

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 382.

Provincial Governments (Mediation and Arbitration Procedures).

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Provincial Affairs at the date of its preparation for inclusion, with the exception of Section 7(2)(b)(i) which was vested in the Prime Minister.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of the Constitution.

References in, or in relation to, this Chapter to—

“the Departmental Head” should be read as references to the Secretary for Provincial Affairs;

“the Department” should be read as references to the Department of Provincial Affairs.

TABLE OF CONTENTS.

	<i>Page.</i>
<i>Provincial Governments (Mediation and Arbitration Procedures) Act ...</i>	3
Regulations	—
Appendix—	
Source of Act.	

0

0

0

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 382.

Provincial Governments (Mediation and Arbitration Procedures) Act.

ARRANGEMENT OF SECTIONS.

PART I.—PRELIMINARY.

1. Interpretation—
 - “arbitrator”
 - “dispute to which this Act applies”
 - “mediator”
 - “Premiers’ Council”
 - “this Act”.

PART II.—APPLICATION.

2. Parties to whom this Act applies.
3. Disputes to which this Act applies.
4. Jurisdiction over disputes to which this Act applies.

PART III.—MEDIATION PROCEDURE.

5. Appointment of panel of mediators.
6. Disqualification.
7. Party to invoke procedure.
8. Effort to settle dispute to be made.
9. Minister to appoint mediator from panel.
10. Duties of mediator.
11. Report by mediator.

PART IV.—ARBITRATION PROCEDURE.

12. Minister to order commencement of arbitration procedure.
13. Parties to endeavour to appoint arbitrator.
14. Parties to advise Minister whether appointments made.
15. Chief Justice to make appointment where parties fail to agree.
16. Parties to fill a vacancy in certain cases.
17. Functions of arbitrator.
18. Powers of arbitrator.
19. Protection of arbitrator, witness, etc.
20. Application for extension of time.
21. Decision.
22. Costs.
23. Decision to be binding.

PART V.—MISCELLANEOUS.

24. Misconduct by arbitrator.
25. Remuneration of mediators and arbitrators.
26. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 382.

Provincial Governments (Mediation and Arbitration Procedures) Act.

Being an Act to provide for mediation and arbitration procedures for the non-judicial settlement of disputes between—

- (a) Provincial Governments; and
 - (b) Provincial Governments and the National Government; and
 - (c) Provincial Governments and certain Statutory Authorities,
- and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

In this Act, unless the contrary intention appears—

- “arbitrator” means a person appointed to be an arbitrator under Part IV.;
- “dispute to which this Act applies” has the meaning ascribed to it by Section 3;
- “mediator” means a person appointed to the panel of mediators under Section 5;
- “Premiers’ Council” means the Premiers’ Council established by Section 82 of the Organic Law on Provincial Government;
- “this Act” includes the regulations.

PART II.—APPLICATION.

2. Parties to whom this Act applies.

This Act applies to—

- (a) the National Government; and
- (b) Provincial Governments; and
- (c) any Statutory Authority declared by the Minister, by notice in the National Gazette, to be a party to which this Act applies.

