

No. 20 of 2000.

***Civil Aviation Act 2000.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 20 of 2000.

***Civil Aviation Act 2000.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

***Civil Aviation Act 2000,***

Being an Act relating to civil aviation in Papua New Guinea, so that civil aviation can contribute to economic and social development, and in particular—

- (a) to promote and regulate civil aviation safety; and
- (b) to enhance safety, security, efficiency and service quality in the civil aviation system in a sustainable manner; and
- (c) to facilitate access to the air transport network; and
- (d) to contribute to the safe, smooth flow of passengers, aircraft and cargo within the civil aviation system; and
- (e) to repeal the *Civil Aviation Act* (Chapter 239) and other legislation,

and for related purposes,

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

**PART I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely—

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to freedom of employment conferred by Section 48 of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 of the *Constitution*; and

- (d) the right to freedom of information conferred by Section 51 of the *Constitution*; and
- (e) the right to freedom of movement conferred by Section 52 of the the *Constitution*,

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

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

(3) The following are declared to be public purposes for the purposes of Section 53(1)(*protection from unjust deprivation of property*) of the *Constitution* and the *Land Act*–

- (a) construction of aerodromes and airports;
- (b) construction of facilities for navigational installations and aviation related services;
- (c) construction of facilities for and the conveyance of aeronautical communications systems.

## 2. PRIMARY OBJECTS OF ACT.

The primary objects of this Act include–

- (a) enhancing safety, security, efficiency and service quality in the civil aviation system in a sustainable manner, facilitating access to the air transport network and contributing to the safe, smooth flow of passengers, aircraft and cargo within the civil aviation system so that it can contribute to the economic and social development of Papua New Guinea; and
- (b) establishing rules of operation and the divisions of responsibility within the Papua New Guinea civil aviation system in order to promote aviation safety at a reasonable cost; and
- (c) ensuring that Papua New Guinea’s obligations under international aviation and meteorological agreements are implemented; and
- (d) ensuring the provision of services and facilities for civil aviation and meteorology as efficiently and economically as practicable.

## 3. INTERPRETATION.

In this Act, unless the contrary intention appears–

“**accident**” means an occurrence that is associated with the operation of an aircraft and takes place between the time a person boards the aircraft with the intention of flight and such time as all such persons have

disembarked and the engine or any propellers or rotors of the aircraft have come to rest, being an occurrence in which—

- (a) a person is fatally or seriously injured as a result of—
  - (i) being in the aircraft; or
  - (ii) direct contact with any part of the aircraft, including any part that has become detached from the aircraft; or
  - (iii) direct exposure to jet blast,except where the injuries are self-inflicted or inflicted by other persons, or where the injuries are to stowaway's hiding outside the areas normally available to passengers and crew; or
- (b) the aircraft sustains damage or structural failure that—
  - (i) adversely affects the structural strength, performance, or flight characteristics of the aircraft; and
  - (ii) would normally require major repair or replacement of the affected component,except engine failure or damage that is limited to the engine, its cowlings or accessories, or damage limited to propellers, wing tips, rotors, antennas, tyres, brakes, fairings, small dents or puncture holes in the aircraft skin; or
- (c) the aircraft is missing or is completely inaccessible;

**“aerodrome”** means—

- (a) any defined area of land or water intended or designed to be used either wholly or partly for the landing, departure, movement and servicing of aircraft; and
- (b) any buildings, installations and equipment on or adjacent to any such area used in connection with the aerodrome or its administration;

**“aerodrome control service”** means an air traffic control service provided for the control of aerodrome traffic;

**“aerodrome flight information service”** means a service provided for the purpose of giving advice and information useful for the safe and efficient conduct of flights in the vicinity of an aerodrome;

**“aerodrome traffic”** means:

- (a) all traffic in the manoeuvring area of an aerodrome; and
- (b) all aircraft flying in the vicinity of an aerodrome;

**“aerodrome traffic circuit”** means the pattern flown by aircraft operating in the vicinity of an aerodrome;

**“aeronautical communication services”** means aeronautical broadcasting services, aeronautical fixed services and aeronautical mobile services as referred to in Annex 10 to the Convention;

**“aeronautical information services”** means services necessary to meet those requirements of Annexes 4 and 15 to the Convention that relate to aeronautical information;

**“aeronautical navigation services”** means aeronautical radio navigation services as referred to in Annex 10 to the Convention, and includes the provision of navigational installations and the provision of electronic radio navigation guidance information enabling aircraft operating under instrument flight rules to navigate during the departure, en-route approach and terminal phases of flight;

**“aeronautical product”** means anything that comprises or is intended to comprise any part of an aircraft or that is intended to be installed in or fitted or supplied to an aircraft, and includes fuel and other similar consumable items necessary for the operation of the aircraft;

**“air service”** means any flight performed by an aircraft for the transport of passengers, mail or cargo for hire or reward, whether regular or casual;

**“air traffic”** means all aircraft in flight or operating on any manoeuvring area of an aerodrome;

**“air traffic control service”** means a service provided for the purposes of:

- (a) preventing collisions:
  - (i) between aircraft; and
  - (ii) between aircraft and obstructions on any manoeuvring area; and
- (b) expediting and maintaining a safe and efficient flow of air traffic;

**“air traffic service”** includes:

- (a) an aerodrome control service; and
- (b) an area control service; and
- (c) an approach control service; and
- (d) a flight information service; and
- (e) an aerodrome flight information service; and
- (f) an alerting service; and
- (g) any other air traffic service considered by the Minister to be necessary or desirable for the safe and efficient operation of the civil aviation system;

**“aircraft”** means a machine that can derive support in the atmosphere from the reactions of the air otherwise than by the reactions of the air against the surface of the earth;

**“aircraft flying in the vicinity of an aerodrome”** means an aircraft that is in, entering, or leaving an aerodrome traffic circuit;

**“aircraft in flight”** means from the time when an aircraft’s external doors are all closed after embarkation until the time when an external passenger door is open for disembarkation, except that:

- (a) in the case of a forced landing, an aircraft is in flight until the time when the competent authorities of the country in which the forced landing takes place; or
- (b) in the case of a forced landing in a place that is not within the territorial limits of any country, until the competent authorities of any country,

assume responsibility for the aircraft and for persons and property on board the aircraft;

**“aircraft in service”** means from the time when pre-flight preparation of an aircraft is commenced by ground personnel or by the aircraft’s crew for a specific flight until:

- (a) the flight is cancelled; or
- (b) 24 hours after the aircraft, having commenced the flight, lands; or
- (c) the aircraft having commenced flight, makes a forced landing and any of the competent authorities referred to in the definition of an aircraft in flight assume responsibility for the aircraft and the persons on board the aircraft; or
- (d) the aircraft, having commenced the flight ceases to be in flight, whichever is the latest;

**“airport”** means an aerodrome at which facilities are available to the public for the shelter, servicing or repair of aircraft, and for receiving or discharging passengers or cargo;

**“airport authority”** means:

- (a) a Provincial Government for the time being established under Section 133 to establish, maintain, operate or manage an airport; and
- (b) a person or association of persons authorized under Section 133(6) to exercise the powers of an airport authority; and
- (c) an airport company; and
- (d) the Authority;

**“airport company”** means a company established under Section 132;

**“alerting service”** means an air traffic service provided to notify appropriate organizations regarding aircraft in need of search and rescue aid, and to assist such organizations as required;

- “approach control service”** means an air traffic control service provided for arriving or departing controlled flights;
- “area control service”** means an air traffic control service provided for controlled flights in controlled airspace;
- “Authority”** means the Civil Aviation Authority of Papua New Guinea established by Section 18;
- “aviation document”** means a licence, permit, certificate, or other document issued under this Act to or in respect of any person, aircraft, aerodrome, aeronautical procedure, aeronautical product or aviation related service;
- “aviation related service”** means any equipment, facility or service including an air traffic service operated in support of or in conjunction with the civil aviation system, and includes the provision of aeronautical products;
- “aviation security officer”** means a person for the time being employed as an aviation security officer by the Authority or by an approved aviation security service provider;
- “Aviation Security Service”** means the Aviation Security Service established under Section 12(f);
- “Chief Executive”** means the person for the time being appointed Chief Executive of the Commission under Section 238;
- “Commission”** means the Accident Investigation Commission established by Section 218;
- “Commissioner”** means a member of the Commission appointed under Section 223;
- “Contracting State”** means a country which has ratified the Convention;
- “controlled airspace”** means an airspace of defined dimensions within which an air traffic control service is provided to controlled flights;
- “controlled flight”** means any flight that is provided with or required by rules made under this Act to make use of an air traffic control service;
- “Convention”:**
- (a) means the version in the English language of the Convention on International Civil Aviation at Chicago on 7 December 1944; and
  - (b) includes:
    - (i) any amendment to the Convention which has entered into force under Article 94(a) of the Convention and has been ratified by Papua New Guinea; and
    - (ii) any Annex or amendment thereto accepted under Article 90 of the Convention; and

- (iii) the international standards and recommended practices from time to time accepted and amended by the International Civil Aviation Organization pursuant to Article 37 of the Convention;

**“crew member”** means a person employed, engaged or contracted by the aircraft operator and trained and assigned for duty by that aircraft operator including:

- (a) a person carried for the sole purpose of receiving or giving instructions in the control and navigation of the aircraft; and
- (b) a flight examiner; and
- (c) ground crew;

**“Defence Force”** means the Papua New Guinea Defence Force established under Section 188 of the *Constitution*;

**“Department”** means the Department responsible for civil aviation matters;

**“Director”** means the person who is for the time being the Director of Civil Aviation appointed under Section 37;

**“domestic air service”** means an air service performed by an aircraft between two or more points within Papua New Guinea;

**“flight information service”** means an air traffic service provided for the purpose of giving advice and information intended for the safe and efficient conduct of flights;

**“foreign international airline”**, means an air services enterprise:

- (a) of a country or territory other than Papua New Guinea; or
- (b) that is not a Papua New Guinea international airline, that is offering or operating an international air service or intends to offer or operate such a service;

**“holder”** in relation to any aviation document, includes any person lawfully entitled to exercise privileges in respect of that document;

**“ICAO”** means the International Civil Aviation Organization;

**“in flight”** means an aircraft in flight;

**“incident”** means an occurrence, other than an accident, that is associated with the operation of an aircraft and affects or could affect the safety of operation;

**“international agreement”** means a convention, agreement, contract or understanding entered into by the Minister under Section 8(2)(c);

**“international air service”** means an air service performed by an aircraft between Papua New Guinea and one or more points in any other country or territory;

- “international airport”** means an airport designated as an airport of entry and departure for international air traffic where the formalities incidental to customs, immigration, security, public health, animal and plant quarantine and similar procedures are carried out;
- “International Civil Aviation Organization”** means the International Civil Aviation Organization established under the Convention, and includes any Successor to the Organization;
- “joint venture airport”** means an aerodrome or airport that is established, maintained, operated or managed as a joint venture by and between the State and an airport authority under this Act;
- “judicial officer”** means a Judge, Magistrate or a Court Registrar;
- “licensee”**, means the holder for the time being of a licence issued under Parts XI or XII;
- “manoeuvring area”** means that part of an aerodrome to be used for the take off and landing of aircraft and for the surface movement of aircraft associated with take off and landing, but does not include areas set aside for loading, unloading or maintenance of aircraft;
- “member”** means a person appointed under Section 20 as a member of the Authority;
- “National Court”** means the National Court of Papua New Guinea;
- “navigation installation”** means any building, facility, work, apparatus, equipment or place (whether or not part of an aerodrome), that is intended to assist in the control of air traffic or as an aid to air navigation, and includes any land adjacent or equipment or place used in connection therewith;
- “non-scheduled international air service”**, means an international air service that is not a scheduled international air service;
- “Office of Civil Aviation”** means the Office of Civil Aviation within the Department;
- “operate”** in relation to an aircraft, means to fly or use the aircraft, or to cause or permit the aircraft to fly, be used, or be in any place, whether or not a person is present with the aircraft, and **“operate”** has a corresponding meaning;
- “owner”**, in relation to an aircraft, includes any person lawfully entitled to the possession of the aircraft for 28 days or longer;
- “PANGTEL”** means Papua New Guinea Telecommunications Authority established under the *Telecommunications Act 1996*;
- “Papua New Guinea Air Traffic Services Ltd.”** means the company established under Section 143, and registered under the *Companies Act 1997*;



**“Papua New Guinea international airline”**, means an incorporated body that is offering or operating a scheduled international air service or intends to offer or operate such a service:

- (a) in which body citizens or permanent residents of Papua New Guinea have majority ownership and effective control; and
- (b) which has its principal place of business in Papua New Guinea;

**“Papua New Guinea registered aircraft”** means an aircraft that is for the time being registered under Section 46(1)(a);

**“Papua New Guinea Register of Aircraft”** means the register of that name that is established under Section 65(1);

**“passenger”** in relation to an aircraft, means a person carried on the operation other than a crew member;

**“performance agreement”** means a performance agreement approved or agreed or determined under Section 36;

**“pilot-in-command”**, in relation to an aircraft, means the pilot responsible for the operation and safety of the aircraft;

**“Police Force”** means the Royal Papua New Guinea Constabulary established under Section 188 of the *Constitution*;

**“PNG ATS”** means Papua New Guinea Air Traffic Services Ltd.;

**“Register”** means the Papua New Guinea Register of Aircraft;

**“Registry”** means the Civil Aviation Registry established under Section 66;

**“remote area”** means any region outside a provincial town where ground or water access is limited or unavailable;

**“rules”** means ordinary rules made by the Minister and emergency rules made by the Director under Part VI;

**“scheduled international air service”**, means a series of flights performed by aircraft for the transport of passengers, cargo or mail between Papua New Guinea and one or more points in any other country or territory, where the flights are so regular or frequent as to constitute a systematic service, whether or not in accordance with a published timetable, and whether or not each flight is open to use by members of the public;

**“security area”** means an area declared by the Director to be a security area under Section 155;

**“security designated aerodrome”** means an aerodrome designated by the Minister as a security aerodrome under Section 153(1);

**“security designated installation”** means a navigation installation for the time being designated as a security navigation installation under Section 153(1);

**“State Aviation Enterprise”** means the Authority, PNG ATS, an airport company, an airport authority as established under this Act or any subsidiary within the meaning of the *Companies Act 1997* or any of them;

**“The Hague Convention”** means the Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on the 16 December 1970;

**“The Montreal Convention”** means the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on the 23 September 1971;

**“The Tokyo Convention”** means the Convention on Offences and Certain Other Acts Committed on Board Aircraft, done at Tokyo on the 14 September 1963;

**“this Act”** includes the Regulations, rules, orders and notices made or issued under this Act;

**“voice recording”** means an actual voice recording or a transcription or record of any words spoken:

- (a) by a crew member during the flight of an aircraft; or
- (b) by any person in the course of providing an air traffic service to an aircraft, irrespective of where or by whom it was made;

**“WMO”** means the World Meteorological Organisation established under the WMO Convention;

**“WMO Convention”** means the convention that came into force on 23 March 1950.

#### 4. ACT TO BIND THE STATE.

(1) This Act binds the State.

(2) Except as otherwise expressly provided in this Act or any other Act, or in the regulations or rules concerned, nothing in this Act shall apply to the Defence Force.

#### 5. APPLICATION OF ACT.

(1) Subject to this section, this Act shall apply to the following:—

- (a) every person, aircraft, aerodrome, aeronautical product, air service and aviation related service, in Papua New Guinea;
- (b) every Papua New Guinea registered aircraft whether within or outside Papua New Guinea;
- (c) every holder of an aviation document whether within or outside Papua New Guinea exercising or purporting to exercise privileges accorded by that document;

(d) every foreign registered aircraft operating in Papua New Guinea.

(2) The Minister, acting on the recommendation of the Authority or the Director as the case may be, may by agreement with the appropriate foreign aeronautical authority:

(a) transfer to the aeronautical authority in the country of a foreign operator all or part of the responsibility for a Papua New Guinea registered aircraft operated by that foreign operator that the Authority or the Director has under this Act; or

(b) vest in the Authority or the Director, as the case may require, all or part of the responsibility for foreign registered aircraft operated by a Papua New Guinea operator that arises under this Act; and

(c) grant exemptions from this Act, or any provision thereof,

relevant to any exercise of the Minister's powers under this subsection.

(3) A Papua New Guinea registered aircraft shall, while being operated over the high seas, be operated in a manner that complies with the Rules of the Air contained in Annex 2 of the Convention.

(4) Except where an act or omission is required in order to comply with the laws of a foreign state, every holder of an aviation document who, while outside Papua New Guinea and exercising or purporting to exercise the privileges accorded by that document, commits an act or omission that would constitute an offence if it were committed in Papua New Guinea is deemed to have committed an offence under this Act and may be proceeded against in Papua New Guinea as if the act or omission had occurred within Papua New Guinea.

(5) Nothing in this section shall be interpreted as requiring a person or aircraft to contravene or be operated in contravention of a law of a foreign state that applies to or in respect of that person or aircraft.

(6) Nothing in this Act shall be interpreted as limiting the privileges or immunities of:

(a) a foreign military aircraft; or

(b) the officers and crew of a foreign military aircraft.

## **6. MATTERS OF NATIONAL IMPORTANCE.**

A person exercising a power or function under this Act shall recognise and provide for the following matters of national importance:—

(a) the maintenance of safety and security in civil aviation operations in Papua New Guinea, especially for the travelling public;

(b) the compliance by Papua New Guinea with international agreements on civil aviation safety;

(c) the independence of the Authority and the Commission from the providers of air services and aviation related services;

(d) the maintenance of air services to provincial and rural communities.

**7. PROTECTION OF NAMES.**

(1) No company or other body shall be incorporated or registered under a name that contains the words:

- (a) “Civil Aviation Authority”; or
- (b) “PNG ATS”; or
- (c) “Air Traffic Services”; or
- (d) “Accident Investigation Commission”,

or under any other name that, in the opinion of the Registrar of Companies, or within the provisions of the *Trade Marks Act* (Chapter 385) so resembles such a name as to be likely to deceive.

(2) A person, who uses the words in Subsection (1)(a) to (d) for purposes other than purposes associated with this Act, is guilty of an offence.

Penalty: Where the person convicted of an offence is:

- (a) a corporation – a fine not exceeding K10,000.00; and
- (b) other than a corporation – a fine not exceeding K2,500.00.

**PART II. – FUNCTIONS, POWERS AND DUTIES OF MINISTER,  
DEPARTMENTAL HEAD, AUTHORITY AND DIRECTOR.**

***Division 1.***

***Functions etc., of the Minister.***

**8. FUNCTIONS AND ROLE OF MINISTER.**

(1) The principal functions of the Minister under this Act are:

- (a) to promote safety in civil aviation at a reasonable cost; and
- (b) to ensure that Papua New Guinea's obligations under international civil aviation agreements are implemented; and
- (c) to ensure that Papua New Guinea's obligations under international meteorological agreements are implemented; and
- (d) to ensure the provision of aviation security services as required by Part IX; and
- (e) to ensure the provision of the meteorological warning services as required by Part XIII; and
- (f) to administer civil aviation policy and legislation in Papua New Guinea.

(2) Without limiting Subsection (1), the Minister shall also have the following functions:–

- (a) to administer Papua New Guinea's participation in the Convention and any other international agreement or treaty pertaining to which the Independent State of Papua New Guinea is a party;
- (b) to administer Papua New Guinea's participation in the WMO Convention and any other international meteorological convention, agreement or understanding to which the State is a party;
- (c) to enter into international agreements with any person, government or international organizations in relation to matters pertaining to civil aviation and meteorology;
- (d) to perform such other functions as are set out in this Act;
- (e) to perform any function incidental to any of the above functions.

(3) The Head of State, acting on advice, may, by regulation, publish the whole or any part of an international agreement entered into under Subsection (2)(c), and the whole or any part of any treaty pertaining to civil aviation entered into by Papua New Guinea under Section 117 of the *Constitution* and, on the making of that regulation, the international agreement or that treaty, or part so published, as the case may be, shall, except to the extent of any inconsistency with this Act, have the force of law as if contained in this Act.

(4) Where an international agreement or treaty or part of an international agreement or treaty published in accordance with Subsection (3) provides for the

exercise by some person or international organization, other than those authorized by or under this Act, of any power of function under this Act, a reference in this Act to a person or an officer or authority of Papua New Guinea shall be read, as appropriate, as a reference to the relevant person or international organization specified in the document so published.

(5) For the purposes of Subsection (1), a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.

## **9. MINISTER CAN REQUEST INFORMATION.**

(1) Subject to Subsection (3), a state aviation enterprise shall supply to the Minister or to such other person or class or classes of persons as the Minister specifies such information relating to the affairs of the state aviation enterprise, or any of its subsidiaries, as the Minister requests, after consultation with the board of that state aviation enterprise.

(2) The Minister may request information to be supplied whether or not the supply of the information is required for the purposes of, or is contemplated by, this Act.

(3) A state aviation enterprise shall not be obliged by Subsection (1) to supply to the Minister any information relating to an individual employee or customer of the state aviation enterprise, or of any subsidiary of it, or any other person, where the information supplied would enable the identification of the person concerned.

(4) Notwithstanding the *Securities Act 1997* or any other Act or rule of law, the board of a state aviation enterprise may direct an officer or employee of the state aviation enterprise to comply with a request under Subsection (1) and the officer or employee shall comply with the request on being directed to do so.

(5) No member of a board of a state aviation enterprise and no officer or employee of a state aviation enterprise who acts in accordance with a request or direction under this section is liable to any person under the *Securities Act 1997* or any other Act or rule of law by reason of acting in accordance with that request or direction.

### ***Division 2.***

#### ***Functions of Departmental Head.***

## **10. FUNCTIONS OF DEPARTMENTAL HEAD.**

(1) The Departmental Head shall have and may exercise such functions, powers and duties as may be conferred on him by this Act, or any other Act, and as may be delegated by the Minister.

(2) The Departmental Head, when exercising any function or power conferred by any section may seek advice and guidance from the Minister or the Authority or the Director or qualified aviation advisers from within Papua New Guinea or a Contracting State.

- (3) The functions of the Departmental Head shall include:
- (a) providing advice on civil aviation matters and developing, keeping current and administering the civil aviation policy of Papua New Guinea; and
  - (b) providing advice on meteorological matters and developing, keeping current and administering the meteorological policy of Papua New Guinea; and
  - (c) negotiating and administering international agreements and air service agreements with other countries; and
  - (d) administering and managing air services licenses under Part X and XI; and
  - (e) in consultation with the Department responsible for foreign affairs matters, administering Papua New Guinea's membership of ICAO; and
  - (f) maintaining a library of state letters, Annexes to the Convention, and other documents issued by ICAO; and
  - (g) in consultation with the Department responsible for foreign affairs matters, administering Papua New Guinea's membership of WMO; and
  - (h) maintaining a library of state letters, Annexes to the WMO Convention, and other documents issued by WMO; and
  - (i) performing such other functions as are set out in this Act; and
  - (j) performing any functions incidental to any of the above functions.

***Division 3.***

***General Objects and Functions of the Authority.***

**11. GENERAL OBJECTS AND FUNCTIONS OF THE AUTHORITY.**

(1) The principal objective for the Authority, and every other state aviation enterprise, shall be to operate successfully and, to this end to be:

- (a) profitable and efficient in their commercial activities, provided that in pursuing this objective the Authority or state aviation enterprise does not compromise aviation safety; and
- (b) a good employer, which, for the purposes of this section is an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring:
  - (i) good and safe working conditions; and
  - (ii) an equal opportunities employment programme; and
  - (iii) the impartial selection of suitably qualified persons for appointment; and

- (iv) opportunities for the enhancement of the abilities of individual employees; and
  - (c) an organization that exhibits a sense of social responsibility by having regard to the interests of the community in which it operates and by endeavouring to accommodate or encourage these, where able to do so.
- (2) The principal functions of the Authority shall be:
- (a) to undertake activities that promote safety in civil aviation at a reasonable cost; and
  - (b) to ensure the provision of air traffic services, aeronautical communications services and aeronautical navigation services; and
  - (c) to ensure the provision of meteorological services and science; and
  - (d) to own, operate, manage and maintain airports.

(3) For the purposes of Subsection (2), a cost is a reasonable cost where the value of the cost to the nation is exceeded by the value of the resulting benefit to the nation.

## **12. FUNCTIONS OF AUTHORITY IN RELATION TO SAFETY.**

In furtherance of its principal safety function under Section 11(2)(a), the functions of the Authority include:

- (a) developing, establishing and promulgating safety and security standards relating to entry into the civil aviation system; and
- (b) monitoring adherence to safety and security standards within the civil aviation system, including within the Authority; and
- (c) conducting comprehensive aviation industry surveillance on an individual and industry-wide basis; and
- (d) issuing, suspending and revoking aviation documents; and
- (e) ensuring regular reviews of the civil aviation system to monitor performance and to promote the improvement and development of its safety and security; and
- (f) establishing and continuing a service to be called the Aviation Security Service; and
- (g) investigating and reviewing civil aviation accidents and incidents in its capacity as the responsible safety and security authority, subject to the limitations set out in Section 248(3); and
- (h) notifying the Commission in accordance with Section 60 of accidents and incidents notified to the Authority; and
- (i) maintaining and preserving records and documents relating to activities within the civil aviation system, and in particular maintaining the Register and the Registry; and



- (j) ensuring the collection, publication, and provision of charts and aeronautical information, and entering into arrangements with any other person or organization to collect, publish and distribute such charts and information; and
- (k) promoting safety and security in the civil aviation system by providing safety and security information and advice and fostering safety and security information education programmes; and
- (l) promoting full and effective consultation and communications with all interested parties on aviation safety issues.

**13. FUNCTIONS OF THE AUTHORITY IN RELATION TO AIR TRAFFIC SERVICES, AERONAUTICAL COMMUNICATIONS SERVICES AND AERONAUTICAL NAVIGATION SERVICES.**

In furtherance of its principal air traffic services, aeronautical communications services and aeronautical navigation services functions under Section 11(2)(b), the functions of the Authority shall include:

- (a) ensuring the provision of navigational installations to permit safe navigation of aircraft within airspace administered by Papua New Guinea; and
- (b) ensuring the provision of the following services, when required, for the purpose of giving effect to the Convention or otherwise for purposes relating to safety, regularity, or efficiency of air navigation:–
  - (i) air traffic services;
  - (ii) aeronautical information services;
  - (iii) search and rescue services;
  - (iv) aeronautical navigation services;
  - (v) aeronautical communications services; and
- (c) establishing, maintaining and operating a Rescue Co-ordination Centre for the conduct of such:
  - (i) aviation search and rescue operations; and
  - (ii) other search and rescue operations as the Minister may from time to time require; and
- (d) providing assistance and advice to the Minister and the Departmental Head for the purpose of giving effect to the Convention or otherwise for purposes relating to civil aviation including participating in the work of the ICAO.

**14. FUNCTIONS OF THE AUTHORITY IN RELATION TO METEOROLOGY.**

In furtherance of its principal meteorological function under Section 11(2)(c), the functions of the Authority shall include:

- (a) establishing and continuing a service to be called the National Weather Service; and
- (b) ensuring the provision of a meteorological warning service in Papua New Guinea, so long as the Director is the designated responsible person under Section 258(2); and
- (c) arranging for the provision of, the making of and issuing of forecasts of the weather; and
- (d) arranging the making, collection, recording, archiving, analysis and dissemination of meteorological information and observations; and
- (e) engaging in scientific analysis and research of benefit to Papua New Guinea; and
- (f) providing assistance to the Minister for the purposes of giving effect to the WMO Convention or otherwise for purposes relating to meteorology including participating in the work of the WMO.

**15. FUNCTIONS OF THE AUTHORITY IN RELATION TO AIRPORTS.**

In furtherance of its principal airport function under Section 11(2)(d), the functions of the Authority shall include:

- (a) improving, developing, maintaining, operating or managing the airports listed in Schedule 2 or any other airport established by the Minister on his own or as a joint venture; and
- (b) carrying out any business or undertaking carried on in connection with an airport; and
- (c) facilitating and assisting in the establishing of airport authorities; and
- (d) providing aviation security services; and
- (e) providing aviation rescue fire-fighting services; and
- (f) developing for airport related purposes or otherwise, either on its own or with others, any land surplus to the requirements of an airport; and
- (g) entering into licence arrangements or joint ventures with a province for that province to establish an airport authority; and
- (h) entering into leasing or management arrangements with a suitable person or persons, on terms and conditions to be approved by the Minister, for any airport.

**16. ADDITIONAL FUNCTIONS OF THE AUTHORITY. .**

(1) In furtherance of its functions under Sections 11 to 15 inclusive the Authority shall also have the following functions:—

- (a) to perform any other function or duty conferred on the Authority under any Act or prescribed by regulations or rules;
- (b) to undertake the provision of services or facilities management for any of its functions in Papua New Guinea or overseas;
- (c) to provide consulting services, training and management services relating to any of its functions, whether in Papua New Guinea or overseas;
- (d) to perform any function incidental to any of the above functions.

(2) The Authority:

- (a) shall carry out such other civil aviation and meteorological functions and duties as the Minister may from time to time prescribe by notice in the National Gazette; and
- (b) in carrying out any of its principal functions listed in Subsection (1)(b) to (d) the Authority may enter into such arrangements as it considers appropriate with any other person to ensure the establishment and carrying on of those functions; and
- (c) shall provide to the Minister such information and advice as the Minister may from time to time require; and
- (d) may provide administrative support services for the Commission on such terms and conditions as are agreed between the Director and the Chief Executive; and
- (e) shall co-operate with the Commission in relation to the investigation of accidents and incidents.

***Division 4.***

***Functions of the Director.***

**17. FUNCTIONS OF THE DIRECTOR IN RELATION TO AIRWORTHINESS DIRECTIVES AND GENERALLY.**

(1) The Director shall:

- (a) exercise control over the entry into the civil aviation system through the granting of aviation documents under this Act; and
- (b) take such action as may be appropriate in the public interest to enforce the provisions of this Act including the carrying out of inspections and audits.

(2) Where the Director believes on reasonable grounds that:

- (a) an unsafe condition exists in any aircraft or aeronautical products of the same design; and
- (b) that condition is likely to develop in any other aircraft or aeronautical products of the same design,

the Director may, by notice in the National Gazette, or by such other notice as the Director considers appropriate in the circumstances, issue an airworthiness directive in respect of the aircraft or aeronautical products, as the case may be, of that design.

(3) An airworthiness directive under Subsection (2) shall come into force on the time and date specified in the notice.

(4) The Director, in performing or exercising any of his functions or powers in relation to:

- (a) the granting of an aviation document; or
- (b) the suspension of an aviation document; or
- (c) the revocation of an aviation document; or
- (d) the granting of an exemption; or
- (e) the enforcement of the provisions of any other law,

in respect of any particular case, shall:

- (f) act independently; and
- (g) not be responsible to the Minister or to the Authority for the performance or exercise of such functions and powers.

(5) It is hereby declared that the Minister, the Departmental Head or a member of the Authority shall not interfere in, attempt to influence or direct the Director in the performance of his functions under Subsection (4).

(6) The Director shall have and may exercise such functions, powers and duties as may be conferred or imposed on the Director by this Act and such other functions and powers as may be delegated to the Director under this Act.

**PART III. – THE AUTHORITY.**

***Division 1.***

***Establishment, etc.,.***

**18. CIVIL AVIATION AUTHORITY OF PAPUA NEW GUINEA IS ESTABLISHED.**

(1) There is established an authority to be known as the Civil Aviation Authority of Papua New Guinea.

(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 real and personal property; and
- (d) may sue and be sued in its corporate name; and
- (e) is capable of doing and suffering all acts and things as a body corporate may do and suffer.

(3) All courts, judges and persons in a judicial capacity shall take judicial notice of the seal of the Authority affixed to a document and shall presume that it was duly affixed.

**19. AUTHORITY TO COMPLY WITH POLICY DIRECTIONS.**

(1) In the exercise of its functions and powers under this Act, the Authority shall:

- (a) have regard to the policy of the Government in relation to civil aviation; and
- (b) comply with any directions relating to that policy given to it in writing signed by the Minister.

(2) As soon as practicable after any direction is given under Subsection (1), the Minister shall publish in the National Gazette and lay before the Parliament a copy of that direction.

(3) The Minister shall not give any direction under Subsection (1) which requires the Authority to do, or refrain from doing, a particular act, or bring about a particular result, in respect of any particular person or persons.

**20. MEMBERSHIP OF THE AUTHORITY.**

(1) The Authority shall comprise of 10 members all of whom shall be citizens or permanent residents of Papua New Guinea, consisting of:

- (a) the Director, *ex officio*; and

- (b) the Departmental Head of the Department responsible for transport matters, *ex officio*, or his nominee; and
- (c) the Departmental Head of the Department responsible for finance matters, *ex officio*, or his nominee; and
- (d) seven part-time members of the Authority, appointed by notice in the National Gazette by the Head of State, acting on advice, given after consideration of recommendations from the Minister, being persons whom the Minister considers will represent the public interest in civil aviation, and not being employees of the Authority.

(2) Before making any recommendation for appointment of the part-time members of the Authority under Subsection (1)(d) the Minister shall:

- (a) in respect of two of the part-time members:
  - (i) request from such organizations as the Minister considers represent those who have a substantial interest in the civil aviation industry in Papua New Guinea the names of persons such organizations consider suitable candidates for appointment to the Authority; and
  - (ii) from the list of those nominated, recommend to the National Executive Council two for appointment as members; and
- (b) in respect of another one of the part-time members:
  - (i) request from such organizations as the Minister considers represent those who have a substantial interest in the business and commercial community in Papua New Guinea the names of persons such organizations consider suitable candidates for appointment to the Authority; and
  - (ii) from the list of those nominated, recommend to the National Executive Council one for appointment as member; and
- (c) in respect of another one of the part-time members:
  - (i) request from such organizations as the Minister considers represent the interest of women and rural communities in Papua New Guinea the names of persons such organizations consider suitable candidates for appointment to the Authority; and
  - (ii) from the list of those nominated, recommend to the National Executive Council one for appointment as member; and
- (d) in respect of another one of the part-time members:
  - (i) request from such organizations as the Minister considers represent the interests of trade unions in Papua New Guinea the names of persons such organizations consider suitable candidates for appointment to the Authority; and

- (ii) from the list of those nominated recommend to the National Executive Council one for appointment as member; and
- (e) in respect of the remaining two part-time members:
  - (i) consult with the Ministers responsible for finance matters and for transport matters with a view to obtaining the names of persons suitable for appointment to the Authority and able to provide the Authority in so far as is possible, with a balance of knowledge and expertise in aviation, commerce, engineering, law, economics, management and community affairs; and
  - (ii) recommend to the National Executive Council two such persons for appointment,

but a failure to comply with the requirements of this subsection in respect of the appointment of any member shall not affect the validity of the appointment.

(3) A person shall not be precluded from being recommended for appointment under Subsection (2)(a)(ii) or appointed under Subsection (1)(d) because he is currently the holder of an aviation document or otherwise has interest in the civil aviation industry.

- (4) A member appointed under Subsection (1)(b):
  - (a) shall be appointed for a term not exceeding three years; and
  - (b) may, while holding office as member, hold any other position or office other than office as a Commissioner; and
  - (c) shall be paid such fees and allowances as are determined under the *Boards (Fees and Allowances) Act (Chapter 299)*; and
  - (d) is eligible for re-appointment.

## **21. CHAIRMAN AND DEPUTY CHAIRMAN.**

The Minister shall appoint one of the members appointed under Section 20(1)(d) to be the Chairman of the Authority and another of the members appointed under Section 20(1)(d) to be the Deputy Chairman of the Authority.

## **22. LEAVE OF ABSENCE OF MEMBERS.**

(1) The Chairman may grant leave of absence to a member on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman on such terms and conditions as the Minister determines.

## **23. RESIGNATION.**

A member may resign from office by written notice to the Minister.

**24. VACATION OF OFFICE.**

(1) If a member, other than the *ex-officio* member:

- (a) dies; or
- (b) resigns his office under Section 23; or
- (c) is absent, except in accordance with leave of absence under Section 22, from three consecutive meetings of the Authority; or
- (d) fails to comply with Section 26; or
- (e) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent persons, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (f) is convicted of an offence under this Act or any other law punishable by a term of imprisonment for one year or longer, or by death, and as a result of the conviction is sentenced to imprisonment or death,

the Head of State, acting on advice, shall terminate his appointment.

(2) The Minister may, at any time, by written notice, advise a member that he intends to terminate the appointment of that member on the grounds of inability or misbehaviour.

(3) Within 14 days of the receipt of a notice under Subsection (2), the member may reply in writing to the Minister who shall consider the reply and, where appropriate, terminate the appointment.

(4) Where a member referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

(5) Where the appointment of a member is terminated under this section, the Minister shall, by notice in the National Gazette, declare the office of that member vacant.

(6) Where an office is declared vacant under Subsection (5), it shall be filled in accordance with Section 20.

**25. VACANCY NOT TO AFFECT POWERS OR FUNCTIONS.**

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

**26. MEETINGS OF THE AUTHORITY.**

(1) Subject to Subsections (2) and (3), the Authority shall meet at such times as, in the opinion of the Authority or the Chairman, are necessary for the efficient conduct of the business of the Authority, and shall meet at such places and times and on such days as the Authority or Chairman determines.

(2) The Minister may, at any time, convene a meeting of the Authority.

(3) The Authority shall meet at least once in every three months.



- (4) At a meeting of the Authority:
- (a) not less than one half of the members of the Authority constitute a quorum; and
  - (b) the Chairman, or in his absence the Deputy Chairman, or in the absence of both the Chairman and the Deputy Chairman, a member of the Authority appointed by the members of the Authority present, shall preside; and
  - (c) all matters shall be decided by a majority of the votes of the members present and voting; and
  - (d) the member presiding has a deliberative and in the event of an equality of votes on a subject, also a casting vote; and
  - (e) minutes of each meeting shall be kept by the Authority and shall be:
    - (i) confirmed by the Authority at the next meeting of the Authority; and
    - (ii) signed by the Chairman, the Deputy Chairman or other member presiding.

(5) The Chairman shall forward a copy of the minutes of each meeting to the Minister.

(6) The contemporaneous linking together by telephone or other means of communication of a member or number of members of numbers of the Authority, whether or not one or more of the members is outside Papua New Guinea, is deemed to constitute a meeting of the Authority where –

- (a) notice of the meeting has been given to every person entitled to receive notice of a meeting of the Authority; and
- (b) the number of members taking part in the meeting is not less than the quorum fixed by Subsection (4)(a) and each of the members taking part:
  - (i) is linked by telephone or other means of communication for the purposes of the meeting; and
  - (ii) acknowledges, at the commencement of the meeting, to all other members taking part, his presence for the purpose of the meeting; and
  - (iii) is able through the meeting to hear the other members taking part; and
  - (iv) on any vote, individually expresses his vote to the meeting; and
- (c) the following conditions apply:–
  - (i) that a member shall not leave a meeting by disconnecting his telephone or other means of communication unless the member has previously obtained the express consent of the chairman of the meeting;

- (ii) that a member shall be conclusively presumed to have been present and to have formed part of a quorum at all times during the meeting by telephone or other means of communication, unless the member has previously obtained the consent of the chairman of the meeting to leave the meeting.

## **27. DISCLOSURE OF INTEREST.**

(1) A member who, otherwise than as a member of the general public, has, directly or indirectly, any pecuniary interest in –

- (a) the performance of any function or the exercise of any power by the Authority; or
- (b) any arrangement, agreement or contract made or entered into, or proposed to be made or entered into, by the Authority,

shall, as soon as is practicable after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Authority.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Authority.

(3) Subject to Subsection (4), the member making the disclosure under Subsection (1):

- (a) shall not, after the disclosure, take part in any deliberation or decision of the Authority with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Authority for any such deliberation or decision.

(4) The Minister may, by written notice to the Authority, waive or modify any of the provisions of Subsection (3) in respect of:

- (a) any particular member or class of members; or
- (b) any particular matter or class of matters,

that, in the opinion of the Minister, does not constitute a direct or indirect material interest.

(5) The Minister shall table in the Parliament any notice issued by him under Subsection (4) within 12 sitting days after the date of issuance of the notice.

## **28. COMMITTEES.**

(1) The Authority may from time to time establish such committees as it considers necessary in relation to its functions.

(2) The Authority shall appoint members (who may or may not be members of the Authority) of a committee and shall specify its functions and powers.

**29. AUTHENTICATION OF DOCUMENTS, ETC.,.**

The seal of the Authority shall be authenticated by the signature of the Chairman or Deputy Chairman and by one member and such seal shall be officially and judicially noticed.

**30. SERVICE OF DOCUMENTS.**

Service upon the Authority of any order, notice or other documents shall be executed by delivering the same or sending the same by registered post to the Chairman of the Authority at the office of the Authority.

