operation are, binding on and of full force and effect against or in favor of the Department as fully and effectively as if it had been a party to them or entitled to the benefit of them.”.

47. TRANSFER OF ASSETS, ETC., TO THE DEPARTMENT (REPEAL AND REPLACEMENT OF SECTION 159).

Section 159 of the Principal Act is repealed and replaced with the following new section:

“159. TRANSFER OF ASSETS, ETC., TO THE DEPARTMENT.

All State assets held in trust by, and obligations and liabilities imposed on the former Office of Higher Education immediately before the coming into operation of this Act, are, on this Act coming into operation, transferred to the Department which must hold those assets in trust for the State.”.

48. TRANSFER OF ACCOUNTS (REPEAL AND REPLACEMENT OF SECTION 160).

Section 160 of the Principal Act is repealed and replaced with the following new section:

“160. TRANSFER OF ACCOUNTS.

All sums, immediately before the coming into operation of the Act, at credit of, and on accounts opened by the former Office of Higher Education are, on this Act coming into operation, transferred to equivalent accounts opened under the name of the Department as the trustee of the State under the provisions of this Act.”.

49. CONSULTANTS, VOLUNTEERS, ETC. (REPEAL AND REPLACEMENT OF SECTION 177).

Section 177 of the Principal Act is repealed and replaced with the following new section:

“177. CONSULTANTS, VOLUNTEERS, ETC.

(1) The Department may, subject to the provisions of the *Public Finances (Management) Act 1995* and any other law, from time to time, within the limits of funds lawfully available for the purpose, and on such terms and conditions as are fixed by the Departmental Head, engage -

- (a) consultants; or
 - (b) overseas volunteers; or
 - (c) persons seconded from universities, international agencies and non-governmental organisations; or
 - (d) persons with expert skills from the private sector,
- for purposes of carrying out its functions under this Act.

(2) Without limiting the generality of Subsection (1), the Department may enter into arrangements with external organisations, including private training institutions, donor partners and corporate entities, to provide targeted training in areas of national skills priority in public higher education institutions.

(3) Any arrangements entered into under Subsection (2) must be done in consultation with the Council of the relevant institution or institutions which must support and work with the Department in the implementation of the arrangements.”.

50. SCHEDULE 1A (AMENDMENT OF SCHEDULE 1A).

Schedule 1A of the Principal Act is amended by -

- (a) repealing Paragraphs (f), (g) and (h), and replacing them with the following new paragraphs:

“(f) to formulate and review proposals for financial assistance for higher education institutions and Papua New Guinea universities to be made to the Government, including sectoral funding models; and

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- (g) to receive and coordinate and manage all requests for financial support from Papua New Guinea universities and higher education institutions made to the Government, including annual budget submissions; and
- (h) to receive from central agencies all Government funding for Papua New Guinea universities and higher education institutions, including annual appropriations to distribute it in accordance with agreed plans, targets and outputs and to ensure clear identification and transparency of budget allocations to institutions; and”; and

(b) by inserting a new paragraph after Paragraph (w) as follows:

- “(wa) to establish a national skills development body on such terms, and to carry out such duties and functions, as are determined by the Departmental Head, including -
 - (i) overseeing the development and sustainability of the PNG TVET section; and
 - (ii) ensuring the maintenance of national standards in the registration of TVET institutions and the accreditation of their programmes; and
 - (iii) overseeing the development of national training packages.”.

51. SCHEDULE 1B (AMENDMENT OF SCHEDULE 1B).

Schedule 1B of the Principal Act is amended -

(a) by repealing Paragraphs (f) and (g) and replacing them with the following new paragraphs:

- “(f) to receive, coordinate and manage all requests for financial support from Papua New Guinea universities and higher education institutions made to the government, including annual budget submissions; and
- (g) to receive from central agencies all Government funding for Papua New Guinea universities and higher education institutions, including annual appropriations, to distribute it in accordance with agreed plans, targets and outputs and to ensure clear identification and transparency of budget allocations to institutions; and”; and

(b) by inserting, immediately after Paragraph (l), the following new paragraph:


- “(la) to monitor and record the number, accuracy and transparency of academic awards made by higher education institutions; and”.

51. REPEAL OF SCHEDULE 2.

Schedule 2 of the Principal Act is repealed.

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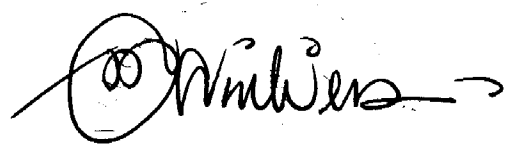
I hereby certify that the above is a fair print of the ***Higher Education (General Provisions) (Amendment) Act 2020***, which has been made by the National Parliament.



Clerk of the National Parliament.

14 JAN 2021

I hereby certify that the ***Higher Education (General Provisions)(Amendment) Act 2020***, was made by the National Parliament on 27 August 2020.



Acting Speaker of the National Parliament.

14 JAN 2021