3. Disputes to which this Act applies.

This Act applies to a dispute—

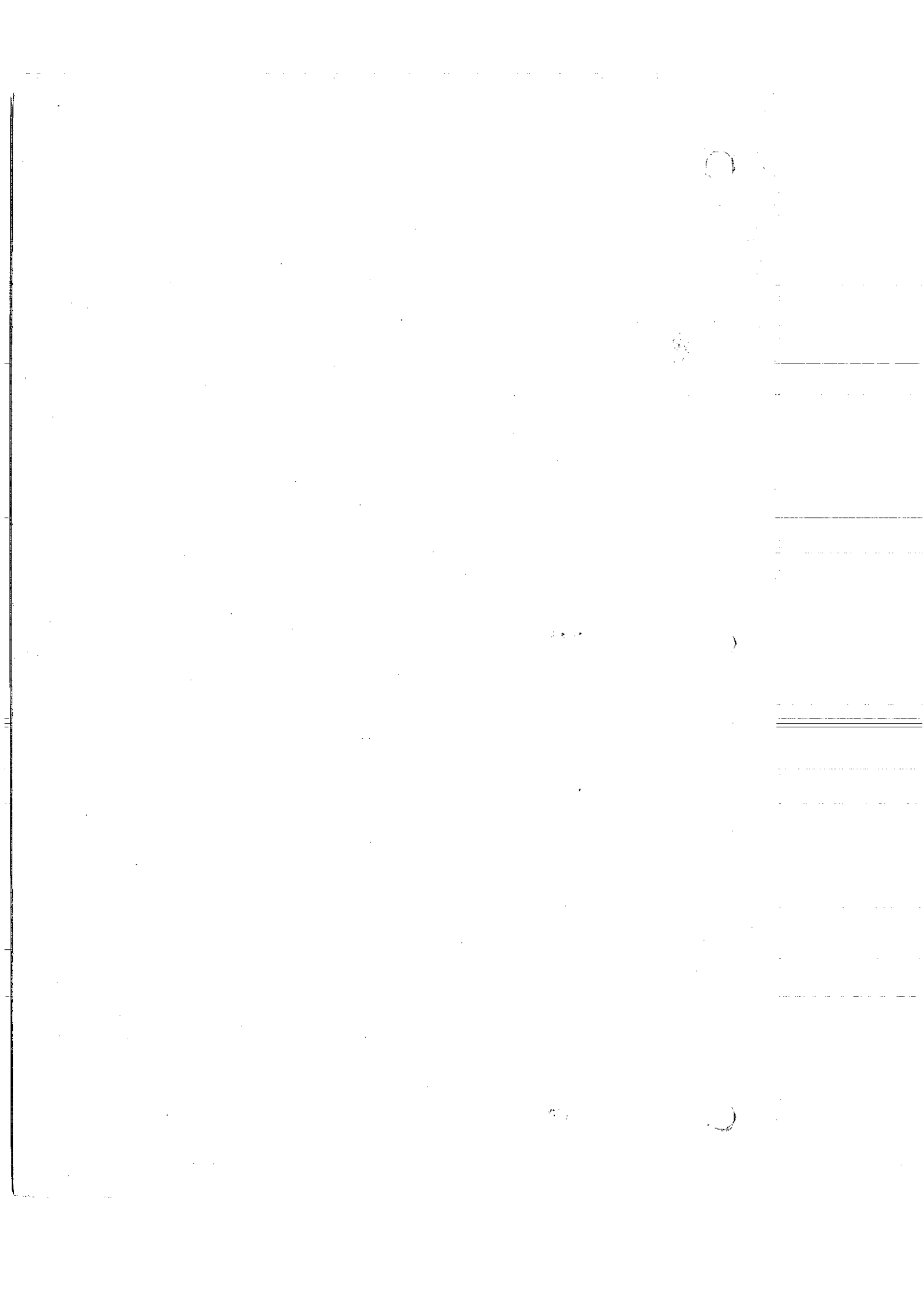
- (a) between two or more parties to whom this Act applies; and
- (b) to which no person, other than a party to whom this Act applies, is a party; and
- (c) to which a Provincial Government is a party; and
- (d) which is not eligible for reference to the National Fiscal Commission.

4. Jurisdiction over disputes to which this Act applies.

No court has jurisdiction to hear a dispute to which this Act applies unless—

- (a) the dispute concerns a matter certified by the Prime Minister to be a matter of law; or
- (b) the dispute has not been resolved to the satisfaction of a party to it after exhaustion of the procedures set out in this Act.

(Replaced by No. 32 of 1983, s. 1.)



PART III.—MEDIATION PROCEDURE.