**31. PROTECTION OF THE AUTHORITY AND OF MEMBERS, ETC., OF THE AUTHORITY.**

(1) No act or proceeding taken under this Act shall be questioned on the ground:

- (a) of the existence of any vacancy in the membership or defect in the appointment of any member of the Authority; or
- (b) of any omission, defect or irregularity not affecting the merits of the case.

(2) No action, suit, precaution or other proceeding shall be brought or instituted personally against:

- (a) the Chairman or Deputy Chairman; or
- (b) a member; or
- (c) a member of a committee,

of the Authority in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

**32. REPORTS.**

(1) The Authority shall, before 30 June in each year, prepare an annual report for the year ending 31 December preceding.

(2) An annual report under Subsection (1) shall comprise:

- (a) a statement of the activities of the Authority during the year; and
- (b) the annual financial statements of the Authority prepared under this Act; and
- (c) the performance agreement under Section 36 for that year between the Minister and the Authority; and
- (d) an analysis of the performance of the Authority compared with the performance agreement; and

- (e) the report by the Auditor-General under the *Audit Act 1989* on the results of his inspection and audit of the accounts and records of the Authority; and
- (f) a report on the extent to which there has been compliance with the equal opportunity programme of the Authority for the year to which the report relates; and
- (g) such other matters as the Minister may in writing, from time to time, require.

(3) The Authority shall forward a copy of its annual report to the Minister who shall, as soon as is practicable lay a copy of the report before Parliament.

### **33. SERVICE CHARTER.**

(1) In the performance of its functions and the exercise of its powers, the Authority and all other State Aviation Enterprises, shall, where appropriate and practicable, consult with Government, commercial, industrial, consumer, community and other relevant bodies and organizations (including ICAO and bodies representing the aviation industry).

(2) As soon as practicable after the coming into operation of this Act, but in any event not later than 1 January 2001, the Authority shall prepare and make available to the public a service charter including (but not limited to):

- (a) a statement by the Authority of the standards of service which the public can expect to apply to the carrying out of functions of the Authority and the Director under this Act and any regulations or rules made under this Act; and
- (b) details of the procedures to be followed under the service charter by a person who alleges that the standards were not met; and
- (c) details of the remedies that are available under the service charter to the person affected where it is established by that person to the satisfaction of the Authority that the standards were not met; and
- (d) provision for the appointment by the Authority of an appropriate independent person to assist in the resolution of disputes arising in respect of alleged failures to meet the standards of service specified in the service charter.

(3) A service charter under Subsection (1) may make provision for a person to be appointed as a deputy to the person appointed under the provision referred to in Subsection (1)(d), and for the functions, duties and powers of the deputy.

(4) The Authority, the Director, any employee or agent of the Authority and any agent of the Director shall have a public duty to observe the provisions of the service charter.

(5) Where the Authority fails to comply with Subsection (1), the Minister shall prepare the service charter and shall make it available to the public.

(6) The Authority and the Minister (where the Minister has prepared it) may from time to time, in writing, amend the service charter, and shall make such amendments available to the public.

(7) The Authority shall not amend the service charter under Subsection (5) where the service charter has been prepared by the Minister under Subsection (4).

(8) Nothing in the service charter shall limit or restrict any right to make any complaint or to bring any proceedings under any Act or rule of law.

### *Division 2.*

#### *Finance and Performance Agreement.*

#### **34. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995.**

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

(2) For the purposes of Section 62(2) of the *Public Finances (Management) Act 1995*, the Authority is declared to be a trading enterprise.

#### **35. FUNDS OF THE AUTHORITY.**

(1) The funds of the Authority shall consist of any monies appropriated by law for the purpose of giving effect to this Act and any monies received in accordance with law, including:

- (a) monies received from commercial undertakings and activities; and
- (b) fees, charges, rents, levies and other sums payable to the Authority in the performance of its functions under this Act or any other Act, regulation or rule; and
- (c) grants, donations, credits or other contributions, including contributions from international organizations or from a government, government department, government instrumentality or a statutory entity of a country other than Papua New Guinea; and
- (d) loans raised by the Authority.

(2) The monies of the Authority shall be expended only:

- (a) in payment or discharge of expenses, obligations and liabilities of the Authority; and
- (b) in payment of the remuneration of the staff of the Authority and of allowances to the members of the Board; and
- (c) for such other purposes as are authorized by this Act or as are consistent with the functions of the Authority.

**36. PERFORMANCE AGREEMENT.**

(1) Not later than three months before the commencement of each financial year, the Authority shall submit to the Minister a draft performance agreement setting out in respect of that year:

- (a) the proposed statement of objectives for that year; and
- (b) the methods (including financial and non-financial performance measures) by which the Authority intends to assess the extent to which it in fact meets those objectives during that year; and
- (c) how the Authority intends to report on the extent to which it meeting those objectives for that year and the dates by which interim reports, if any, will be given to the Minister; and
- (d) any new borrowings or financial leases or similar liabilities which the Authority intends to incur for that year; and
- (e) financial forecasts for the two years following the year to which the performance agreement relates; and
- (f) a summary of the current and planned projects.

(2) A draft performance agreement shall be accompanied by a statement of the Authority's best estimate of:

- (a) both:
  - (i) the various impacts the outputs described in the statement of objectives will have for; and
  - (ii) the consequences of those outputs for,
    - a safe civil aviation system in Papua New Guinea during the year to which the draft performance agreement relates; and
- (b) the impacts of those outputs on, and consequences of those outputs for, a safe civil aviation system for Papua New Guinea for later years.

(3) The Authority shall not, without the prior approval of the Minister responsible for finance matters, include in a performance agreement any provision specifying any liabilities which the Authority intends to incur.

(4) After receiving a draft performance agreement from the Authority under Subsection (1) or an amended version of it under Subsection (5) (whether for the first time or any later time), the Minister shall:

- (a) subject to Subsection (3), approve it; or
- (b) refuse to approve it and return it to the Authority with directions to the Authority to amend it.

(5) Where a draft performance agreement is returned to the Authority under Subsection (4)(b), the Authority shall amend it in accordance with the directions given by the Minister and shall return it to the Minister.

(6) The draft performance agreement approved for any year by the Minister under Subsection (4)(a) shall constitute the performance agreement between the Minister and the Authority for that year.

(7) Where the Authority fails to comply with Subsection (1), the draft performance Agreement shall, subject to Subsection (3), be prepared by the Minister and that performance agreement shall constitute the performance agreement between the Minister and the Authority for that year.

(8) Where the Authority fails within a reasonable time to comply with Subsection (5) to the satisfaction of the Minister, the Minister shall determine the amendment and shall approve the performance agreement as amended.

(9) At any time during a financial year, the Minister and the Authority may, subject to Subsection (3), agree in writing to amend the performance agreement for that year.

(10) At any time during a financial year, the Minister may direct the Authority, subject to Subsection (3), to amend any provision of the performance agreement in respect of that year and the Authority shall amend the performance agreement according to the directions given by the Minister.

(11) The performance agreement prepared under this section shall be deemed to be the performance and management plan required under Section 50 of the *Public Finances (Management) Act 1995* to be delivered by the Authority to the Departmental Head of the Department for financial management.

### ***Division 3.***

#### ***Director of Civil Aviation.***

### **37. DIRECTOR OF CIVIL AVIATION.**

(1) There shall be a Director of Civil Aviation who is the Chief Executive of the Authority.

(2) The Director of Civil Aviation:

- (a)<sup>1</sup> shall be appointed, suspended or dismissed in the manner as is specified in the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
- (b) shall be appointed for a term not exceeding four years; and
- (c) is eligible for re-appointment; and
- (d) shall hold office on such terms and conditions as are determined by the Parliament in accordance with a recommendation from the Salaries and Remuneration Commission.

(3) The Director shall be employed under a contract of employment which shall be executed by the Chairman on behalf of the Authority and by the Director.

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<sup>1</sup> Section 37 Subsection (2) amended by No. 97 of 2006, Sched. 1.

(4) The Director has and may exercise such functions, powers and duties as are conferred or imposed on him by Section 17 or otherwise by this Act and such other functions and powers as may be delegated to the Director by the Authority under Section 42.

### **38. ELIGIBILITY FOR OFFICE.**

(1) Subject to Subsection (2), a person is not eligible to be appointed or to continue in office as Director, where:

- (a) directly or indirectly, as owner, shareholder, director, officer, operator, principal or otherwise, he:
  - (i) is engaged in an aviation business or corporate organization which operates air services or provides air services in Papua New Guinea; or
  - (ii) has a financial or proprietary interest in any firm or corporate body referred to in Subparagraph (i); or
- (b) is an undischarged bankrupt; or
- (c) is or has been convicted of an offence which would disqualify him from becoming a director under the *Companies Act 1997*.

(2) A Director:

- (a) who, at the time of his appointment has an interest referred to in Subsection (1)(a); or
- (b) in whom an interest referred to in Subsection (1)(a) vests by will or succession, shall dispose of it within three months from the date of his appointment or the date of vesting, as the case may be.

### **39. RESIGNATION.**

<sup>2</sup>The Director may resign from office in writing signed by him and delivered to the Chairman.

#### ***Division 4.***

#### ***Staff of the Authority.***

### **40. STAFF OF THE AUTHORITY.**

(1) The Director may appoint as employees of the Authority such persons, including persons on secondment from any Department or organization, as the Director considers necessary for the efficient performance of the functions of the Authority.

(2) The Director and the employees appointed under Subsection (1) constitute the staff of the Authority.

<sup>2</sup> Section 39 Substituted by No. 97 of 2006, Sched. 1.



(3) The employees appointed under Subsection (1) shall hold office on such terms and conditions of employment as are determined from time to time by the Authority, subject to the *Salaries and Conditions Monitoring Committee Act 1988*.

***Division 5.***

***Delegations.***

**41. DELEGATION OF MINISTER'S FUNCTIONS OR POWERS TO AUTHORITY.**

The powers of delegation of the Minister in relation to this Act are as provided for in the *Ministers (Delegation) Regulation* (Chapter 35).

**42. DELEGATION OF AUTHORITY'S FUNCTIONS OR POWERS TO EMPLOYEE OF AUTHORITY.**

(1) The Authority may, by writing under the hand of the Chairman, delegate to the Director or any other employee of the Authority all or any of the functions or powers of the Authority under this Act or any other Act, including functions or powers delegated to the Authority under this Act.

(2) The Authority may, with prior written consent of the Minister, delegate any functions or powers delegated to the Authority by the Minister.

(3) In any case where the Authority has delegated any functions or powers to an employee of the Authority under this section, that employee may, with the prior approval in writing of the Authority, delegate to any other employee of the Authority such of those functions and powers as are so approved.

(4) No delegation of any of the functions and powers delegated to the Director by the Authority under this section shall be delegated by the Director under Subsection (4) without the written consent of the Authority.

(5) A delegation under this section may be to a specified employee of the Authority or to employees of a specified class or to the holder or holders for the time being of a specified office or class of offices in the Authority.

(6) Every person purporting to act under any delegation under this section shall when reasonably requested produce evidence of his authority to do so.

**43. DELEGATION OF DIRECTOR'S FUNCTIONS TO EMPLOYEES OF THE AUTHORITY.**

(1) Subject to Subsection (2), the Director may, by writing under his hand, delegate to any employee of the Authority, all or any of his functions and powers under this Act or any other Act (except this power of delegation).

(2) The Director shall not delegate:

(a) any functions or powers delegated to the Director by the Authority without the written consent of the Authority; or

(b) the power under Section 17 to revoke an aviation document.

(3) The provisions of Section 42(3) to (6) inclusive shall apply to a delegation under this section as if:

(a) references in those provisions to the Authority were references to the Director; and

(b) references in those provisions to the Director or to any employee or the Authority were references to any employee of the Authority other than the Director.

**44. DELEGATION OF AUTHORITY'S OR DIRECTOR'S FUNCTIONS OR POWERS TO PERSONS OUTSIDE THE AUTHORITY.**

(1) Subject to this section, the Authority may, by writing under the hand of the Chairman, delegate to a person who is not an employee of the Authority all or any of its functions or powers under this Act or any other Act.

(2) Subject to this section, the Director may, by writing under his hand, delegate to a person who is not an employee of the Authority any of his functions or powers under this Act or any other Act, other than:

(a) the power under Section 17 to revoke aviation document; or

(b) the power under Section 17 to suspend or revoke aviation documents.

(3) No delegation shall be made under this section except with the written consent of the Minister.

(4) A delegation under this section may be to a specified person or persons of a specified class or to the holder or holders for the time being of a specified office or class of offices in the Authority.

(5) A person purporting to act under a delegation under this section shall when reasonably requested to do so produce evidence of his authority to act.

**PART IV. – THE CIVIL AVIATION SYSTEM.**

***Division 1.***

***Entry into the civil aviation system.***

**45. GENERAL REQUIREMENTS FOR PARTICIPANTS IN CIVIL AVIATION SYSTEM.**

(1) In this section “**a participant**” means a person who carries out an activity for which an aviation document is required.

(2) A participant shall ensure that he holds the appropriate aviation documents and all the necessary qualifications and other documents for the activity which he is carrying out.

(3) A participant shall:

(a) comply with this Act and the conditions attached to the relevant aviation documents; and

(b) ensure that the activities or functions for which the aviation document has been granted are carried out by him and by all persons for whom he is responsible, safely and in accordance with the relevant prescribed safety standards and practices.

(4) A participant who holds an aviation document that authorizes the provision of a service within the civil aviation system shall:

(a) where so required by rules made under this Act, establish and follow a management system that will ensure compliance with the relevant prescribed safety standards and the conditions attached to the documents; and

(b) provide training and supervision to all employees of the participant who are engaged in doing anything to which the document relates, so as to maintain compliance with the relevant prescribed safety standards and the conditions attached to the document and promote safety; and

(c) provide sufficient resources to ensure compliance with the relevant prescribed safety standards and the conditions attached to the document.

**46. REQUIREMENT TO REGISTER AIRCRAFT.**

(1) Except as otherwise provided in this Act, a person lawfully entitled to the possession of an aircraft for a period of 28 days or longer which flies to, from, within or over Papua New Guinea territory shall register that aircraft and hold a valid certificate of registration for that aircraft from:

(a) the Director; or

(b) the appropriate aeronautical authorities of a Contracting State; or

- (c) the appropriate aeronautical authorities of another State that is party to an agreement with the Government of Papua New Guinea or the Authority which provides for the acceptance of each other's registrations.

(2) No aircraft shall be registered in or remain registered in Papua New Guinea if it is registered in any other country.

(3) The Director may decline to register an aircraft in accordance with the provisions of regulations or rules made under this Act.

(4) A person, in respect of whom a decision is taken under this section, may appeal against that decision to the National Court under Section 310.

#### **47. REQUIREMENT FOR AVIATION DOCUMENT.**

(1) Rules made under this Act may require that an aviation document is required by or in respect of all or any of the following:—

- (a) Papua New Guinea registered aircraft;
- (b) aircraft pilots;
- (c) flight crewmembers;
- (d) air traffic services personnel;
- (e) aviation security services personnel;
- (f) aircraft maintenance personnel;
- (g) air services;
- (h) air traffic services;
- (i) aerodromes and aerodrome operators;
- (j) aeronautical navigation service providers;
- (k) aviation training organizations;
- (l) aircraft design, manufacture and maintenance organizations;
- (m) aeronautical procedures;
- (n) aviation security services;
- (o) aviation meteorological services;
- (p) aviation communications services;
- (q) aviation medical services;
- (r) aviation personnel licensing and examining;
- (s) any persons, services, or things within any of the classes specified in Paragraphs (a) to (r) inclusive;
- (t) such other persons, aircraft, aeronautical products, aviation related services, facilities and equipment operated in support of the civil

aviation system, or classes of such persons, aircraft, aeronautical products, aviation related services, facilities and equipment operated in support of the civil aviation system, as may, in the interests of safety or security, be specified in the rules.

(2) The requirements, standards and application procedure for each aviation document, and the maximum period for which each document may be issued, are as prescribed.

(3) Subject to any regulations or rules made under this Act, an aviation document may be issued by the Director for such specified period and subject to such conditions as the Director considers appropriate in each particular case.

(4) A person in respect of whom a decision is taken under this section may appeal against that decision to the National Court under Section 310.

#### **48. APPLICATION FOR AVIATION DOCUMENT.**

(1) An application for the grant or renewal of an aviation document shall be made to the Director in the prescribed form or, where there is no prescribed form, in such form as the Director may require.

(2) An applicant for an aviation document shall provide his address for service in Papua New Guinea including where applicable, telephone and facsimile numbers.

(3) A record of information provided under Subsection (2) shall be maintained by the Director at the Registry.

(4) It shall be the duty of every holder of an aviation document to maintain the currency of the information provided under Subsection (2) by promptly notifying the Director of any changes to the address, telephone number or facsimile number.

(5) Service of any notification under this Act on a holder of, or applicant for, an aviation document shall be effective service where served on the address last provided by that holder or applicant under this section.

#### **49. GRANT OR RENEWAL OF AVIATION DOCUMENT.**

(1) After considering an application for the grant or renewal of an aviation document, the Director shall, as soon as is practicable, grant the application where he is satisfied that:

- (a) all things in respect of which the document is sought meet the relevant prescribed requirements; and
- (b) the applicant and any person who is to have or is likely to have control over the exercise of the privileges under the document:
  - (i) either holds the relevant prescribed qualifications and experience or holds such foreign qualifications as are acceptable to the Director under Subsection (2); and
  - (ii) is a fit and proper person to have such control or hold the document; and

- (iii) meets all other relevant prescribed requirements; and
- (c) it is not contrary to the interest of aviation safety for the document to be granted or renewed.

(2) For the purposes of granting or renewing an aviation document, the Director may, subject to any provisions in the regulations or rules, accept such foreign qualifications or recognise such foreign certifications as he considers appropriate in each case.

(3) It shall be a condition of every current aviation document that the holder and any person who has or is likely to have control over the exercise of the privileges under the document continue to satisfy the fit and proper person test specified in Subsection (1)(b)(ii).

(4) Where the Director decides that he is no longer satisfied that the holder is a fit and proper person to hold that document, and notifies the holder in writing accordingly, the holder is in breach of that condition.

(5) Where the Director declines to grant an application for the grant or renewal of an aviation document under this section, the applicant may appeal against that decision to the National Court under Section 310.

#### **50. CRITERIA FOR FIT AND PROPER PERSON TEST.**

(1) For the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act, the Director shall, having regard to the degree and nature of the person's proposed involvement in the Papua New Guinea civil aviation system, have regard to, and give such weight as the Director considers appropriate to, the following matters:—

- (a) the person's compliance history with transport safety regulatory requirements;
- (b) the person's related experience, if any, within the transport industry;
- (c) the person's knowledge of the applicable civil aviation regulatory requirements;
- (d) any history of physical or mental health or serious behavioural problems;
- (e) any conviction for any transport safety offence, whether or not the conviction was in a Papua New Guinea Court;
- (f) any offence committed before the coming into operation of this Act, any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act.

(2) The Director shall not be confined to consideration of the matters specified in Subsection (1) and may take into account other such matters and evidence as may be relevant.

(3) The Director may, for the purpose of determining whether or not a person is a fit and proper person for any purpose under this Act:

- (a) seek and receive such information as the Director thinks fit; and
- (b) consider information obtained from any source.

(4) Subsection (1) applies to a body corporate with the following modifications:—

- (a) Paragraphs (a), (b), (c), (e) and (f) of that subsection shall be read as if they refer to the body corporate and its officers; and
- (b) Paragraph (d) of that subsection shall be read as if it refers only to the officers of the body corporate.

(5) Subject to Subsection (6), where the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in Subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any person.

## 51. RIGHTS OF PERSONS AFFECTED BY PROPOSED ADVERSE DECISIONS.

(1) In this section, unless the context otherwise requires:

**“adverse decision”** means a decision of the Director to the effect that a person is not a fit and proper person for any purpose under this Act;

**“affected document holder,”** in relation to a person directly affected by an adverse decision, means the holder of or the applicant for the aviation document;

**“person directly affected”**, in relation to an adverse decision, means the person who would be entitled under Section 310 to appeal against that adverse decision;

**“person on the basis of whose charter the adverse decision arises”**, in relation to an adverse decision made or proposed to be made on the grounds referred to in Section 50, means the person whom the Director assesses as not being a fit and proper person.

(2) Where the Director proposes to make an adverse decision under this Act in respect of any person, the Director, by notice in writing, shall:

- (a) notify the person directly affected by the proposed decision of the proposed decision; and
- (b) subject to Subsection (4), inform that person of the grounds for the proposed decision; and

- (c) specify a date by which submissions may be made to the Director in respect of the proposed decision, which date shall not be less than 21 days after the date on which the notice is given; and
- (d) where appropriate, specify the date on which the proposed decision will, unless the Director otherwise determines, take effect, being a date not less than 28 days after the date on which the notice is given; and
- (e) notify the person of the person's right of appeal under Section 310, in the event of the Director proceeding with the proposed decision; and
- (f) specify such other matters as in any particular case may be required by any provision of this or any other Act.

(3) Where the Director gives a notice under Subsection (2), the Director:

- (a) shall also supply a copy of the notice to:
  - (i) any person on the basis of whose character the adverse decision arises, where that person is not the person directly affected by the proposed decision; and
  - (ii) any affected document holder, where the Director considers that the proposed decision is likely to have a significant impact on the operations of the document holder; and
- (b) may supply a copy of the notice to any other affected holder.

(4) No notice or copy of a notice given under this section shall include or be accompanied by any information referred to in Section 50(1), except to the extent that:

- (a) the notice or copy is supplied to the person to whom the information relates; or
- (b) that person consents to the supply of that information to any other person.

(5) Where a notice or a copy of a notice is given to a person under this section, the following provisions shall apply:—

- (a) it shall be the responsibility of that person to ensure that all information that that person wishes to have considered by the Director in relation to the proposed decision is received by the Director within the period specified in the notice under Subsection (2)(c), or within such further period as the Director may allow;
- (b) the Director may consider any information supplied by that person after the expiry of the period referred to in Paragraph (a), other than information requested by the Director and supplied by that person within such reasonable time as the Director may specify;
- (c) the Director shall consider any submission made in accordance with Paragraph (a), other than information requested by the Director and supplied pursuant to a request referred to in Paragraph (b).



(6) After considering the matters referred to in Subsection (5), the Director shall:

- (a) finally determine whether or not to make the proposed adverse decision; and
- (b) as soon as practicable thereafter, notify in writing the person directly affected, and any other person of a kind referred to in Subsection (3)(a) of:
  - (i) the Director's decision and the grounds for the decision; and
  - (ii) the date on which the decision will take effect; and
  - (iii) in the case of an adverse decision, the consequences of that decision and any applicable right of appeal referred to in Section 49(5), 53(7) or 54(4).

### *Division 2.*

#### *Surveillance and Sanctions.*

#### **52. DIRECTOR MAY REQUIRE OR CARRY OUT SAFETY AND SECURITY INSPECTIONS AND MONITORING.**

(1) The Director may in writing require a person who:

- (a) holds an aviation document; or
- (b) operates, maintains or services, or does any other act in respect of any aircraft, aeronautical product, aviation related service, air traffic service or aeronautical procedure,

to undergo or carry out such inspections and such monitoring as the Director considers necessary in the interests of civil aviation safety and security.

(2) The Director may, in respect of a person described in Subsection (1)(a) or (b), carry out such inspections and monitoring as the Director considers necessary in the interests of civil aviation safety.

(3) For the purposes of any inspections or monitoring carried out in respect of a person under Subsection (1) or (2), the Director may in writing require from that person such information as the Director considers relevant to the inspection or the monitoring.

#### **51. POWER OF THE DIRECTOR TO SUSPEND AVIATION DOCUMENT OR IMPOSE CONDITIONS.**

(1) The Director may suspend an aviation document issued under this Act, or impose conditions in respect of an aviation document, where he considers such action necessary in the interests of safety or security, and where he:

- (a) considers such action necessary to ensure compliance with this Act; or

- (b) is satisfied that the holder has failed to comply with any conditions of an aviation document or with the requirements of Section 45; or
- (c) is satisfied that the holder has contravened or failed to comply with Section 283; or
- (d) considers that the privileges or duties for which the document has been granted are being carried out by the holder in a careless or incompetent manner.

(2) Without limiting the generality of the powers conferred by Subsection (1), the Director may suspend an aviation document relating to the use of an aircraft, aeronautical product or the provision of a service, or impose conditions in respect of any such document, where he considers that there is reasonable doubt as to the airworthiness of the aircraft or as to the quality or safety of the aeronautical product or service to which the document relates.

(3) The suspension of an aviation document or conditions imposed in respect of any such document shall remain in force until the Director has determined, after due investigation, the action to be taken in respect of the causes regarding the suspension or imposition of conditions, but the duration of any such suspension or conditions shall not exceed 14 days unless the Director directs that a further specified period is necessary for the purposes of the investigation.

(4) Where:

- (a) an investigation conducted under Subsection (3) is completed; or
- (b) in any other case in which the Director considers such action to be warranted, the Director may suspend the aviation document or impose conditions on it, and he shall cause the appropriate endorsement to be made on the document concerned.

(5) A person whose aviation document has been suspended or made subject to conditions under this section shall forthwith produce that document to the Director for appropriate endorsement.

(6) The whole or any part of an aviation document may be suspended under this section.

(7) A person in respect of whom a decision is taken under this section may appeal against that decision to the National Court under Section 310.

#### **54. POWER OF DIRECTOR TO REVOKE AVIATION DOCUMENT.**

(1) Where:

- (a) an investigation conducted under Section 53(3) is completed; or
- (b) in any other case where the Director considers such action to be warranted,

the Director believes that a relevant aviation document should be revoked, the Director may revoke that document.

(2) Where the Director proposes to revoke an aviation document, the Director shall give notice in accordance with Section 51, which shall apply as if the proposed revocation were proposed adverse decisions under this Act.

(3) A person whose aviation document has been revoked shall forthwith surrender that document to the Director.

(4) A person in respect of whom a decision is taken under this section may appeal against that decision to the National Court under Section 310.

**55. CRITERIA FOR ACTION TAKEN UNDER SECTION 53 OR SECTION 54.**

(1) The provisions of this section shall apply for the purpose of determining whether an aviation document shall:

- (a) be suspended; or
- (b) made subject to conditions under Section 53; or
- (c) revoked under Section 54.

(2) The Director may have regard to, and give such weight as the Director considers appropriate to the following matters:–

- (a) the duty of the Authority to maintain a safe civil aviation system;
- (b) the person's compliance history with transport safety regulatory requirements;
- (c) any conviction for any transport safety offence, whether or not:
  - (i) the conviction was in a Papua New Guinea Court; or
  - (ii) the offence was committed before the commencement of the Act;
- (d) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any rule made under this Act.

(3) The Director shall not be confined to consideration of the matters specified in Subsection (2) and may take into account other such matters and evidence as may be relevant.

(4) The Director may:

- (a) seek and receive such information as the Director thinks fit; and
- (b) consider information obtained from any source.

(5) Subject to Subsection (6), where the Director proposes to take into account any information that is or may be prejudicial to a person, the Director shall, as soon as is practicable, disclose that information to that person and give that person a reasonable opportunity to refute or comment on it.

(6) Nothing in Subsection (5) shall require the Director to disclose any information the disclosure of which would be likely to endanger the safety of any

person or to disclose any information before suspending an aviation document or imposing conditions in respects of an aviation document under Section 53.

**56. POWER OF DIRECTOR TO AMEND OR REVOKE AVIATION DOCUMENT IN OTHER CASES.**

(1) The Director may, where so requested in writing by the holder of an aviation document:

- (a) amend that document in the manner requested; or
- (b) revoke that document.

(2) Subject to Subsection (3), the Director may do any of the following:—

- (a) amend an aviation document to reflect the fact that any privilege or duty for which the document has been granted is no longer being carried out, or is no longer able to be carried out, by the holder;
- (b) revoke an aviation document where none of the privileges or duties for which the document has been granted is being carried out, or is able to be carried out, by the holder;
- (c) amend an aviation document to correct any clerical error or obvious mistake on the face of the document.

(3) Before taking any action under Subsection (2), the Director shall notify the holder in writing of the proposed action and give the holder a reasonable opportunity to comment or make submissions on the proposed action.

(4) The power to amend an aviation document under this section includes:

- (a) power to revoke the document and issue a new document in its place; and
- (b) power to impose reasonable conditions.

(5) When the holder of an aviation document is notified that specified action is proposed under this section, the holder shall forthwith produce the document to the Director.

**57. POWER OF DIRECTOR TO DETAIN AIRCRAFT, SEIZE AERONAUTICAL PRODUCTS AND IMPOSE PROHIBITIONS AND CONDITIONS.**

(1) Where the Director believes on reasonable grounds that the operation or use of an aircraft or aeronautical product or a class of aircraft or aeronautical products may endanger persons or property, the Director may, where authorized by a warrant given by a judicial officer on written application on oath, do all or any of the following:—

- (a) detain the aircraft or any aircraft of that class;
- (b) seize the aeronautical product or any aeronautical products of that class;

- (c) destroy any aeronautical product or any products of that class;
- (d) prohibit or impose conditions on the operation of the aircraft or aircraft of that class or on the use of any aeronautical product or any aeronautical products of that class.

(2) Where the Director believes on reasonable grounds that the operation or use of an aircraft or aeronautical product or a class of aircraft or aeronautical product may endanger persons or property and that prompt action is necessary to prevent the danger, the Director may do all or any of the following:—

- (a) prohibit or impose conditions on the operation of the aircraft or all aircraft of that class;
- (b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class;
- (c) detain particular aircraft or seize particular aeronautical products where necessary in order to prevent their operation or use.

(3) A detention or seizure under Subsection (1) or (2) shall be maintained for only such time as is necessary in the interest of safety, but where aircraft, aeronautical products or parts thereof are required for the purpose of evidence in any prosecution under this Act those aircraft, products or parts thereof may be retained by the Director for such period as the Director considers necessary for that purpose.

(4) The Director shall, where requested by the owner or the person for the time being in charge of an aircraft detained or an aeronautical product seized under Subsection (1), provide in writing to the owner or that person the reasons for the detention or seizure.

(5) Prior to destroying an aeronautical product seized under Subsection (1), the Director shall give to the owner, where known, 21 days' notice of his intention to destroy the aeronautical product.

(6) The Director shall not be liable to pay compensation to a person for an aviation product destroyed under the provisions of this section.

(7) A person in respect of whom a decision is taken under this section may appeal against that decision to the National Court under Section 310.

(8) For the purpose of Subsection (2), the Director shall notify any prohibitions or conditions to such person as he considers necessary by such means of communication, whether or not of a permanent nature, as the Director considers appropriate in the circumstances.

***Division 3.***  
***Powers of Entry.***

**58. GENERAL POWER OF ENTRY.**

(1) For the purpose of carrying out his functions, duties or powers under this Act, a person duly authorized by the Director shall have right of access at any reasonable time to the following:—

- (a) any aircraft, aerodrome, building or place;
- (b) any document or record concerning any aircraft, aeronautical product or aviation related service.

(2) Without limiting the generality of the powers conferred by Subsection (1), a person duly authorized by the Director who has reasonable grounds to believe that:

- (a) any breach of this Act is being or is about to be committed; or
- (b) a condition imposed under a civil aviation document is not being complied with; or
- (c) a situation exists within the civil aviation system or is about to exist that constitutes a danger to persons or property,

may at any reasonable time enter any aircraft, aerodrome, building or place, and carry out an inspection to determine whether or not a matter referred to in Paragraphs (a), (b) or (c) exists.

(3) A person who is duly authorized to enter any aircraft, aerodrome, building or place under Subsection (1) or (2) may require the owner, occupier or operator, as the case may be:

- (a) to produce any aviation document, certificate, book, manual, record, list, notice or other document required by or under this Act to be kept by that owner, occupier or operator; and
- (b) to surrender any such aviation document, certificate, book, manual, record, list, notice or other document.

(4) Nothing in Subsection (1) or (2) shall confer on any person the power to enter any dwelling place unless the entry is authorized by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(5) A warrant issued under Subsection (4) shall be directed to a named person and shall be valid for a period of one month from the date of its issue or such lesser period as the judicial officer considers appropriate and the period of validity shall be shown in the warrant.

(6) A person exercising the power of entry conferred by Subsection (1) or (2) shall carry a warrant of authority issued by the Director specifying —

- (a) the name and the office or offices held by the person; and

- (b) that the person is authorized by the Director to exercise the power conferred by Subsections (1) and (2) to enter aircraft, aerodromes, buildings and places and to carry out such inspection.

(7) A person exercising the power of entry conferred by Subsections (1) and (2) shall produce the warrant of authority and evidence of identity:

- (a) where practicable on first entering the aircraft, aerodrome, building or place; and
- (b) whenever subsequently reasonably required to do so.

(8) A commissioned officer of the Police Force has and may exercise all or any of the powers conferred on a person who has been duly authorized by the Director under this section.

#### **59. POWERS OF ENTRY OF THE AUTHORITY AND PNG ATS.**

(1) Subject to Subsection (3), the Authority and PNG ATS may:

- (a) enter upon any land for the purpose of gaining access to cables, wires, navigation installations or other equipment used for the purpose of carrying out the functions of the Authority and PNG ATS; and
- (b) perform any act or operation necessary for the purpose of inspecting, maintaining or repairing any such equipment.

(2) The power to enter upon land conferred by Subsection (1) shall be subject to the following conditions:—

- (a) entry to the land shall be made only by an officer, employee, or agent of the Authority or PNG ATS authorized in writing or by persons under the immediate control of such an officer, employee or agent;
- (b) entry shall be made at reasonable times;
- (c) the officer, employee or agent shall have with him and shall produce on initial entry and subsequently where required to do so, evidence of his identity and authority.

(3) Any equipment owned by the Authority or PNG ATS that is fixed to or installed over or under land not owned by the Authority or PNG ATS is deemed to be lawfully fixed or installed and shall continue to be fixed or installed until the Authority or PNG ATS otherwise decides, and no person other than the Authority or PNG ATS shall have any interest in any such equipment by reason only of having an interest in the land.

#### ***Division 4.***

#### ***Notification of Accidents.***

#### **60. OBLIGATION TO NOTIFY ALL ACCIDENTS AND INCIDENTS.**

(1) The pilot-in-command of an aircraft that is involved in an accident shall notify the accident to the Authority as soon as practicable.

(2) A person who:

- (a) operates, maintains or services or does any other act in respect of an aircraft, aeronautical product or aviation related service; and
- (b) is involved in an incident,

shall, where required to do so under rules made under this Act, notify the incident to the Authority.

(3) Where, due to injuries or death, the pilot-in-command is unable to give the necessary notice under Subsection (1), the operator shall provide the necessary notice.

(4) The co-ordinator of any search and rescue operation for an aircraft shall notify the Authority of the operation as soon as possible.

(5) The Authority may, on being notified under this section request such additional information, in such form as the Authority considers appropriate in each specific case, and the pilot-in-command or operator or person to whom the request is made shall provide the additional information forthwith.

## **61. NOTIFICATION OF ACCIDENT OR INCIDENTS.**

(1) Without limiting the generality of the provisions of Section 60, the responsible person who is required to notify the Authority of an accident shall advise by the quickest means, such of the following information as is immediately available:—

- (a) the type, nationality, and registration marks of the aircraft;
- (b) the name of the owner, operator and hirer (if any) of the aircraft;
- (c) the name of the pilot-in-command;
- (d) the date and time of the accident;
- (e) the last point of departure and the point of intended landing of the aircraft;
- (f) the position of the aircraft with reference to an easily defined geographical point;
- (g) the number of persons killed and the number seriously injured (if any);
- (h) the nature and the extent of the damage to the aircraft so far as is known.

(2) Where all the particulars specified in Subsection (1) are not immediately available, the notification shall so state, and a supplementary notification containing the particulars not included in the first notification shall be furnished to the Authority as soon as possible.

(3) Where the aircraft to which the accident has occurred is registered in a state other than Papua New Guinea, the Authority shall forward as soon as practicable to the state of registry the particulars supplied in the notifications



required under this section, together with advice as to the nature of the inquiry being conducted in respect of the accident.

**62. DUTY OF AUTHORITY TO NOTIFY ACCIDENTS AND INCIDENTS TO THE COMMISSION.**

(1) As soon as practicable after an accident or incident is notified under Section 60, the Authority shall notify the Commission that the Authority has been notified of the accident or incident where it is of any of the following kinds:—

- (a) an accident involving aircraft;
- (b) a serious incident in accordance with the provisions of the Convention.

(2) Where the Authority has been notified of a search and rescue operation under Section 60(4), the Authority shall forthwith notify the Commission accordingly.

*Division 5.*

*Duties of Pilot-in-Command.*

**63. DUTIES OF PILOT-IN-COMMAND.**

The pilot-in-command of an aircraft shall:

- (a) be responsible for the safe operation of the aircraft in flight, and the safety and well-being of all passengers and crew, and the safety of cargo carried; and
- (b) have final authority to control the aircraft while in command and for the maintenance of discipline by all persons on board; and
- (c) subject to Section 64, be responsible for compliance with all relevant requirements and regulations and rules made under this Act.

**64. DUTIES OF PILOT-IN-COMMAND AND OPERATOR DURING EMERGENCIES.**

(1) Subject to Subsections (2) and (6), in an emergency that arises in flight, the pilot-in-command may breach the provisions of this Act.

(2) For the purposes of Subsection (1), a breach of a prescribed requirement is permitted only where the pilot-in-command is satisfied that —

- (a) the emergency involves a danger to life or property; and
- (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
- (c) there is no other reasonable means of alleviating, avoiding or assisting with the emergency; and

- (d) the degree of danger involved in complying with the prescribed requirement is clearly greater than the degree of danger involved in deviating from it.

(3) Subject to Subsections (4) to (6), where an emergency (not being an emergency that arises in flight) necessitates the urgent transportation of persons or medical or other supplies for the protection of life or property, the pilot-in-command of the aircraft or the operator of the aircraft may breach the provisions of this Act.

(4) For the purposes of Subsection (3), a breach of prescribed requirement is permitted only where:

- (a) the emergency involves a danger to life or property; and
- (b) the extent of the breach of the prescribed requirement goes only as far as is necessary to deal with the emergency; and
- (c) there is no other reasonable means of alleviating, avoiding or assisting with the emergency; and
- (d) the degree of danger involved in deviating from the prescribed requirement is clearly less than the degree of risk in failing to attend to the emergency.

(5) Nothing in Subsection (3) permits:

- (a) the operation of an aircraft that is not registered in Papua New Guinea or elsewhere; or
- (b) the breach of a prescribed requirement as to the airworthiness of an aircraft; or
- (c) the operation of an aircraft by a person who is not lawfully entitled to operate that aircraft.

(6) Where in an emergency described in this section, a pilot-in-command or an operator breaches this Act in accordance with the provisions of this section, the pilot-in-command or the operator, as the case may be, shall –

- (a) immediately notify the relevant air traffic service of the action; and
- (b) as soon as practicable, notify the Director of the action and the circumstances which necessitated it; and
- (c) where requested by the Director, provide a written report of the action.

**PART V. – REGISTRIES AND INFORMATION SERVICES.**

**65. PAPUA NEW GUINEA REGISTER OF AIRCRAFT.**

(1) The Authority shall establish a register to be called the Papua New Guinea Register of Aircraft.

(2) The Authority shall enter into the Register such particulars as may be prescribed of every aircraft registered under Section 46.

(3) The Director shall enter into the Register the particulars of every lien as required by Section 97.

(4) The Director may, in his absolute discretion and without any responsibility or liability to the State, the Authority or the Director, for any reason, place on the Register at the request of any person a note of any security or other such financial interest held by that person in an aircraft.

**66. CIVIL AVIATION REGISTRY.**

(1) The Authority shall establish a Civil Aviation Registry.

(2) Copies or appropriate evidence of the following shall be recorded and maintained at the Registry:–

- (a) a copy of this Act and any amendments;
- (b) every current aviation document;
- (c) the Register;
- (d) every regulation made under this Act, and every rule notified in the National Gazette and for the time being in force;
- (e) any material incorporated into a rule by reference under Section 78;
- (f) every accident and incident notification given under Section 60;
- (g) every airworthiness directive issued by the Director under Section 17(2);
- (h) every delegation, authorization, and exemption granted in writing under this Act;
- (i) the address for service of every current applicant for an aviation document and of every current aviation document holder;
- (j) every document required to be lodged at the Registry under Part XI and Part XII;
- (k) any other document required by any Act, regulation or rule to be lodged at the Registry.

(3) Documents kept at the Registry shall be made available by the Authority for inspection by the public free of charge or for copying upon payment of a reasonable fee.

**67. JOINT REGISTRATION OF AIRCRAFT.**

Where an aircraft is subject to joint or international registration, it is deemed for the purposes to be registered in the country which, according to the records of ICAO, is the country of registration.

**68. INFORMATION SERVICES.**

(1) The Authority shall ensure that an aeronautical information service is provided which shall comprise the collection and dissemination of aeronautical information and instructions relating to the safety, regularity and efficiency of air navigation.