5. Appointment of panel of mediators.

- (1) The Premiers' Council shall appoint suitable persons to form a panel of mediators.
- (2) A person appointed under Subsection (1) shall—
 - (a) be appointed for a period of three years; and
 - (b) be eligible for re-appointment; and
 - (c) receive such remuneration and expenses as are determined by the Premiers' Council.

6. Disqualification.

A person who—

- (a) has been convicted of an indictable offence or is undergoing a sentence of imprisonment; or
- (b) is insane or of unsound mind within the meaning of any law in force for the time being relating to insanity or unsoundness of mind,

is not capable of being or continuing to be a mediator.

7. Party to invoke procedure.

(1) A party to a dispute to which this Act applies may apply in writing to the Minister for the commencement of the mediation procedure.

(2) An application under Subsection (1) shall—

- (a) be accompanied by a description of—
 - (i) the facts of the dispute; and
 - (ii) the efforts made to settle the dispute; and
- (b) be signed by—
 - (i) where the applicant is the National Government—the Prime Minister; and
 - (ii) where the applicant is a Provincial Government—the Premier or Deputy Premier; and
 - (iii) where the applicant is other than the National Government or a Provincial Government—the senior executive or his deputy.

8. Effort to settle dispute to be made.

An application under Section 7 shall not be considered unless efforts have been made to settle the dispute.

9. Minister to appoint mediator from panel.

(1) Subject to Subsection (2), where an application has been made under Section 7, the Minister shall, from the panel of mediators, appoint a mediator to mediate in the dispute the subject of the application.

(2) A person who—

- (a) has an interest in land, customary or otherwise; or
- (b) has a business; or

(c) resides,
in a province which is a party to a dispute is not eligible to mediate in that dispute.

10. Duties of mediator.

As soon as practicable after his appointment under Section 9, the mediator shall contact the parties to the dispute and shall endeavour to effect a settlement of the dispute acceptable to the parties to the dispute.

11. Report by mediator.

The mediator shall, within 60 days of his appointment under Section 9, and after carrying out his duties under Section 10, report to the Minister that the dispute—

- (a) has been settled; or
- (b) has not been settled,

as the case may be.

PART IV.—ARBITRATION PROCEDURE.

12. Minister to order commencement of arbitration procedure.

(1) Where the Minister receives a report from the mediator under Section 11(b) that the dispute has not been settled, he shall order the parties to the dispute to commence the arbitration procedures.

(2) An order under Subsection (1) shall—

- (a) be in writing; and
- (b) specify a date by which the parties shall advise the Minister whether the appointment required under Section 13 has been made; and
- (c) specify a date by which the decision of the arbitrator shall be given.

13. Parties to endeavour to appoint arbitrator.

Where the parties to a dispute receive an order under Section 12, they shall, as soon as practicable, appoint an arbitrator to arbitrate in the dispute.

14. Parties to advise minister whether appointments made.

On or before the date specified in Section 12(2)(b) the parties to the dispute shall advise the Minister—

- (a) that the arbitrator has been appointed, and shall notify the Minister of the appointee; or
- (b) that they have failed to appoint an arbitrator.

15. Chief justice to make appointment where parties fail to agree.

Where the Minister receives advice under Section 14(b) of failure to make an appointment, he shall refer the matter to the Chief Justice, who shall make the appropriate appointment.

16. Parties to fill a vacancy in certain cases.

- (1) Where an arbitrator—
 - (a) refuses to act; or

Ch. No. 382 *Provincial Governments (Mediation and Arbitration
Procedures)*

- (b) resigns; or
- (c) is incapable of acting; or
- (d) dies,

the parties to the dispute shall advise the Minister and a new arbitrator shall be appointed within 30 days in the same manner as the original appointment.

(2) Where no appointment under Subsection (1) has been made within the time stated, the Minister shall refer the matter to the Chief Justice who shall make the appropriate appointment.

17. Functions of arbitrator.

As soon as practicable after his appointment an arbitrator shall investigate the dispute and give a written decision on how the dispute is to be settled.

18. Powers of arbitrator.

(1) For the purposes of the exercise and performance of his functions an arbitrator may—

- (a) require the parties to the dispute to make written submissions; and
- (b) hold a hearing in public or in private; and
- (c) summon witnesses, by instrument under his hand; and
- (d) take evidence on oath or affirmation and administer oaths or affirmations for the purpose; and
- (e) by instrument under his hand require a person to produce a document, book or paper in his possession or control; and
- (f) if appointed under Section 16 or 24—at his sole discretion continue any proceedings already commenced or commence new proceedings.

(2) Subject to Subsection (3), a person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him)—

- (a) to attend before the arbitrator at the time and place appointed in the summons or requirement; or
- (b) to be sworn or make an affirmation; or
- (c) to answer any question put to him by an arbitrator; or
- (d) to produce the document, book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

(3) It is a defence to a charge of an offence against Subsection (2)(c) or (d), if the defendant proves that the question, document, book or paper was not relevant to the matter in connexion with which the question was asked or the production of the document, book or paper was required, as the case may be.

19. Protection of arbitrator, witness, etc.

(1) In the exercise of his functions and the performance of his duty an arbitrator has the same protections and immunities as a Judge.

(2) A witness who appears before an arbitrator and a lawyer appearing before an arbitrator have the same protection and are subject, in addition to any penalties provided by this Act, to the same liabilities in any civil or criminal proceedings as a witness or lawyer has, or is subject to, respectively, in a case tried in the National Court.

20. Application for extension of time.

The arbitrator may request the Minister to extend the time specified in Section 12(2)(c) and the Minister may, in his sole discretion, grant such extension.

21. Decision.

As soon as possible after the completion of his investigation into the dispute, the arbitrator shall record in writing his decision as to how the dispute is to be settled and send a copy to—

- (a) each of the parties to the dispute; and
- (b) the Minister.

22. Costs.

The arbitrator shall include in his decision such order as to costs as he thinks fit.

23. Decision to be binding.

Subject to Sections 4 and 24(2), the decision made by the arbitrator shall be final and binding on both parties.

(Replaced by No. 32 of 1983, s. 2.)

PART V.—MISCELLANEOUS.

24. Misconduct by arbitrator.

(1) Where an arbitrator has misconducted himself, the Chief Justice may remove him and appoint another arbitrator in his place.

(2) Where an arbitrator has misconducted himself or a decision has been improperly arrived at, the Chief Justice may set the decision aside and appoint another arbitrator in his place.