(2) The Authority shall ensure that information and instructions referred to in Subsection (1) are readily available to any person upon payment of a reasonable charge fixed by the Director.

**PART VI. – RULES.**

**69. POWER OF MINISTER TO MAKE ORDINARY RULES.**

(1) The Minister may from time to time make rules (in this Act called “ordinary rules”) for all or any of the following purposes:–

- (a) the implementation of Papua New Guinea’s obligations under the Convention;
- (b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programmes and services;
- (c) any matter related or reasonably incidental to any of the functions of the Authority, the Departmental Head, the Director or the Minister as set out in this Act;
- (d) any other matter contemplated by any provision.

(2) An ordinary rule may apply generally or with respect to different classes of aircraft, aerodromes, aeronautical products, aeronautical procedures or aviation related services, or with respect to the same class of aircraft, aerodrome, aeronautical product, aeronautical procedure or aviation related service in different circumstances.

(3) An ordinary rule may apply generally throughout Papua New Guinea or within any specified part or parts of Papua New Guinea.

(4) The coming into operation of an ordinary rule may be wholly suspended until it is applied by the Minister by notice in the National Gazette.

(5) No ordinary rule shall be invalid because it confers any discretion upon or allows any matter to be determined or approved by the Authority or the Director or any other person, or allows the Authority or the Director or any other person to impose requirements as to the performance of any activities.

(6) No breach of an ordinary rule shall constitute an offence against this Act unless the offence is prescribed in the regulations made under this Act.

(7) So far as the laws of a province or local-level government are inconsistent with or repugnant to any ordinary rule made under this Act in force in the same locality, the laws shall be construed subject to the rules.

(8) The Minister shall not delegate his power to make ordinary rules under this Act.

**70. RULES RELATING TO SAFETY AND SECURITY.**

Without limiting the generality of the power conferred by Section 69, in the interests of safety or security within the civil aviation system, ordinary rules may include:

- (a) rules providing for the classification, designation, special use, prohibition and the restriction of airspace and things affecting navigable

- airspace, including airspace used by the Defence Force or a visiting defence force; and
- (b) rules providing for the use of aerodromes and other aviation related facilities, including but not limited to the following:—
    - (i) the provision of identification procedures for persons, aircraft, and any other aviation related things;
    - (ii) the prevention of interference with aerodromes and other aviation related facilities; and
  - (c) general operating rules, air traffic rules and flight rules, including but not limited to the following:—
    - (i) the conditions under which aircraft may be used or operated, or under which any act may be performed in or from any aircraft;
    - (ii) the prevention of aircraft endangering persons or property; and
  - (d) rules providing for the control of things likely to be hazardous to aviation safety, including but not limited to the following:—
    - (i) the safe carriage of firearms and other dangerous or hazardous goods or substances by air;
    - (ii) the construction, use, or operation of anything likely to be hazardous to aviation safety.

#### **71. RULES RELATING TO OTHER MATTERS.**

Without limiting the generality of the powers conferred by Section 69, the Minister may make:

- (a) ordinary rules in the national interest for the classification, designation, special use, prohibition and restriction of airspace and things affecting navigable airspace, including airspace used by the Defence Force or a visiting defence force; and
- (b) ordinary rules prescribing flight rules, flight paths, altitude restrictions, curfews and operating procedures for the purpose of noise abatement and the protection of community health in the vicinity of aerodromes.

#### **72. RULES RELATING TO GENERAL MATTERS.**

(1) Without limiting the generality of the powers conferred by Section 69, ordinary rules may be made for all or any of the following purposes:—

- (a) the designation, classification and certification of all or any of the following:—
  - (i) aircraft;
  - (ii) aircraft pilots;
  - (iii) flight crewmembers;

- (iv) air traffic service personnel;
  - (v) aviation security personnel;
  - (vi) aircraft maintenance personnel;
  - (vii) air services;
  - (viii) air traffic services;
  - (ix) aerodromes and aerodrome operators;
  - (x) aeronautical navigation service providers;
  - (xi) aviation training organizations;
  - (xii) aircraft design, manufacture, and maintenance organizations;
  - (xiii) aeronautical procedures;
  - (xiv) aviation security providers;
  - (xv) aviation meteorological services;
  - (xvi) aeronautical communications services;
  - (xvii) any other person who provides services in the civil aviation system and any aircraft, aeronautical product or aviation related services, facilities and equipment operated in support of the civil aviation system or classes of such persons, aircraft, aeronautical products, aviation related services, facilities and equipment operated in support of the civil aviation system;
- (b) the setting of standards, specifications, restrictions and licensing requirements for all or any of those persons or things specified in Paragraph (a), including but not limited to the following:–
- (i) the specification of the privileges, limitations and ratings associated with licences or other forms of approval;
  - (ii) the setting of standards for training system and techniques, including recurrent training requirements;
  - (iii) the setting of medical standards for personnel;
  - (iv) the requirement for proof of access to appropriate weather services;
  - (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval and identification of aircraft and aeronautical products;
  - (vi) air services, including the requirements for insurance coverage for air services;
  - (vii) the format of aviation documents, forms and applications, including the specification of information required on all application forms for aviation documents;

- (viii) the provision of information to the Authority by applicants or holders of aviation documents;
- (c) the conditions of operation of foreign aircraft and international flights to, from or within Papua New Guinea;
- (d) the definitions, abbreviations and units of measurement to apply within the civil aviation system;
- (e) prescribing the design and colours of the Papua New Guinea Civil Air Ensign, and when and where and by whom it may be flown.

### **73. POWER OF DIRECTOR TO MAKE EMERGENCY RULES.**

(1) Subject to Subsection (2), the Director may from time to time, in accordance with Section 77, make such emergency rules as may be necessary to alleviate or minimise any risk of the death of or serious injury to any person or of damage to any property.

(2) The Director shall not make an emergency rule unless it is impracticable in the circumstances of the particular case for an ordinary rule to be made effectively to alleviate or minimise the risk concerned.

(3) The Minister may revoke an emergency rule made under Subsection (1).

### **74. PROCEDURES RELATING TO RULES.**

(1) An ordinary rule shall:

- (a) be signed by the Minister; and
- (b) contain a statement specifying the objective of the rule and the extent of any consultation under Section 76; and
- (c) set out fully the requirements of the rule, except where by reason of size or length certain information is incorporated in the rule by reference under Section 78.

(2) An emergency rule shall:

- (a) be signed by the Director; and
- (b) contain a statement specifying the objective of the rule and the extent of the consultation under Section 77 that took place before the making of the rule; and
- (c) set out fully the requirements of the rule, except where by reason of size or length or length certain information is incorporated in the rule by reference under Section 78.

### **75. MATTERS TO BE TAKEN INTO ACCOUNT IN MAKING RULES.**

(1) The ordinary rules made by the Minister, and the emergency rules made by the Director shall not be inconsistent with the following:—



- (a) the standards of ICAO relating to aviation safety and security, to the extent adopted by Papua New Guinea;
- (b) Papua New Guinea's international obligation relating to aviation safety and security.

(2) In making a rule, regard shall be had and such weight as is appropriate shall be given in each case to the following:—

- (a) the recommended practices of ICAO relating to aviation safety and security, to the extent adopted by Papua New Guinea;
- (b) the level of risk existing to aviation safety in each proposed activity or service;
- (c) the nature of the particular activity or service for which the rule is being established;
- (d) the level of risk existing to aviation safety and security in Papua New Guinea in general;
- (e) the need to maintain aviation safety and security;
- (f) the costs of implementing aviation safety and security measures;
- (g) the international circumstances in respect of aviation safety and security;
- (h) such other matters as the Minister or the Director considers appropriate in the circumstances.

## **76. PROCEDURE FOR MAKING ORDINARY RULES.**

(1) Before an ordinary rule is made, the Minister shall:

- (a) publish a notice of his intention to make the rule in a national newspaper that is regularly distributed throughout the country; and
- (b) publish the notice in the National Gazette; and
- (c) give interested persons a reasonable time, which shall be specified, to make submissions on the proposed ordinary rule; and
- (d) ensure that the Authority undertakes consultation with such persons, representative groups within the aviation industry or elsewhere, Departments and State agencies as the Minister in each case considers appropriate.

(2) Subject to Subsection (3), the making of an ordinary rule shall be notified in the National Gazette and be made available by the Authority to members of the public at the Registry for inspection free of charge and purchase at a reasonable fee set by the Director.

(3) Where for reasons of security it is inappropriate to notify a rule under Subsection (2), the Minister shall notify such persons as he considers appropriate or necessary in the circumstances and service of notification may be effected in such

other manner as the Minister considers appropriate or necessary in the circumstances, and the rule shall apply only to the persons so notified.

(4) An ordinary rule shall come into force on the date of its notification in the National Gazette or on such later day as may be specified in the rule or under Section 69(4) or, where notified by service on any person under Subsection (3), immediately upon service of the rule upon that person and in respect of that person only.

#### **77. PROCEDURE FOR MAKING EMERGENCY RULES.**

(1) Before making an emergency rule, the Director may consult with such persons, representative groups within the aviation industry or elsewhere, Departments and State agencies as the Director in each case considers appropriate.

(2) Subject to Subsection (4), an emergency rule shall be notified in the National Gazette and be made available by the Authority to members of the public at the Registry for inspection free of charge and purchase at a reasonable fee set by the Director.

(3) An emergency rule shall come into force immediately upon its being notified in the National Gazette, or, where notified by service on any person under Subsection (4), immediately upon service of notification upon that person and in respect of that person only.

(4) Where for reasons of safety or security it is impracticable or inappropriate to notify an emergency rule under Subsection (2), the Director shall notify such persons as he considers appropriate or necessary in the circumstances and service of such notification may be effected by facsimile, telephone or such other manner as the Director considers appropriate or necessary in the circumstances.

(5) An emergency rule may be in force for a period not exceeding 90 days and may be renewed by the Director once only for a further period not exceeding 30 days.

(6) The Minister may, at any time while an emergency rule is in force in accordance with Subsection (5), by notice in the National Gazette, renew the rule in accordance with Subsection (6) for a further period not exceeding 180 days from the date of notification.

(7) Before renewing an emergency rule under Subsection (5), the Minister shall consult with such persons, representative groups within the aviation industry or elsewhere, Departments and State agencies as the Minister considers appropriate.

(8) So far as any emergency rule is inconsistent or repugnant to any ordinary rule made under this Act, the emergency rule shall prevail.

#### **78. INCORPORATION BY REFERENCE.**

(1) The following may be incorporated by reference into a rule made by the Minister or the Director:—

- (a) standards, requirements or recommended practices of international aviation organizations;
  - (b) standards, requirements or rules prescribed under law by any other Contracting State of ICAO;
  - (c) standards, requirements or rules of any aviation sport or aviation recreational organization;
  - (d) any other written material or document that, in the opinion of the Minister or the Director, as the case may be, is too large or impractical to be printed as part of the rule.
- (2) Unless otherwise provided in the rule:
- (a) any material incorporated in a rule by reference under Subsection (1); and
  - (b) an amendment to any material so incorporated by reference that is made by the person or organization originating the material, subject to Subsections (3) and (4),

shall be deemed to be part of the rule.

(3) The Director shall, by notice in the National Gazette, specify the date on which an amendment to material incorporated by reference under Subsection (1) shall take effect.

(4) All material incorporated by reference under Subsection (1) or (2) shall be made available at the Registry for inspection free of charge or for purchase at a reasonable cost.

## **79. EXEMPTION POWER OF DIRECTOR.**

(1) The Director may, where he considers it appropriate and upon such conditions as he considers appropriate, exempt any person, aircraft, aeronautical product, aerodrome or aviation related service from any specified requirement in any rule made under Section 70, 71 or 72.

(2) Before granting an exemption under Subsection (1), the Director shall be satisfied in the circumstances of each case that –

- (a) the requirement has been substantially complied with and that further compliance is unnecessary; and
- (b) the action taken or provision made in respect of the matter to which the requirement relates is as effective or more effective than actual compliance with the requirement; and
- (c) the prescribed requirements are clearly unreasonable or inappropriate in the particular case; and
- (d) events have occurred that make the prescribed requirements unnecessary or inappropriate in the particular case; and

(e) the risk to safety will not be significantly increased by the granting of the exemption.

(3) The number and nature of exemptions granted under Subsection (1) shall be notified as soon as practicable in the National Gazette.

(4) Nothing in this section shall apply in a case where any rule specifically provides that no exemptions are to be granted.

**PART VII. – SERVICE POLICIES, CHARGES, LEVIES, FEES AND LIENS.*****Division 1.******Interpretation.*****80. INTERPRETATION.**

In this Part, unless the context otherwise requires:

**“airfield-activities”** means the activities undertaken (including the facilities and services provided) to enable the landing and take-off of aircraft, and includes:

- (a) the provision of any one or more of the following:–
  - (i) airfields, runways, taxiways and parking aprons for aircraft;
  - (ii) facilities and services for air traffic and parking apron control;
  - (iii) airfield and associated lighting;
  - (iv) services to maintain and repair airfields, runways, taxiways and parking aprons for aircraft;
  - (v) rescue, fire, safety and environmental hazard control services;
  - (vi) airfield supervisory and security services; and
- (b) the holding of any facilities and assets (including land) acquired or held to provide airfield activities in the future (whether or not used for any other purpose in the meantime);

**“aviation service provider”** means the Authority, PNG ATS or any airport authority or an airport company;

**“charge”** means the amount payable to an aviation service provider under this Part for a service or the use or availability of any service or facility provided by the aviation service provider and does not include any amount payable under a contract, agreement or any other Act;

**“claimant”** means an aviation service provider to whom an owner owes an outstanding amount;

**“owner”**, in respect of an aircraft, includes:

- (a) the person in whose name the aircraft is registered; and
- (b) the operator of the aircraft; and
- (c) a person in possession of an aircraft as purchaser under a conditional sale or hire-purchase agreement that reserves to the vendor the title to the aircraft until payment of the purchase price or the performance of certain conditions; and

- (d) a person in possession of the aircraft as chattel mortgagor under a chattel mortgage; and
- (e) a person in possession of the aircraft under a *bona fide* lease or agreement of hire;

**“outstanding amount”** means:

- (a) the amount of any charge payable by a person being an owner of the aircraft, that is unpaid at that time; and
- (b) the amount of any penalty that is unpaid at that time, to the extent that any such amounts have not been remitted, waived or written off;

**“services”** means the provision in Papua New Guinea of any one or more of the following:–

- (a) airfield activities;
- (b) specified passenger terminal activities;
- (c) air traffic services, aeronautical navigation services, navigation installations, aeronautical meteorological services, aeronautical information services and aeronautical communication services;
- (d) civil aviation safety regulation services;
- (e) aviation security services;
- (f) all ancillary services, facilities and equipment used in association with the services referred to in Paragraphs (a) to (e) inclusive;

**“specified passenger terminal activities”** mean the activities undertaken (including the facilities and services provided) in relation to aircraft passengers while those passengers are in a security area or areas of the relevant airport, and include:

- (a) the provision, within a security area or security areas of the relevant airport, of any one or more of the following:–
  - (i) passenger seating areas, thoroughfares and airbridges;
  - (ii) flight information and public address systems;
  - (iii) facilities and services for the operation of customs, immigration and quarantine checks and control;
  - (iv) facilities for the collection of duty-free items;
  - (v) facilities and services for the operation of security and Police services;
- (b) any activities undertaken (including the facilities and services provided) in a passenger terminal to enable the check-in of aircraft passengers, including services for baggage handling;

- (c) the holding of any facilities and assets (including land) acquired or held to provide specified passenger terminal activities in the future (whether or not used for any other purpose in the meantime);

but does not include the provision of any space for retail activities.

### ***Division 2.***

#### ***Service Policies and Directions.***

#### **81. SERVICE POLICIES TO BE ESTABLISHED.**

(1) An aviation service provider shall, within one year after the coming into operation of this Act or its commencement of business, whichever is the later, established policies consistent with this Act concerning the levels of services it provides.

(2) Subject to this Act, an aviation service provider shall apply its level of service policies in a consistent manner.

(3) An aviation service provider:

- (a) may revise its level of service policies from time to time; and
- (b) shall publish the level of service policies established or revised under this section.

(4) Where services are requested in excess of the levels provided for in the level of service policies, an aviation service provider is not required to provide those additional services unless the person requesting them establishes through written evidence that a majority of the users who will be affected in a material way by the provision of the additional services agreed to the provision of the additional services.

(5) For the purpose of Subsection (4), a user shall be considered to be affected by the provision of additional services only where, in the opinion of the Director acting reasonably and in good faith, the user is likely to use the additional services, pay more for the service that is to be increased and experience a change in service as a result of the provision of the additional services.

(6) Before establishing level of service policies or revising those policies, an aviation service provider shall give notice of its proposal to establish or revise the policies, as the case may be, in the National Gazette.

#### **82. NO UNDUE DISCRIMINATION, UNIVERSAL SERVICE AND QUALITY OF SERVICE.**

(1) It is a duty of an aviation service provider:

- (a) subject to Subsection (2), not to discriminate unduly against or among various users or category of users; and
- (b) subject to Subsection (2), to provide uniform and equal access to its services to similar users; and

- (c) subject to Subsection (2), to conduct its business in such a manner as to ensure that it does not engage in any restrictive trade practice; and
- (d) to consult with its substantial customers on major changes in the provision of services and facilities; and
- (e) to ensure that the services provided by it meet the standards established under this Act or regulations or rules made under it; and
- (f) to have due regard to the efficiency, economy and safety of operations in respect of services provided by it.

(2) An aviation service provider may withhold or deny services to a user where there are outstanding amounts due to the aviation service provider, provided that an aviation service provider or any of its employees do not endanger an aircraft or its passengers in so withdrawing or denying services.

(3) A person affected by a breach or potential breach of any duty set out in this section may make application to the National Court for such relief as the Court considers just in the circumstances.

### **83. DIRECTIONS.**

(1) The Head of State, acting on the advice of the Minister, may give directions in writing to an aviation service provider to provide services to civil aviation at or in respect of remote areas designated in the directions.

(2) Where Papua New Guinea is obliged, pursuant to an international agreement, to provide services to civil aviation in a certain manner or to a certain extent, the Head of State, acting on the advice of the Minister, may give directions in writing to an aviation service provider requiring it to provide services in that manner or to that extent.

(3) The Head of State, on the recommendation of the Minister responsible for defence matters, may give directions in writing to an aviation service provider to provide services to civil aviation where the Head of State is of the opinion that it is in the interest of national security to do so.

(4) Before a direction is given under this section, the appropriate Minister shall consult with the aviation service provider as to its content and timing.

(5) An aviation service provider shall ensure that every direction it receives is implemented as soon as practicable.

(6) Compliance by an aviation service provider with a direction is deemed to be in the best interests of an aviation service provider and shall not constitute a breach of a duty under Section 82.

(7) Immediately after implementing a direction, an aviation service provider shall notify the appropriate Minister to that effect.



**84. COMPENSATION.**

(1) The appropriate Minister shall compensate an aviation service provider for any financial loss determined in accordance with Subsection (2) that it has sustained or will sustain in complying with a direction under Section 83 and for that purpose, the Minister may require an audit of the books and records of an aviation service provider to determine the amount of that financial loss.

(2) The financial loss for which compensation is payable under this section is the amount by which the incremental costs to the aviation service provider resulting from complying with the direction exceed the incremental revenues generated by the provision of the services.

(3) The amount of compensation under this section shall be paid out of money appropriated by Parliament for the purpose.

*Division 3.*

*Imposition of Charges for Certain Services.*

**85. CHARGES FOR AVAILABILITY OR PROVISION OF SERVICES.**

(1) Without limiting the ability of an aviation service provider to enter into contracts or other rights to raise revenues under this or any other Act, regulation or power, an aviation service provider may impose charges under this Part on a user for the availability or provision of services provided by it or another aviation service provider.

(2) No charge may be imposed under Subsection (1):

- (a) on a user who is a person acting under the authority of the Minister responsible for defence matters; or
- (b) on a user in respect of a state aircraft of a foreign country, unless the foreign country has been designated under Subsection (3).

(3) The Head of State, acting on advice, may, by notice in the National Gazette, designate a country in respect of which charges may be imposed for the purpose of Subsection (2).

(4) A charge imposed on a user under Subsection (1) is deemed to be in respect of all aircraft operated by that user.

**86. INITIAL CHARGES.**

(1) Subject to this Act, the charges imposed by an aviation service provider for services shall be the charges that were imposed immediately before the commencement of this Act or at the commencement, whichever is the later, for the provision of those services whether imposed by regulation, agreement, contract or any other means.

(2) For the purposes of this section, charges imposed under Subsection (1) are not new charges for services or revised charges.

**87. NEW AND REVISED CHARGES.**

(1) Subject to this Act, an aviation service provider may, on or after the date of coming into operation of this Act, establish new charges for services and revise existing charges, including a charge referred to in Section 86(1).

(2) An aviation service provider is deemed to be revising an existing charge each time the Kina amount of the charge changes.

**88. CHARGING PRINCIPLES.**

(1) An aviation service provider shall observe the following principles when establishing a new charge for services or revising an existing charge:—

- (a) charges shall be in accordance with a methodology established and published by an aviation service provider that is explicit and that also includes the terms and conditions affecting charges;
- (b) charges shall not be structured in such a way that a user would be encouraged to engage in practices that diminish safety for the purpose of avoiding a charge;
- (c) charges for the same services shall not differentiate between domestic and international flights;
- (d) charges for the same services shall not differentiate among Papua New Guinea persons or among foreign persons or between them;
- (e) charges shall differentiate between the provision of services which are substantially different but do not need to differentiate:
  - (i) on an individual service, flight or facility basis; or
  - (ii) on the basis that a user has or has not used a service or facility that was or was not available;
- (f) charges shall reflect a reasonable allocation of the costs of providing the services;
- (g) charges in respect of recreational and private aircraft shall not be unreasonable or undue;
- (h) charges shall be consistent with the international obligations of Papua New Guinea; and
- (i) charges shall not be set at a level that, based on reasonable and prudent projections, would generate revenues exceeding an aviation service provider's current and future financial requirements in relation to the provision of services.

(2) The charging methodology referred to in Subsection (1)(a) may recognize that the value of the services differs among users.

(3) Where the charging methodology of an aviation service provider recognizes the value of the services and aircraft weight is used as a measure of the value of the services, the charging methodology may use aircraft weight either:

- (a) directly proportionally; or
- (b) less than directly proportionally; or
- (c) in a combination of the factors in Paragraphs (a) and (b),

without breaching the charging principles referred to in Subsection (1).

(4) For the purposes of Subsection (3), “weight”, in relation to an aircraft, means the maximum permissible take-off weight specified in the aircraft manufacturer’s certificate of airworthiness or in a document referred to in that certificate.

(5) For the purpose of Subsection (1)(i), the financial requirements of an aviation service provider in relation to the provision of services include, without duplication, an aviation service provider’s:

- (a) costs incurred in establishing the aviation service; and
- (b) operations and maintenance costs; and
- (c) management and administration costs; and
- (d) debt servicing requirements and financial requirements arising out of contractual arrangements relating to the borrowing of money; and
- (e) depreciation costs on capital assets; and
- (f) a reasonable return on the equity of investment of the aviation service provider; and
- (g) financial requirements necessary for an aviation service provider to maintain an appropriate credit rating; and
- (h) tax liability; and
- (i) reasonable reserves for future expenditures and contingencies; and
- (j) other costs determined in accordance with generally accepted accounting principles for commercial enterprises,

to the extent that they relate to the provision of those services, less the amount determined in accordance with Subsection (6).

(6) The amount to be deducted for the purpose of Subsection (5) is the aggregate of:

- (a) all grants, contributions and subsidies of a monetary nature received by the aviation service provider for the provision of the services; and
- (b) all interest income and investment income earned by the aviation service provider.

(7) A category of users may be charged on a flat-fee basis so long as the charge is otherwise consistent with the charging principles set out in Subsection (1).

**89. NOTICE OF NEW OR REVISED CHARGE.**

(1) Where an aviation service provider proposes to establish a new charge or revise an existing charge, it shall give notice of the proposal in accordance with this section.

(2) A notice under Subsection (1) shall:

- (a) set out the particulars of the proposal; and
- (b) specify that a document containing more details about the proposal, including a justification for the proposal in relation to the charging principles set out in Section 88, can be obtained from the aviation service provider on request; and
- (c) specify that persons interested in making representations in writing to an aviation service provider about the proposal may do so by writing to the address set out in the notice.

(3) An aviation service provider shall:

- (a) send, by mail or by electronic means, a copy of a notice under this section to:
  - (i) representative organizations of users whose members will, in the opinion of an aviation service provider, be affected by the new or revised charge; and
  - (ii) every user and other person who has, at least 10 days before,  
notifying an aviation service provider of their desire to receive notices or announcements under this Act; and
- (b) post an electronic version of the notice in a location that is generally accessible to persons who have access to what is commonly referred to as the Internet,

and, after having done so, an aviation service provider shall file a copy of the notice with the Departmental Head.

**90. ANNOUNCEMENT OF NEW OR REVISED CHARGE.**

(1) Before imposing a new charge for services or a revised charge, an aviation service provider shall make an announcement in accordance with this section.

(2) A new or revised charge set out in an announcement may be different from the charge as proposed in the notice required under Section 89 where, based on reasonable and prudent projections, the total annual revenue to be generated by the announced charge is no greater than the total annual revenue to be generated by the charge as proposed in the notice.

(3) An announcement under this section shall:

- (a) set out the new or revised charge; and
- (b) specify when the new or revised charge will become effective; and

- (c) contain a statement that the charge may be appealed on application to the Departmental Head; and
  - (d) where Subsection (2) applies:
    - (i) specify that the charge set out in the announcement is different from the charge set proposed in the notice required under Section 89; and
    - (ii) specify that the total annual revenue to be generated by the charge set out in the announcement is no greater than the total annual revenue that would have been generated by the charge as proposed in the notice; and
    - (iii) state that details in relation to an aviation service provider's projection of the revenues referred to in Subparagraph (ii) can be obtained from an aviation service provider on request.
- (4) An aviation service provider shall:
- (a) send, by mail or by electronic means, a copy of the announcement to:
    - (i) representative organizations of users whose members will, in the opinion of an aviation service provider, be affected by the new or revised charge; and
    - (ii) every user and other person who has, at least 10 days before, notified an aviation service provider of their desire to receive notices or announcements under this Act; and
  - (b) post an electronic version of the announcement in a location that is generally accessible to persons who have access to what is commonly referred to as the Internet,

and, after having done so, an aviation service provider shall file a copy of the announcement with the Departmental Head.

(5) The announcement may only be made after 60 days have expired since the day the notice required under Section 89 was filed with the Departmental Head.

## **91. WHEN CHARGE CAN BE IMPOSED.**

An aviation service provider may only impose a new charge for services or a revised charge, after 10 days have expired since the day the announcement in relation to the new or revised charge was filed with the Departmental Head.

## **92. APPEALS AGAINST CHARGES.**

- (1) A:
- (a) user; or
  - (b) group of users; or
  - (c) representative organization of users,

may appeal to the Departmental Head in accordance with this section against charges established under this Part by an aviation service provider.

(2) An appeal under Subsection (1):

- (a) shall be in the form and manner determined by the Departmental Head; and
- (b) shall be made only on one or more of the following grounds:—
  - (i) that one or more of the charging principles set out in Section 88 have not been observed in establishing the charge;
  - (ii) that the notice requirements in Section 89 have not been complied with;
  - (iii) that the announcement requirements in Section 90 have not been complied with;
  - (iv) where Section 90(2) applies, that, based on reasonable and prudent proportions, the total annual revenue to be generated by the announced charge is greater than the total annual revenue to be generated by the charge as proposed in the notice; and
- (c) subject to Subsection (3), shall be made within 30 days after the day the announcement required by Section 90 in respect of the charge that is the subject of the appeal was filed with the Departmental Head.

(3) Where:

- (a) no notice of a proposal to establish a new charge or revise an existing charge by an aviation service provider has been given under Section 89, but an announcement of the proposal has been made under Section 90 - an appeal against the charge shall be made within 60 days after the announcement was made with the Departmental Head; and
- (b) no notice of a proposal to establish a new charge or revise an existing charge by an aviation service provider has been given under Section 89 and no announcement has been made under Section 90 - an appeal against the charge may be made at any time.

### **93. EFFECT OF APPEAL.**

An appeal does not prevent the charge that is the subject of the appeal from becoming effective or prevent an aviation service provider from imposing the charge pending the outcome of the appeal, and neither the Departmental Head nor any court may make an order that prevents the charge from becoming effective or an aviation service provider from imposing the charge.

### **94. TIME FOR DECIDING APPEAL.**

(1) The Departmental Head shall decide an appeal as expeditiously as possible, but no later than 60 days after it is made, unless he is of the opinion that there are

special circumstances involved in the determination of the appeal, in which case he has a further 30 days to decide the appeal.

(2) Where the Departmental Head does not decide the appeal within the time permitted it shall be deemed to be a decision by him in favour of the aviation service provider.

**95. NOTIFICATION OF DECISION.**

At the conclusion of an appeal, the Departmental Head shall provide the parties to the appeal with written reasons for his decision.

**96. PREPONDERANCE OF EVIDENCE.**

The Departmental Head shall only decide to allow an appeal based on the failure of an aviation service provider to observe a charging principle where he is satisfied on a preponderance of evidence that an aviation service provider failed to observe that charging principle.

**97. ORDER IF CHARGING PRINCIPLES NOT OBSERVED OR NO NOTICE OR ANNOUNCEMENT.**

(1) Where the decision of the Departmental Head is that one or more of the charging principles set out in Section 88 have not been observed in establishing a new charge or revising an existing charge or that no notice under Section 89 was given or no announcement under Section 90 was made in respect of a new or revised charge, he shall:

- (a) order the aviation service provider to cancel the new charge that is the subject of the appeal and refund the amount of the cancelled charge to each user who paid it; or
- (b) order the aviation service provider to cancel the revised charge that is the subject of the appeal, re-establish the previous charge and refund to each user who paid the cancelled charge the amount, if any, collected in excess of the re-established charge; or
- (c) order the aviation service provider to reduce the revised charge that is the subject of the appeal to a level not lower than the previous charge with effect from the date of the order, and refund to each user who has paid the cancelled charge the amount, if any, collected in excess of the re-established charge.

(2) Where the decision of the Departmental Head is that the requirements in Section 89 or 90 have not been fully complied with in respect of a new or revised charge, he may make such order, including an order requiring refunds, as he considers appropriate in the circumstances, having regard to the seriousness of the non-compliance.

(3) Where the decision of the Departmental Head is that, based on reasonable and prudent projections, the total annual revenue to be generated by a charge set out

in an announcement required under Section 90 is greater than the total annual revenue to be generated by the charge as proposed in the notice required under Section 89, he shall –

- (a) order the aviation service provider to cancel the new charge that is the subject of the appeal and refund the amount of the cancelled charge to each user who paid it; or
- (b) order an aviation service provider to cancel the revised charge that is the subject of the appeal, re-establish the previous charge and refund to each user who paid the cancelled charge the amount, if any, collected in excess of the re-established charge; or
- (c) order the aviation service provider to reduce the revised charge that is the subject of the appeal to a level not lower than the previous charge with effect from the date of the order, and refund to each user who has paid the cancelled charge the amount, if any, collected in excess of the re-established charge.

(4) Where an aviation service provider is ordered to refund amounts, it may do so by way of credit or payment.

#### **98. CREDITING AMOUNTS.**

(1) Each time a user who is entitled to a refund under an order of the Departmental Head is charged by an aviation service provider for service, the aviation service provider shall credit the user an amount not less than 10% of the charge, until the entire amount owing to the user is refunded.

(2) The aviation service provider shall refund the entire amount owing to each user within two years after the date of the order of the Departmental Head.

#### **99. DECISION FINAL.**

A decision of the Departmental Head pursuant to an appeal is final and binding and, notwithstanding any other Act of Parliament or rule of law, no appeal lies from the decision.

#### **100. AIRCRAFT OWNER AND OPERATOR HAVE JOINT AND SEVERAL LIABILITY.**

The owners of an aircraft are jointly and severally liable for the payment of any charge for services imposed by an aviation service provider in respect of the aircraft.



***Division 4.***  
***Fees and Charges by Regulation.***

**101. FEES AND CHARGES.**

(1) In this section “costs” includes any depreciation, capital charge or profit or return on investment of the aviation service provider.

(2) Nothing in this Part limits the power of the aviation service provider to enter into contracts or make arrangements for the provision of services for valuable consideration.

(3) Without limiting the generality of the power to make regulations conferred by Section 322, but subject to the provisions of this section, the Head of State, acting on advice, may, from time to time make regulations prescribing or providing for the fixing of fees and charges payable for all or any of the following purposes:—

- (a) the provision of funds for the establishment, maintenance and operation of works, facilities and services under this Act;
- (b) the defrayal of the costs and expenses incurred by the aviation service provider or its officers and employees in the exercise of functions, powers and duties and in providing services, under this Act;
- (c) generally for the purposes of civil aviation.

(4) Different rates of fees and charges may be so prescribed or fixed in respect of different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services, air traffic services or aeronautical procedures, or on the basis of different times of use, or on any other differential basis.

(5) A regulation made under this section may:

- (a) specify the persons by whom and to whom any fees or charges are payable; and
- (b) prescribe penal or overtime or additional fees or charges or rates for work or services carried out outside normal working hours or at weekends or on statutory holidays; and
- (c) prescribe additional charges for reimbursement of traveling time, accommodation and other expenses; and
- (d) require returns to be made by persons by whom any fees or charges are payable, and prescribe conditions relating to the making of such returns; and
- (e) provide for the refund or waiver of any fee or charge in whole or in part, in any specified case or class of cases.

(6) Fees and charges in respect of the use of any airport operated or managed by an airport authority shall not be prescribed, except where the National Executive Council has considered recommendations of the Minister given after consultation with the airport authority.

**102. PAYMENT OF FEES AND CHARGES.**

(1) Except as otherwise provided in regulation made under this Act, application under this Act shall be accompanied by payment of all relevant prescribed fees and charges.

(2) A regulation made under this Act may:

- (a) prescribe a date by which any fee or charge is payable or authorize an aviation service provider to fix the date by which the fee or charge is payable; and
- (b) provide for a discount for early payment of any fee or charge or an additional fee for late payment, or both, on an equal basis to persons liable to pay the fee or charge.

**103. SUSPENSION OR REVOCATION OF AVIATION DOCUMENT FOR FAILURE TO PAY FEES OR CHARGES.**

(1) The Director may suspend an aviation document where all fees and charges payable in respect of that document under this Act have not been paid within the time prescribed or fixed for payment of those fees and charges, and the Director may revoke that document where such fees and charges remain unpaid for a period of at least six months after the day on which payment is due.

(2) Before suspending or revoking an aviation document under Subsection (1), the Director shall notify the holder of the document of:

- (a) the Director's intention to suspend or revoke the document; and
- (b) the right of appeal available to the holder in the event of the document being suspended or revoked.

(3) Where a fee or charge is payable as part of an application or for the provision of a service, the Director or other person asked to process the application or provide the service may, unless the safety of any person would be put at risk, decline to do so unless the appropriate fee or charge has been paid or arrangements acceptable to the Director or other person have been made for the fee or charge to be paid.

(4) A person in respect of whom any decision is taken under Subsection (1) may appeal against that decision to the National Court under Section 310.

**104. RECOVERY OF FEES AND CHARGES FOR AVIATION RELATED SERVICES.**

(1) Subject to Subsection (2), where a fee or charge is payable under this Act in respect of any function, power, duty, or service carried out or provided by an aviation service provider in relation to an aircraft, the owner, and each of them severally are liable to pay that fee or charge.

(2) A person who would otherwise be liable to pay a fee or charge in relation to an aircraft in terms of Subsection (1) as an operator shall not be so liable where that person:

- (a) proves that during any relevant period of use of the aircraft that person was not entitled, whether alone or together with some other person, to possession of the aircraft or that another person was unlawfully in possession of it; and
- (b) has taken all reasonable steps to supply the aviation services provider with such information as would identify the actual user.

***Division 5.***

***Levies for Civil Aviation Purposes.***

**105. IMPOSITION OF LEVIES.**

(1) Subject to Subsection (3), for the purpose of enabling the Authority to carry out its functions under this Act and any other Act, the Head of State, acting on advice, may from time to time, on the recommendation of the Minister, by order impose on all or any of the persons referred to in Subsection (2) a levy payable to the Authority, and may in the same manner vary any such order.

(2) A levy may be imposed under Subsection (1) on:

- (a) the holders of aviation documents of any class or classes specified in the order; and
- (b) persons who, but for an exemption granted under this Act, would be required by this Act to hold an aviation document of the class or classes specified in the order.

(3) The Minister shall not make any recommendation under Subsection (1) unless:

- (a) the recommendation has been made at the request and with the concurrence of the Authority; and
- (b) he is satisfied that the income of the Authority from other sources is not or will not be sufficient to enable it to perform its functions under this Act without the imposition of a levy at the rate recommended; and
- (c) he is satisfied that the Authority has consulted with such persons, representative groups within the aviation industry or elsewhere, Departments and State agencies as he considers appropriate.

**106. BASIS OF WHICH LEVIES MAY BE IMPOSED.**

(1) Different rates of levies may be imposed or varied under Section 106 in respect of different classes of persons, aerodromes, aircraft, aeronautical products, or aviation related services or on the basis of different times of use or on any other differential basis.

(2) The rate of a levy imposed or varied under Section 106 may be calculated according to any one of, or any combination of one or more of, the following factors:—

- (a) the quantity of aviation fuel purchased by a person;
- (b) the number of passengers able to be carried on an aircraft;
- (c) the number of passengers actually carried on an aircraft;
- (d) the amount of freight able to be carried on an aircraft;
- (e) the amount of freight actually carried on an aircraft;
- (f) the distance flown by an aircraft;
- (g) aircraft size or capacity;
- (h) passengers or arriving or departing passengers using an airport;
- (i) the purpose for which an aircraft or aeronautical product is used or for which an aviation related service is supplied;
- (j) any other basis whatever that relates to the use, capacity or size of:
  - (i) an aircraft; or
  - (ii) an aeronautical product; or
  - (iii) an aviation related service; or
  - (iv) a privileges exercisable under an aviation document; or
  - (v) an airport; or
  - (vi) the air traffic services or air navigation system.

#### **107. LEVY ORDERS TO BE CONFIRMED.**

(1) An order made under Section 105 shall be laid before the Parliament not later than the tenth sitting day of the Parliament after the day on which it is made.

(2) An order under Section 105 shall expire on the close of the 31 December in the following year except so far as it is expressly validated or confirmed by Act of Parliament passed before the end of that following year.

(3) Where an order made under Section 105 expires by virtue of Subsection (2), the following provisions shall apply:—

- (a) every levy imposed or increased or decreased by the order shall thereupon cease to be payable;
- (b) the expiry of the order does not affect the liability of any person to pay any amount under the order, so long as the liability was incurred while the order was in force; and
- (c) where a payment of levy under the order has been made in error or in excess of the amount payable, then, except so far as any provision is made by any other Act in respect thereof, the person in respect of whom the payment was made shall, upon application made to the Authority,

be entitled to a refund of the amount paid in error or in excess of the amount payable.

(4) An application under Subsection (3)(c) shall be in a form provided for the purpose by the Authority and shall contain such information as the Authority considers necessary to enable the refund to be made in accordance with this section.

(5) The repeal of an Act passed for the purpose of expressly validating or confirming an order pursuant to Subsection (2) shall not, unless there is any express provision to the contrary, affect the validity or confirmation of those orders.

#### **108. OTHER PROVISIONS RELATING TO LEVIES.**

(1) A levy imposed under Section 105 shall be paid to the Authority to be applied by the Authority in performing its functions under this Act.

(2) An order made under Section 105 may:

- (a) specify the persons by whom a levy is payable and the place at which it is payable; and
- (b) prescribe a date by which a levy is payable or authorize the Authority to fix the date by which the levy is payable; and
- (c) require returns to be made by persons by whom a levy is payable, and prescribe conditions relating to the making of such returns.

(3) A levy imposed under Section 105 is a charge payable under this Part.

(4) An order under Section 105 shall come into effect on the date specified in a notice published in the National Gazette.

#### ***Division 6.***

#### ***Liens.***

#### **109. CLAIMANT MAY CLAIM LIEN ON AIRCRAFT.**

(1) Where a default is made by an owner or operator of an aircraft in the payment to the claimant of any charge, the claimant may, subject to the provisions of this Part, take such steps as are necessary to detain, pending payment, either:

- (a) the aircraft in respect of which the charge was incurred (whether or not it was incurred by the person who is the owner or operator of the aircraft at the time when the detention begins); or
- (b) any other aircraft of which the person in default is the owner or operator at the time when the detention begins.