25. Remuneration of mediators and arbitrators.

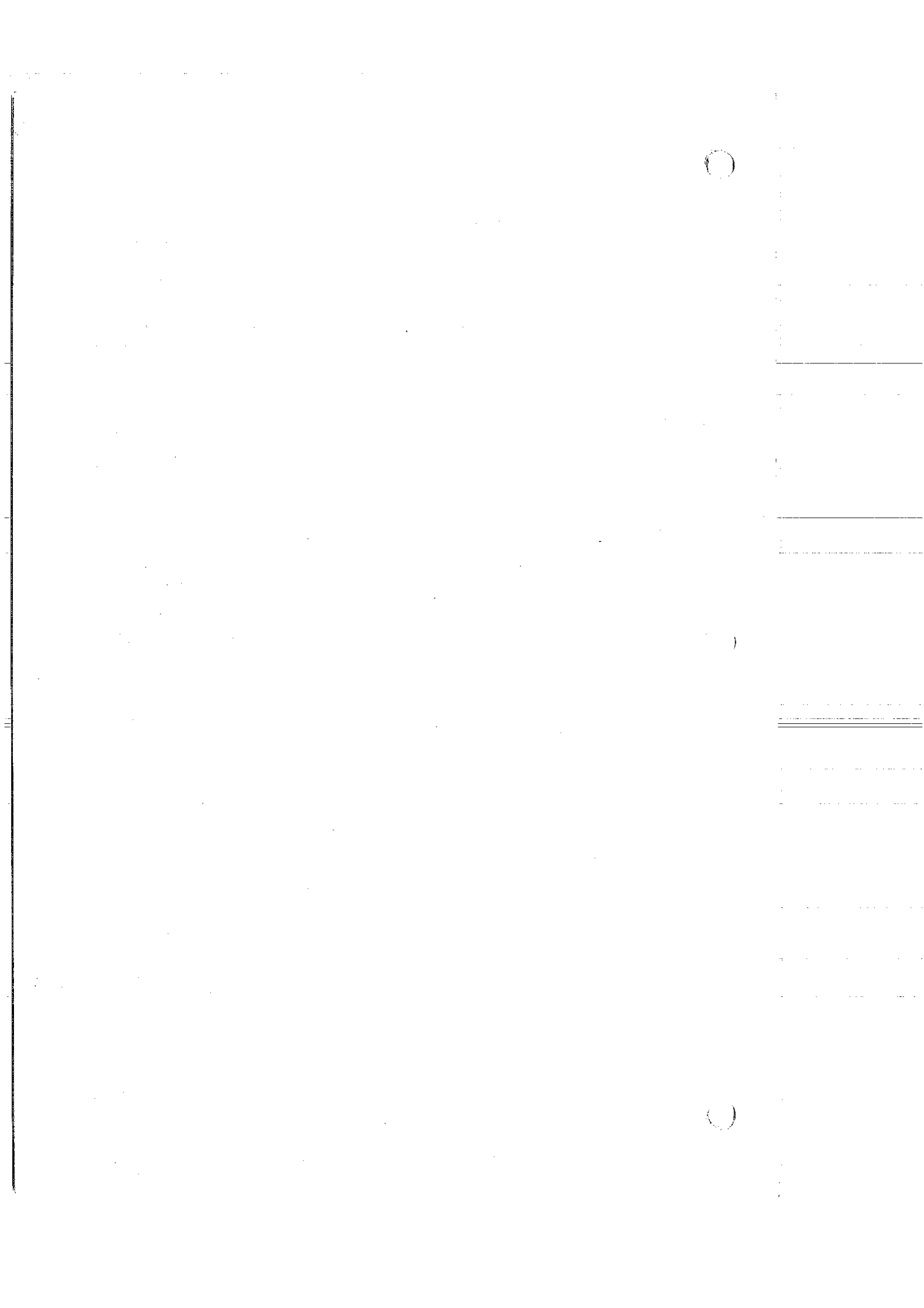
(1) The remuneration to be paid to a mediator or to an arbitrator shall be determined by the Premiers' Council.

(2) The remuneration of a mediator shall be paid in equal parts by the parties to the dispute.

(3) The remuneration of an arbitrator shall be paid as ordered under Section 22.

26. Regulations.

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 382.

Provincial Governments (Mediation and Arbitration Procedures) Act.

APPENDIX 1.

SOURCE OF THE PROVINCIAL GOVERNMENTS (MEDIATION AND
ARBITRATION PROCEDURES) ACT.

Part A.—Previous Legislation.

Provincial Governments (Mediation and Arbitration Procedures) Act 1981 (No.7 of
1981)

as amended by—

Provincial Government (Mediation and Arbitration Procedures) (Amendment) Act 1983
(No. 32 of 1983).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹	Section, etc., in Revised Edition.	Previous Reference. ¹
1	1	14	14
2	2	15	15
3	3	16	16
4	4	17	17
5	5	18	18
6	6	19	19
7	7	20	20
8	8	21	21
9	9	22	22
10	10	23	23
11	11	24	24
12	12	25	25
13	13	26	26

¹Unless otherwise indicated, references are to the Act set out in Part A.

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