(2) The claimant shall not detain, or continue to detain, an aircraft under this Division by reason of any alleged default in the payment of any charge payable to the claimant under this section where the owner or operator of the aircraft or any other person claiming an interest therein:

- (a) disputes that the charge is due or, where the aircraft is detained under Subsection (1)(a), that the charge was incurred in respect of that aircraft; and
- (b) gives to the claimant, pending the determination of the dispute, sufficient security for the payment of the charge which is alleged to be due.

**110. NOTIFICATION OF AIRCRAFT LIEN.**

Where the claimant under Section 109 detains an aircraft pursuant to this Part, the claimant shall notify the Director and the Director shall:

- (a) forthwith thereafter make an entry in the Register in the manner prescribed under Section 111; and
- (b) take all reasonable steps to give notice of detention to:
  - (i) each of the following person namely:–
    - (A) owner;
    - (B) operator;
    - (C) lessee;
    - (D) hirer;
    - (E) charterer or pilot-in-command,  
of the aircraft; and
  - (ii) such persons as, in the opinion of the Director, have a security interest in the aircraft.

**111. DIRECTOR TO ENTER LIEN IN REGISTER.**

The Director shall enter in the Register in relation to each aircraft to which this Division applies:

- (a) the description and amount of the charge due to the claimant and from whom it is due; and
- (b) the name and address for service of the claimant; and
- (c) the date on which and the time at which the aircraft was detained by the claimant; and
- (d) the date on which and the time at which the entry is made.

**112. EFFECT OF LIEN.**

(1) Where an entry is made by the Director under Section 111, an aircraft lien shall be vested in the claimant and it may keep possession of the aircraft until all outstanding amounts are paid.

(2) An aircraft lien vested in the claimant shall secure:

- (a) the unpaid charge; and
- (b) any penalty that is or becomes payable in respect of the unpaid charge; and
- (c) any further outstanding amounts in respect of the aircraft.

**113. CANCELLATION OF REGISTRATION.**

(1) In the case of a Papua New Guinea aircraft, where an outstanding amount secured by an aircraft lien is unpaid:

- (a) at the end of six months after the day on which it became an outstanding amount; or
- (b) on the day on which the aircraft lien was registered,

whichever is the later, the Director may, having regard to all the circumstances, including the steps, if any, taken by a person to pay the whole or part of the outstanding amounts secured by the aircraft lien, cancel the certificate of registration of the aircraft in the Register.

(2) Where a certificate is cancelled under Subsection (1), the aircraft shall not be re-registered until the aircraft lien ceases to have effect.

**114. SALE OF AIRCRAFT SUBJECT TO LIEN.**

(1) Where an outstanding amount secured by an aircraft lien is unpaid at the end of one month after the date on which the aircraft lien was registered, the claimant may at any time, with the leave of the National Court, sell the aircraft.

(2) No leave shall be granted by the National Court for the sale of the aircraft except on proof that:

- (a) a sum is due to the claimant for charges; and
- (b) default has been made in the payment thereof; and
- (c) the claimant has complied with Section 115.

**115. PROCEDURE BEFORE SALE.**

(1) The claimant shall, before applying to the National Court for leave to sell an aircraft under this Part, take the steps required under this section for bringing the proposed application to the notice of interested persons and for affording them an opportunity of becoming a party to the proceedings.

(2) At least 21 days before applying to the National Court, the claimant shall publish in one or more national newspapers circulating in Port Moresby such notice as is required by Subsection (3), and shall also, unless in each case it is impracticable to do so, serve a notice, in the manner so prescribed, on each of the following persons:—

- (a) the owner of the aircraft as specified in the Register;
  - (b) the person who appears to the Director to be the operator of the aircraft;
  - (c) the person who appears to the Director to be a charterer or hirer of the aircraft;
  - (d) any person who is registered as a mortgagee of the aircraft under the Register;
  - (e) any other person who appears to the Director to have a priority interest in the aircraft.
- (3) A notice under Subsection (1) shall:
- (a) state the nationality and registration marks of the aircraft; and
  - (b) state the type of aircraft; and
  - (c) state that by reason of default in payment of a sum due to the claimant, the claimant on a date which shall be specified in the notice, detained the aircraft under Section 109 and, unless payment of the sum so due is made within a period of 60 days from the date when the detention began, or within 21 days of the date of service of the notice, whichever shall be the later, will apply to the National Court for leave to sell the aircraft; and
  - (d) invite the person to whom the notice is given to inform the claimant within 14 days of the service of the notice if he wishes to become a party to the proceedings on the application.
- (4) Notice under Subsection (3) shall be served on the person:
- (a) by delivering it to him; or
  - (b) by leaving it at his usual or last known place of business or abode; or
  - (c) by sending it by post in a prepaid registered letter addressed to him at the last known address shown on the Register or at his usual or last known place of business or abode; or
  - (d) where the person to whom a notice under Subsection (3) is to be sent is a claimant or body corporate, by delivering it to the registered address or principal office address of the claimant or body corporate or sending it by post in a prepaid registered letter.

#### **116. ADVERTISING OF SALE.**

(1) Where leave is given by the National Court, the claimant shall cause a notice to sell the aircraft to be published in the National Gazette and at least twice in a regularly circulating national newspaper and shall ensure that the aircraft is sold for the best price that can be reasonably obtained.

(2) A sale of any aircraft pursuant to a leave given by the National Court shall be further subject to such conditions as the National Court may, as it thinks just, impose.



**117. PROCEEDS OF SALE.**

The proceeds of any sale under this Part shall be applied as follows, and in the following order:–

- (a) in payment of any customs duty which is due in consequence of the aircraft having been brought into Papua New Guinea;
- (b) in payment of the expenses incurred by the claimant in detaining, keeping and selling the aircraft, including its expenses in connection with the application to the National Court and the keeping of the insurance required under Section 124;
- (c) in payment of the outstanding amounts due to the claimant in respect of any aircraft which the National Court has found to be due by virtue of this Part;
- (d) in payment of any outstanding amounts incurred in respect of the aircraft which are due from the operator of the aircraft to any other aviation service provider;
- (e) the surplus, if any, shall be paid to or among the person or persons whose interests in the aircraft have been divested by reason of the sale.

**118. SALE TO INCLUDE STORES, DOCUMENTS, ETC.**

The power of detention and sale conferred by the provisions of this Part in respect of an aircraft extends to:

- (a) the equipment of the aircraft and any stores for use in connection with its operation (being equipment and stores carried in the aircraft) whether or not the property of the person who is its operator, and references to the aircraft in Section 109 to 124 include, except where the context otherwise requires, references to any such equipment and stores; and
- (b) any aircraft document carried in it or associated with it, and any such documents may, where the aircraft is sold under those provisions, be transferred by the claimant to the purchaser.

**119. CLAIMANT'S OTHER RIGHTS.**

Nothing in this Part shall prejudice any right of the claimant to recover any outstanding amounts or any part thereof by action.

**120. DISCHARGE OF LIEN.**

Where:

- (a) there is no outstanding amount secured by an aircraft lien; or
- (b) the aircraft is sold under the provisions of this Part; or
- (c) the Director directs in writing that an aircraft lien ceases to have effect,

the aircraft lien shall cease to have effect, and the Director shall make an entry in the Register as prescribed.

### **121. ADVICE OF LIEN.**

(1) In this section, “**prescribed person**” means:

- (a) the person who holds the certificate of registration of an aircraft; and
- (b) a person who, in the opinion of the Director, has a security interest in the aircraft; and
- (c) the owner, or the agent of the owner, of the aircraft; and
- (d) a person authorized in writing by a person referred to in Paragraph (a), (b) or (c).

(2) Upon a request made in writing in respect of an aircraft by a prescribed person, the Director shall issue a certificate in writing, stating whether or not, as at a specified date and time, any charge or penalty or any debt is payable and unpaid in respect of the aircraft and, in respect of any such charge, penalty or debt, the amount of it and the date upon which it became payable.

(3) Where a certificate has been issued under Subsection (2), an aircraft lien in respect of the aircraft, whether imposed before or after the time to which the certificate relates, does not secure:

- (a) any such charge or debt in respect of the aircraft that was payable and unpaid as at that time but was not specified in the certificate; or
- (b) any penalty relating to any such charge.

### **122. OFFENCES.**

(1) A person who, knowing or having reasonable grounds to believe that an aircraft lien is in force in respect of an aircraft, detaches any part or equipment from the aircraft without the prior approval of the Director, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months, or both.

(2) Subsection (1) does not apply to an act done as required by or under this Division.

### **123. NO ACTION AGAINST DIRECTOR OR CLAIMANT.**

An action does not lie against the claimant or the Director in respect of:

- (a) loss of, or damage to, an aircraft during its detention in accordance with Section 109; or
- (b) loss of or damage to, an aircraft so detained while it is in the custody, possession or control of the claimant or Director; or

- (c) any economic loss suffered by a person as a result of such an arrest other than loss or damage wilfully or negligently caused by the claimant or Director.

#### **124. CLAIMANT TO INSURE AIRCRAFT.**

(1) Where an aircraft is detained under Section 109, the claimant shall insure the aircraft, and keep it insured, against the loss of, or any damage to, the aircraft during its detention or while it is in the custody, possession or control of the claimant.

(2) The insurance shall be for the benefit of the person prescribed.

(3) Where an amount of a premium of the insurance is paid by the claimant, an equivalent amount becomes a debt payable to the claimant by the person by whom amounts secured by the aircraft lien in respect of the aircraft are payable.

(4) In this section “**prescribed person**” means:

- (a) the owner of the aircraft; and
- (b) the Director; and
- (c) the claimant; and
- (d) a person who, in the opinion of the Director, has a security interest in the aircraft.

#### ***Division 7.***

#### ***Information and monopoly services.***

#### **125. REGULATIONS REQUIRING DISCLOSURE OF INFORMATION BY AVIATION SERVICE PROVIDERS.**

(1) The Head of State, acting on advice, may make regulations for any or all of the following purposes:—

- (a) requiring an aviation service provider to make publicly available information in relation to its services or any of them, or any class or classes of its services;
- (b) requiring an aviation service provider to complete, within a time prescribed by the regulations, financial statements (in this section referred to as “disclosure financial statements”) and financial forecasts (in this section referred to as “disclosure financial forecasts”), or either of them, in relation to its services or any of them, or any class or classes of its services;
- (c) requiring an aviation service provider to make publicly available, in the manner prescribed by the regulations and within the time prescribed by the regulations, any disclosure financial statements and disclosure financial forecasts, that the aviation service provider is required to complete;

- (d) prescribing the information and other matters that shall be included in disclosure financial statements and disclosure financial forecasts;
- (e) prescribing the certificates and reports that shall be prepared in relation to the information, or any specified information, contained in disclosure financial statements and disclosure financial forecasts;
- (f) prescribing any standard or standards with which disclosure financial statements and disclosure financial forecasts shall comply;
- (g) prescribing any methodology or methodologies that shall be used in completing disclosure financial statements and disclosure financial forecasts;
- (h) enabling the making of guidelines by persons specified by the regulations in relation to the completion of, or the use of any methodologies (including, without limitation, any methodologies relating to the valuation of assets) in, disclosure financial statements and disclosure financial forecasts;
- (i) providing that compliance with the guidelines is deemed to constitute compliance with the relevant requirements of the regulations;
- (j) prescribing the certificates, reports, and statutory declarations that shall be prepared in relation to disclosure financial statements and disclosure financial forecasts or in relation to statements, forecasts, reports, agreements, particulars and information supplied to the Departmental Head under Section 127;
- (k) exempting, or providing for the exemption (in accordance with prescribed criteria and after such public notification as is prescribed) of, any person, or any class of persons, from all or any of the requirements of the regulations.

(2) Regulations made under Subsection (1) may require or prescribe different requirement or matters in relation to:

- (a) different classes of aviation service provider; and
- (b) the disclosure financial statements and disclosure financial forecasts of different classes of aviation service provider.

(3) No guidelines are permitted to be made pursuant to regulations made under Subsection (1)(h) except after consultation with such persons, representative groups within the aviation industry or elsewhere, substantial customers of aviation service providers, Departments and State agencies as the person or persons making the guidelines think appropriate.

## **126. CONSULTATION.**

Failure by an aviation service provider to comply with an obligation to consult does not affect the validity or enforceability of any charge, fee, levy, deed, agreement,

right or obligation set, entered into, obtained, or incurred by that aviation service provider.

**127. INFORMATION TO BE SUPPLIED TO DEPARTMENTAL HEAD.**

(1) An aviation service provider that is required by regulations made under Section 126 to make any financial statement, financial forecast, or other information publicly available:

- (a) shall supply to the Departmental Head, within 30 days after the day on which any such statement, forecast, or other information is so made available, a copy of that financial statement, financial forecast, or other information; and
- (b) shall, where the Departmental Head, for the purpose of monitoring the compliance with those regulations by the aviation service provider, gives to the aviation service provider a notice in writing requesting further statements, forecasts, reports, agreements, particulars and other information, supply to the Departmental Head, within 30 days after the day on which the request is given to that aviation service provider (or within such additional time as the Departmental Head allows) the requested statements, forecasts, reports, agreements, particulars, and other information.

(2) All statements, forecasts, reports, agreements, particulars and information supplied to the Departmental Head under Subsection (1)(a) or (b) shall be verified by statutory declaration in the form prescribed and by the person or persons prescribed, by regulations made under Section 125(1)(j).

**128. OFFENCES.**

(1) A person who:

- (a) fails, without reasonable excuse, to comply with any information disclosure requirements prescribed in regulations made under Section 125; or
- (b) fails, without reasonable excuse, to comply with the requirements of Section 127(1)(a) or with a request made under Section 127(1)(b),

is guilty of an offence.

Penalty: A fine not exceeding K100,000.00.

Default penalty: A fine not exceeding K5,000.00.

(2) A person who makes a false declaration under Section 127(2) in relation to any statement, forecasts, report, agreement, particulars, or information supplied under Section 127(1) is guilty of an offence.

Penalty: A fine not exceeding K20,000.00.

**PART VIII. – AIRPORTS.*****Division 1.******Domestic Airports.*****129. POWERS OF MINISTER IN RESPECT OF AERODROMES AND AIRPORTS.**

(1) The Minister may, for the purposes of civil aviation, establish, maintain and operate aerodromes and services and facilities in connection with the operation of an aerodrome or with the operation of aircraft engaged in civil aviation.

(2) The Minister may do all that is necessary, convenient, or incidental to the establishment, maintenance and operation of an aerodrome under his complete or partial control or of any services or facilities in connection with the operation of any such aerodrome in all respects as if the operation of the aerodrome or of the services or facilities were a commercial undertaking, and, in particular, may himself carry out any work or undertaking in respect of which he is authorized to enter into any agreement under Section 136.

(3) Any power given to the Minister under this Act in respect of an aerodrome or any facilities in connection with an aerodrome may be exercised by him whether or not the aerodrome or the facilities have been established by him under this Act.

(4) The powers conferred by this section are in addition to and not in derogation of any powers conferred by any other law or enactment and nothing in this section shall be construed so as to limit or affect the powers conferred on any person or authority by any other law or enactment.

(5) The Minister shall not take over the operation of an aerodrome that is owned or operated by a person other than the State, except by agreement with the owner or operator.

(6) Nothing in Sections 132 to 140 inclusive shall apply to an aerodrome or airport that is established or operated by a private person, body or organization, including a church, a community group, a mining company or a petroleum licensee (as defined in the *Oil and Gas Act 1998*), whether or not the aerodrome or airport was established and operated in partnership or in a joint venture with the State or under a lease or approval issued by the State, unless the aerodrome or airport is a joint venture airport established by agreement under Section 130 or a notice has been issued under Section 133(6).

**130. JOINT VENTURE AIRPORTS.**

(1) In this section and Section 131, the expression “**joint venture airport**” means an aerodrome or airport that is established, maintained, operated or managed as a joint venture by and between the State and an airport authority under this Act.

(2) The Minister, with the consent of the Minister responsible for finance matters, and any one or more provinces, bodies, or persons may from time to time enter into and carry out such agreements for the execution, control, operation or

management of any work or undertaking authorized by this Act as may to them seem most suited to the circumstances.

(3) An agreement entered into under Subsection (1) may provide for all or any of the following:—

- (a) the establishment, maintenance or operation of an aerodrome or services or facilities in connection with the operation of the aerodrome as a joint venture between the Minister and any other party or parties to the agreement;
- (b) the vesting of aerodrome buildings and facilities in trust for aerodrome purposes in an airport authority, province, body or person approved by the Minister in that behalf;
- (c) the exchange, leasing, sub-leasing or licensing of land or buildings vested in the State for the purposes and not immediately required for those purposes;
- (d) the transfer of the management of an aerodrome under the control of the Minister or a province or of any facilities connected with the operation of any such aerodrome, from the Minister or province to any other party or parties to the agreement at such time and subject to such terms and conditions as may be agreed upon;
- (e) the transfer to the Minister of the control, management or operation of an aerodrome or any facilities in connection with the operation of an aerodrome, under the control of a province, airport authority, body or person, and for the vesting in or leasing to the Minister of any real or personal property necessary for the purpose of any such transfer;
- (f) the control of access to aerodromes by persons or aircraft and for the prohibition or control of the use of aerodromes for any purposes not related to civil aviation;
- (g) the development, establishment, maintenance, management and operation at any aerodrome of duty free zones, shops, stalls and kiosks, booking offices, offices, housing and accommodation, warehousing and such other facilities as the parties think fit, whether or not necessary or convenient for the operation of the aerodrome or the convenience of persons using the aerodrome;
- (h) the contributions by parties to the agreement in respect of the cost of any work or undertaking to which the agreement relates;
- (i) the apportionment or allocation between parties to the agreement of the cost of any work or undertaking to which the agreement relates;
- (j) the payment of grants or subsidies or the making of advances to any party to the agreement in respect of any work or undertaking to which the agreement related;

- (k) the giving of guarantees, the raising of loans and the entering into of bonds in respect of any work or undertaking to which the agreement relates;
- (l) the entering into contracts of insurance by any party to the agreement in respects of such matters in relation to the agreement as may require the provision of insurance.

(4) An agreement entered into under Subsection (2) may from time to time be varied by the parties to the agreement or may be terminated in accordance with the terms of the agreement.

(5) An agreement entered into under Subsection (2) or a variation under Subsection (4) shall not be effective or enforceable against the State until it has been approved by the Head of State, acting on advice.

### **131. RETENTION OF STATE MONEY, ETC., IN JOINT VENTURE AIRPORTS.**

(1) Any money:

- (a) standing to the credit of or held on behalf of the State in the accounts of a joint venture airport as a result of the operations of that airport; and
- (b) representing the share due to the State of the net proceeds of any fees or charges imposed under this Act, after deducting the share of any costs or expenses due by the State; and
- (c) representing the share due to the State of the proceeds of the sale of any of the assets of the airport,

may, with the approval of the Minister responsible for finance matters, instead of being paid into the Consolidated Revenue Fund:

- (d) be retained on behalf of the State in the accounts of that joint venture airport; and
- (e) without further authority than this section, be used for such purposes in connection with the operation of the airport as may be authorized by the Minister with the concurrence of the Minister responsible for finance matters.

(2) Notwithstanding any other enactment, rule of law, deed or agreement, the Minister may:

- (a) require to be withdrawn by the State any money:
  - (i) standing to the credit of or held on behalf of the State in the accounts of a joint venture airport as a result of the operations of that airport; or
  - (ii) representing the share due to the State of the net proceeds of any fees or charges imposed under this Act, after deducting the share of any costs or expenses due by the State; or



- (iii) representing the share due to the State of the proceeds of the sale of any of the assets of the airport; and
- (b) subject to the liability (if any) of the State under any enactment, deed, order or agreement to pay any part of the moneys referred to in Paragraph (a) to any other person, direct that the moneys referred to in Paragraph (a):
  - (i) be paid into the Consolidated Revenue Fund; or
  - (ii) be used for such civil aviation purpose as the Minister determines.

(3) Notwithstanding any other enactment, rule of law, deed or agreement, any money:

- (a) standing to the credit of or held on behalf of a province in the accounts of a joint venture airport as a result of the operations of that airport; or
- (b) representing the share due to the province of the net proceeds of any fees or charges imposed under this Act, after deducting the share of expenses and costs due by the Province; or
- (c) representing the share due to the province of the proceeds of the sale of any of the assets of the airport,

may with the approval of the Minister responsible for finance matters:

- (d) be withdrawn by the province; and
- (e) subject to the liability (if any) of the province under any enactment, deed, order or agreement to pay any part of the moneys referred to in Paragraphs (a), (b) or (c) to any other person, ceased, subject to any conditions imposed by the Minister responsible for finance matters, for such other purpose as the province thinks fit.

### 132. AIRPORT COMPANIES.

(1) Notwithstanding any other enactment or rule of law, the Minister and the Minister responsible for finance matters jointly may:

- (a) incorporate a company under the *Companies Act 1997* that is, or is intended to become, owner, operator or manager of an aerodrome or airport; and
- (b) may subscribe for, hold, acquire, and dispose of any equity securities or debt securities issued by any such company (in this Act called “an airport company”).

(2) An equity security issued under Subsection (1)(b) shall not be sold or otherwise disposed of or allotted to any person or body other than the State or the Authority.

(3) Nothing in Subsection (2) shall apply to a redeemable preference share that:

- (a) is not convertible into a share of any other class; and
- (b) does not confer a right to vote at a general meeting of shareholders.

(4) The Minister responsible for finance matters, may from time to time, from the Consolidated Revenue Fund (out of money appropriated by Parliament for the purpose), pay for the acquisition on behalf of the State of any equity securities or debt securities under Subsection (1).

(5) The Minister and the Minister responsible for finance matters, on behalf of the State, may from time to time exercise all or any of the State's rights and powers as the holder of any equity securities or debt securities acquired under Subsection (1)(b).

(6) Except as provided in this Part, nothing in this Act shall be construed as limiting or affecting the powers, rights, authorities, duties, and obligations that an airport company has under the *Companies Act 1997*.

### **133. PROVINCES AS AIRPORT AUTHORITIES TO ESTABLISH AND CARRY ON AIRPORTS.**

(1) The Minister may, with the prior consent of, and in accordance with any conditions prescribed by the Head of State, acting on advice, establish a province as an airport authority for the purpose of establishing, improving, maintaining, operating or managing airports (including the approaches, buildings and other accommodation, and equipment and appurtenances for any such airports) and the airport authority may acquire land or an interest in land for such purpose within the province.

(2) Before a province is established as an airport authority:

- (a) the province and the Minister shall enter into an agreement under either Section 130 or 135 for the development, management, control and maintenance of the airport; and
- (b) the province shall submit to the Minister for consideration and the Minister and the Minister responsible for finance matters shall have approved:
  - (i) the initial business and management plan for the airport; and
  - (ii) the composition, rules and procedures of the management committee of the airport authority; and
  - (iii) the proposal by the province for the timely completion of a master plan and environment strategy for the airport; and
- (c) the Minister shall be satisfied that the Director has issued to the airport authority, or will issue before the airport authority commences operations, an aviation document in relation to the operation of the airport.

(3) A province empowered to carry out an undertaking under this section may carry on or cause to be carried on in connection therewith any subsidiary business or undertaking.

(4) Where a province is established as an airport authority it shall not acquire by virtue of being so established, any interest in assets, property or fixtures attached to such property that constitutes the airport.

(5) An airport authority may, with the consent of the Minister, acquire or purchase an interest in real property associated with the airport.

(6) The powers conferred on provinces by this section may, with the prior consent of, and in accordance with conditions prescribed by the Head of State, acting on advice, be exercised by any person or association of persons referred to in the notice.

(7) A notice under this section may at any time in like manner be amended or revoked.

(8) An airport authority that is a province is deemed to be a “public body” for the purposes of the *Public Finances (Management) Act 1995* and all the provisions of Part VIII of that Act shall apply to an airport authority.

(9) Subject to Subsection (2)(b)(ii), an airport authority that is a province shall establish a management committee to manage the airport authority, consisting of not more than nine persons with a knowledge and expertise in government, aviation, transport, commerce, tourism, engineering, law, economics, management and community affairs so that it will be able properly and efficiently to achieve its functions and of whom at least a majority are from the private sector and the community.

(10) An airport authority that is a province is authorized to establish a trust account under Section 16 of the *Public Finances (Management) Act 1995* to be used solely for the airport purposes with the terms and conditions of the instrument to be recorded in the agreement entered into under either Section 130 or 135 and to be agreed by the Minister responsible for financial matters.

#### **134. POWERS OF AIRPORT AUTHORITIES.**

(1) In addition to any other powers it has, an airport authority may from time to time:

- (a) improve, maintain, operate or manage an airport, whether or not the airport was established under this Act; and
- (b) improve, maintain, operate, or manage an airport which has been added to, improved or reconstructed by the State or by some other authority, body or person since the establishment of the airport; and
- (c) establish, improve, maintain, operate or manage an airport on any land, whether or not the land is wholly or partly owned by the airport authority; and

- (d) improve, add to, alter or reconstruct an airport or part of an airport maintained or operated by the airport authority; and
- (e) operate or manage an airport as a commercial undertaking; and
- (f) establish, operate or manage or cause to be established, operated or managed at airports refreshment rooms, bookstalls, booking offices, travel agencies and such other facilities as may be considered necessary; and
- (g) enter into a contract for the management and operations of the airport; and
- (h) set charges as an aviation service provider in accordance with Part VII; and
- (i) enter into contracts and agreements for the provision of services and facilities; and
- (j) enter into and carry out any agreement or arrangement necessary for the exercise of any power or function conferred on the airport authority by this Act.

(2) An airport operated or managed by an airport authority shall be operated or managed as a commercial undertaking.

(3) In the case of an airport authority that is a province the powers contained in this Act are in addition to and not in derogation of any of the powers of a province under any other Act.

### **135. AIRPORT AUTHORITY SHALL ACT IN ASSOCIATION WITH MINISTERS.**

(1) An airport authority shall act in conjunction with the Minister or the Minister responsible for finance matters or with both of those Ministers and may combine with any other province or airport authority and for that purpose may from time to time enter into and carry out such agreements as may seem to it most suited to the circumstances.

(2) An agreement under Subsection (1) may provide:

- (a) for any party to the agreement to undertake or be responsible for the carrying out of the undertaking to which the agreement relates and to enter into contracts in connection therewith; and
- (b) for the acquisition by a party to the agreement of land required for the undertaking; and
- (c) for any such land or any part thereof or any property acquired in connection with the undertaking to be vested in any part to the agreement; and
- (d) for the management, control or maintenance of the undertaking, or any part thereof, to be vested in any party to the agreement; and

- (e) for the apportionment or allocation of the cost of any work in connection with the undertaking or of any surplus or deficit arising from the operation and management of the undertaking, between the parties to the agreement; and
- (f) for the payment by a party to the agreement of his share of the cost of the undertaking either in one sum or by installments spread over any period or by yearly or other payments as and when the costs are ascertained; and
- (g) for the payment by a party to the agreement in respect of money payable by that party under the agreement of interest at such rate as may be agreed upon between the parties or, in default of agreement, at such rate as the Minister responsible for finance matters approves in that behalf; and
- (h) for the giving by a party to the agreement of security for the payment of any money payable by that party under the agreement; and
- (i) for the setting aside out of the revenue of the undertaking, or for the payment by any party to the agreement, of such money as may be agreed upon to form a fund for the repair, renewal, replacement or improvement of any property acquired in connection with the undertaking or for the purpose of purchasing additional property in connection with the undertaking; and
- (j) for the setting up of a joint committee to control and manage the airport and providing for the constitution, functions and powers of any such committee; and
- (k) for the employment of staff or the secondment of staff from the province to carrying out the work of the airport authority; and
- (l) for reimbursing the province or the State for costs incurred in managing or operating the airport authority, including employee costs and a reasonable management fee; and
- (m) for such other terms and conditions as may be agreed upon for the purpose of giving effect to the carrying out and general management of the undertaking.

(3) An agreement under this section may be combined with and integrated into a joint venture agreement under Section 130.

(4) Where default is made by an airport authority for more than 14 days in the payment of any amount due by it under an agreement entered into under this section, the amount in respect of which default has been made together with interest at such rate as may be prescribed in the agreement or, where no rate is prescribed, at such rate as the Minister responsible for finance matters approves, shall be recoverable as a debt due by the airport authority to the party to whom the amount is payable under the agreement.

(5) A certificate under the hand of the Auditor-General shall, until the contrary is proved, be sufficient evidence of the amount in respect of which default has been made as aforesaid and of the date on which it was payable.

(6) Any money set aside or paid for any purpose referred to in Subsection (2)(i) may be applied for any such purpose or for such other purposes as may be approved by the parties to the agreement and any such money may be invested and the proceeds of the investment applied in such manner as may be agreed upon by those parties.

### **136. LEASING POWERS OF AIRPORT AUTHORITIES.**

(1) An airport authority may grant a lease, licence or concession of all or any part of any land, building or installations vested in an airport authority for any purpose that will not interfere with the safe and efficient operation of the airport.

(2) All leases, licences and concessions granted by an airport authority at an airport shall be granted in accordance with the *Aerodromes (Business Concessions) Act* (Chapter 354) and for the purposes of that Act the airport authority shall have the powers of the Minister.

### **137. PROVINCES MAY ASSIST AIRPORT AUTHORITIES.**

A province may, for the purpose of assisting airport authorities in the exercise of their powers and functions as such, with the prior approval of the Minister and the Minister responsible for finance matters, make grants of money or loans or grant leases of land at such rental, or such term, and on such terms and conditions as it thinks fit, to an airport authority.

### **138. FINANCIAL PROVISIONS.**

(1) Within six months after 31 December in each year or within such further period as the Minister may allow, an airport authority shall cause to be prepared statements and accounts of all its income and expenditure in that year and of its assets and liabilities at the end of that year in accordance with generally accepted accounting principles for commercial enterprises.

(2) The statements and accounts referred to in Subsection (1) shall be audited by the Auditor General who, for that purpose, shall have the same powers as he has under the *Audit Act 1989* in respect of public money and stores and the audit of provincial accounts.

(3) As soon as practicable after 31 December in each year, an airport authority shall deliver to the Minister and the Minister responsible for finance matters a report of its operations during that year together with a copy of its duly audited accounts for that year and the report of the Auditor-General on those accounts.

(4) A copy of the annual report and of the accounts of each airport authority, together with a copy of the report of the Auditor-General on the accounts, shall be laid before the Parliament as soon as practicable after their receipt by the Minister.

**139. BY-LAWS.**

(1) Subject to Subsection (2), an airport authority may, in respect of the airport which it operates, make such by-laws as it thinks fit for all or any of the following purposes:—

- (a) the good rule and management of the airport;
- (b) the more effectual carrying out of the functions and powers of the airport authority in respect of the airport;
- (c) protecting any property used in connection with the airport from damage or injury;
- (d) prescribing precautions to be taken for the protection of persons or property from accident or damage;
- (e) regulating traffic, whether pedestrian or vehicular, and the provision and use of parking places for vehicles at the airport;
- (f) prescribing the times, terms, and conditions upon which the public may enter or be in or upon the airport;
- (g) providing for the establishment and maintenance of facilities at the airport for the reception and storage of lost property, and, after the insertion of suitable advertisements in a newspaper circulating in the district where the airport is situated, providing for the sale by way of auction of any such property that is unclaimed after being held by the authority for not less than three months, provided that in the case of lost property which is perishable or valueless the by-laws may provide for the disposal of the property in such manner as may be determined by the authority;
- (h) prescribing charges for the use of parking spaces for vehicles or for the admission of members of the public to the airport or to any land adjacent to the airport owned or controlled by the airport authority;
- (i) prescribing charges for the use of the airport or any part thereof for air pageants, sports meetings and such other matters in respect of which no charge is prescribed by regulations under the Act;
- (j) prescribing charges in respect of the commercial use of any part of the airport, including the delivery of goods to or from the airport and the provision of services at the airport, in respect of which no charge is prescribed under the Act;
- (k) generally for the administration of the airport, or for the control of trading activities thereon or for the management of any business ancillary thereto that may be carried on pursuant to this Act.

(2) An airport company shall not have the power to make by-laws for the purpose set out in Paragraphs (g) to (j) inclusive.

(3) Subject to any direction given by the Auditor-General either in respect of airport authorities generally or in respect of any specific airport authority, the

proceeds of every sale made pursuant to by-laws made under Subsection (1)(f), after deducting the costs of the sale, and any lost money which is unclaimed, shall be paid into such bank account as may be kept by the airport authority and shall thereupon form part of its funds.

(4) A by-law made by a province under this section:

- (a) shall be made in accordance with this Act and, except as otherwise provided by this section the provisions of this Act shall apply accordingly in respect of any such by-laws; and
- (b) shall be subject to approval by the Minister.

(5) A by-law made under this section shall not have any force or effect until it has been approved by the Head of State, acting on advice, and notified in the National Gazette.

(6) A notice made under Subsection (5) shall set out the approved by-law in a Schedule to the notice.

(7) A person, who commits a breach of a by-law in force under this section, is guilty of an Offence.

Penalty: A fine not exceeding K500.00.

Default penalty: A fine not exceeding K50.00.

(8) Where a person commits a continuing breach of any by-law, then, notwithstanding anything in any other Act, the National Court may, on application by the airport authority, grant an injunction restraining the further continuance of the breach by that person.

(9) An injunction may be granted under Subsection (7):

- (a) notwithstanding that proceedings for the offence constituted by the breach have not been taken; or
- (b) where the person is convicted of such an offence, either:
  - (i) in the proceedings for the offence, in substitution for or in addition to any penalty awarded for the offence; or
  - (ii) in subsequent proceedings.

## *Division 2.*

### *International Airports.*

#### **140. SALE OF LIQUOR AT INTERNATIONAL AIRPORTS.**

(1) Liquor may be sold at an international airport to passengers and crew members on aircraft departing from or arriving in Papua New Guinea, being passengers and crew members who have attained the age of 20 years, but any liquor so sold:

- (a) shall not be delivered by or on behalf of the purchaser to any other person within Papua New Guinea; or



(b) consumed within Papua New Guinea,

unless the passenger or crew member purchased the liquor before departing from Papua New Guinea in another country and returned or purchased the liquor at the international airport on arrival from another country.

(2) The Head of State, acting on advice, may, from time to time, make regulations for either or both of the following purposes:—

- (a) prescribing the circumstances and conditions relating to the control of the sale of liquor to international passengers or crew members on aircraft departing from or arriving in Papua New Guinea, being passengers or crew members who have attained the age of 20 years;
- (b) prescribing offences in respect of the contravention of or non compliance with any of the provisions of any regulation made under this section, and prescribing fines, not exceeding K1,000.00, that may, on conviction, be imposed in respect of any such offence.

(3) A person, who does any act in contravention of this section, is guilty of an offence.

Penalty: A fine not exceeding K1,000.00.

(4) Nothing in the *Liquor Licensing Act* (Chapter 312) or in any provincial law shall apply to the sale of liquor pursuant to the authority of any regulation made under this section.

#### **141. DESIGNATION OF INTERNATIONAL AIRPORTS.**

(1) The Head of State, acting on advice, may by notice in the National Gazette, designate as an international airport an aerodrome at which facilities for formalities incidental to immigration, customs, quarantine, agricultural services, aviation security and other facilitation requirements are available, or are required to be available, in connection with the arrival of aircraft in or their departure from Papua New Guinea.

(2) Subject to the prescribed exceptions:

- (a) an aircraft arriving in Papua New Guinea from outside Papua New Guinea shall land at; and
- (b) an aircraft departing from Papua New Guinea for a place outside Papua New Guinea shall take off from,

an aerodrome designated as an international airport under Subsection (1).

#### **142. RECOVERY OF COST OF FACILITATION SERVICES AT INTERNATIONAL AIRPORTS.**

(1) Before an airport is designated as an international airport under Section 141 the Departmental Head shall consult with the Heads of the Departments responsible for financial management and the provision of customs, immigration,

quarantine, agricultural services, aviation security and other facilitation requirements and shall ascertain:

- (a) the staffing required to provide these services at the new proposed international airport; and
- (b) the equipment and facilities required to provide the services; and
- (c) the operating cost of providing facilitation services and facilities; and
- (d) the capital cost of providing facilitation services and facilities.

(2) Before an airport is designated as an international airport under Section 141 the Departmental Head shall consult with the Authority and PNG ATS on the impact of making such a designation, with particular regard to the requirements and the cost of providing to international air services:

- (a) air traffic services, aeronautical navigation services, aeronautical communications services; and
- (b) aviation meteorological services; and
- (c) safety services.

(3) The Departmental Head shall supply the airport authority with:

- (a) an exposition containing all relevant information gathered under Subsection (1) and (2); and
- (b) a draft determination for recovering all or part of the cost of providing the required services and facilities referred to in Subsection (1) from the airport authority by way of a lump sum or periodic payments, or both.

(4) Where the Authority or the airport authority objects to the draft determination by the Departmental Head supplied under Subsection (3)(b), it may enter into negotiations with the Departmental Head as to the amount to be paid.

(5) Where the Departmental Head and the airport authority agree on the cost recovery proposal as contained in the draft determination it shall be recorded in a determination signed by the Departmental Head and in the event that they cannot agree, the matter shall be referred, together with written submissions from both parties, to the Minister responsible for finance matters who shall make a final determination.

(6) From time to time, but at intervals of not less than once annually, the Departmental Head may propose an amendment to the determination and the provisions of Subsections (2) and (3) shall apply accordingly.

(7) The amounts payable under a determination issued under this section shall be recoverable by the State as a debt and shall be paid into the Consolidated Revenue Fund.

(8) Where the amount payable under a determination is unpaid for more than six months, the Departmental Head may suspend the designation of the airport as an international airport until such time as the outstanding sum has been paid.

(9) The airport authority shall be entitled to recover, in whole or in part, the amount levied under a determination from the air services operator(s) requesting or using the international services.

**PART IX. – PNG AIR TRAFFIC SERVICES LTD.****143. AUTHORITY TO INCORPORATE PNG AIR TRAFFIC SERVICES LTD.**

(1) The Authority shall incorporate a subsidiary company under the *Companies Act 1997* for the purpose of providing air traffic services, aeronautical navigation services and aeronautical communications services and all related services in Papua New Guinea and the airspace for which it is responsible.

(2) Subject to the approval of the Registrar of Companies, the company referred to in Subsection (1) shall be called “Papua New Guinea Air Traffic Services Ltd” (PNGATS) or such other name as the Authority decides.

(3) So long as PNG ATS is a subsidiary of the Authority a majority of the directors of the company shall be members of the Authority with the remaining directors, if any, appointed by the Authority after consulting with the Minister.

(4) Upon incorporation, PNG ATS shall be a wholly owned subsidiary of the Authority and no person other than the Authority or the Minister or the Minister responsible for finance matters shall hold any shares in the company or be entitled to exercise effective control of the company but nothing in this subsection shall prevent the Minister and the Minister responsible for finance matters, acting jointly, from disposing of all or part of the shares in or business of PNG ATS to any other person upon such terms and conditions as they think fit.

(5) No director or employee of PNG ATS shall be personally liable for any liability of PNG ATS, or for any act done or omitted by PNG ATS, or by the chief executive of PNG ATS or any other employee of the PNG ATS in good faith in pursuance or intended pursuance of the functions or powers of PNG ATS.

**144. SOLE PROVIDER.**

(1) Subject to Subsection (3), after the commencement of this Act, no person other than PNG ATS shall provide the following services in respect of Papua New Guinea airspace or any other airspace for which Papua New Guinea is responsible:–

- (a) area control services;
- (b) approach control services;
- (c) area flight information services;
- (d) aerodrome control services.

(2) Nothing in this section shall apply to aerodrome flight information services.

(3) Subject to obtaining the consent of:

- (a) the Minister; and
- (b) the Director as to safety aspects,

PNG ATS may contract with any other person for the provision of air traffic services in Papua New Guinea airspace or in any other airspace for which Papua New Guinea is responsible.

(4) Subject to obtaining the consent of the Director as to safety aspects, PNG ATS may consent in writing to any other person providing air traffic services in Papua New Guinea airspace or in any other airspace for which Papua New Guinea is responsible in the event that PNG ATS is unable to for any reason.

#### **145. POWER TO EXEMPT CERTAIN FLIGHTS FROM FEES.**

(1) The Minister may, by notice in the National Gazette, after consulting with PNG ATS, exempt flights of a particular class from payment of fees for the use of air traffic services.

(2) The Minister shall, with the concurrence of the Minister responsible for finance matters, out of moneys appropriated by Parliament, compensate PNG ATS for exempt flights and the amount of compensation shall be equivalent to the sum which would have been charged by PNG ATS to those flight's as if they had not been exempted from charges.

#### **146. TELECOMMUNICATIONS.**

(1) Notwithstanding any of the provisions of the *Telecommunications Act 1996*, PNG ATS is authorized to provide for any of the following:–

- (a) telecommunications services utilising line links and reserved link lines;
- (b) telecommunications services utilising satellite links and satellite based facilities;
- (c) telecommunications services utilising microwave links and microwave facilities.

(2) PNG ATS shall be entitled to supply the services described in Subsection (1) under a licence(s) to be granted by PANGTEL pursuant to the *Telecommunications Act 1996* and upon payment of the prescribed fees.

#### **147. ANNUAL REPORT.**

(1) PNG ATS shall submit to the Minister an annual report, including the audited and approved financial statements, within three months of the end of each financial year.

(2) A copy of the annual report shall be sent to the last known address of all air traffic service customers of PNG ATS who operated scheduled services within or to and from Papua New Guinea.

(3) A copy of the annual report shall be supplied to other air traffic service users on request.

**PART X. – AVIATION SECURITY.****148. AVIATION SECURITY.**

The:

- (a) prevention of crimes against Part XV; and
- (b) safe-guarding of international civil aviation operations against acts of unlawfully interference; and
- (c) protection of persons and property from dangers arising from the commission or attempted commission of such crimes,

shall be the joint responsibility of the Police Force and the authorized provider of aviation security services at an aerodrome or navigation installation.

**149. RESPONSIBILITY OF MINISTER.**

The Minister shall ensure that aviation security services are provided at all security designated aerodrome and security designated navigation installations.

**150. AUTHORIZED AVIATION SECURITY SERVICES.**

(1) Subject to Subsection (2), aviation security services at any security designated aerodrome or security designated navigation installation may be provided by:

- (a) the Aviation Security Services; or
- (b) the operator of that aerodrome or navigation installation; or
- (c) an airline.

(2) No operator of an aerodrome or navigation installation or an airline, and no person employed by any such operator or an airline to provide aviation security services, shall provide aviation security services at an aerodrome or installation, except pursuant to a current aviation document issued by the Director under Section 49.

(3) The holder of a document referred to in Subsection (3) shall comply with the relevant prescribed requirements and standards.

**151. MINISTER MAY DESIGNATE AVIATION SECURITY SERVICE AS SOLE PROVIDER.**

(1) Notwithstanding Sections 49 and 150, but subject to Subsection (2), the Minister may from time to time, by notice in the National Gazette, specify that only the Aviation Security Service may be granted an aviation document to provide aviation security services at any security designated aerodrome or security designated navigation installation and any such notice may be amended or revoked by the Minister by notice in the National Gazette.

(2) Where a person already holds an aviation document entitling that person to provide aviation security services at a security designated aerodrome or security designated navigation installation, the Minister shall not give a notice under Subsection (1) in respect of that aerodrome or navigation installation or airline without the consent of that person.

(3) Notwithstanding anything in Section 150, the Minister may at any time, in the event of an emergency or other crisis, appoint the Aviation Security Service to provide aviation security services at any designated aerodrome or security designated navigation installation, notwithstanding that another person is providing aviation security services.

(4) An appointment made by the Minister under Subsection (3) shall have effect for a period specified by the Minister, being not more than 10 days.

## **152. FUNCTIONS AND DUTIES OF AVIATION SECURITY SERVICES.**

(1) Without limiting the powers, functions, duties or responsibilities of the Police Force under this Act or any other enactment, and without limiting the generality of the powers conferred by Section 149, the Aviation Security Service shall have the following functions and duties:—

- (a) to carry out passenger and baggage screening of all international aircraft passenger services and of such other services where the service or the screening is considered advisable by the Director and, where necessary, to undertake searches of passengers, baggage, cargo, aircraft, aerodromes and navigation installations;
- (b) to carry out aerodrome security patrols and patrols of navigation installations;
- (c) review, inquire into and keep itself informed on security techniques, systems, devices, practices and procedures related to the protection of civil aviation and persons employed in or using it;
- (d) to undertake and encourage and supervise such experimental or research work in respect of any aspect of aviation security as the Departmental Head may specify;
- (e) for the purpose of better carrying out any of its functions under this Act, to co-operate with the Police Force, Departments, operators and authorities administering the airport security services of other countries, and with any appropriate international organization;
- (f) to exercise and perform such other functions and duties as may be conferred on it by any other enactment.

(2) Aviation security service providers (other than the Aviation Security Service) shall have such functions and duties as may be prescribed by rules made under this Act.

(3) Aviation security service providers (other than the Aviation Security Service) shall designate employees to be aviation security officers.

(4) An aviation security officer shall have and may exercise, in relation to the aerodrome or navigation installation at which he is employed, all the powers of an aviation security officer under this Act, except the power to arrest and detain any person.

### **153. SECURITY DESIGNATED AERODROMES AND NAVIGATION INSTALLATIONS.**

(1) The Minister may, by notice in the National Gazette, designate any aerodrome or navigation installation as a security designated aerodrome or security designated installation.

(2) A designation under Subsection (1) may at any time be revoked, in whole in or part, or amended by the Minister, by notice in the National Gazette.

### **154. RIGHT OF ACCESS.**

(1) Subject to Subsections (2) and (3), an aviation security officer while on duty may at any time enter a security designated aerodrome or a security designated navigation installation or any aircraft, building or place in any part of a security designated aerodrome or security designated navigation installation, for the purpose of exercising and carrying out his powers, functions and duties under this Act.

(2) Unless the aviation security officer is accompanied by a commissioned officer of the Police Force, the power of entry conferred by Subsection (1) shall be limited to peaceful and non-forcible entry.

(3) Where the Police Force has taken command of any situation at an aerodrome or navigation installation, the rights of an aviation security officer to enter any part thereof or any aircraft, building or place, shall be subject to such limitations as the senior member of the Police Force present at the aerodrome or navigation installation specifies.

(4) Where an aircraft or vehicle is not being used for commercial purposes, Subsection (1) shall not apply unless the aviation security officer believes on reasonable grounds that there is in that vehicle or aircraft a person or thing likely to endanger the aerodrome or installation or any of its facilities or any person.

### **155. SECURITY AREA.**

(1) The Director may declare, by a sign or signs affixed at the perimeter thereof, that an area within a security designated aerodrome or security designated navigation installation is a security area.

(2) No person other than a member of the Police Force on official duties or an aviation security officer shall enter or remain in a security area unless authorized by the Director or other person having control thereof.

(3) A person in a security area shall, on the request of an aviation security officer, state his name, address, the purpose of his presence in the security area and



his authority to enter it, and shall produce satisfactory evidence of the correctness of his stated name and address.

(4) Where a person:

- (a) fails or refuses to provide an aviation security officer with satisfactory evidence of his name and address when requested by the aviation security officer; or
- (b) fails to satisfy the aviation security officer that he is authorized to be there,

the aviation security officer may order that person to leave the aviation security area.

(5) An aviation security officer and any person whom he calls to his assistance, may use such force as may be reasonably necessary to remove from any security area a person who fails or refuses to leave the security area after having been ordered by an aviation security officer to do so under Subsection (4).

(6) A person who refuses to comply with Subsection (3) or Subsection (4) and, after having been warned that he commits an offence, persists in its commission, may be detained by an aviation security officer and in that case the detained person shall, as soon as may be practicable, be delivered to a member of the Police Force.

(7) A passenger embarking or disembarking directly through gateways or thoroughfares in an airport approved for that purpose by the licensee of the airport shall be deemed to be authorized to pass through any security area forming part of those gateways or thoroughfares.

#### **156. POWERS OF ARREST FOR SERIOUS CRIMES AGAINST AVIATION.**

(1) An aviation security officer employed by the Aviation Security Service is empowered to arrest without warrant any person on or in the vicinity of a security designated aerodrome or security designated navigation installation where the aviation security officer has reasonable grounds to believe that an offence has been or is being committed by that person against Section 260, 261, 262 or 267.

(2) A person called upon to do so by an aviation security officer is justified in assisting him in good faith to arrest any person.

(3) An aviation security officer shall as soon it is practicable deliver any person he arrests to a member of the Police Force.

#### **157. ARREST OF PERSONS DELIVERED TO POLICE.**

(1) A member of the Police Force shall accept delivery of a person whom an aviation security officer seeks to deliver to him under this Part where the member of the Police Force has reasonable grounds to suspect that person of having done or admitted to do anything if that act or omission is an offence against Section 260, 261, 262 or 267.

(2) A member of the Police Force who accepts delivery of a person under Subsection (1) may forthwith arrest that person.

(3) An aviation security officer who detains a person in accordance with the Section 155(6) and delivers him to a member of the Police Force, and any person who at his request and in good faith assists an aviation security officer in doing so, is justified in so detaining and delivering that person and in using such force as may be reasonably necessary doing so.

**158. POWERS OF POLICE.**

A member of the Police Force shall have and may exercise all or any of the powers conferred on an aviation security officer under this Act or regulations or rules made under this Act.

**PART XI. – DOMESTIC AIR SERVICES.**

**159. APPLICATION FOR LICENCES.**

(1) A person operating a domestic air service shall hold a current licence issued in accordance with this Part.

(2) An application for a licence under this Part shall be lodged with the Departmental Head.

(3) An applicant for a licence shall, when making the application:

- (a) supply such information and documents as may be required by regulations or rules made under this Act or as may be specified by the Departmental Head; and
- (b) pay the prescribed fees and charges (if any).

**160. PUBLIC NOTICE TO BE GIVEN OF APPLICATION.**

(1) As soon as practicable after receiving an application under Section 159, the Departmental Head shall give public notice of it on at least two occasions, one week apart, in a nationally circulating newspaper.

(2) A public notice under Subsection (1) shall contain:

- (a) the name of the applicant; and
- (b) the nature of the proposed domestic air service; and
- (c) an invitation for any person to supply to the Departmental Head any written comments the person may wish to make concerning the application within 14 days after the date of the first publication of the notice; and
- (d) a statement of the provisions of Subsection (3).

(3) Any written comments supplied to the Departmental Head in accordance with Subsection (2)(c) shall be accompanied by a statutory declaration by the person making the comments to the effect that all statements of fact contained in those comments are correct.

(4) The Departmental Head shall supply the applicant with a copy of all comments received following the invitation made under Subsection (2)(c), as soon as practicable after he has received them.

(5) Within 14 days after receiving such information and submissions, or within such longer period as the Departmental Head may allow at the request of the applicant, the applicant may supply the Departmental Head with such additional written information and particulars as he thinks fit.

**161. CONSIDERATION OF APPLICATION.**

As soon as practicable after the procedure required by Section 160 has been completed, the Departmental Head shall proceed to consider and determine the application and where:

- (a) after so considering the application he reaches the provisional view that the application should be declined; or
- (b) for any other reason it is considered he should hear the applicant in person,

the Departmental Head shall hold a formal meeting and give no less than 10 days' notice of the proposed meeting to the applicant, or such shorter period as the applicant agrees to.

**162. GRANT OF LICENCE, ETC.**

(1) After considering an application under Section 161, the Departmental Head shall grant to the applicant the licence sought where the Departmental Head is satisfied:

- (a) that the proposed domestic air service will be operated in accordance with government policy; and
- (b) that the proposed domestic air service is likely to be carried on in a safe and reliable manner and that all aviation documents relating to the proposed domestic air service, whether issued by the Authority or another Contracting State, have been or will be issued before the domestic air service commences; and
- (c) as to the experience, competence and repute of the applicant and of the persons who will be responsible for the management and control of the proposed domestic air services (including any relevant training or educational qualifications of those persons.); and
- (d) as to the financial resources of the applicant; and
- (e) that the liability of the applicant for loss of or damage to property or life caused by events occurring in connection with the carrying on the proposed domestic air service is or will be covered by insurance:
  - (i) in respect of such kinds of event; and
  - (ii) up to such amount in respect of each kind of event - as the Departmental Head considers appropriate.

(2) In satisfying himself that the proposed domestic air service is likely to be carried on in a safe and reliable manner, the Departmental Head shall have regard to the advice that he receives from the Director.

(3) In considering an application under this section as to the experience, competence and repute of any person that is a body corporate, the Departmental

Head shall have regard to the experience, competence and repute of the person or persons (not being bodies corporate) who in fact have control of that body corporate.

(4) A decision of the Departmental Head under this section shall be in writing and, where an application is not granted or is granted in terms not applied for by the applicant, the reasons for that decision shall be included in it.

(5) The Departmental Head shall not approve an application for a domestic air service licence from a foreign international airline unless the applicant delivers to him written approval for such service signed by the Minister.

(6) Nothing in Subsection (5) precludes a domestic air service operator entering into a code-sharing arrangement with a foreign international airline in respect of a domestic air service, provided that the domestic air service is operated by a Papua New Guinea airline.

### **163. CONDITION APPLYING TO LICENCES.**

(1) The following conditions shall apply to each licence:—

- (a) that the licensee shall not carry on the domestic air service authorized by the licence unless all fees and other money payable under any Act, regulation or by-law in respect of any aircraft used in the domestic air service have been duly paid;
- (b) that the licensee shall not give less than 14 days' notice to the Departmental Head of any proposed change in or proposed addition to the aircraft or other major assets used in the domestic air service authorized by the licence;
- (c) that the licensee shall give to the Departmental Head notice of:
  - (i) any change in the person or persons responsible for the management or control of the domestic air service authorized by the licence; and
  - (ii) where the licensee or any of the persons referred to in Subparagraph (1) is a body corporate, any change in the person or persons (not being bodies corporate) who in fact have control of that body corporate,
    - either before the change occurs or within 14 days after it has occurred;
- (d) that the licensee shall not abandon the domestic air service authorized by the licence without giving at least 21 days' written notice to the Departmental Head and not less than 21 days' concurrent public notice of the intention to abandon the service;
- (e) that the licensee shall, not later than 4p.m. on the due date for the renewal of the insurance referred to in Section 162(1)(e)(ii), deposit with the Departmental Head a certificate endorsed by the insurers or an insurance broker of the renewal or replacement of the insurance;

- (f) that the licensee shall give not less than 14 days' written notice to the Departmental Head of:
- (i) any alteration of the localities served by the service or of the route or routes on which it is to operate; and
  - (ii) any alteration to a published timetable setting out the service offered by the licensee; and
  - (iii) any curtailment of any kind of the service which is proposed to last for more than seven days.

(2) Where the certificate referred to in Subsection (1)(e) is not deposited with the Departmental Head before the time and date referred to in that subsection, the licence shall be deemed to be suspended until the certificate is so deposited.

(3) The Departmental Head may direct the licensee to give public notice, in such form as the Departmental Head considers appropriate, of any alteration or curtailment referred to in Subsection (1)(f).

#### **164. FORM AND EFFECT OF LICENCE.**

(1) A licence issued under this Part shall be in the prescribed form and shall be signed by the Departmental Head.

(2) A licence shall authorize the licensee to carry on the domestic air service specified in the licence subject to and in accordance with the provisions.

(3) During any period that a licence is suspended it shall be deemed not to have any force or effect.

#### **165. LICENCES ON CIVIL AVIATION REGISTER, ETC.,.**

(1) The Departmental Head shall send to the Director and the Director shall place on the Registry:

- (a) a copy of each licence granted under this Part; and
- (b) a copy of amendments or alterations to a licence granted under this Part; and
- (c) a note of a suspension of a licence granted under this Part; and
- (d) a copy of a surrender or cancellation of a licence under Section 166.

(2) Evidence of the contents of the Registry may be given in any proceedings by a certificate under the hand of the Director and every such certificate shall be sufficient evidence of the matters stated in it in the absence of proof to the contrary.

(3) A certificate under the hand of the Director that on a date specified in the certificate the name of a person did not appear in the Registry as the holder of a licence under this Act, in the absence of proof to the contrary, shall be sufficient evidence that that person was not the holder of any such licence on that date.

(4) Where the Departmental Head is satisfied that a licence has been lost, defaced, or destroyed, he may on payment of a prescribed fee and (where the licence has been defaced) on the surrender to him of the licence, issue a duplicate licence which shall be signed by him and endorsed as a duplicate licence.

**166. SURRENDER AND CANCELLATION OF LICENCES.**

(1) A licensee may at any time surrender his licence by forwarding it, together with written notice of the surrender, to the Departmental Head.

(2) Where a licensee has abandoned the domestic air service authorized by his licence, the Departmental Head may without formality cancel the licence after giving not less than 14 days' notice of the intention to do so.

(3) Where a licence has been superseded by another licence, the Departmental Head may without formality cancel the superseded licence.

**167. DURATION AND RENEWAL OF LICENCES.**

(1) Subject to this section, a domestic air service licence shall take effect or be deemed to take effect on such day, whether before or after the date thereof, as may be stated therein and shall, unless sooner revoked, or unless expressed to expire on an earlier date, expire on the completion of two years or such other period as may be prescribed, after the date on which it took effect.

(2) Where:

(a) an application for renewal of a domestic air service licence is duly made; and

(b) the application is not disposed of before the date of expiry of the licence,

the licence continues in operation until the application is disposed of, unless the Departmental Head otherwise directs.

(3) For renewal of a licence, the Departmental Head shall require any amendment to the information considered necessary to be provided for the original application.

(4) The renewal of a domestic air service licence shall have effect, unless expressed to expire at an earlier date, for a period of two years from the expiry of the licence in renewal of which it is granted, but any such renewal may be granted in advance to take effect as aforesaid.

**168. INQUIRY INTO OPERATION OF LICENCES AND BREACH OF CONDITIONS.**

(1) Where the Departmental Head on stated grounds suspects that:

(a) owing to changed circumstances, a domestic air service no longer meets the criteria set out in Section 162; or

(b) a licensee has failed to comply with any condition of his licence,

he may conduct an inquiry under this section.

(2) An inquiry referred to in Subsection (1) shall specify the matters to be inquired into and the grounds on which the suspicion of the Departmental Head is based.

(3) The Departmental Head shall give not less than 28 days' written notice to the licensee affected by the inquiry, and a concurrent period of not less than 28 days' public notice, of the matters to be inquired into and of the time and place at which it is proposed to conduct the inquiry.

(4) The notice given under Subsection (3) to the licensee affected shall set out the grounds on which the suspicion of the Departmental Head is based.

(5) The Departmental Head shall forward to the licensee affected a copy of all information relative to the inquiry and of any submissions relative to the inquiry as soon as practicable after he has received them.

(6) Only the licensee affected by the inquiry and the Departmental Head are entitled to be parties to an inquiry under this section.

(7) Where an inquiry under this section is into whether a domestic air service still meets the criteria set out in Section 162(1), the provisions of Subsection (3) of that section shall apply with the necessary modifications.

(8) The Departmental Head may, where, as a result of the inquiry, he is satisfied that the domestic air service concerned no longer meets the criteria set out in Section 162(1) or that a licensee has failed to comply with any condition of his licence, as the case may be, make an order:

- (a) suspending the licence for a specified period not exceeding one year; or
- (b) imposing as a condition of the licence, a restriction on the number, type and capacity of aircraft which may be operated by the licensee under the licence for a specified period not exceeding one year; or
- (c) revoking the licence.

(9) The Departmental Head may, whether or not he exercises any of his powers under Subsection (8), order any party to the inquiry to pay some or all of the costs of the inquiry, and to pay to any other party such costs and expenses (including expenses of witnesses) as it considers reasonable, and may apportion any such costs and expenses between the parties or either of them in such manner as he thinks fit.

(10) The Departmental Head may review an order made by him under Subsection (8)(a) or (b) on the application of the licensee to whom the order applies and, where he is satisfied that, because of changed circumstances, the order is causing undue hardship to the licensee and ought to be cancelled or modified, may do one or both of the following:—

- (a) cancel any suspension of a licence or reduce the period of suspension;
- (b) cancel any conditions imposed under Paragraph (b) or modify it so that it is less onerous.



(11) A decision of the Departmental Head under Subsection (8) or (10) shall be in writing and shall include the reasons for the decision.

(12) The Departmental Head shall send to the Director, and the Director shall note on the Registry, every decision under Subsection (8) or (10).

**169. ENFORCING ORDERS FOR COSTS AND EXPENSES.**

For the purpose of enforcing an order of the Departmental Head for the payment of costs and expenses, a duplicate of such order may be filed by the person to whom the costs and expenses are payable in the office of the National Court named in the order and shall thereupon be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.

**170. APPEALS FROM DECISIONS OF DEPARTMENTAL HEAD.**

(1) There shall be a right of appeal to the National Court by the persons referred to in Section 171 against the whole or any part of the decision of the Departmental Head in respect of any domestic air service licence or in respect of any application made to, or any inquiry or review conducted by the Departmental Head or any pension revocation or imposition of a condition by him.

(2) An appeal under Subsection (1) shall be made by giving notice of appeal within 28 days after the date of the decision of the Departmental Head against which the appeal is made.

(3) A notice of appeal shall state the grounds of appeal.

**171. PERSONS ENTITLED TO APPEAL.**

The following persons may exercise the right of appeal under Section 170:–

- (a) the person in respect of whose application the decision was given; and
- (b) the holder of the licence in respect of which the decision was given; and
- (c) any party to an inquiry under Section 168.

**172. HEARING OF APPEAL.**

(1) Subject to the provisions of this Part, the procedure in respect of an appeal under Section 170 shall be as determined by the National Court or in accordance with any rules of the National Court applicable.

(2) The National Court may, in any case where it considers it is in the interests of the parties or of any of them and is not contrary to the interests of other persons concerned or the public interest, order that the hearing or any part of it shall be held in private.

(3) The National Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private), but no such order shall be

made prohibiting the publication of the names and descriptions of the parties to the appeal or of any decision of the National Court.

#### **173. DETERMINATION OF APPEAL.**

(1) Subject to Subsections (2) and (3), in its determination of an appeal under this Part, the National Court may confirm, modify, or reverse the decision appealed against, or any part of that decision, and, subject to Section 174, the decision of the National Court shall be final and conclusive.

(2) The National Court may in any case, instead of determining an appeal under Subsection (1), direct the Departmental Head to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving a direction under this section, the National Court shall:

- (a) advise the Departmental Head of its reasons for so doing; and
- (b) give to the Departmental Head such directions as it thinks just concerning the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

#### **174. APPEAL TO SUPREME COURT.**

Any further appeal in respect of an appeal under Section 170 may be made in accordance with law on questions of law only.

#### **175. RIGHTS OF LICENSEE PENDING DETERMINATION OF APPEAL.**

Pending the determination of an appeal to the National Court against a decision of the Departmental Head, the licensee may carry on the domestic air service to which the appeal relates in the manner in which and to the extent to which he was entitled to carry it on at the time when the decision of the Departmental Head was given or, in the case of a decision granting a new licence to him, in accordance with the terms of that decision.

#### **176. RETURNS TO BE FURNISHED.**

A person carrying on a domestic air service pursuant to a licence shall furnish to the Departmental Head such financial and statistical returns and statements as the Departmental Head may from time to time require by notice in writing addressed to that person.

**PART XI. – INTERNATIONAL AIR SERVICES & TARIFFS.**

***Division 1.***

***General.***

**177. APPLICATION FOR LICENCE.**

(1) An application for a licence or a renewal of a licence under this Part shall be lodged with the Departmental Head.

(2) Every applicant for a licence shall, when making the application:

- (a) supply such information and documents as may be required by regulations or rules made under this Act or as may be specified by the Departmental Head; and
- (b) pay the prescribed fees and charges (if any).

***Division 2.***

***Papua New Guinea International Airlines.***

**178. MINISTER TO BE LICENSING AUTHORITY FOR PAPUA NEW GUINEA INTERNATIONAL AIRLINES.**

The Minister shall be the licensing authority to grant scheduled international air service licences to Papua New Guinea international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

**179. NOTICE OF APPLICATION.**

(1) Where an application for a scheduled international air service licence is lodged by a Papua New Guinea international airline in accordance with Section 178, the Departmental Head shall give notice in the National Gazette and at least twice, one week apart, in a nationally circulating newspaper that the application has been received.

(2) A notice under this section shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

**180. CONSIDERATION OF APPLICATION FOR SCHEDULED INTERNATIONAL AIR SERVICE LICENCE BY PAPUA NEW GUINEA INTERNATIONAL AIRLINE.**

(1) In considering an application for a scheduled international air service licence made by a Papua New Guinea international airline the Minister shall take into account the following matters:–

- (a) any relevant international agreement, convention, or arrangement to which Papua New Guinea is a party;
- (b) Government policy;

- (c) the safety and security requirements of the Director;
- (d) the financial ability of the applicant to carry on the proposed service;
- (e) the likelihood of the applicant carrying on the proposed service satisfactorily;
- (f) any written representations received by the Minister in relation to the application;
- (g) the experience, competence and repute of the applicant and of the persons who will be responsible for the management and control of the scheduled international air services (including any relevant training or educational qualifications of those persons);
- (h) the applicant's liability for loss of or damage to or property or life caused by events occurring in connection with the carrying on the scheduled international air service is or will be covered by insurance:
  - (i) in respect of such kinds of event; and
  - (ii) up to such amount in respect of each kind of event - as the Minister considers appropriate; and
- (i) such other matters as the Minister considers appropriate.

(2) In satisfying himself that the proposed international air service is likely to be carried on in a safe and reliable manner, the Minister shall have regard to the advice that he receives from the Director.

(3) In considering an application under this section as to the experience, competence, and repute of any person that is a body corporate, the Minister shall have regard to the experience, competence and repute of the person or persons (not being bodies corporate) who in fact have control of that body corporate.

(4) A decision of the Minister under this section shall be in writing and, where an application is not granted or is granted in terms not applied for by the applicant, the reasons for that decision shall be included in it.

(5) Where the granting of the licence would be contrary to an agreement, convention or arrangement referred to in Subsection (1)(a), the Minister shall refuse to grant the licence.

#### **181. SCHEDULED INTERNATIONAL AIR SERVICE LICENCE MAY BE GRANTED SUBJECT TO CONDITIONS.**

(1) The Minister, after giving consideration to an application under Section 180, may grant the licence subject to such conditions as the Minister considers appropriate.

(2) The scheduled international air service licence shall be in the prescribed form and signed by the Minister.

(3) Without prejudice to the generality of Subsection (1), the Minister, in granting a scheduled international air service licence, may specify, in respect of the scheduled international air service:

- (a) the countries or territories, or points within those countries or territories, that may be served and the route or routes that may be followed; and
- (b) the maximum capacity that may be provided; and
- (c) a date not later than which the service shall be commenced.

**182. DURATION OF SCHEDULED INTERNATIONAL AIR SERVICE LICENCE.**

(1) A scheduled international air service licence granted under Section 181 shall take effect from the date stated in the licence and may be granted for such term as the Minister considers appropriate in the particular case.

(2) Where an application is made under Section 183 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Minister otherwise directs.

**183. RENEWAL OF SCHEDULED INTERNATIONAL AIR SERVICE LICENCE.**

(1) The Minister may, from time to time, renew a scheduled international air service licence granted under Section 181.

(2) An application for the renewal of a scheduled international air service licence granted under Section 181 shall be lodged with the Departmental Head not less than three months before the date on which the licence expires.

(3) Section 180 (1) shall apply to every application for the renewal of the licence as if it were an application for a new licence.

(4) The Departmental Head shall give notice in the National Gazette of the Minister's intention to consider exercising the power conferred on the Minister by Subsection (1).

(5) A notice given under Subsection (4) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

(6) No person shall be entitled as of right to a renewal of a scheduled international air service licence, and in considering an application for a renewal the Minister shall take into account all the matters referred to in Section 180 as if the application were an application for a new licence.

(7) The renewal of the licence shall take effect from the date of the expiry of the licence for which the renewal is granted, and may be for such term as the Minister considers appropriate in the particular case.

**184. VARIATION OF TERMS AND CONDITIONS OF SCHEDULED-INTERNATIONAL AIR SERVICE LICENCE.**

(1) The Minister, while a scheduled international air service licence granted under Section 181 is in force, may, of the Minister's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the opinion of the Minister are necessary or desirable in the public interest.

(2) Where the Minister, on the Minister's own motion, proposes to exercise the power conferred on the Minister by Subsection (1), the Minister shall give the licensee not less than 21 clear days' notice in writing of the Minister's intention to exercise that power.

(3) Where a proposed variation involves:

- (a) a change or addition to the route to be operated; or
- (b) an increase in the capacity of the service to be provided,

pursuant to the licence, the Departmental Head shall, by notice in the National Gazette, give not less than 21 clear days' notice of the Minister's intention to consider exercising the power conferred on the Minister by this section.

(4) A notice given under Subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations regarding the proposed variation.

(5) In considering an application referred to in Subsection (1), the Minister shall take into account all the matters referred to in Section 180 as if the application were an application for a new licence.

(6) Where the Minister has varied the terms or conditions of a scheduled international air service licence under this section, the Minister shall give notice in the National Gazette of the fact of, and the terms of, that variation.

**185. TRANSFER OF SCHEDULED INTERNATIONAL AIR SERVICE LICENCE.**

(1) A scheduled international air service licence granted under Section 181 may, subject to this section, be transferred to any person.

(2) An application for the transfer of a scheduled international air service licence shall be lodged with the Departmental Head not less than three months before the date of the proposed transfer.

(3) The Departmental Head shall give notice in the National Gazette of the Minister's intention to consider the application for the transfer of the licence.

(4) A notice given under Subsection (3) shall specify a time, being not less than 21 clear days from the date of the notice, within which the Minister will receive written representations from any person relating to the application.

(5) In considering the application for the transfer of the licence the Minister shall take into account all the matters referred to in Section 180 as if the application were an application for a new licence.

*Division 3.*

*Foreign International Airlines.*

**186. DEPARTMENTAL HEAD TO BE LICENSING AUTHORITY FOR FOREIGN INTERNATIONAL AIRLINES.**

(1) Subject to Subsection (2), the Departmental Head shall be the licensing authority to grant scheduled international air service licences to foreign international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

(2) Where the applicant for a scheduled international air service licence is a foreign international airline of a country or territory with which Papua New Guinea does not have an air service agreement or similar arrangement, the application shall be referred to the Minister for determination in accordance with Sections 188 to 192 inclusive as if the references in those sections to the Department Head were references to the Minister.

**187. CONSIDERATION OF APPLICATION FOR SCHEDULED INTERNATIONAL AIR SERVICE LICENCE BY FOREIGN INTERNATIONAL AIRLINE.**

(1) In considering an application for a scheduled international air service licence or the renewal of such licence made by a foreign international airline the Departmental Head shall take into account the following matters:—

- (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention or arrangement to which Papua New Guinea is a party;
- (b) the safety and security requirements of the Director;
- (c) such other matters as the Departmental Head considers appropriate and has determined in writing should be taken into account.

(2) Where the granting of the licence would be contrary to an agreement, arrangement or convention referred to in Subsection (1)(a), the Departmental Head shall refuse to grant the licence.

**188. SCHEDULED INTERNATIONAL AIR SERVICE LICENCE MAY BE GRANTED SUBJECT TO CONDITIONS.**

(1) The Departmental Head, after giving consideration to the application in accordance with Section 187, may refuse it, or may grant it wholly or partly, and subject to such conditions as he thinks fit.

(2) A scheduled international air service licence shall be in such form as the Departmental Head thinks fit.

(3) Without prejudice to the generality of Subsection (1), the Departmental Head, in granting a scheduled international air service licence, may specify, in respect of the scheduled international air service –

- (a) the countries or territories or points within those countries or territories, that may be served and the route or routes that may be followed; and
- (b) the maximum capacity that may be provided; and
- (c) the date not later than which the service shall be commenced.

(4) Where the Departmental Head grants a licence in accordance with this section, the Departmental Head shall give notice in the National Gazette that the licence has been granted.

#### **189. DURATION OF SCHEDULED INTERNATIONAL AIR SERVICE LICENCE.**

(1) A scheduled international air service licence granted under Section 188 shall take effect from the date stated in the licence and may be granted for such term as the Departmental Head considers appropriate in the particular case or, where he thinks fit, for an indefinite term.

(2) Where an application is made under Section 190 for the renewal of a scheduled international air service licence, the licence shall, where the application is not disposed of before the date of expiry of the licence, continue in force until the application is disposed of, unless the Departmental Head otherwise directs.

#### **190. RENEWAL OF SCHEDULED INTERNATIONAL AIR SERVICE LICENCE.**

(1) The Departmental Head may, from time to time, renew a scheduled international air service licence granted under Section 188.

(2) An application for the renewal of a scheduled international air service licence granted under Section 188 shall be lodged with the Departmental Head not less than three months before the date on which the licence expires.

(3) Section 189(2) shall apply to every application for the renewal of the licence as if it were an application for a new licence.

(4) No person shall be entitled as of right to a renewal of a scheduled international air service licence.

(5) In considering an application for a renewal the Departmental Head shall take into account all the matters referred to in Section 187 as if the application were an application for a new licence.

(6) The renewal of a licence shall take effect from the date of the expiry of the licence for which the renewal is granted and may be for such term as the



Departmental Head considers appropriate in the particular case or, where he considers it appropriate, for an indefinite term.

**191. VARIATION OF TERMS AND CONDITIONS OF SCHEDULED INTERNATIONAL AIR SERVICE LICENCE.**

(1) The Departmental Head, while a scheduled international air service licence granted under Section 188 is in force, may, of the Departmental Head's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the opinion of the Departmental Head are necessary or desirable in the public interest.

(2) Where the Departmental Head, on the Departmental Head's own motion, proposes to exercise the power conferred on the Departmental Head by Subsection (1), the Departmental Head shall give the licensee not less than 21 clear days' notice in writing of the intention of the Departmental Head to exercise that power.

(3) Where an application under Subsection (1) seeks approval for:

- (a) a change or addition to the route or routes to be operated; or
- (b) an increase in the capacity of the service to be provided, pursuant to the licence,

the Departmental Head shall take into account all the matters referred to in Section 187 as if the application were an application for a new licence.

(4) Where the Departmental Head has varied the terms or conditions of any licence under this section, the Departmental Head shall give notice in the National Gazette of the fact of, and the terms of, that variation.

***Division 4.***

***Open Aviation Market Licences.***

**192. MINISTER MAY DESIGNATE COUNTRIES OR TERRITORIES FOR OPEN AVIATION MARKET LICENCES.**

The Minister may from time to time, by notice in the National Gazette, designate any one or more countries or territories in respect of which:

- (a) scheduled international air services; and
- (b) non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire,

may be carried on pursuant to and in conformity with an open aviation market licence.

**193. DEPARTMENTAL HEAD TO BE LICENSING AUTHORITY FOR OPEN AVIATION MARKET LICENCES.**

The Departmental Head shall be the licensing authority to grant open aviation market licences to Papua New Guinea international airlines and foreign

international airlines and to exercise jurisdiction in respect of those licences in accordance with this Part.

#### **194. CONSIDERATION OF APPLICATION FOR OPEN AVIATION MARKET LICENCE.**

(1) In considering an application for an open aviation market licence made by a Papua New Guinea international airline or a foreign international airline the Departmental Head shall take into account the following matters: –

- (a) any relevant air services agreement and associated arrangements, and any other international agreement, convention or arrangement to which Papua New Guinea is a party;
- (b) the safety and security requirements of the Director;
- (c) such other matters as the Minister thinks fit and has determined in writing should be taken into account.

(2) Where the granting of an open aviation market licence would be contrary to any agreement, convention or arrangement referred to in Subsection (1)(a), the Departmental Head shall refuse to grant the licence.

#### **195. OPEN AVIATION MARKET LICENCE MAY BE GRANTED SUBJECT TO CONDITIONS.**

(1) The Departmental Head, after giving consideration to an application in accordance with Section 194, may refuse it or may grant it wholly or partly and subject to such conditions as the Departmental Head thinks fit.

(2) Without prejudice to the generality of Subsection (1), the Departmental Head, in granting an open aviation market licence, shall prescribe, in respect of any scheduled international air service and non-scheduled international flight carried on pursuant to the licence, the countries or territories that may be served.

(3) An open aviation market licence shall be in such form as the Departmental Head thinks fit.

(4) Where the Departmental Head grants an open aviation market licence under this section, the Departmental Head shall give notice in the National Gazette that the licence has been granted.

#### **196. DURATION OF OPEN AVIATION MARKET LICENCE.**

(1) An open aviation market licence granted under Section 195 shall take effect from the date stated in the licence, and may be granted for such term as the Departmental Head considers appropriate in the particular case or, in respect of a foreign international airline, where he considers it appropriate, for an indefinite term.

(2) Where an application is made under Section 197 for the renewal of an open aviation market licence, the licence shall, where the application is not disposed of

before the date of expiry of the licence, continue in force until the application is disposed of, unless the Departmental Head otherwise directs.

**197. RENEWAL OF OPEN AVIATION MARKET LICENCE.**

(1) The Departmental Head may, from time to time, renew an open aviation market licence granted under Section 195.

(2) An application for the renewal of an open aviation market licence granted under Section 195 shall be lodged with the Departmental Head not less than three months before the date on which the licence expires.

(3) Section 189(2) shall apply to every application for the renewal of an open aviation market licence as if it were an application for a new licence.

(4) No person shall be entitled as of right to a renewal of an open aviation market licence, and in considering an application for a renewal the Departmental Head shall take into account all the matters referred to in Section 194 as if the application were an application for a new licence.

(5) The renewal of an open aviation market licence shall take effect from the date of expiry of the licence for which the renewal is granted and may be for such term as the Departmental Head considers appropriate in the particular case or, in respect of a foreign international airline, where he considers it appropriate, for an indefinite term.

**198. VARIATION OF TERMS AND CONDITIONS OF OPEN AVIATION MARKET LICENCE.**

(1) The Departmental Head, while an open aviation market licence granted under Section 195 is in force, may, of the Departmental Head's own motion or on the application of the licensee, amend or revoke any of the terms and conditions of the licence or add any new terms or conditions that in the opinion of the Departmental Head are necessary or desirable in the public interest.

(2) Where the Departmental Head, on the Departmental Head's own motion, proposes to exercise the power conferred on the Departmental Head by Subsection (1), the Departmental Head shall give the licensee not less than 21 clear days' notice in writing of the intention of the Departmental Head to exercise that power.

(3) Where an application under Subsection (1) seeks approval for a change or addition to the country or countries, or territory or territories, to be served pursuant to the open market aviation licence, the Departmental Head shall take into account all the matters referred to in Section 194 as if the application were an application for a new licence.

(4) Where the Departmental Head has varied the terms or conditions of an open aviation market licence under this section, the Departmental Head shall give notice in the National Gazette of the fact of, and the terms of, that variation.

**199. TRANSFER OF OPEN AVIATION MARKET LICENCE.**

(1) An open aviation market licence granted to a Papua New Guinea international airline under Section 195 may, subject to the provisions of this section be transferred to any other Papua New Guinea international airline.

(2) An application for the transfer of an open aviation market licence shall be lodged with the Departmental Head not less than three months before the date of the proposed transfer.

(3) In considering the application for the transfer of a licence the Departmental Head shall take into account all the matters referred to in Section 194 as if the application were an application for a new licence.

(4) Where the Departmental Head transfers an open aviation market licence under this section, the Departmental Head shall give notice in the National Gazette that the licence has been transferred.

**200. HOLDER OF OPEN AVIATION MARKET LICENCE MAY OPERATE NON-SCHEDULED INTERNATIONAL FLIGHTS WITHOUT AUTHORIZATION.**

The holder of an open aviation market licence under this Division is entitled to carry on, to or from the countries or territories that may be served pursuant to the licence as prescribed under Section 195(2), non-scheduled international flights engaged in the carriage of passengers, cargo, or mail for remuneration or hire without authorization under Section 201.

***Division 5.******Non-scheduled International Flights.*****201. NON-SCHEDULED INTERNATIONAL FLIGHTS NOT TO BE OPERATED EXCEPT AS AUTHORIZED BY DEPARTMENTAL HEAD.**

(1) Subject to Section 200, no person shall operate a non-scheduled international flight between Papua New Guinea and one or more points in any other country or territory, except as authorized by the Departmental Head and in accordance with such conditions as the Departmental Head may impose in accordance with guidelines specified by the Minister in accordance with Subsection (2).

(2) For the purposes of Subsection (1), the Minister may issue guidelines to the Departmental Head for the regulation of flights described in Subsection (1).

(3) The Minister may from time to time review and amend the guidelines referred to in Subsection (2).

(4) The Departmental Head shall, when requested by any person, make a copy of the guidelines issued in accordance with Subsection (2) available to that person.

**Division 6.**

**Provisions applicable to all licences.**

**202. SURRENDER AND CANCELLATION OF LICENCES.**

(1) A licensee may at any time surrender a licence issued under this Part by forwarding it, together with written notice of the surrender, to the Departmental Head.

(2) Where a licensee has abandoned the international air service authorized by his licence, the Departmental Head may without formality cancel the licence after giving not less than 14 days' notice in the National Gazette of his intention to do so.

(3) Where a licence has been superseded by another licence, the Departmental Head may without formality cancel the superseded licence.

(4) The Departmental Head shall send to the Director and the Director shall note in the Registry, a surrender or cancellation of a licence under this section.

**203. INSURANCE COVER AGAINST LIABILITY.**

The Minister or the Departmental Head, as the case may be, may, before granting or renewing a licence, or at any other time while a licence is in force, call upon the applicant or the licensee, as the case may be, to furnish to the satisfaction of the Minister or the Departmental Head, as the case may be, proof that the liability of the applicant or the licensee which may arise out of or in connection with the operation of the service in respect of the death of or bodily injury to any person and in respect of loss of or damage to any property, is covered by insurance.

**204. RETURNS TO BE FURNISHED.**

A person carrying on a scheduled international air service or non-scheduled international flight pursuant to a licence shall furnish to the Departmental Head such financial and statistical returns and statements as the Departmental Head may from time to time require by notice in writing addressed to that person.

**205. SUSPENSION OF LICENCES.**

Where the Minister is satisfied that:

- (a) a licensee has wilfully committed a breach of any of the conditions of a licence granted under this Part; or
- (b) a licensee's safety approvals to operate services under the licence issued by either the Director or a person equivalent to the Director in a Contracting State have been suspended or revoked,

the Minister may suspend the licence for such period as the Minister thinks fit.

**206. REVOCATION OF LICENCES.**

The Minister may revoke a licence granted under this Part where:

- (a) the service authorized by the licence is not commenced on the date specified in the licence; or
- (b) the Minister is satisfied that the service authorized by the licence is not being carried on in conformity with the terms and conditions of the licence; or
- (c) the service authorized by the licence has been terminated; or
- (d) the licence has been granted under or in accordance with any international agreement between the Government of Papua New Guinea and the government of any other country (whether or not any other government is also a party thereof) and that international agreement has been terminated or has ceased to bind the Government of Papua New Guinea or the government of that other country; or
- (e) the licence has been granted under or in accordance with any such convention, agreement, or arrangement referred to in Paragraph (d) and circumstances have occurred or any condition has been fulfilled whereby the Minister, or the Government of Papua New Guinea, has become entitled under or in accordance with the international agreement to revoke the licence.

**207. LICENCES ON CIVIL AVIATION REGISTER, ETC.**

(1) The Departmental Head shall send to the Director and the Director shall place in the Registry:

- (a) a copy of all licences granted under this Part; and
- (b) a copy of amendments or alterations to any licence granted under this Part; and
- (c) a note of a suspension of a licence granted under this Part; and
- (d) a copy of a surrender or cancellation of a licence under Section 202.

(2) Evidence of the contents of the Registry may be given in any proceedings by a certificate under the hand of the Director and every such certificate shall be sufficient evidence of the matters stated in it in the absence of proof to the contrary.

(3) A certificate under the hand of the Director that on a date specified in the certificate the name of a person did not appear in any Registry as the holder of a licence under this Act, in the absence of proof to the contrary, shall be sufficient evidence that person was not the holder of any such licence on that date.

(4) Where the Departmental Head is satisfied that a licence has been lost, defaced, or destroyed, he may on payment of a prescribed fee and (where the licence has been defaced) on the surrender to him of the licence, issue a duplicate licence which shall be signed by him and endorsed as a duplicate licence.

**208. APPEALS FROM DECISIONS OF MINISTER AND DEPARTMENTAL HEAD.**

(1) There shall be a right of appeal to the National Court against the whole or any part of the decision of the Minister or the Departmental Head, as the case may be, in respect of an international air service or in respect of an application made to the Minister or the Departmental Head under this Part.

(2) An appeal under Subsection (1) shall be made by giving notice of appeal within 28 days after the date of the decision of the Minister or the Departmental Head against, which the appeal is made.

(3) It shall be necessary to state in the notice under Subsection (2), the grounds of appeal.

**209. PERSONS ENTITLED TO APPEAL.**

The following persons may exercise the right of appeal under Section 208 or be heard in the appeal:—

- (a) the person in respect of whose application the decision was given;
- (b) the holder of the licence in respect of which the decision was given;
- (c) the holder of an international air services licence for the market that is the subject of the applications appeal;
- (d) any person who applies to the National Court to be heard in that appeal and the National Court is satisfied that that person has a material interest in the decision.

**210. HEARING OF APPEAL.**

(1) Subject to the provisions of this Part, the procedure in respect of an appeal under Section 209 shall be as determined by the National Court or in accordance with any rules of the National Court applicable.

(2) The National Court may, in any case, where it considers it is in the interests of the parties or of any of them and is not contrary to the interests of other persons concerned or the public interest, order that the hearing or any part of it shall be held in private.

(3) The National Court may make an order prohibiting the publication of any report or description of the proceedings or of any part of the proceedings in any appeal before it (whether heard in public or in private); but no such order shall be made prohibiting the publication of the names and descriptions of the parties to the appeal or of any decision of the National Court.

**211. DETERMINATION OF APPEAL.**

(1) Subject to Subsection (2), in its determination of an appeal under Section 208, the National Court may confirm, modify, or reverse the decision appealed

against, or any part of that decision, and, subject to Section 212 the decision of the National Court shall be final and conclusive.

(2) The National Court may in any case, instead of determining an appeal, direct the Minister to reconsider, either generally or in respect of any specified matters, the whole or any specified part of the matter to which the appeal relates.

(3) In giving a direction under this section, the National Court shall:

- (a) advise the Minister or Departmental Head of its reasons for so doing; and
- (b) give to the Minister or Departmental Head such directions as it thinks just concerning the rehearing or reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

## **212. APPEAL TO SUPREME COURT.**

A further appeal in respect of an appeal under Section 211 may be made in accordance with law on a question of law only.

## **213. RIGHTS OF LICENSEE PENDING DETERMINATION OF APPEAL.**

Pending the determination of an appeal to the National Court against a decision of the Minister or the Departmental Head under Section 210, the licensee may carry on the international air service to which the appeal relates in the manner in which and to the extent to which he was entitled to carry it on at the time when the decision of the Departmental Head was given or, in the case of a decision granting a new licence to him, in accordance with the terms of that decision.

## **214. PROVISIONS OF THIS PART IN ADDITION TO REQUIREMENTS OF THIS ACT.**

No aircraft being used in connection with a scheduled international air service pursuant to a licence granted under this Part or a non-scheduled international flight shall, by virtue of its being used in connection with that service or flight, be exempt from the operation of any regulation or rules made under this Act.

### ***Division 7.***

#### ***Authorization of contracts, arrangements, and understandings relating to international carriage by air.***

## **215. AUTHORIZATION OF CONTRACTS AND ARRANGEMENTS.**

(1) In this section and in Sections 216 and 217, unless the contrary intention appears:

“**capacity**” means a statement, expressed to apply to one or more specified airlines, or to all airlines other than one or more specified airlines, or to all airlines, specifying the number of flights to be undertaken between specified points in a period or successive periods by the airline or



airlines, whether or not by reference to specified classes of aircraft or the number of seats or volume of cargo space to be provided;

**“commission regime”** means a statement, expressed to apply to any specified international carriage by air, specifying the rates and bases of calculation of agency commissions (including any benefit, whether in monetary form or otherwise, supplied to an agent) to be allowed, charged, disbursed, given, offered, paid, provided or retained, in relation to the international carriage by air to which it is expressed to apply, and the circumstances and conditions under and subject to which any such commission is to be allowed, charged, disbursed, given, offered, paid, provided or retained, and different rates, bases, circumstances and conditions may be specified in respect of all or any of the following:—

- (a) international carriage by air provided by different airlines;
- (b) international carriage by air arranged by persons of different classes;
- (c) international carriage by air provided for persons of different classes;

**“international carriage by air”** means the carriage by air of persons, baggage, or cargo:

- (a) between Papua New Guinea and any place outside Papua New Guinea; or
- (b) where that carriage is purchased, sold or arranged in Papua New Guinea, between places outside Papua New Guinea;

**“tariff”** means a statement, expressed to apply to one or more specified airlines, or to all airlines other than one or more specified airlines, or to all airlines, specifying:

- (a) the fares, rates and charges applicable to international carriage by air between specified points (whether direct or indirect, and whether or not including any stopovers) that may at any time be provided by the airlines to which it is expressed to apply; and
- (b) any conditions subject to which any such fares, rates and charges, or any of them, are to apply to international carriage by air between those points; and
- (c) any conditions subject to which international carriage by air between those points is to be provided on such fares, rates, and charges.

(2) The Minister may from time to time specifically authorize all or any provisions of a contract, arrangement or understanding made between two or more persons in respect of international carriage by air and related to such carriage so far as the provisions relate, whether directly or indirectly, to the fixing of tariffs, the application of tariffs or the fixing of capacity, or any combination thereof.

(3) In considering whether to grant authorization under Subsection (2), the Minister shall ensure that the granting of such authorization will not prejudice compliance with any relevant international agreement or treaty to which the State is a party.

(4) Subject to Subsection (5), authorization shall not be given under this section to a provision of any contract, arrangement, or understanding that –

- (a) provides that a party to it may directly or indirectly enforce it through any form of action by way of fines or market pressures against any person, whether or not that person is a party to the contract, arrangement or understanding; or
- (b) has the purpose or effect of breaching the terms of a commission regime issued under Section 216; or
- (c) unjustifiably discriminates between consumers of international air services in the access they have to competitive tariffs; or
- (d) so far as it relates to tariffs, has the effect of excluding any supplier of international carriage by air from participating in the market to which it relates; or
- (e) has the purpose or effect of preventing any party from seeking approval, in terms of Section 217, for the purpose of selling international carriage by air at any other tariff so approved; or
- (f) prevents any party from withdrawing without penalty on reasonable notice from the contract, arrangement, or understanding.

(5) The Minister may authorize any provision of any contract, arrangement or understanding under this section where the Minister believes that to decline authorization would have an undesirable effect on international comity between Papua New Guinea and any other country.

(6) Where the Minister declines to authorize a provision of a contract, arrangement or understanding under this section, the Minister shall give notice in the National Gazette that authorization has been declined.

## **216. MINISTER MAY ISSUE COMMISSION REGIMES.**

The Minister may, from time to time, by notice in the National Gazette:

- (a) issue commission regimes; and
- (b) amend or revoke a commission regime so issued.

## **217. AUTHORIZATION OF TARIFFS BY MINISTER.**

(1) The Minister may from time to time specially authorize a tariff in respect of international carriage by air where the relevant places of departure and destination are within the territories of two countries, one of which is Papua New Guinea, whether or not there is to be a break in the carriage or a transshipment.

(2) In giving authorization under this section the Minister shall have regard to:

- (a) whether the proposed tariff is excessive in terms of a reasonable return on investment or the cash flow requirements of the supplier of the carriage; and
- (b) whether it is likely that supply of the relevant carriage can be carried on for a reasonable period at the level of tariff proposed; and
- (c) whether there is likely to be a substantial degree of benefit accruing to consumers generally, or to a significant group of consumers, as a result of the application of the proposed tariff; and
- (d) whether a substantial disparity exists between the proposed tariff and tariffs for the same routes when purchased outside of Papua New Guinea,

and shall ensure that the granting of such authorization will not prejudice compliance with any international convention, agreement, or arrangement to which Papua New Guinea is a party.

**PART XIII. – ACCIDENT INVESTIGATION COMMISSION AND USE OF VOICE RECORDINGS.**

***Division 1.***

***Accident Investigation Commission.***

**218. ESTABLISHMENT OF COMMISSION. .**

(1) For the purposes of this Act, there is established an Accident Investigation Commission.

(2) The Commission:

(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; and

(e) may do and suffer all acts and things as bodies corporate may do and suffer.

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

**219. PURPOSE OF THE COMMISSION.**

The principal purpose of the Commission is to determine the circumstances and causes of accidents and incidents with a view to avoiding similar occurrences in the future, rather than to ascribe blame to any person.

**220. FUNCTIONS OF THE COMMISSION.**

(1) The principal function of the Commission is the investigation of aviation accidents and incidents.

(2) The Minister may, by notice in the National Gazette, direct the Commission to investigate any serious land or marine transport accident or incident.

(3) Where a direction is given under Subsection (2), all references to an “aircraft” shall be read as a reference to the vehicle or vessel or other form of transport involved in the accident or incident to be investigated.

(4) Without limiting the principal function under Subsection (1), the Commission shall also have the following functions:–

(a) to make such inquiries and investigations as it considers appropriate in order to ascertain the cause or causes of accidents or incidents;

(b) to co-ordinate and direct all such inquiries and investigations and to determine which other parties, if any, should be involved in the investigation;

- (c) to prepare and publish findings and recommendations, if any, in respect of any such inquiries and investigation;
- (d) where requested by the Minister, to deliver a written report on each investigation to the Minister, including any recommendations for changes or improvements that it considers will ensure avoidance of accidents and incidents in the future;
- (e) to co-ordinate and co-operate with other accident investigation organizations of Contracting States, including taking or collecting evidence on their behalf;
- (f) to request from the Authority or PNG ATS or any other person such information as it considers appropriate regarding any accident or incident that the Commission believes that it is required to investigate under this Act;
- (g) to perform any other function or duty conferred on the Commission under any Act or prescribed by regulations;
- (h) with the consent of the Minister, to provide consulting services, training and management services relating to any of its functions, whether in Papua New Guinea or overseas.

**221. COMMISSION RESPONSIBLE TO MINISTER.**

The Commission is responsible to the Minister for the administration of this Part and shall report directly to the Minister.

**222. COMMISSION TO HAVE POWERS OF A NATURAL PERSON.**

(1) Except as provided in this Act, the Commission shall have:

- (a) the rights, powers and privileges of a natural person; and
- (b) the power to do anything it is authorized to do by or under –
  - (i) this Act; or
  - (ii) any other enactment; or
  - (iii) any rule of law.

(2) The Commission shall not exercise any of its rights, powers or privileges except for the purpose of performing its functions.

**223. MEMBERSHIP OF THE COMMISSION.**

(1) The Commission shall consist of three Commissioners:

- (a) of whom:
  - (i) one shall be a National Court Judge or a lawyer with at least 10 years' experience of practising at a senior level in the courts of

Papua New Guinea, who shall be the Chief Commissioner of the Commission; and

- (ii) one shall be a person with significant aviation industry experience being either the holder or former holder of a commercial pilot's licence or an aircraft maintenance engineer's licence or a senior manager in civil aviation safety; and
  - (iii) one shall be a person with qualifications and experience relevant to the functions of the Commission; and
- (b) who shall be:
- (i) citizens or permanent residents of Papua New Guinea; and
  - (ii) appointed by notice in the National Gazette by the Head of State, acting on advise, given after considerations of recommendations by the Minister; and
  - (iii) appointed for a term not exceeding five years; and
  - (iv) eligible for re-appointment; and
  - (v) paid such fees and allowances as are determined under the Boards (Fees and Allowances) Act (Chapter 299); and
  - (vi) part-time Commissioners and shall not be employees of the Commission.

#### **224. CHAIRMAN AND DEPUTY CHAIRMAN.**

(1) The Chief Commissioner is Chairman of the Commission.

(2) The Head of State, acting on advice, shall appoint one of the Commissioners to be the Deputy Chairman of the Commission.

(3) Where the Chairman or Deputy Chairman vacates office as a Commissioner or is otherwise removed from office as Chairman or Deputy Chairman in accordance with this Act, the Minister may appoint any existing Commissioner or any new Commissioner as Chairman or Deputy Chairman and where the Deputy Chairman is appointed as Chairman, he shall vacate office as Deputy Chairman.

#### **225. LEAVE OF ABSENCE OF COMMISSIONER.**

(1) The Chairman of the Commission may grant leave of absence to a Commissioner on such terms and conditions as the Chairman determines.

(2) The Minister may grant leave of absence to the Chairman of the Commission on such terms and conditions as the Minister determines.

#### **226. RESIGNATION.**

A Commissioner may resign from the Commission by written notice to the Minister.

**227. VACATION OF OFFICE.**

- (1) If a Commissioner:
  - (a) dies; or
  - (b) resigns from the Commission under Section 226; or
  - (c) is absent, except in accordance with leave of absence granted under Section 225, from three consecutive meeting of the Commission; or
  - (d) fails to comply with Section 230; or
  - (e) becomes bankrupt or applies to take the benefit of any law for the relief of bankrupt or insolvent persons, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
  - (f) is convicted of an offence under this Act or any other law punishable by a term of imprisonment for one year or longer or by death, and as a result of conviction is sentenced to imprisonment or death,

the Head of State, acting on advise, shall terminate his appointment.

(2) The Minister may, at any time, by written notice, advise a Commissioner that he intends to terminate the appointment of that Commissioner on the grounds of inability or misconduct.

(3) Within 14 days of the receipt of a notice under Subsection (2), the Commissioner may reply in writing to the Minister who shall consider the reply and, where appropriate, terminate the appointment.

(4) Where a Commissioner referred to in Subsection (2) does not reply in accordance with Subsection (3), his appointment is terminated.

(5) Where an appointment is terminated under this section, the Minister shall, by notice in the National Gazette, declare the office vacant.

(6) Where an office is declared vacant under Subsection (5), it shall be filled in accordance with Section 223.

**228. VACANCY NOT TO AFFECT POWERS OF FUNCTIONS.**

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

**229. MEETINGS OF THE COMMISSION.**

(1) Subject to Subsection (2), the Commission shall meet at such times as, in the opinion of the Commission or the Chairman, are necessary for the efficient performance of the functions of the Commission and shall meet at such places and times and on such days as the Commission or the Chairman determines.

(2) The Minister may, at any time, convene a meeting of the Commission.

(3) At a meeting of the Commission:

- (a) two Commissioners constitute a quorum; and
- (b) the Chairman, or in his absence the Deputy Chairman, shall preside; and
- (c) all matters shall be decided by a majority of the votes of the Commissioners present and voting; and
- (d) the Commissioner presiding has a deliberative and, in the event of an equality of votes on a subject, also a casting vote; and
- (e) minutes of each meeting shall be kept by the Commission and shall be:
  - (i) confirmed by the Commission at the next meeting of the Commission; and
  - (ii) signed by the Chairman of the Commission.

(4) The Chairman shall forward a copy of the minutes of each meeting to the Minister.

### **230. DISCLOSURE OF INTEREST.**

(1) A Commissioner who, otherwise than as a member of the general public has, directly or indirectly, any pecuniary or material interest in:

- (a) the performance of any function or the exercise of any power by the Commission; or
- (b) any arrangement, agreement or contract made or entered into or purposed to be made or entered into, by the Commission,

shall, as soon as in practicable after the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Commission.

(2) A disclosure under Subsection (1) shall be recorded in the minutes of the Commission.

(3) Subject to Subsection (4), the Commissioner making the disclosure under Subsection (1):

- (a) shall not, after the disclosure, take part in any deliberation or decision of the Commission with respect to the function, power, arrangement, agreement or contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Commission for any such deliberation or decision.

(4) The Minister may, by written notice to the Commission, waive or modify any of the provisions of Subsection (3) in respect of:

- (a) any Commissioner; or
- (b) any particular function, power, arrangement, agreement or contract,

that in the opinion of the Minister, does not constitute a direct or indirect pecuniary or material interest.



(5) The Minister shall table in the Parliament any notice issued by him under Subsection (4) within 12 sitting days after the date of issuance of the notice.

**231. AUTHENTICATION OF DOCUMENTS.**

The seal of the Commission shall be authenticated by the signature of the Chairman or Deputy Chairman and another Commissioner.

**232. SERVICE OF DOCUMENTS.**

Service upon the Commission of any order, notice or other document shall be affected by delivering or sending the same to the Chairman of the Commission at the office of the Commission.

**233. PROTECTION OF THE COMMISSION AND OF COMMISSIONERS.**

(1) No act or proceeding taken under this Act shall be questioned on the ground:

- (a) of the existence of any vacancy in the membership or defect in the constitution of the Commission; or
- (b) of any omission, defect or irregularity not effecting the merits of the case.

(2) No action, suit, protection or other proceeding shall be brought or instituted personally against the Chief Commissioner or a Commissioner in respect of any act done bona fide in pursuance or execution or intended execution of this Act.

**234. REPORTS.**

(1) The Commission shall, before 30 June in each year, prepare an annual report for the year ending 31 December preceeding.

(2) An annual report under Subsection (1) shall comprise:

- (a) a statement of the activities of the Commission during the year; and
- (b) the annual financial statements of the Commission prepared under this Act; and
- (c) the report by the Auditor-General under the Audit Act 1989 on the results of his inspection and audit of the account and records of the Commission; and
- (d) such other matters as the Minister may, from time to time, require.

**235. DELEGATION.**

(1) The Commission may, in writing, delegate:

- (a) to any Commissioner of the Commission; or
- (b) to any employee, consultant, agent or specialist; or

(c) to any other person,

any of its functions or powers, including its power to investigate an accident or incident, and any power incidental thereto, including the functions set out in Section 220, but shall retain the responsibility to review the facts and to make findings and recommendations as to the contributing factors and causes of the accident or incident.

(2) A delegation shall not be made to any person, other than a Commissioner or an employee of the Commission, unless the Minister consents in writing.

(3) The Commission or the Chief Commissioner, as the case may be, shall be liable for the actions of any delegate or sub-delegate as if that person were an employee of the Commission (whether or not that is the case) and as if any directions given or control exercised by any person over the delegate or sub-delegate in that capacity were directions given or control exercised by the Commissioner or the Chief Executive Officer.

### ***Division 2.***

#### ***Funding, Finances etc., of Commission.***

#### **236. APPLICATION OF PUBLIC FINANCES (MANAGEMENT) ACT 1995.**

(1) Subject to Subsection (2), Part VIII of the Public Finances (Management) Act 1995 applies to and in relation to the Commission.

(2) The Commission shall not borrow money.

#### **237. FUNDING AND FINANCES OF THE COMMISSION.**

(1) The functions and activities of the Commission shall be funded from monies appropriated in an Appropriation Act.

(2) The Commission shall cause proper accounts and records of the affairs of the Commission to be kept in accordance with the accounting principles generally applies in commercial practice.

(3) The Commission shall do all things to ensure that:

- (a) all payments by the Commission are correctly made and properly authorized; and
- (b) adequate control is maintained over the assets of, or in the custody of the Commission, and over the incurring of liabilities by the Commission.

### ***Division 3.***

#### ***Staff of the Commission, etc.,.***

#### **238. CHIEF EXECUTIVE.**

(1) There shall be a Chief Executive of the Commission.

(2) The Chief Executive:

- (a) shall be appointed by the Head of State, acting on advice, by notice in the National Gazette; and
- (b) shall be appointed for a term not exceeding four years; and
- (c) is eligible for re-appointment; and

(3) The Chief Executive shall be employed under a contract of employment which shall be executed by the Chairman on behalf of the Commission and by the Chief Executive.

(4) The Chief Executive has and may exercise such functions, powers and duties as are conferred or imposed on him by this Act and such other functions and powers as may be delegated to the Chief Executive by the Commission.

### **239. ELIGIBILITY FOR OFFICE.**

(1) Subject to Subsection (2), a person is not eligible to be appointed or to continue in office as Chief Executive, where:

- (a) directly or indirectly, as owner, shareholder, director, officer, operator, principal or otherwise, he:
  - (i) is engaged in an aviation business or corporate organization which operates air services or provides air services in Papua New Guinea; or
  - (ii) has a financial or proprietary interest in any firm or corporate body referred to in Subparagraph (i); or
- (b) is an undischarged bankrupt; or
- (c) is or has been convicted of an offence which would disqualify him from becoming a director under the Companies Act 1997.

(2) A Chief Executive:

- (a) who, at the time of his appointment has an interest referred to in Subsection (1)(a); or
- (b) in whom an interest referred to in Subsection (1)(a) vest by will or succession,

shall dispose of it within three months from the date of his appointment or the date of vesting, as the case may be.

### **240. VACATION OF OFFICE.**

(1) The Chief Executive may resign from office in writing signed by him and delivered to the Chairman.

(2) Where the Chief Executive:

- (a) is absent from duty, without authorization, except on approved leave of absence, for 28 consecutive days or for 20 days in any 12 month period; or

- (b) engages, except with the approval of the Commission, in paid employment outside the duties of his office; or
- (c) becomes bankrupt or applies to take the benefit of any law for the benefit or bankrupt or insolvent debtors, compounds with his creditors makes an assignment of his remuneration for their benefit; or
- (d) is convicted of an offence under this Act or any other law punishable by a term of imprisonment or death and as a result of the convicted is sentenced to imprisonment or death,

the Head of State, acting on advice, shall terminate his appointment.

(3) The Minister may, at any time, by written notice, advise the Chief Executive that he intends to recommend the termination of the appointment of the Chief Executive on the grounds of misconduct in office or incapacity, and such notice shall specify the details of the misconduct or incapacity alleged.

(4) Within 14 days of the receipt of a notice under Subsection (3), the Chief Executive may reply in writing to the Minister who shall consider the reply and where appropriate recommend to the National Executive Council that the appointment be terminated.

(5) Following consideration of a recommendation under Subsection (4), the National Executive Council may advise the Head of State to terminate the appointment and the Head of State, acting on advice, shall terminate the appointment.

(6) Where the Chief Executive does not reply in accordance with Subsection (4), his appointment is terminated.

#### ***Division 4.***

#### ***Staff, etc., of the Commission.***

#### **241. STAFF OF THE COMMISSION.**

(1) The Chief Executive may appoint as employees of the Commission such persons, including persons on secondment from any Department or organization, as the Chief Executive considers necessary for the efficient performance of the functions of the Commission.

(2) The Chief Executive and the employees appointed under Subsection (1) constitute the staff of the Commission.

(3) The employees appointed under Subsection (1) shall hold office on such terms and conditions of employment as are determined from time to time by the Commission, subject to the Salaries and Conditions Monitoring Committee Act 1988.

#### **242. APPOINTMENT OF EXPERT ASSESSORS.**

(1) The Commission may from time to time appoint, on such terms as the Chief Executive and the appointee agree, any suitable qualified person, as an expert assessor for the purposes of any investigation under this Act.

(2) The Commission may co-opt an assessor, for such term as it considers appropriate to be a member of the Commission.

(3) A co-opted member of the Commission may be a citizen or a permanent resident of a Contracting State.

(4) A co-opted member of the Commission is entitled to speak at any meeting of the Commission, but shall not be entitled to vote on any question.

***Division 5.***

***Powers and Procedures Relating to Accident and Incident Investigation Etc.***

**243. COMMISSION MAY MAKE REPORTS TO SECRETARY AND GIVE NOTICE WHERE APPROPRIATE.**

(1) The Commission may make such preliminary reports and recommendations to the Departmental Head and the Authority as may be necessary in the interests of transport safety.

(2) The Commission may give such notice of any preliminary report or recommendation to such persons as may be appropriate in the interests of transport safety.

**244. COMMISSION TO NOTIFY AUTHORITY OF ACCIDENTS AND INCIDENTS NOT BEING INVESTIGATED.**

The Commission shall notify the Authority of every accident or incident that:

- (a) is reported to the Commission; and
- (b) either:
  - (i) is outside the scope of the Commission's jurisdiction; or
  - (ii) is an accident or incident that the Commission decides not to investigate, being an accident or incident that the Commission is not required to investigate under this Act.

**245. INVESTIGATIVE POWERS OF COMMISSION.**

(1) For the purposes of carrying out its functions and duties under this Act, the Commission shall have the same powers as are conferred on a Commission of Inquiry by the Commissions of Inquiry Act (Chapter 31) and subject to the provisions of this Part, all the provisions of that Act, shall apply accordingly.

(2) In addition the Commission shall have all such powers as may be conferred on it by this or by any other Act, and as may be reasonably necessary or expedient to enable it to carry out its functions.

**246. POWERS OF ENTRY AND INVESTIGATION.**

(1) Subject to Subsection (2), where an accident occurs to an aircraft in Papua New Guinea, the aircraft (including the contents and parts thereof) shall be deemed

to be in the custody of the Commission for such period as the Commission considers necessary for the purposes of an accident inquiry, and shall not be removed or otherwise interfered with except with the permission of the Chief Commissioner, the Deputy Chief Commissioner or the Chief Executive.

(2) An aircraft to which Subsection (1) refers may be moved to the extent necessary:

- (a) to extricate persons, animals, mails, and valuables; or
- (b) to prevent destruction or damage by fire or other causes; or
- (c) to eliminate any danger or obstruction to air navigation, to other transport, or to the public.

(3) Without limiting the generality of the powers conferred by Section 222 or Section 245, for the purpose of exercising any of its functions, duties, or powers under this Act, the Commission and any person authorized in writing for the purpose by the Commission shall have power to do the following:—

- (a) to enter and inspect any aircraft, aerodrome, building, or place where the Commission believes on reasonable grounds that it is necessary to do so for the purpose of investigating an accident or incident;
- (b) to inspect, make copies of, or take extracts from, or retain any document or record that the Commission believes on reasonable grounds is relevant to the investigation of an accident or incident;
- (c) where necessary to preserve or record evidence, or to prevent the tring with or alteration, mutilation, or destruction of any aircraft, place, aeronautical product, or any other thing involved in any manner in an accident or incident, to prohibit or restrict access of persons or classes of persons to the site of any accident or incident;
- (d) to seize, detain, remove, preserve, protect, or test any aircraft, aeronautical product, or any thing that the Commission believes on reasonable grounds will assist in establishing the cause of an accident or incident.

(4) Nothing in Subsection (3) shall confer on any person the power to enter any dwelling house unless the entry is authorized by a warrant given by a judicial officer on written application on oath, which shall not be granted unless the judicial officer is satisfied that the entry is essential to enable the inspection to be carried out.

(5) A warrant issued under Subsection (4) shall be directed to a named person and shall be valid for a period of one month from the date of its issue or such lesser period as the judicial officer considers appropriate; and the period of validity shall be shown in the warrant.

(6) A person exercising the power of entry conferred by Subsection (3) or Subsection (4) shall:

- (a) carry a warrant of authority issued by the Chief Commissioner specifying:

- (i) the name and the office or offices held by the person; and
  - (ii) that the person is authorized by the Chief Commissioner to exercise the power conferred by Subsections (3) and (4) to enter aircraft, aerodromes, buildings, and places, and to carry out such inspection; and
- (b) produce the warrant of authority and evidence of identity:
- (i) if practicable on first entering the aircraft, aerodrome, building, or place; and
  - (ii) whenever subsequently reasonably required to do so.

**247. ACCIDENTS TO BE INVESTIGATED.**

(1) As soon as practicable after an accident or incident has been notified to the Commission under Section 62, the Commission shall investigate the accident or incident where:

- (a) the accident:
  - (i) involves a foreign aircraft (being an accident that is required by the Convention to be investigated); or
  - (ii) is at the interface of the civil and military aviation systems; or
  - (iii) involves an aircraft that is used principally for the transport of passengers or goods for hire or reward; or
  - (iv) involves an aircraft exceeding a weight of 544 kg maximum certified take-off mass; or
  - (v) involves the death of any person; or
  - (vi) involves a missing aircraft; or
- (b) the Commission believes that the circumstances of the accident or incident have, or are likely to have, significant implications for aviation safety and security, or the investigation may allow the Commission to establish findings or make recommendations which increase aviation safety; or
- (c) where the Commission has decided not to investigate an accident or incident under Paragraph (b), the Minister has directed the Commission to undertake an investigation in respect of that accident or incident.

(2) The power conferred by Subsection (1)(b) shall include the power to investigate any aviation accident or incident that involves any combination of military and non-military persons, aircraft, aerodromes, aeronautical products or aviation related services.

(3) Where an accident or incident has not been notified to the Commission in accordance with Section 62 and the accident or incident is required to be investigated under Subsection (1), the Commission shall commence such investigation of the accident or incident as it considers appropriate.

(4) Where the Commission proposes to undertake an investigation under this section, the Commission shall notify the Authority of this election as soon as is practicable.

(5) For the purpose of Subsection (2), “military” means, with respect to any aircraft or facility, an aircraft or facility operated by the Defence Force or a visiting defence force.

#### **248. CONDUCT OF INVESTIGATION.**

(1) When an accident or incident is under investigation by the Commission, the Commission shall be in charge of that investigation.

(2) The Commission shall permit the participation or representation of such foreign organizations in any investigation as is provided for in the Convention.

(3) Except with the consent of the Commission, no person other than those referred to in Subsection (2) shall:

- (a) participate in any investigation being undertaken by the Commission; or
- (b) undertake any independent investigation at the site of any accident or incident being investigated by the Commission; or
- (c) examine or cause to be examined any material removed from the site of any accident or incident being investigated by the Commission.

(4) Where the Commission refuses consent under Subsection (3), it shall give the applicant a statement in writing of the reasons for its refusal.

(5) Where a preliminary report issued by the Commission states or infers that the conduct of any specified person has contributed to the cause of an accident or incident being investigated by the Commission, the Commission shall, before issuing a final report on the matter:

- (a) give that person an opportunity to comment on or refute that statement, either in a statement in writing or at a hearing; and
- (b) have regard to the statement or other evidence of that person.

(6) Where an incident or accident referred to in Section 247 is being investigated by the Commission and the Defence Force, or a visiting force, the Commission and the Commander of the Defence Force shall take all reasonable measures to ensure that the investigations are co-ordinated.

#### **249. COMMISSION TO COMPLETE CERTAIN FORMER INVESTIGATIONS.**

Every investigation commenced under the Civil Aviation Regulations (Chapter 354) but not completed before the coming into operation of this Act shall be taken over and completed by the Commission under this Act.



**Division 6.**

**Use of Voice Recordings.**

**250. USE OF VOICE RECORDINGS - CRIMINAL PROCEEDINGS.**

A voice recording made:

- (a) during the flight of an aircraft operated by a Papua New Guinea operator; or
- (b) in course of providing an air traffic service to an aircraft,

is not admissible in any criminal proceedings in a Papua New Guinea court against an aircraft crew member or a person providing air traffic services.

**251. USE OF VOICE RECORDINGS - CIVIL PROCEEDINGS.**

(1) Subject to this section, a voice recording made:

- (a) during the flight of an aircraft operated by a Papua New Guinea operator; or
- (b) in course of providing an air traffic service to an aircraft,

is not admissible in any civil proceedings in a Papua New Guinea court.

(2) A party to damages proceedings may, at any time before the determination of the proceedings, apply to the court in which the proceedings have been instituted for an order that a voice recording or part of a voice recording of the type referred to in Subsection (1), be admissible in evidence in the proceedings.

(3) Where an application is made to a court under Subsection (2), the court shall examine the voice recording, and where it is satisfied:

- (a) that, where a material question of fact in the proceedings will not be able to be properly determined from other evidence available to the court; and
- (b) that the voice recording, or a part of the voice recording, where admissible in evidence in the proceeding, will assist in the proper determination of that material fact; and
- (c) that in the circumstances of the case, the public interest in the proper determination of that material question of fact outweighs the public interest in protecting the privacy of the people recorded on such voice recording,

the Court may order that the voice recording, or that part of the voice recording, as the case may be, be admissible in evidence in the proceedings.

(4) Notwithstanding Subsection (1) where the court makes an order referred to in Subsection (3), the voice recording, or that part of the voice recording, is admissible in evidence in the proceeding.

**252. PERSON TO BE PRESENT DURING EXAMINATION OF VOICE RECORDING.**

(1) Where a Court examines a voice recording under Section 252, no person other than the following may be present at the examination:—

- (a) persons constituting the court;
- (b) the legal representatives to the parties to the proceedings;
- (c) such other persons as the court directs.

(2) The court may direct that the voice recording or the part of the voice recording, or other information obtained from the recording or part of the recording, shall not:

- (a) be published or communicated to any person; or
- (b) be published or communicated except in such manner, and to such persons, as the court specifies.

**253. WHERE COURT MAKES AN ORDER IN RELATION TO VOICE RECORDING.**

(1) The voice recording referred to in Section 252, or that part of the voice recording, is not evidence for the purpose of the determination of the liability in the proceedings of an aircraft crew member or a person providing air traffic services.

(2) Where there are two or more defendants in the proceedings of whom at least one is a crew member or a person providing air traffic services and the remaining defendants are not such persons, the voice recording, or that part of the voice recording, is evidence for the purpose of determining whether or not any crew member or person providing air traffic services has been negligent for the purposes only of determining the liability in the proceedings of any defendant who is not a crew member or a person providing air traffic services.

(3) The court may direct that the voice recording or the part of the voice recording, or any information obtained from the recording or part of the recording, shall not:

- (a) be published or communicated to any person; or
- (b) be published or communicated except in such manner, and to such persons, as the court specifies.

**254. VOICE RECORDING NOT TO BE GROUND FOR DISCIPLINARY ACTION.**

(1) A person is not entitled to take disciplinary action against an employee on the basis of information in a voice recording or any part of a voice recording or information obtained from such a recording or any part of such a recording.

(2) This section has effect notwithstanding any other law or anything in any agreement.

**255. OFFENCE TO DISCLOSE VOICE RECORDINGS.**

(1) A person shall not intentionally or recklessly publish or communicate to any person:

- (a) a voice recording or any part of a voice recording; or
- (b) any information obtained from a voice recording or any part of a voice recording, otherwise than in the course of an investigation into an accident, serious incident or incident involving an aircraft conducted under this Part or for the purposes of, or in connection with:
- (c) criminal proceedings, other than criminal proceedings of the kind referred to in Section 250; or
- (d) civil proceedings of the kind referred to in Section 251.

(2) A person, who breaches Subsection (1), is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) corporation – a fine not exceeding K100,000.00; and
- (b) other than a corporation – a fine not exceeding K30,000.00 or imprisonment for a term not exceeding one year, or both.

**256. OTHER EVIDENCE ADMISSIBLE.**

Nothing in Sections 250 and 251 affects the admissibility in any proceeding of evidence of words spoken by a person on the flight deck of an aircraft or in an air traffic services facility other than evidence constituted by a voice recording or by a transcript of such a recording.

**PART XIV. – METEOROLOGICAL SERVICES.**

**257. PROVISION OF METEOROLOGICAL WARNING SERVICE.**

(1) The Minister shall ensure the provision of the meteorological warning service referred to in Section 14(2)(b).

(2) The Minister shall arrange for the provision of:

- (a) the making and issuing of forecasts of the weather; and
- (b) the collection and recording of such meteorological information as is necessary for the purposes of making and issuing forecasts of the weather.

(3) Notwithstanding the provisions of Section 14, the Minister may make arrangements with any person or organization, other than the Authority, to enable him to fulfil his obligations under this section.

**258. MINISTER TO DESIGNATE METEOROLOGICAL WARNING SERVICE.**

(1) The Minister shall, from time to time, by notice published in the National Gazette, designate a person who shall be responsible to provide the authorized meteorological warning service in Papua New Guinea.

(2) Upon the coming into operation of this Act, the Director shall be the responsible person referred to in Subsection (1).

**259. AUTHORITY TO ESTABLISH THE NATIONAL WEATHER SERVICE.**

(1) The Authority shall establish the National Weather Service whose primary function shall be to provide and arrange for the dissemination of public forecasting and meteorological warning services to the people of Papua New Guinea in a timely and efficient manner.

(2) Without limiting the generality of this section, the other functions of the National Weather Service shall include -

- (a) providing of quality meteorological services and products to rural, village and city communities, aviation, marine, mining, exploration, agricultural and other users; and
- (b) advising the Minister on meteorological matters; and
- (c) conducting meteorological research in support of national development and other essential socio-economic activities; and
- (d) contributing to the fulfillment of Papua New Guinea's international meteorological obligations.

(3) The Head of State, acting on advice, may by Order transfer the National Weather Service to any other Department, Government agency or authority upon such terms and conditions as are specified in the Order.

(4) Where the National Weather Service is transferred under Subsection (3), each employee of the National Weather Service is deemed to have accrued entitlements in his employment with that new Department, Government agency or authority to benefits equivalent to the benefits which he had accrued immediately prior to the transfer date and that the employee shall from the transfer date be employed by that Department, Government agency or authority.

(5) The Authority may, with the consent of the Minister and the Minister responsible for financial matters, establish a wholly owned subsidiary company under the Companies Act 1997 for the purpose of carrying out its functions in respect of meteorological services, science and the National Weather Service.

(6) Where a company is established under Subsection (3) it shall be deemed to be a state aviation enterprise for the purposes of this Act.

**PART XV. – AVIATION CRIMES.*****Division 1.******Hijacking and Serious Crimes.*****260. HIJACKING.**

A person who, while on board an aircraft in flight, whether in or outside Papua New Guinea, unlawfully, by force or by threat of force or by any form of intimidation, seizes or exercises control, or attempts to seize or exercise control, of that aircraft is guilty of a crime of hijacking.

Penalty: Imprisonment for life.

**261. CRIMES IN CONNECTION WITH HIJACKING.**

(1) A person who, while on board an aircraft in flight outside Papua New Guinea, does or omits to do any act which, if done or omitted by that person in Papua New Guinea, would be a crime, commits a crime where the act or omission occurred in connection with the crime of hijacking.

Penalty: Imprisonment for life.

(2) Without in any way limiting the generality of Subsection (1), an act or omission by any person shall be deemed to occur in connection with the crime of hijacking where it was done or omitted with intent:

- (a) to commit or facilitate the commission of the crime of hijacking; or
- (b) to avoid the detection of himself or of any other person in the commission of the crime of hijacking; or
- (c) to avoid the arrest or facilitate the flight of himself or of any other person upon the commission of the crime of hijacking.

**262. OTHER CRIMES RELATING TO AIRCRAFT AND ASSAULTS ON AIRCRAFT CREW.**

A person who, whether in or outside Papua New Guinea:

- (a) on board an aircraft in flight, commits an assault with intent to injure or which is likely to endanger the safety of the aircraft or any person (whether or not a particular person); or
- (b) destroys an aircraft in service; or
- (c) causes damage to an aircraft in service which renders the aircraft incapable of flight or which is likely to endanger the safety of the aircraft in flight; or
- (d) causes damage to an aircraft or to any system or equipment directly associated with the guidance, control or operation of an aircraft which

renders the aircraft incapable of flight or is likely to endanger the aircraft or any passengers on that aircraft if it goes into service; or

- (e) approaches an aircraft in service in a threatening manner with any of the devices mentioned in Subsection 267 (1), irrespective of whether or not they are in his personal position, with the intention of preventing the aircraft from taxiing or taking-off or otherwise interfering with the aircraft movement as planned by the pilot-in-command; or
- (f) places or causes to be placed on an aircraft in service anything which is likely to destroy the aircraft, or to cause damage to the aircraft which will render it incapable of flight, or which is likely to endanger the safety of the aircraft in flight; or
- (g) destroys, damages, or interferes with the operation of any air navigation facility used for the purposes of international air navigation, where the destruction, damage, or interference is likely to endanger the safety of aircraft in flight; or
- (h) endangers the safety of an aircraft in flight by communicating to any other person any information which the person supplying the information knows to be false; or
- (i) assaults a member of the crew of an aircraft in flight; or
- (j) threatens a member of the crew of an aircraft in service or about to go into service with any violence, injury, damage or detriment to be caused to him or any other person on or in the vicinity of the aircraft or to the aircraft by the offender or by any other person,

is guilty of a crime.

Penalty: Imprisonment for a term not exceeding 14 years.

### **263. CRIMES DEEMED TO BE INCLUDED IN EXTRADITION TREATIES.**

(1) For the purposes of this section, the expression “foreign country” includes any territory for whose international relations the government of a foreign country is responsible and to which the extradition treaty and The Hague Convention or, as the case may be, the Montreal Convention extends.

(2) For the purposes of the *Extradition Act* (Chapter 49), the crime of hijacking referred to in Section 261 (including aiding, abetting, inciting, counselling, or procuring any person to commit that crime, inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed, and being an accessory after the fact to that crime), shall, where not already described in the treaty, be deemed to be an offence described in an extradition treaty concluded before the commencement and for the time being in force between Papua New Guinea and any foreign country which is a party to The Hague Convention, and a certificate given under the hand of the Minister responsible for Foreign Affairs that any foreign country is a party as shall be sufficient evidence of that fact.

(3) For the purposes of the *Extradition Act* (Chapter 49) each crime referred to in Section 261 (including attempting to commit that crime, aiding, abetting, inciting, counselling, or attempting to procure any person to commit that crime when it is not in fact committed, and being an accessory after the fact to that crime) shall be deemed to be an offence described in an extradition treaty concluded before the commencement and for the time being in force between Papua New Guinea and any foreign country which is a party to the Montreal Convention, and a certificate given under the hand of the Minister responsible for Foreign Affairs matters that any foreign country is a party as aforesaid shall be sufficient evidence of that fact.

(4) Where, pursuant to the provisions of Subsection (2) or (3), a crime is deemed to be an offence described in an extradition treaty, a person whose surrender is sought under the *Extradition Act* (Chapter 49), in respect of an act or omission which amounts to that crime shall be liable to be surrendered in accordance with the provisions of that Act, whether the act or omission occurred before or after the date on which the crime was deemed to be an offence described in the extradition treaty.

(5) Attempting to commit any of the crimes referred to in this section, aiding, abetting, inciting, counselling, or procuring any person to commit the crime of hijacking or any of the crimes so referred to inciting, counselling, or attempting to procure any person to commit the crime of hijacking or any of the crimes so referred to when it is not in fact committed, and being an accessory after the fact to the crime of hijacking or any of the crimes so described.

#### **264. SURRENDER OF OFFENDERS.**

(1) Where the surrender of a person is sought under the *Extradition Act* (Chapter 49) in respect of any act or omission which amounts to the crime of hijacking or to any crime referred to in Section 261 including attempting to commit any of the crimes so referred to, aiding, abetting, inciting, counselling, or procuring any person to commit the crime of hijacking or any of the crimes so referred to, inciting, counselling, or attempting to procure any person to commit the crime of hijacking or any of the crimes so referred to when it is not in fact committed, and being an accessory after the fact to the crime of hijacking or any of the crimes so referred to), and for which the person whose surrender is sought could be tried and punished in the country seeking surrender being a country which is a party to the Hague Convention or the Montreal Convention, as the case may require, that act or omission shall be deemed to have been committed within the jurisdiction of that country notwithstanding that it was committed outside the territory of that country, and a certificate given under the hand of the Minister responsible for Foreign Affairs that a country is a party to either Convention shall be sufficient evidence of that fact.

(2) For the purposes of this section, the term “country” includes any territory for whose international relations the government of a country is responsible and to which the extradition treaty (if any) and the Hague Convention or, as the case may be, the Montreal Convention, extends.



**265. APPLICATION OF SECTIONS 260 AND 261.**

(1) Nothing in Section 260 or 261 shall apply where both the place of take off and the place of actual landing of the aircraft (not being a Papua New Guinea aircraft) are in the territory of the country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:

- (a) the alleged offender is a Papua New Guinea citizen or a person ordinarily resident in Papua New Guinea; or
- (b) the act or omission occurred in Papua New Guinea; or
- (c) the alleged offender is present in Papua New Guinea.

(2) Nothing in Section 262(a) to (d) and (f) shall apply where both the place of take off and the place of actual or intended landing of the aircraft (not being a Papua New Guinea aircraft) are in the territory of a country in which the aircraft is registered, or, in the case of an aircraft that is subject to joint or international registration, in the territory of one of the countries having an interest in the aircraft, unless:

- (a) the alleged offender is a Papua New Guinea citizen or a person ordinarily resident in Papua New Guinea; or
- (b) the act or omission occurred in Papua New Guinea; or
- (c) the alleged offender is present in Papua New Guinea.

**266. APPLICATION OF CERTAIN PROVISIONS OF CRIMINAL CODE.**

(1) Nothing in the Criminal Code (Chapter 262) shall apply with respect to the crime of hijacking or to any of the crimes described in Section 261 or to any crime referred to in Section 262, when committed in connection with the crime of hijacking.

(2) Subject to Subsection (1), nothing in this Act shall be construed to limit or affect the operation of any provision of the Criminal Code (Chapter 262).

***Division 2.******Taking Firearms, Explosives, Etc., on to Aircraft.*****267. TAKING FIREARMS, EXPLOSIVES, ETC., ON TO AIRCRAFT.**

(1) For the purposes of this Act, the term “firearm” means any gun, rifle or pistol, whether acting by force of explosives or not, and includes any such gun, rifle or pistol which for the time being is not capable of discharging any shot, bullet or other missile, but which by its completion or the replacement of any component part or parts or the correction or repair of any defect or defects, would be so capable, and also includes any such gun, rifle or pistol which is for the time being dismantled.

(2) A person who, without lawful authority or reasonable excuse, or without the permission of the owner or operator of the aircraft or of a person duly authorized

by either of them to give such permission, takes or attempts to take on board any aircraft –

- (a) any firearm; or
- (b) any other dangerous or offensive weapon or instrument of any kind whatsoever; or
- (c) any ammunition; or
- (d) any explosive substance or device, or any other injurious substance or device of any kind whatsoever which could be used to endanger the safety of the aircraft or of persons on board the aircraft,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 7 years.

### *Division 3.*

#### *Search of Passengers, Baggage, and Cargo.*

#### **268. SEARCH OF PASSENGERS, BAGGAGE, AND CARGO.**

(1) Any:

- (a) member of the Police Force; or
- (b) aviation security services officer; or
- (c) officer of Customs; or
- (d) employee or agent of the carrier authorized by the carrier for the purpose,

may, with the consent of the passenger, search any passenger and his baggage before the passenger boards any aircraft in Papua New Guinea pursuant to any contract providing for the carriage of the passenger by air from any place in Papua New Guinea to any other place (whether in Papua New Guinea or elsewhere).

(2) Where passenger declines to allow himself or his baggage to be searched, the carrier may refuse to carry him.

(3) A carrier shall not be liable to any civil proceeding, other than a proceeding in respect of any right that the passenger may have for the recovery of the fare or any part thereof, by reason of the fact that the carrier has refused to carry a passenger who has declined to allow himself or his baggage to be searched.

(4) The following provisions shall apply with respect to any search made pursuant to Subsection (1):–

- (a) the passenger shall not be required to remove any article of clothing (other than a coat or similar article) for the purpose of being searched;
- (b) except where the search is made by means of any mechanical or electrical or electronic or other similar device, no female shall be searched except by a female.

(5) An employee or agent of the carrier authorized by the carrier for the purpose, or an aviation security officer, may examine any cargo before the cargo is loaded on to an aircraft in Papua New Guinea pursuant to a contract providing for the carriage of the cargo by air from a place in Papua New Guinea to any other place (whether in Papua New Guinea or elsewhere).

**269. SEARCH OF PERSONS DECLINING TO ALLOW SEARCH.**

(1) Where:

- (a) pursuant to Subsection 268(2) a carrier refuses to carry a person who has declined to allow himself, or his baggage to be searched; and
- (b) a member of the Police Force has reasonable grounds to suspect that a crime against this Act in relation to the aircraft on which that person was to be carried has been, or is being, or is likely to be, committed, whether by that person or by any other person,

the member of the Police Force may, subject to Section 268(4)(b), without warrant, search that first mentioned person and his baggage and may detain him for the purposes of that search, and may take possession of any article referred to in Section 267(a) to (c) found in the course of that search.

(2) The refusal of a person to allow himself or his baggage to be searched shall not of itself constitute reasonable grounds for suspecting that a crime against this Act in relation to the aircraft has been, is being, or is likely to be, committed.

(3) A member of the Police Force exercising the power of search conferred by Subsection (1) shall identify himself to the person searched, and shall also inform that person that the search is being made pursuant to that subsection.

(4) The member of the Police Force shall, where not in uniform, produce evidence that he is a member of the Police Force.

**270. EVIDENCE OF OFFENCES.**

Nothing found in the course of a search or examination made pursuant to Section 268 or Section 269 shall be admissible as evidence in any criminal proceedings against the person who, or whose baggage, has been searched, or, as the case may be, the consignor of any cargo that has been examined, other than proceedings in respect of a crime against this Act or the crime of treason or any crime punishable by death or imprisonment for life or for a term of imprisonment of five years or more.

*Division 4.**Powers of Aircraft Pilot-in-command.***271. POWERS OF AIRCRAFT PILOT-IN-COMMAND.**

(1) Where the pilot-in-command of an aircraft in flight, wherever that aircraft may be, has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft:

- (a) anything which is an offence under the law of the country in which the aircraft is registered (not being a law of a political nature or a law based on racial or religious discrimination), or
- (b) anything (whether an offence or not) which jeopardises or may jeopardise:
  - (i) the safety of the aircraft or of persons or property on board the aircraft; or
  - (ii) good order and discipline on board the aircraft,  
the pilot-in-command may take, with respect to that person, such reasonable measures, including restraint, as may be necessary:
- (c) to protect the safety of the aircraft or of persons or property on board the aircraft; or
- (d) to maintain good order and discipline on board the aircraft; or
- (e) to enable the pilot-in-command to disembark or deliver that person in accordance with Subsection (5) or Subsection (6).

(2) A member of the crew of an aircraft and any other person on board the aircraft may, at the request or with the authority of the pilot-in-command of the aircraft, and a member of the crew shall where so required by the pilot-in-command, assist in restraining any person whom the pilot-in-command is entitled under Subsection (1) to restrain.

(3) A member of the crew and any other person on board an aircraft may, without the pilot-in-command's authority, take with respect to any person on board the aircraft such reasonable measures, including restraint, as he has reasonable grounds to believe are immediately necessary to protect the safety of the aircraft or of persons or property on board the aircraft.

(4) Any restraint imposed on a person on board an aircraft under the powers conferred by Subsection (1), (2) or (3) shall not be continued after the aircraft ceases to be in flight, unless the pilot-in-command of the aircraft notifies the appropriate authorities of the country in which the aircraft ceases to be in flight, either before or as soon as reasonably practicable after that time, that a person on board is under restraint and of the reasons for such restraint, but, provided that notification has been given, restraint may be continued:

- (a) for any period ( including the period of any further flight ) between that time and the first occasion thereafter on which the pilot-in-command is able with the requisite consent of the appropriate authorities to disembark or deliver the person under restraint in accordance with Subsection (5) or (6) ; or
- (b) where the person under restraint agrees to continue his journey under restraint on board that aircraft.

(5) If the pilot-in-command of an aircraft has reasonable grounds to believe that a person on board the aircraft has done or is about to do on board the aircraft anything (whether it is an offence or not)which jeopardises or may jeopardise:

- (a) the safety of the aircraft or of persons or property on board the aircraft; or
- (b) good order and discipline on board the aircraft,

he may, where he considers it necessary in order to protect the safety of the aircraft, disembark that person in any country in which the aircraft may be.

(6) Where the pilot-in-command of an aircraft has reasonable grounds to believe that a person on board the aircraft has done on board the aircraft anything which in the pilot-in-command's opinion is a serious offence under the law of the country in which the aircraft is registered, he may deliver that person:

- (a) in Papua New Guinea, to any member of the Police Force; or
- (b) in any other country which is a party to the Tokyo Convention, to any person exercising functions corresponding to those of a member of the Police Force.

(7) Where the pilot-in-command of an aircraft disembarks a person pursuant to Subsection (5):

- (a) in the case of a Papua New Guinea aircraft, in any country; or
- (b) in the case of any other aircraft, in Papua New Guinea,

he shall report the fact of, and the reasons for, that disembarkation to an appropriate authority in the country of disembarkation.

(8) Where the pilot-in-command of an aircraft intends to deliver a person in accordance with Subsection (6), in Papua New Guinea or, in the case of a Papua New Guinea aircraft, in any other country which is a party to the Tokyo Convention, he shall, before or as soon as practicable after landing, give notification of his intention and of the reasons for this intention to an appropriate authority in that country.

(9) A pilot-in-command of an aircraft, who without reasonable cause, fails to comply with the requirements of Subsection (7) or (8) is guilty of an offence.

Penalty: A fine not exceeding K1000.00.

(10) A person who in good faith imposes reasonable measures, including restraint, on another person in accordance with these provisions is not guilty of an offence and is not liable to any civil proceeding in respect of those measures.

**272. ARREST OF PERSONS DELIVERED TO POLICE FORCE.**

(1) A member of the Police Force shall accept delivery of a person whom the pilot-in-command of an aircraft seeks to deliver to him in accordance with Subsection 271 (5) where he has reasonable grounds to suspect that person of having done or omitted to do on board that aircraft anything that is a crime against this Act or any other Act.

(2) Where any member of the Police Force accepts delivery of a person under Subsection (1), the member of the Police Force shall forthwith arrest that person.

**273. POWER TO SEARCH PERSONS ON AIRCRAFT.**

Where the pilot-in-command of an aircraft in flight has reasonable grounds to suspect that a crime against this Act has been, is being, or is likely to be, committed on board or in relation to that aircraft, he, or any member of the crew of the aircraft or any other person on board the aircraft authorized by him to do so, may search any person or baggage on board the aircraft, and may take possession of any article found which has been used or could be used to effect or facilitate the commission of a crime against this Act.

*Division 5.**Miscellaneous Provisions.***274. ATTORNEY-GENERAL'S CONSENT REQUIRED FOR PROSECUTIONS.**

(1) No proceedings for the trial and punishment of any person charged with a crime against Section 260, 261, 262 or 267 shall be instituted in any Court except with the consent of the Attorney-General.

(2) A person charged with any crime referred to in Subsection (1) may be arrested, or a warrant for his arrest may be issued and executed, and he may be remanded in custody or on bail, notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the crime has not been obtained, but no further proceedings shall be taken until that consent has been obtained.

**275. AIRCRAFT IN MILITARY, CUSTOMS, OR POLICE SERVICE.**

Nothing in Sections 267 to 273 (inclusive) shall apply to aircraft used in the military, customs, or police service of any country, including Papua New Guinea.

**PART XVI. – OFFENCES AND PENALTIES.**

***Division 1.***

***Safety Offences.***

**276. ENDANGERMENT CAUSED BY HOLDER OF AVIATION DOCUMENT.**

(1) A holder of an aviation document who, in respect of any activity or service to which the document relates, does or omits to do any act or causes or permits any act or omission, where the act or omission causes unnecessary danger to any other person or to any property, is guilty of an offence.

Penalty: Where a person convicted on an offence is:

- (a) a corporation a fine not exceeding K200,000.00; and
- (b) other than a corporation – a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 2 years, or both.

(2) The provisions of Subsection (1) are in addition to and not in derogation of any regulations or rules made under this Act.

**277. OPERATING AN AIRCRAFT IN A CARELESS MANNER.**

(1) A person, who operates an aircraft in a careless manner, is guilty of an offence.

Penalty: Where a person convicted on an offence is:

- (a) a corporation a fine not exceeding K50,000.00; and
- (b) other than a corporation – a fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months, or both.

(2) The provisions of Subsection (1) are in addition to and not in derogation of any regulations or rules made under this Act.

**278. DANGEROUS ACTIVITY INVOLVING AIRCRAFT, AERONAUTICAL PRODUCT, OR AVIATION RELATED SERVICE.**

(1) A person, who:

- (a) operates, maintains, or services; or
- (b) does any other act in respect of an aircraft, aeronautical product or service; or
- (c) causes or permits an aircraft, aeronautical product or aviation related service to be operated, maintained, or serviced; or
- (d) causes or permits any other act to be done in respect of an aircraft, aeronautical product or aviation related service,

in a manner which causes unnecessary danger to any other person or to any property, is guilty of an offence.

Penalty: Where a person convicted on an offence is:

- (a) a corporation a fine not exceeding K200,000.00; and
- (b) other than a corporation – a fine not exceeding K50,000.00 or imprisonment for a term not exceeding 2 years, or both.

(2) The provisions of Subsection (1) shall be in addition to and not in derogation of any regulations or rules made under this Act.

**279. COURT MAY DISQUALIFY HOLDER OF AVIATION DOCUMENT OR IMPOSE CONDITIONS ON HOLDING OF DOCUMENT.**

(1) In addition to any penalty the Court may impose under Sections 277 to 279 (inclusive), the Court may, on convicting any person of an offence against any of those sections:

- (a) disqualify the person convicted from holding or obtaining an aviation document or a particular aviation document; or
- (b) impose on any aviation document held by or issued to the person convicted, such restrictions or conditions or both as the Court, having regard to the circumstances of the offence, thinks fit for such period not exceeding 12 months as the Court thinks fit.

(2) Nothing in Subsection (1) shall affect or prevent the exercise by the Director of his powers under Section 53.

**280. ACTING WITHOUT NECESSARY AVIATION DOCUMENT.**

A person who:

- (a) operates, maintains, or services; or
- (b) does any other act,

in respect of any aircraft, aeronautical product or aviation related service, either without holding the appropriate current aviation document or knowing that a current aviation document is required to be held in respect of that aircraft, product or service before that act may lawfully be done and knowing that the appropriate aviation document is not held, is guilty of an offence.

Penalty: Where a person convicted on an offence is:

- (a) a corporation a fine not exceeding K50,000.00; and
- (b) other than a corporation - a fine not exceeding K10,000.00 or imprisonment for a term not exceeding 3 months, or both.

**281. ADDITIONAL PENALTY FOR OFFENCES INVOLVING COMMERCIAL GAIN.**

(1) In addition to any penalty the Court may impose under Sections 276 to 278 (inclusive) and 280, the Court may, on convicting a person of an offence specified in



any of those sections, order that person to pay an amount up to three times the value of any commercial gain resulting from the commission of that offence where the Court is satisfied that the offence was committed in the course of producing a commercial gain.

(2) For the purpose of Subsection (1), the value of any gain shall be assessed by the Court, and shall be recoverable in the same manner as a fine.

***Division 2.***

***General Offences.***

**282. APPLYING FOR AVIATION DOCUMENT WHILE DISQUALIFIED.**

(1) A person who applies for or obtains an aviation document while disqualified by an order of the Court from obtaining such a document, is guilty of an offence.

Penalty: Where a person convicted on an offence is:

- (a) a corporation a fine not exceeding K50,000.00; and
- (b) other than a corporation – a fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months, or both.

(2) The Court may order a person convicted under Subsection (1) to be disqualified from holding or obtaining an aviation document for such period not exceeding 12 months as the Court thinks fit.

(3) An aviation document obtained by a person while disqualified by an order of the Court shall be of no effect, irrespective of whether the person has been convicted of an offence under this section.

**283. COMMUNICATING FALSE INFORMATION OR FAILING TO DISCLOSE INFORMATION RELEVANT TO GRANTING OR HOLDING OF AVIATION DOCUMENT.**

A person who:

- (a) by any means, provides to the Minister, the Departmental Head or the Director, as the case may be, information relevant to the exercise of powers under this Act by the Minister, the Departmental Head or the Director, as the case may be, or under rules or regulations made under this Act, knowing the information to be false or in a manner reckless as to whether it is false; or
- (b) being an applicant for an aviation document, fails, without reasonable excuse, to provide to the Minister, the Departmental Head or the Director information known to that person which is relevant to that person's exercise of powers under this Act, or under rules or regulations made under this Act; or
- (c) being the holder of an aviation document, fails without reasonable excuse to provide to the Director as the case may be, information known

to that person which is relevant to the condition specified in Section 45 (3); or

- (d) without reasonable excuse, fails to comply with any requirements of the Director acting under this Act,

is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation a fine not exceeding K100,000.00; and  
 (b) other than a corporation – a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

**284. OBSTRUCTION OF PERSONS DULY AUTHORIZED BY MINISTER, DEPARTMENTAL HEAD OR DIRECTOR.**

(1) A person who obstructs or impedes a person who is duly authorized by the Minister or the Departmental Head, the Authority or the Director and acting in the performance or exercise of any functions, duties, or powers conferred on him by this Act, or by any rules made under this Act, is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation-a fine not exceeding K50,000.00; and  
 (b) other than a corporation – a fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months, or both.

(2) Subsection (1) shall apply only where the person obstructed or impeded is in uniform or produces evidence of his authority.

**285. FAILURE OR REFUSAL TO PRODUCE OR SURRENDER DOCUMENTS.**

A person, who, without reasonable excuse, fails or refuses to comply with a requirement made in accordance with Section 54(3), is guilty of an offence.

Penalty: A fine not exceeding K2,500.00

**286. INTERFERING WITH FACILITIES OR EQUIPMENT.**

A person, who interferes with navigation installations or equipment used in an aviation-related service or in the provision of meteorological services, is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months, or both.

**287. TRESPASS.**

A person who, without reasonable excuse, enters or remains within an aerodrome or any building or area in which are operated technical facilities or services for civil aviation, when directed not to enter or not to remain by:

- (a) a person duly authorized in writing for that purpose by the Minister, the Departmental Head or the Director or by a member of the Police Force or an aviation security officer; or
- (b) notice posted by any of the persons referred to in Paragraph (a), is guilty of an offence.

Penalty: A fine not exceeding K10,000.00 or imprisonment for a term not exceeding three months, or both.

**288. FAILURE TO NOTIFY EMERGENCY BREACH OF ACT OR REGULATIONS OR RULES.**

A pilot-in-command, who, without reasonable excuse, fails to comply with Section 64 (6)(b), is guilty of an offence.

Penalty: A fine not exceeding K5,000.00.

**289. FAILURE TO NOTIFY ACCIDENT OR INCIDENT.**

A pilot-in-command or operator who, without reasonable excuse, fails to comply with Section 60(1) or (2) or (3), is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation a fine not exceeding K50,000.00; and
- (b) other than a corporation – a fine not exceeding K10,000.00 or imprisonment for a term not exceeding 3 months, or both.

**290. FLIGHT IN FOREIGN COUNTRY WITHOUT AUTHORITY OR FOR AN IMPROPER PURPOSE.**

(1) This section applies to:

- (a) an aircraft that is registered or required to be registered in Papua New Guinea under this Act; or
- (b) any other aircraft operated by a person who is a permanent resident of Papua New Guinea or whose principal place of business is in Papua New Guinea.

(2) A person who, being the operator or pilot-in-command of an aircraft to which this section applies, that is being flown over a foreign country or territory, knowingly allows that aircraft to be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in, that country or territory, is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation a fine not exceeding K100,000.00; and
- (b) other than a corporation – a fine not exceeding K30,000.00 or imprisonment for a term not exceeding one year, or both.

(3) In a prosecution for an offence against Subsection (2), where it is proved by the prosecution that the aircraft was used for a purpose that is prejudicial to:

- (a) the security of; or
- (b) public order or public health of; or
- (c) the safety of air navigation in relation to,

the foreign country or territory, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the aircraft was being so used.

(4) A person commits an offence where he, being the operator or pilot-in-command of an aircraft to which this section applies that is being flown over any foreign country or territory, knowingly fails to comply with any direction that is given in respect of the aircraft by the appropriate aeronautical authority of that country or territory where:

- (a) the flight is not duly authorized; or
- (b) there are reasonable grounds for the appropriate aeronautical authority to believe that the aircraft is being or will be used for a purpose that is prejudicial to the security of, public order or public health of, or the safety of air navigation in relation to, that country or territory,

unless the lives of people on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.

Penalty: Where a person convicted of an offence is:

- (a) a corporation a fine not exceeding K100,000.00; and
- (b) other than a corporation – a fine not exceeding K30,000.00 or imprisonment for a term not exceeding one year, or both.

(5) A person shall not be convicted under Subsection (4) where he proves, on the balance of probabilities, that the lives of persons on board the aircraft or the safety of the aircraft would be endangered by complying with the direction.

(6) In a prosecution for an offence against Subsection (4), where it is proved by the prosecution that the defendant failed to comply with a direction that was given in respect of that aircraft by the appropriate aeronautical authority, in the absence of evidence to the contrary it shall be presumed that the defendant knew that the direction had been given.

(7) The requirement in Subsection (4) is without prejudice to any other requirement to comply with directions given by an aeronautical authority.

(8) For the purposes of this Act, “appropriate aeronautical authority” includes any Person, whether a member of the military authorities or the civil authorities of

the foreign country or territory, who is authorized under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.

**291. FAILURE TO MAINTAIN ACCURATE RECORDS.**

A person, who contravenes any provision or any rule made under this Act that requires that person:

- (a) to make accurate entries in a record; or
- (b) to maintain an accurate record; or
- (c) to produce to any person an accurate record,

is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation—a fine not exceeding K10,000.00; and
- (b) other than a corporation – a fine not exceeding K2,500.00.

**292. CONTRAVENTION OF EMERGENCY RULE, PROHIBITION, OR CONDITION.**

A person who, without reasonable excuse, acts in contravention of or fails to comply with any emergency rule made under Section 73 or any prohibition or condition notified under Section 53 is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation a fine not exceeding K10,000.00; and
- (b) other than a corporation – a fine not exceeding K2,500.00.

***Division 3.***

***Security Offences.***

**293. SECURITY AREA OFFENCES.**

A person who, on being found in a security area:

- (a) refuses to state his name, address and authority to enter the security area after having been informed that he is in the security area and having been requested by an aviation security officer to state those particulars; or
- (b) refuses forthwith to leave the security area after having been ordered by an aviation security officer to do so,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding one month, or both.

**294. PERSONATION OR OBSTRUCTION OF AVIATION SECURITY OFFICER.**

A person, who, not being an aviation security officer:

- (a) by words, conduct, demeanour or the assumption of the dress, name, designation or description of an aviation security officer, holds himself or herself out as being an aviation security officer; or
- (b) willfully obstructs, or incites or encourages any person to obstruct an aviation security officer in the execution of his duty,

is guilty of an offence.

Penalty: A fine not exceeding K5,000.00 or imprisonment for a term not exceeding 6 months, or both.

**295. COMMUNICATING FALSE INFORMATION AFFECTING SAFETY.**

(1) A person who by any means provides to another person information relating to the safety of an aircraft, aerodrome, aeronautical product, aviation related service or any other facility or product used in or connected with aviation, or any person associated therewith, knowing the information to be false or in a manner reckless as to whether it is false, is guilty of an offence.

Penalty: Where a person convicted of an offence is:

- (a) a corporation - a fine not exceeding K100,000.00; and
- (b) other than a corporation - a fine not exceeding K30,000.00 or imprisonment for a term not exceeding one year, or both.

(2) Where the commission of an offence against Subsection (1) causes financial loss to any person and where the court imposes a fine in respect of that offence, the court may order that such part of the fine as it thinks fit, but in any event not more than one half of the fine, be awarded to that person.

***Division 4.******Disqualification.*****296. EFFECT OF DISQUALIFICATION.**

(1) Where the holder of an aviation document is disqualified by an order of a Court from holding or obtaining an aviation document, the document shall be deemed to be suspended while the disqualification continues in force, and during the period of suspension shall be of no effect.

(2) Where the holder of an aviation document is disqualified from holding or obtaining a document, and the disqualification will expire before the expiration of the term of the document, the document shall on the expiration of the disqualification, continue to be of no effect until the holder of it undergoes and passes such tests and fulfils such requirements as the Director may from time to time specify.

**297. COMMENCEMENT OF A PERIOD OF DISQUALIFICATION.**

Where an order is made disqualifying a person from holding or obtaining an aviation document, the period of disqualification shall commence on the date of the making of the order unless the Court making the order directs that the period of disqualification shall commence on a later date.

**298. RETENTION AND CUSTODY OF DOCUMENT.**

(1) Where by an order of a Court the holder of an aviation document is disqualified from holding or obtaining a document, the person in respect of whom the order is made shall forthwith, and whether or not demand is made, surrender the document:

- (a) to the Court where the order was made; or
- (b) to any person authorized by the Director to accept such documents.

(2) Where an aviation document is so surrendered, it shall forthwith be forwarded to the Director who shall endorse the terms of the disqualification on the document and retain it until the disqualification has expired or been removed and the person entitled to the document has made a request in writing for its return.

(3) Where the person entitled to the document is a person to whom Section 296(2) applies, the document shall not be returned to that person until that person has passed the tests and fulfilled the requirements referred to in that provision.

**299. REMOVAL OF DISQUALIFICATION.**

(1) Subject to this section, a person who by order of a Court is disqualified for a period exceeding 12 months from holding or obtaining an aviation document may, after the expiration of 12 months after the date on which the order of disqualification became effective, apply to the Court by which that order was made to remove the disqualification.

(2) On the application under this section the Court may, having regard to the Character of the applicant, the applicant's conduct subsequent to the order, the nature of the offence, and any other circumstances of the case, remove the disqualification as from such date as may be specified in the order or refuse the application.

(3) Where the disqualification was ordered by a National Court, where practicable every application under this section shall be made to the Judge who made the order in the first instance.

(4) Notice of every application under this section shall be served on the Director who shall be a party to the proceeding.

**300. PARTICULARS OF DISQUALIFICATION ORDERS, ETC., TO BE SENT TO DIRECTOR.**

Where a Court makes an order disqualifying a person from holding or obtaining an aviation document or imposes restrictions or conditions (or both) on any aviation document held by or issued to any person or makes an order under Section 300 removing any disqualification, particulars of the order shall be sent by the Registrar of the Court to the Director.

**301. APPEALS AGAINST DISQUALIFICATION.**

(1) An order of a National Court by which any person is disqualified from holding or obtaining an aviation document is deemed to be a sentence or part of a sentence, as the case may be.

(2) Where a notice of appeal against any order referred to in Subsection (1) is filed, a Court may, where it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.

(3) A person who is disqualified by an order of a National Court from holding or obtaining an aviation document and who applies for a removal of that disqualification and whose application is refused, may appeal against the refusal to the Supreme Court.

(4) Notice of every appeal under Subsection (2) shall be served on the Director who shall be a party to the appeal unless he advises the Supreme Court otherwise; but in the event of the Court so being advised, the Court shall proceed to hear and determine the merits of the appeal.

(5) In determining the expiration of the period for which a person is disqualified from holding or obtaining an aviation document, any time during which the operation of the disqualification order is deferred under this section shall be disregarded.

***Division 5.******Air Services Offences.*****302. OFFENCE TO CARRY ON DOMESTIC AIR SERVICE WITHOUT LICENCE, ETC.,.**

A person who:

- (a) carries on a domestic air service operation otherwise than pursuant to the authority of a licence operated under Part XI; or
- (b) carries on a domestic air service operation otherwise than in conformity with the conditions of a licence operated under Part XI; or
- (c) knowingly does any act in any capacity as agent for any domestic air service that he knows is being carried on otherwise than pursuant to the authority of a licence operated under Part XI; or



- (d) knowingly does any act in any capacity as agent for any domestic air service that he knows is being carried on otherwise than in conformity with the conditions of a licence operated under Part XI,

is guilty of an offence.

Penalty: A fine not exceeding K100,000.00 and if the offence is a Default Penalty a fine not exceeding K5,000.00.

**303. CARRYING ON INTERNATIONAL AIR SERVICE WITHOUT LICENCE OR CONTRARY TO LICENCE.**

A person who :

- (a) carries on a scheduled international air service in Papua New Guinea without a licence granted under Part XII; or
- (b) being the holder of a licence granted under Part XII, carries on a scheduled international air service in Papua New Guinea in a manner contrary to the terms and conditions of the licence; or
- (c) knowingly does any act in any capacity as agent for an international air service that he knows is being carried on otherwise than pursuant to the authority of a licence operated under Part XII; and
- (d) knowingly does any act in any capacity as agent for an international air service that he knows is being carried on otherwise than in conformity with the conditions of a licence operated under Part XII;
- (e) operates a non-scheduled international flight to which Section 204 applies contrary to the provisions of that section; or
- (f) being the holder of an open aviation market licence, carries on a non-scheduled international flight in a manner contrary to the terms and conditions of the licence,

is guilty of an offence.

Penalty: A fine not exceeding K100,000.00, and if the offence is a Default Penalty a fine not exceeding K5,000.00.

**304. COMMUNICATING FALSE INFORMATION OR FAILING TO DISCLOSE INFORMATION RELEVANT TO GRANTING OR HOLDING OF AN AIR SERVICE LICENCE.**

A person who:

- (a) by any means provides to the Minister, the Departmental Head or the Director as the case may be, information relevant to that person's exercise of powers under Parts XI and XII., knowing the information to be false or in a manner reckless as to whether it is false; or
- (b) being an applicant for an air service licence, fails, without reasonable excuse, to provide to the Minister or the Departmental Head or the

Director information known to that person which is relevant to that person's exercise of powers under this Act, or under rules or regulations made under this Act; or

- (c) being the holder of an air service licence, fails without reasonable excuse to provide to the Minister, the Departmental Head or the Director, as the case may be, information lawfully requested by any of them and being information known to the holder of the licence,

is guilty of an offence.

Penalty: Where a person convicted on an offence is:

- (a) a corporation - a fine not exceeding K100,000.00; and  
 (b) other than a corporation – a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

### ***Division 6.***

#### ***Provisions regarding offences.***

### **305. INSTITUTION OF PROCEEDINGS.**

(1) An offence against this Act, except those under Part XIV, shall be punishable on summary conviction before a Grade 5 Magistrate.

(2) The Director or an authorized officer may, after consultation with the Public prosecutor, lay any information and institute prosecutions for all offences under this Act and any regulations and rules, except for offences under Part XIV.

### **306. RECOVERY OF COSTS AND COMPENSATION.**

(1) Where a person is convicted of an offence against this Act and as a consequence directly or indirectly of the commission of that offence any other person (including the State) has suffered damage or injury or has incurred expenses, that other person may make application to the court for an award of damages or compensation in respect of that damage or injury or expenses, and the Court may make an order accordingly.

(2) An application to the Court under Subsection (1) may be made at the conclusion of the prosecution for the offence, or to the same Court not later than 30 days after the person is convicted.

(3) In an action under this section, the Court may, where it thinks fit, order the defendant to:

- (a) pay to the Director the reasonable costs and expenses incurred in conducting any test, inspection or other costs of an investigation of the offence, and  
 (b) pay to the Director the costs of prosecuting the matter, where it considers that it would be just in the circumstances to make the order; and

- (c) pay an amount of compensation to any persons (including the State) who, because of the commission of the offence, suffered loss of income, loss or damage to property or incurred costs; and
- (d) lodge a bond or equivalent security.

(4) Costs and compensation recoverable under this section are a civil debt and an action may be taken by the person in whose favour the order was made to recover the debt.

### **307. CRIMINAL LIABILITY OF DIRECTORS, OFFICERS OF BODIES CORPORATE.**

Where a corporate body:

- (a) commits a crime; or
- (b) an indictable offence; or
- (c) commits an offence;

under this Act, any director, officer or employee or agent of the corporate body who directed, authorized, assented to or acquiesced or participated in:

- (d) the commission of the crime; or
- (e) the commission of an indictable offence; or
- (f) commission of an offence,

shall be a party to and guilty of the crime, indictable offence or offence, and shall be liable to the punishment provided for that crime, indictable offence or offence in respect of an individual, whether or not the corporate body has been prosecuted or convicted.

### **308. EVIDENCE AND PROOF.**

In any proceedings for an offence against this Act, the following provisions shall apply:—

- (a) a copy of any aviation document which is certified correct by the Director or an officer of the Authority authorized in that behalf by the Director shall be sufficient, in the absence of proof to the contrary, to prove that document;
- (b) evidence of the contents of the Register maintained under Section 65 or the Registry maintained under Section 66 may be given by a certificate signed by the Director or any officer of the Authority authorized in that behalf by the Director, and every such certificate shall be sufficient evidence of the matter stated in it, until the contrary is proved;
- (c) the production of a certificate signed by the Director or by an officer of the Authority authorized in that behalf by the Director to the effect that on a specified date a person or organization was or was not the holder of an aviation document or any specified type of aviation document shall

be sufficient evidence of the matter certified, until the contrary is proved;

- (d) until the contrary is proved, it shall be presumed that a certificate purporting to have been certified or given under this section has been certified or given by the Director or by an officer of the Authority authorized by the Director to certify documents or give certificates under this section.

**309. EVIDENCE OF AIR TRAFFIC SERVICES PROVIDER.**

(1) A document used in recording services in relation to the movement of an aircraft and purporting to have been initiated at the time of the movement by an employee of a person providing air traffic services shall be admissible in every Court and in every judicial examination or proceeding as prima facie evidence that the air traffic services described in such document were provided on the date and for the aircraft referred to in the document.

(2) A document certified by an employee of a person providing air traffic services purporting to be a computer record of the provision of air traffic services, the particulars of which have been recorded or stored in the usual and ordinary course of the business of such person, shall be admissible as if it were a document to which Subsection (1) applies.

(3) For the purposes of this section the expression “computer record” includes a microfiche, a microfiche printout a computer printout, or any other document produced by a device by means of which information is recorded or stored.

**PART XVII. – RIGHTS OF APPEAL.**

**310. APPEAL TO NATIONAL COURT.**

(1) Where any other section provides that a person has a right of appeal under this section against a decision, that person may appeal to the National Court against that decision in respect of that person, in accordance with the provisions of this Part.

(2) It is hereby declared that in the exercise of any power conferred on the Director by any section that confers a right of appeal of the kind referred to in Subsection (1) is, except where the section specifies that the right of appeal applies to a particular decision or decisions, a decision in respect of a person within the meaning and may be appealed against under this section.

(3) The right of appeal against any such decisions may be exercised by:

- (a) the holder of the aviation document; or
- (b) the owner or the person for the time being in charge of the aircraft or aeronautical product; or
- (c) the owner or the person for the time being of any aircraft or aeronautical product of any class, as the case may be, in respect of whom the decision was made.

**311. PROCEDURE.**

(1) An appeal under Section 310 shall be brought, by application, not more than 28 days after the date on which the appellant is notified of the decision appealed against, or within such further period as the National Court may allow.

(2) In determining an appeal under Section 310 the National Court may:

- (a) hear all evidence tendered and representations made by or on behalf of any party to the appeal, whether or not that evidence would be otherwise admissible in that Court; and
- (b) either:
  - (i) confirm, reverse, or modify the decision appealed against, and make such orders and give such directions to the Minister, the Departmental Head or the Director, as the case may require, as may be necessary to give effect to the decision of the Court; or
  - (ii) refer the matter back to the Minister, the Departmental Head or the Director, as the case may require, with directions to reconsider the whole or any specified part of the matter.

(3) An appeal under this section shall be by way of rehearing.

(4) Subject to this section, an appeal shall be made and determined in accordance with the rules of the National Court or as determined by the Judge.

(5) Subject to Section 313, the decision of the National Court shall be final.

**312. DECISION OF MINISTER, DEPARTMENTAL HEAD OR DIRECTOR TO CONTINUE IN FORCE PENDING APPEAL, ETC.,.**

(1) A decision of the Minister, the Departmental Head or the Director that is appealed against under Section 310 shall continue in force pending the determination of the appeal, and no person shall be excused from complying with any of the provisions of the Act or the decision on the ground that any appeal is pending.

(2) Notwithstanding that an appeal under Section 310 may have been determined in favour of the appellant, the Minister, the Departmental Head or the Director, as the case may be, may, subject to the same right of appeal, refuse to grant, revoke, suspend, disqualify, or otherwise deal with in accordance with the provisions any aviation document, any person to which or to whom the appeal related, or any aviation document or approval granted or restored in compliance with the decision of the National Court on the appeal, on any sufficient grounds supported by facts or evidence discovered since the hearing of the appeal.

**313. APPEAL TO SUPREME COURT ON THE QUESTION OF LAW.**

(1) A party to an appeal under Section 310 may appeal to the Supreme Court only on a question of law.

(2) Subject to Subsection (1), an appeal under this section shall be heard and determined in accordance with the rules of the Supreme Court.

**PART XVIII. – ADOPTION OF FOREIGN REGULATIONS AND CODES.**

**314. POWER TO ADOPT FOREIGN RULES.**

(1) For the purposes of Sections 69 to 73 (inclusive) and 322, regulations and rules made there under may adopt regulations, rules or orders applying to the regulation of civil aviation matters in a Contracting State (in this Part referred to as “foreign rules”).

(2) Where foreign rules are adopted by regulation or rules made under this Act, all courts, Departments, licensees, owners, officers and persons shall give full faith and effect to the foreign rules adopted.

(3) No foreign rule, or part thereof, shall be rendered invalid, inoperative or irrelevant because it makes reference to any law, agency, authority, document, procedure, person or thing that is not in existence, or is not applicable to the laws, in Papua New Guinea, and any reference to such law, agency, authority, document, procedure, person or thing:

- (a) shall be deemed to be a reference to the corresponding law, agency, authority, document, procedure, person or thing within Papua New Guinea or under the laws of Papua New Guinea; and
- (b) where there is no clearly corresponding law, agency, authority, document, procedure, person or thing within Papua New Guinea or under the laws of Papua New Guinea:
  - (i) the closest equivalent law, agency, authority, document, procedure, person or things within Papua New Guinea or under the laws of Papua New Guinea shall be deemed to be the law, agency, authority, document, procedure, person or thing referred to and in this respect regard shall be had to any directive issued by the Minister, after consulting with the Attorney General, for the purpose of identifying the closest equivalent; and
  - (ii) where notwithstanding Sub-paragraph (i), it remains impossible to determine the closest equivalent, the Minister may designate any law, agency, authority, document, procedure, person or thing to be the equivalent in Papua New Guinea.

(4) A copy of each foreign rule adopted by regulation or rules shall be placed in the Registry and shall be available for inspection.

(5) Copies of individual foreign rules or provisions may be obtained where photocopying facilities are available and at a reasonable cost to be determined by the Director, where copies are held under his control.

**315. FOREIGN RULES TO REMAIN IN FORCE.**

(1) Where a foreign rule has been adopted by a regulation or rules made under this Act it shall stand and apply as if made under this Act and shall remain in force

notwithstanding that it may have at any time ceased to have operation in the country of its origin.

(2) Where a foreign rule is amended in its country of origin the Minister may determine that the amendment shall apply in Papua New Guinea and the foreign rule shall thereby be deemed to have been amended by Regulation made under this Act.

**316. APPLICATION OF FOREIGN RULES DELAYED.**

(1) Where the Minister determines that the application of any provision of a foreign rule should be deferred until persons affected by it can reasonably be expected to comply with it, the Minister may at any time determine that the operation of such provision shall be deferred until a date set by him.

(2) Where a time or times for compliance is or are stipulated in any provision of a foreign rule, in the absence of a determination made by the Minister under Subsection (1), regard may be had to any directive issued by the Minister for the purpose of determining the appropriate time or times for compliance to apply in Papua New Guinea.

**317. FOREIGN RULES TO EXPIRE AUTOMATICALLY.**

(1) Where a foreign rule has been adopted by regulations or rules made under this Act it shall expire three years from the date of coming into force.

(2) As soon as practicable after a foreign rule has been adopted by regulations or rules under this Act, the Minister shall prepare and publish a notice of proposed rule-making under Section 71 to replace the foreign rule with an ordinary rule.



**PART XIX. – SMOKING ON AIRCRAFT.**

**318. MINISTER MAY PROHIBIT SMOKING ON AIR ROUTES.**

(1) For the purposes of this Part:

“**air route**” includes domestic and international air routes;

“**Papua New Guinea airline**” means a Papua New Guinea air transport enterprise that is offering or operating domestic air services, scheduled international air services or non-scheduled international flights;

“**to smoke**” means to smoke, hold, or otherwise have control over an ignited tobacco product, weed, or plant and “**smoked**” and “**smoking**” have corresponding meanings.

(2) The Minister may from time to time, by notice in the National Gazette:

(a) designate any one or more air routes, or class or classes of routes, or all domestic or international air routes generally, as non-smoking routes; and

(b) exempt any specified route or part of a route from any designation imposed by the Minister in accordance with Paragraph (a), subject to any conditions that the Minister thinks fit.

(3) The Minister shall, before giving any notice under Subsection (2), consult with the significant Papua New Guinea airlines.

(4) A Papua New Guinea airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall ensure that:

(a) there are prominent notices displayed in the aircraft indicating that smoking is not permitted; and

(b) an announcement is made to passengers on the aircraft at the commencement of each journey on the route advising that smoking is not permitted.

(5) No Papua New Guinea airline that is operating an aircraft carrying passengers on any route designated as a non-smoking route pursuant to this section shall permit any person to smoke on that aircraft.

(6) No person shall smoke while on any aircraft operated by a Papua New Guinea airline carrying passengers on any route designated as a non-smoking route pursuant to this section.

**319. OFFENCES IN RESPECT OF SMOKING ON FLIGHTS.**

(1) A person who, being a Papua New Guinea airline, without reasonable excuse:

(a) fails to comply with the requirements of Section 318(4); or

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(b) permits any person to smoke in contravention of Section 318(5),  
is guilty of an offence.

Penalty: A fine not exceeding K30,000.00.

(2) A person who smokes in contravention of Section 319(6), is guilty of an  
offence.

Penalty: A fine not exceeding K1,000.00.

**PART XX. – MISCELLANEOUS PROVISIONS.**

**320. NUISANCE, TRESPASS, AND RESPONSIBILITY FOR DAMAGE.**

(1) No action for nuisance may be brought in respect of the noise or vibration caused by aircraft or aircraft engines on an aerodrome, where the noise or vibration is of a kind specified in any rules made under Sections 69 to 71 (inclusive), so long as the provisions of the rules are duly complied with.

(2) No action shall lie in respect of trespass, or in respect of nuisance, by reason only of the flight of aircraft over any property at a height above the ground which having regard to wind, weather and all the circumstances of the case is reasonable, so long as the provisions and of any rules made under this Act are duly complied with.

(3) Where material damage or loss is caused to property on land or water by an aircraft in flight, taking off, landing or alighting or by any person or article in or falling from any such aircraft, damages shall be recoverable from the owner of the aircraft, without proof of negligence or intention or other cause of action, as if the damage or loss was caused by his fault, except where the damage or loss was caused by or contributed to by the fault of the person by whom the same was suffered.

(4) Where damage or loss is caused in the manner described in Subsection (3) and in circumstances in which:

- (a) damages are recoverable from the owner of the aircraft in respect of the damage or loss by virtue only of the provisions of Subsection (3) ; and
- (b) some person other than the owner is liable to pay damages in respect of the damage or loss,

the owner shall be entitled to be indemnified by that other person against any claim in respect of the damage or loss.

(5) Where damage or loss is contributed to by the fault of the person by whom the same was suffered, the provisions of the Wrongs (Miscellaneous Provisions) (Chapter 297) as to apportionment shall apply.

(6) Damages shall not be recoverable under Subsection (4) from the owner of an aircraft in respect of damage or loss caused by a person descending from the aircraft by parachute, provided that damages shall be recoverable from the person descending and the provisions of Subsection (4) shall, with the necessary modification, apply as if the person descending were the owner of the aircraft.

(7) Subsection (6) shall not apply in respect of damage or loss caused by a person descending from an aircraft by parachute where the descent is required to avoid injury or death to any person.

(8) Where an aircraft has been hired out to any other person by the owner thereof, for a period greater than 28 days and no pilot, pilot-in-command, or operative member of the crew of the aircraft is in the employment of the owner, this section shall apply as though every reference to the owner were a reference to the person to whom the aircraft has been so hired out.

(9) For the purposes of this section, the term “fault” means negligence, breach of statutory duty, or other act or omission which gives rise to a liability in tort or would, apart from the Wrongs (Miscellaneous Provisions) Act (Chapter 297) give rise to the defence of contributory negligence.

### **321. INDEMNITY IN RESPECT OF CERTAIN MESSAGES.**

(1) No person shall have any right to compensation nor shall any liability be imposed upon the State or any person lawfully acting on its behalf by reason of any error, omission or delay in the transmission of any message to which this section applies.

(2) This section shall apply to any message of a class prescribed in that behalf by regulations or rules made under this Act (not being a message which may effect the safety of any aircraft) transmitted through any aeronautical communication service established under this Act.

### **322. REGULATIONS.**

(1) The Head of State, acting on the advice of National Executive Council, may, from time to time, make regulations not inconsistent with this Act for all or any of the following purposes:—

- (a) prescribing, or providing for the fixing of, fees and charges payable under this Act;
- (b) prescribing those breaches of rules made under this Act that constitute offences against this Act;
- (c) prescribing the penalty for each offence prescribed under Paragraph (b), which:
  - (i) in the case of an individual, shall be a fine not exceeding K3,000.00; or
  - (ii) in the case of a body corporate, shall be a fine not exceeding K30,000.00;
- (d) prescribing forms for the purposes of this Act;
- (e) prescribing for the Authority, the Commission or an airport authority the rules for the conduct of meetings, disclosure of interest by members, and such other matters concerning the functioning of the Authority, the Commission or the airport authority as the Minister may recommend;
- (f) such other matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Any regulations made under this Act may be so made that different regulations shall apply with respect to different classes of persons, aerodromes, aircraft, aeronautical products, aviation related services or aeronautical procedures, or with respect to the same class of person, aerodrome, aircraft, aeronautical product, aviation related service or aeronautical procedure in different circumstances.

**323. NOTICE REQUIRED FOR STRIKES.**

(1) In this section

**“strike”** means the act of any number of employees of the same employer or of different employers:

- (a) in discontinuing their employment, whether wholly or partially, or in reducing the normal performance of it; or
- (b) in breaking their employment contract; or
- (c) in refusing or failing after any such discontinuance to resume or return to their employment; or
- (d) in refusing or failing to accept engagement for any work in which they are usually employed; or
- (e) in reducing their normal output or their normal rate of work, the said act being due to any combination, agreement, common understanding or concerted action, whether express or implied, made or entered into by any employees, but does not include an employees’ meeting authorized by the employer or under any employment contract;

**“employee”** means any person employed in the Papua New Guinea civil aviation sector who holds a current aviation document issued by the Director under Section 49;

**“to strike”** means to become a party to a strike;

(2) Notwithstanding the provisions of any other law or Act, participation by an employee in a strike shall be unlawful where the requirements as to notice that are contained in Subsections (3) to (6) have not been complied with.

(3) No employee shall:

- (a) strike, without having given to the employee’s employer, within one month before the date of the commencement of the strike, 21 clear days’ notice in writing of the employee’s intention to strike; or
- (b) strike before the expiry of notice of intention to strike given by the employee or on the employee’s behalf under Paragraph (a).

(4) The notice required by Subsection (3)(a) shall specify:

- (a) a brief accurate exposition of the issue, grievance, complaint, action or matter giving rise to the proposed strike; and
- (b) the nature of the proposed strike, including whether or not the proposed action will be continuous; and
- (c) the place or places where the proposed strike will occur; and
- (d) the date on which the strike will begin.

(5) The notice required by Subsection (3)(a) shall be signed either by the employee or on the employee’s behalf by his authorized representative.

(6) Where the notice is given on the employee's behalf, it need not specify by name the employees on whose behalf it is given where it is expressed to be given on behalf of all employees who are employed in a distinct part of the employer's business or at any particular place or places where the employer carries on business.

(7) Where a strike by an employee is not lawful a remedy may be obtained by any affected person through an action brought in the National Court for an injunction or for damages or for both against:

- (a) the employee; and
- (b) any person, including an incorporated body and its officers, who aided, abetted or counselled the employee to strike unlawfully.

**PART XXI. – REPEAL, TRANSITION, ADMINISTRATION AND SAVINGS.**

**324. REPEAL OF ACTS AND REGULATIONS.**

The Acts and regulations specified in Schedule 2 to this Act are hereby repealed.

**325. EFFECT OF ACT ON CIVIL AVIATION REGULATIONS.**

(1) The following shall continue in force as if the *Civil Aviation Act* (Chapter 239) (repealed), had not been repealed by Section 324:

- (a) the *Civil Aviation Regulation* (Chapter 239); and
- (b) all orders, notices, requirements, circulars, and other publications issued under those regulations;
- (c) the *Civil Aviation (Aircraft Charges) Regulation* (Chapter 239).

(2) Notwithstanding Section 324:

- (a) the regulations referred to in Subsection (1) may be amended or revoked under Section 322; and
- (b) the orders, notices, requirements, circulars, and other publications referred to in Subsection (1) may be amended or revoked by the Minister.

(3) Each new rule made under Section 69, may specify a regulation or regulations contained in the *Civil Aviation Regulations Chapter 239* (repealed), that are to be repealed upon the coming into force of the rule, and the regulation or regulations shall be revoked from that date.

**326. INTERPRETATION RELATING TO TRANSFER OF ASSETS AND LIABILITIES.**

(1) In this section and in Sections 328 to 333 (inclusive), unless the context otherwise requires:

“**agreement**” includes a deed, a contract, an agreement, an arrangement, and an understanding, whether oral or written, express or implied, and whether or not enforceable at law;

“**assets**” means any real or personal property of any kind, whether or not subject to rights, and without limiting the generality of the foregoing includes:

- (a) any estate or interest in any land, including all rights of occupation of land or buildings; and
- (b) all buildings, vehicles, plant, equipment, and machinery, and any rights therein; and
- (c) all securities as defined in the *Securities Act 1997*; and

- (d) all rights of any kind, including rights under Acts, deeds, agreements, or licences; and
- (e) all trust accounts established for civil aviation purposes under the Public Finance (Management) Act 1995; and
- (f) any kind of building or planning consent; and
- (g) all patents, trade marks, designs, copyright, and other intellectual property rights whether enforceable by Act or rule of law; and
- (h) goodwill, and any business undertaking;

**“liabilities”** includes:

- (a) liabilities and obligations under any Act or agreement; and
- (b) contingent liabilities; and
- (c) an agreed Kina denominated amount to represent foreign currency loans of the State raised for civil aviation infrastructure purposes,

but does not include foreign currency civil aviation infrastructure loans of the State;

**“rights”** includes powers, privileges, interests, licences, approvals, consents, benefits, and equities of any kind, whether actual, contingent, or prospective;

**“state aviation enterprise”** includes the Authority, the Commission, PNG ATS, an airport company, an airport authority or a subsidiary of a state aviation enterprise;

**“transfer”** includes:

- (a) assign and convey; and
- (b) vest by order of the Head of State by notice in the National Gazette; and
- (c) confer estates in fee simple of land held by the State; and
- (d) grant leases, rights, and interests in any real or personal property; and
- (e) in the case of liabilities, the assumption thereof by a state aviation enterprise.

(2) In this section and in Sections 328 to 333 (inclusive), a reference to **“transfer”**, **“authorize”**, or **“grant”** includes entering into an agreement to transfer, authorize, or grant, as the case may be.

(3) This section and Sections 328 to 333 (inclusive) shall have effect and assets and liabilities may be transferred pursuant to this Act, notwithstanding any restriction, prohibition or other provision contained in any Act, rule of law, or agreement that would otherwise apply.



(4) Nothing in this Act shall limit any powers or rights that the State or a Minister has other than pursuant to this Act.

**327. ACTIONS NOT TO ABATE.**

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding was pending or existing by, against or in favour of the State, in so far as it relates to functions of the Authority or the Commission under this Act, it does not, on that coming into operation, abate or discontinue or be in any way affected by any provision of this Act, but it may be prosecuted, continued or enforced by, against or in favour of the State as if this Act has not been made.

**328. ACCOUNTS.**

All monies immediately before the coming into operation of this Act, standing to the credit of, and in accounts opened by, the Office of Civil Aviation, including any trust account opening under the Public Finance (Management) Act, 1995 are, on that coming into operation, transferred to and stand to the credit of the Authority on the same terms and conditions.

**329. TRANSFER OF STATE ASSETS AND LIABILITIES TO STATE AVIATION ENTERPRISES.**

(1) Notwithstanding any Act, rule of law, or agreement, the Minister and the Minister responsible for financial matters, acting jointly may, on behalf of the State, do any one or more of the following:—

- (a) transfer to a state aviation enterprise assets and liabilities of the State (being assets and liabilities relating to the activities to be carried on by the state aviation enterprise);
- (b) authorize the state aviation enterprise to act on behalf of the State in providing goods or services, or in managing assets or liabilities of the State;
- (c) vest in the state aviation enterprise any rights conferred by declarations, instruments, orders or notices applying to land transferred to the state aviation enterprise;
- (d) grant to the state aviation enterprise leases, licences, easements, permits or rights of any kind in respect of any assets or liabilities of the State,

for such consideration, and on such terms and conditions, as the Minister and Minister responsible for financial matters may agree jointly with the state aviation enterprise.

(2) The Minister shall lay before the National Executive Council any contract or other document entered into pursuant to Subsection (1) within 10 days after the date thereof.

(3) Assets that are fixed to, or are under or over, any land may be transferred to a state aviation enterprise pursuant to this Act whether or not any interest in the land is also transferred and where any such asset is so transferred, the asset and the land shall be regarded as separate assets each capable of separate ownership.

(4) Any asset or liability of the State may be transferred to a state aviation enterprise pursuant to this Act whether or not any Act or agreement relating to the asset or liability permits such transfer or requires any consent to such a transfer.

(5) Where a transfer of the kind described in Subsection (4) takes place:

- (a) the transfer shall not entitle a person to terminate, alter or in any way affect the rights or liabilities of the State, or the state aviation enterprise under any Act or agreement; and
- (b) where the transfer is registrable, the person responsible for keeping the register shall register the transfer forthwith after written notice of the transfer is received by him from any person authorized for this purpose by the Minister; and
- (c) the laying before the National Executive Council of any contract or other document relating to the transfer shall be deemed to be notice of the transfer, and any third party shall after the date of such contract or document deal with the state aviation enterprise in place of the State; and
- (d) the State shall remain liable to any third party as if the asset or liability had not been transferred but shall be indemnified by the state aviation enterprise in respect of any liability to that third party; and
- (e) any satisfaction or performance by the state aviation enterprise in respect of the asset or liability shall be deemed to be also satisfaction or performance by the State; and
- (f) any satisfaction or performance in respect of the asset or liability by a third party to the benefit of the state aviation enterprise shall be deemed to be also to the benefit of the State.

(6) No provision in any agreement limiting the State's right:

- (a) to sell any assets to third parties; or
- (b) for determining the consideration for the sale of any assets to third parties, or obliging the State to account to any person for the whole or part of the proceeds of sale by the State of any assets to third parties, or obliging the State to pay a greater price than otherwise by reason of or as a consequence of the sale of any assets to third parties,

shall have any application or effect in respect of any agreement or transfer entered into or effected pursuant to or under this Act or pursuant to such an agreement or transfer.

(7) In any case where:

- (a) the State transfers or agrees to transfer to a state aviation enterprise assets which the State acquires or is entitled to acquire from another person for the purpose of carrying on any activity; and
- (b) the assets are acquired by the State, or the State's rights to acquire the assets arise, under an agreement with that person that contains a provision specifying or limiting the State's rights to recover compensation or damages; and
- (c) the state aviation enterprise carries on that activity or part of that activity whether or not it also carries on any other activity,

the provision referred to in Paragraph (b) shall, notwithstanding the transfer of the assets to the state aviation enterprise, continue in force in favour of the State as if the state aviation enterprise was part of the State, the State continued to carry on the activity, and any loss suffered by the state aviation enterprise was a loss suffered by the State and not, by reason only of having been suffered by the state aviation enterprise, an indirect or a consequential loss or a loss suffered by a third party.

(8) In any case where:

- (a) the State transfers or agrees to transfer to a state aviation enterprise assets which the State acquires or is entitled to acquire from another person for the purpose of carrying on any activity; and
- (b) the assets are acquired by the State, or the State's rights to acquire the assets arise, under an agreement with that person that contains a provision relieving the State from performing any obligation imposed upon it, or relieving the State from any claim or cause of action based on the failure by the State to perform any such obligation, as a result of any particular event; and
- (c) the state aviation enterprise carries on that activity or part of that activity whether or not it also carries on any other activity,

the provision referred to in Paragraph (b) shall, notwithstanding the transfer of the assets to the state aviation enterprise, continue in force in favour of the State as if the state aviation enterprise was part of the State, the State continued to carry on the activity and as if the occurrence of any such event referred to in the provision in relation to the state aviation enterprise was the occurrence of the event in relation to the State.

(9) Where:

- (a) rights or obligations to provide goods or services to third parties are transferred to a state aviation enterprise pursuant to this Act; and
- (b) those goods or services have previously been provided by the State on terms and conditions wholly or partly prescribed by any Act; and
- (c) the Head of State, acting on advice, has by order declared that this Subsection shall apply in respect of those goods or services,

the goods or services shall, to the extent that those terms and conditions are not already contained in contracts between the State and third parties, from the date of transfer be deemed to be provided pursuant to contracts between the state aviation enterprise and the third parties (whether or not the Act is repealed), and each such contract shall be deemed to include such of the terms and conditions contained in that Act (with all necessary modifications), and such of the following provisions as are specified in the order:—

- (d) a condition permitting termination at any time by the third party on giving 14 days' notice to the state aviation enterprise;
- (e) a condition permitting variation or termination at any time by the state aviation enterprise on giving to the third party one month's notice in such manner (including newspaper advertising) as the state aviation enterprise thinks fit.

(10) Where any land that is subject to any lease, licence, permit or right, created on terms and conditions wholly or partly set out in any Act, has been or is to be transferred to a state aviation enterprise pursuant to this Act, the Head of State, acting on advice, may, by order, declare that such of the provisions of that Act as are specified in the order shall continue to apply in relation to the land and such licence, lease, permit or right.

(11) Where an order is made under Subsection (10), the provisions of the Act referred to in the order shall, with all necessary modifications, continue to apply in relation to the land and the terms or conditions of the lease, licence, permit or right subject to any agreement to:

- (a) amend or revoke any such term or condition; or
- (b) revoke any such term or condition and substitute another term or condition for it, made between the owner for the time being of the land and the holder for the time being of the lease, licence, permit or right.

(12) Notwithstanding any other provision, where prior to the coming into operation of this Act any land was leased to the State under a lease administered by the Minister responsible for land matters, the Minister shall not, except with the consent of the lessor or where the lease so permits, transfer that leasehold interest to a state aviation enterprise, but the Minister may enter into an agreement with a state aviation enterprise pursuant to Subsection (1) (b) to manage, on behalf of the State, its rights under that lease.

### **330. ORDERS RELATING TO TRANSFER OF ASSETS AND LIABILITIES.**

For the purpose of facilitating the transfer of assets and liabilities to a state aviation enterprise pursuant to this Act, the Head of State, acting on advice, may from time to time, by order, do any one or more of the following:—

- (a) vest in or impose on a state aviation enterprise any asset or liability, any class of any such asset or liability, that the state aviation enterprise has agreed to have transferred to it;

- (b) vest land in a state aviation enterprise for the purposes of Section 329(1);
- (c) declare that a reference to the State or a Minister, officer, employee, Department or instrument of the State in any or all regulations, orders, notices, or documents shall be deemed to be or to include a reference to a state aviation enterprise specified in the order;
- (d) declare that a state aviation enterprise shall assume or continue to have the rights and obligations of the State or a Minister, officer, employee, Department or instrument of the State in respect of applications for rights, objections, or proceedings before any Court, authority, or other person, being rights and obligations that the state aviation enterprise has agreed to assume;
- (e) declare that a state aviation enterprise is entitled to receive any benefits and be subject to any detriments under any consents, licences, permits, designations, declaration of the State concerning civil aviation;
- (f) declare, in respect of any assets or liabilities transferred to a state aviation enterprise pursuant to this Act, that the state aviation enterprise shall be deemed to have specified rights or obligations in respect of those assets or liabilities, being rights or obligations that are required in respect of those assets or liabilities as a result of the change of ownership or responsibility from the State to the state aviation enterprise;
- (g) declare that any order made under this section shall be deemed to be notice to all persons, and that specific notice need not be given to any authority or other person;
- (h) direct any authority or other person to register or record any such vesting or declaration.

**331. EXCEPTION FROM TRANSFER TAXES, DUTIES AND FEES.**

No duty, income tax, value added tax, provincial tax, fee or duty is payable on any agreement, contract, transfer, conveyance, order, lease or licence made for the purpose of this Act in establishing the Authority, PNG ATS, an airport company or an airport authority or any subsequent transfer of assets between them to give effect to the purposes of this Act or Government policy.

**332. TRANSFER OF LAND.**

(1) Notwithstanding any other provision of this Act, land within the meaning of the Land Act 1996 and any lands of the State other than lands registered under the Land Registration Act (Chapter 191) that are to be transferred to a state aviation enterprise pursuant to this Act shall:

- (a) be identified by an adequate legal description, or on plans lodged in the office of the Registrar of Titles (being plans certified as correct for the purposes of this section by the Surveyor-General); and
- (b) vest in the state aviation enterprise:
  - (i) pursuant to and on a date specified in an order; or
  - (ii) made for the purposes of this section by the Head of State, acting on advice; or
  - (iii) pursuant to and on a date specified in a notice in the National Gazette given for the purposes of this section by the Minister.

(2) Every notice given under Subsection (1)(b)(ii) may be given on such terms and conditions as the Minister, thinks fit, and shall have effect according to its tenor.

(3) All land that is subject to the Land Act 1996 and that is transferred to a state aviation enterprise pursuant to this Act shall cease to be subject to the Land Act 1996 as the case may be, from the date of that transfer, unless otherwise expressly provided by this Act or any other Act.

(4) Subject to Subsection (5), all land:

- (a) designated as an aerodrome by the Minister of Lands under Section 54 of the Land Act 1996 and its predecessors; or
- (b) used as an aerodrome for the aerodromes listed in Schedule 1; or
- (c) gazetted for aerodrome purposes, being one of the aerodrome listed in Schedule 1; or
- (d) designated for public purposes associated with civil aviation,

whether currently used as an aerodrome or for civil aviation purposes or not, may be transferred to the Authority, or PNG ATS, or an airport authority or an airport company or a province on such terms and condition as determined by the Minister pursuant to and on a date specified in a notice in the National Gazette given for the purposes of this section.

(5) Nothing in Subsection (4) shall permit the Minister to transfer:

- (a) the land, or any part of it, making up the aerodrome listed in Part 1 of Schedule 1 (being Jacksons Airport) to any person other than the Authority or an airport company wholly owned by the State; or
- (b) the land, or any part of it, making up any of the aerodromes listed in Parts 2 Schedule of to any person other than either the Authority or an airport authority established by the province within which the aerodrome is located.

### **333. TITLE TO LAND.**

(1) A Registrar of Titles shall, on written application by a person authorized by a Minister and on payment of the prescribed fee:

- (a) register a state aviation enterprise as the proprietor, in substitution for the State, of the estate or the interest of the State, or any Department in any land that is incorporated in the register or otherwise registered in the land titles office that is transferred to the state aviation enterprise pursuant to this Act; and
- (b) deal with and give effect to the copy of the application as if it were a duly executed grant, conveyance, memorandum or instrument of transfer of the land; and
- (c) make such entries in the register and on any outstanding documents of title and generally do all such things as may be necessary to give effect to this section.

(2) The powers conferred by Subsection (1) may be exercised in respect of an estate or interest that is incorporated in the register by virtue of a lease or licence that has expired or has been determined.

(3) The Registrar of Titles shall, on written application by a person authorized by a Minister and on payment of the prescribed fee, issue a certificate of occupancy for land vested in a state aviation enterprise pursuant to Section 332(1).

(4) As soon as registration is accomplished in accordance with Subsection (1) a certificate of occupancy is issued in accordance with Subsection (2), the state aviation enterprise shall, except where the interest acquired is either an easement in gross or an estate as lessee or mortgagee, be deemed to be seized of an estate in fee simple in possession in respect of that land.

(5) Applications in accordance with Subsections (1) and (2) shall specify the name of the state aviation enterprise and the date of the agreement, together with a description of the land sufficient to identify it and, in the case of applications under Subsection (2), a certificate by the Surveyor-General as to the correctness of such description.

(6) Before a Registrar of Titles issues a certificate of occupancy in respect of any land vested in a state aviation enterprise pursuant to Section 332(1), the Registrar of Titles shall either receive under the hand of or request from the Surveyor-General a certificate as to the legal description of the land, any trusts, reservations, or restrictions affecting the land, and any other matters that the Registrar of Titles considers appropriate.

(7) Where any land that has been vested in a state aviation enterprise pursuant to Section 330(1) and for which no certificate of occupancy has been issued in the name of that enterprise, is to be transferred to any other person, the Registrar of Titles shall, before issuing a certificate of occupancy, either receive under the hand of or request from the Surveyor-General a certificate as to the legal description of the land, any trusts, reservations, or restrictions affecting the land and any other matters that the Registrar of Titles considers appropriate.

(8) A certificate in accordance with Subsection (6) or (7) shall be filed by the Registrar of Titles in the Registry and shall be conclusive evidence to the Registrar of Titles of the matters required to be stated therein.

**334. HUMAN RESOURCES AND INDUSTRIAL RELATIONS.**

(1) In this section:

**“contract of employment”** means a written contract entered into by the State pursuant the Public Service (Management) Act 1995 with a person working in the Office;

**“Determination”** means the Air Traffic Services and Airways Engineering National Technical Officers Determination No. 1 of 1988 of 16 May 1988 and registered under the provisions of the Public Services Conciliation and Arbitration Act (Chapter 69);

**“new employer”** means the Authority or the Commission or PNG ATS or an airport company established to operate Port Moresby International Airport as determined by Subsection (3);

**“transfer date”** means a date appointed by the Minister and notified in the National Gazette for the transfer of an employee or a group of employees from the Office of Civil Aviation to the Authority, the Commission or PNG ATS;

**“transferred employee”** means an employee of the State transferred pursuant to Subsection (2);

(2) Subject to Subsection (3), every person who, on the day immediately preceding the transfer date, was employed by the State under the Public Services (Management) Act 1995 and working for the Office of Civil Aviation shall be deemed to be an employee of the new employer, with effect from the transfer date.

(3) A transferred employee who immediately before the transfer date was employed by:

- (a) the Office of Civil Aviation, in the work of the Air Accident Investigation Branch shall be an employee of the Commission; or
- (b) the Office of Civil Aviation, in the work of Operations Division and the Project Management Office shall be an employee of PNG ATS; or
- (c) the Office of Civil Aviation, in the work of Jacksons Airport Division shall be an employee of the Authority or if established at the transfer date, an airport company established for the purposes of managing or operating Jacksons International Airport; or
- (d) any other Office of Civil Aviation directorate or branch shall be an employee of the Authority,

and in the event of any ambiguities, inconsistencies or disputes in determining the new employer of a transferred employee, the decision of the Departmental Head shall be final and binding.

(4) Persons employed by the Office of Civil Aviation, in the work of the Air Transport Regulation Directorate, shall remain public servants and employees of the Department.



(5) Nothing in this Section precludes the voluntary transfer of any employee of the Office of Civil Aviation from the Office of Civil Aviation to the Authority, the Commission or PNG ATS or any other state aviation enterprise either at the transfer date or subsequently.

(6) The terms and conditions of employment for a transferred employee applying on the day immediately preceding the transfer date shall continue in force and shall be binding on the transferred employee and the employer, until replaced by an agreement or determination between the new employer, and the employee or a group of employees.

(7) If after the transfer date the terms and conditions referred to in Subsection (6) are varied for public servants under the Public Service (Management) Act 1995 or Public Service General Orders, such variations shall apply to the transferred employees whose contract of employment is still governed by Subsection (6) as if they were still employed in the Public Service.

(8) Every transferred employee ceases to be employed in the Public Service from the transfer date.

(9) A transferred employee shall be deemed to have accrued with the new employer entitlement to benefits equivalent to the benefits that he or she had accrued immediately prior to the transfer date.

(10) For the avoidance of doubt and greater certainty a transferred employee is not entitled to claim payment from the State or any other person for any in respect of any of the accrued benefits as at the transfer date.

(11) Any disciplinary proceeding, proceeding, claim, or other action taken under the Public Services Conciliation and Arbitration Act (Chapter 69), the Public Services (Management) Act 1995 or the Public Service General Orders that was commenced before the transfer date by or in respect of a transferred employee shall be continued as though the new employer were the employer.

(12) Where events giving rise to a right to commence a disciplinary proceeding, proceeding, claim or other action occurred before the transfer date but the proceedings had not commenced before that date, the proceedings may be commenced by or against the new employer on or after that date, and be proceeded with as though the new employer were the State.

(13) If, at the transfer date, a transferred employee is a member of the Public Officers Superannuation Fund (in this section called "the POSF") established under the Public Officers Superannuation Fund Act 1990 the new employer shall pay and continue to pay to the POSF, as long as a person remains a member of the POSF, the same sum that the State is obliged to pay to the POSF as if the transferred employee had remained a public servant, excluding any payment due for the period prior to the transfer date.

(14) All sums payable by a new employer under Subsection (13) shall be paid by the new employer to the POSF not later than the end of the month after the month in which the salary or wages payment on which the new employer's contribution is based was made to the transferred employee.

(15) A transfer of employment under this section shall not create, and shall not be taken to be:

- (a) a breach of any contract of employment; or
- (b) an interruption to employment; or
- (c) a retrenchment, severance or redundancy.

(16) A new employer shall not be permitted to terminate the employment of a transferred employee for reasons solely of retrenchment or severance within one year after the transfer date, other than if a voluntary retrenchment or severance is agreed to between the transferred employee and the new employer.

### **335. PROVISIONS RELATING TO MINISTERS' SHAREHOLDING.**

(1) Shares in a state aviation enterprise that is a company held in the name of a person described as the Minister or the Minister responsible for Finance matters shall be held by the person for the time being holding the office of Minister responsible for Finance matters or Minister, as the case may be.

(2) Notwithstanding any other enactment or rule of law, it shall not be necessary to complete or register a transfer of shares of the kind referred to in Subsection (1) consequent upon a change in the person holding the office of Minister responsible for finance matters or Minister, as the case may be.

(3) Each Minister may exercise all the rights and powers attaching to the shares in such a state aviation enterprise held by that Minister.

(4) A shareholding Minister may at any time or times, by written notice to the state aviation enterprise that is a company, authorize (on such terms and conditions as are specified in the notice) such person as the Minister thinks fit to act as the Minister's representative at any or all of the meetings of shareholders of the state aviation enterprise or of any class of such shareholders, and any person so authorized shall be entitled to exercise the same powers on behalf of the Minister as the Minister could exercise if present in person at the meeting or meetings.

### **336. TRANSITIONAL PROVISIONS RELATING TO REFERENCES IN ACTS, ETC.,.**

(1) Every reference to the Minister in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement, shall, unless the context otherwise requires, be read as a reference to the Minister responsible for civil aviation.

(2) Every reference to the Director of Civil Aviation or Controller of Civil Aviation in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice or other document whatsoever in force at the commencement, shall, unless the context otherwise requires, be read as a reference to the Director under this Act.

(3) Unless the context otherwise requires, in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice, or other document whatsoever in force at the commencement –

- (a) every reference to the Office of Air Safety Investigation shall be read as a reference to the Commission; and
- (b) every reference to the Board of Accident Inquiry shall be read as a reference to the Commission.

(4) Every reference to the Civil Aviation Authority, Department of Civil Aviation or Office of Civil Aviation in any Act, regulation, rule, order, other enactment, agreement, deed, instrument, application, notice or other document whatsoever in force at the commencement, shall, unless the context otherwise requires, be read as a reference to the Authority established under this Act.

### **337. SAVING OF LICENCES, INQUIRIES, ETC.**

(1) All aviation documents issued under the Civil Aviation Act (Chapter 239) (repealed), or Civil Aviation Regulations (Chapter 239) (repealed), and being current at the time coming into force, shall be of full effect as if issued under this Act and shall remain in force as if commencing on the date that, that Act is repealed and this Act comes into force.

(2) Notwithstanding Subsection (1) any aviation document issued under the Civil Aviation Act (Chapter 239) (repealed), or Civil Aviation Regulations (Chapter 239) (repealed) shall expire on the date on which it was originally intended to terminate or otherwise according to law.

(3) Every licence, rating, certificate, permit, authorization, approval, or other document issued to a person under the Civil Aviation Regulations (Chapter 239)(repealed), that is in force immediately before the commencement, shall be deemed to be an aviation document issued under this Act, and shall have effect and be subject to the provisions accordingly.

(4) Every international agreement entered into by the Minister under Section 7 of the Civil Aviation Act(Chapter 239) (repealed), and every delegation or sub-delegation made by the Director or a delegate of the Director, that is in force immediately before the commencement, shall be deemed to have been given or issued, as the case may be, under this Act, and shall have effect and be subject to the provisions accordingly.

(5) All aviation documents issued and all actions taken by any person holding the position of Director, Office of Civil Aviation or Acting Director, Office of Civil Aviation or any delegate of them since 3rd August 1995 purporting to be in the name of or under the authority of the Director of Civil Aviation appointed under the Civil Aviation Act (Chapter 239) (repealed), shall be deemed to be valid and lawful as if those persons were properly appointed under Section 6 of that Act and the validity of any aviation document issued by or actions taken by such persons shall not be questioned in any proceeding.

(6) Any requirement made, or condition imposed upon the holder of, or applicant for, an aviation document under the Civil Aviation Act (Chapter 239) (repealed), shall have full effect as if made, imposed or required under this Act.

(7) Any enforcement proceeding, prosecution or inquiry taken under the Civil Aviation Act (Chapter 239) (repealed), and as yet undetermined at the time of the coming into force of this Act shall remain in force and shall be maintainable under that Act, notwithstanding that the Act may be repealed during the course of such proceeding, prosecution or inquiry.

(8) The Minister may determine that any enforcement, proceeding, prosecution or inquiry referred to in Subsection (5) hereof shall be deemed to proceed under the corresponding or similar provision under this Act and thereafter it shall proceed as if taken under the provision.

**SCHEDULE 1 – NATIONAL AERODROMES.**

**PART 1 – AERODROMES NATIONAL CAPITAL DISTRICT.**

Port Moresby International Airport (Jacksons)

**PART 2 – AERODROMES IN THE PROVINCES.**

Buka  
Chimbu  
Daru  
Girua  
Goroka  
Gurney  
Hoskins  
Kavieng  
Kerema  
Kieta  
Kiunga  
Madang  
Mendi  
Momate  
Mount Hagen  
Nadzab  
Port Moresby  
Tari  
Tokua  
Vanimo  
Wapenamanda  
Wewak

**SCHEDULE 2 – ACTS AND REGULATIONS REPEALED.**

*Civil Aviation Act*, (Chapter 239).

*Civil Aviation (Crimes) Act*, (Chapter 266).

*Civil Aviation Regulations*, (Chapter 239) as to:

Part XIII. (relating to refusal to grant, and suspension, cancellation of licences);

Part XIV. (relating to accident inquiries);

Part XV. (relating to penal provisions and proceedings);

Part XVI. (relating to evidence);

Part XVII. (relating to miscellaneous matters);

*Wrongs (Miscellaneous Provisions), Act*:

Part X. – (relating to damage by aircraft).

*Civil Aviation Act*, (Chapter 239).

*Civil Aviation (Crimes) Act*, (Chapter 266).

*Civil Aviation Regulations*, (Chapter 239) as to:

Part XIII. (relating to refusal to grant, and suspension, cancellation of licences);

Part XIV. (relating to accident inquiries);

Part XV. (relating to penal provisions and proceedings);

Part XVI. (relating to evidence);

Part XVII. (relating to miscellaneous matters);

*Wrongs (Miscellaneous Provisions), Act*:

Part X. – (relating to damage by aircraft).