

Chapter 374.
Employment of Non-citizens Act 1978.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 374.

Employment of Non-citizens Act 1978.

ARRANGEMENT OF SECTIONS.

1. Compliance with Constitutional requirements.
2. Interpretation.
 - “authorized officer”
 - “child”
 - “the commencement date”
 - “dependant”
 - “employee”
 - “employer”
 - “employer’s register”
 - “non-citizen”
 - “occupation”
 - “place of engagement”
 - “the register”
 - “self-employed”
 - “the Secretary”
 - “this Act”
 - “work permit”
3. Application to State.
4. Prohibition of employment of non-citizen without work permit, etc.
5. Employment of non-citizens before commencement date.
- 5A. Application for approval to recruit.
- 5B. Secretary may grant approval to recruit.
6. Application for work permit, etc.
7. Secretary may grant work permit.
8. Requirements as to skills.
9. Cancellation of work permit or approval to recruit.
10. Register of work permits.
11. Termination of employment.
12. Duplicate work permit.
13. Custody of work permit.

14. Employer's register.
15. Repatriation.
16. Authorized officers.
- 16A. Institution of prosecution or proceedings.
17. Offences by officers of a company.
18. Guidelines.
19. General penalty.
20. Regulations.
21. Exemptions.
22. Work Permit Trust Account.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Employment of Non-citizens Act 1978,

Being an Act to control and regulate the employment of non-citizens.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

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

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

is a law that is made for that purpose, taking into account the National Goals and the Basic Social Obligations, in particular the third goal of the National Goals and Directive Principles entitled national sovereignty and self-reliance.

(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.

2. INTERPRETATION.

In this Act unless the contrary intention appears—

“**authorized officer**” means an officer appointed under Section 16;

“**child**” means a legitimate or legitimated child or a step-child, or in relation to its mother an illegitimate child, and includes an adopted child;

“**the commencement date**” means 24 July 1980, being the date on which the *Employment of Non-citizens Act 1978* came into force;

“**dependant**” means, in relation to a person, the spouse of that person not living apart from that person under a decree of court or a deed of separation and an unmarried child of that person under the age of 21 years;

“**employee**” means a non-citizen employed under this Act;

“**employer**” means a person by whom an employee is employed and includes a prospective employer;

“**employer’s register**” means a register kept by an employer under Section 14;

“**non-citizen**” means a person other than an automatic citizen or a naturalised citizen;

“**occupation**” means any profession, art, business, trade, calling, following or occupation (including service for a religious or charitable organisation) in which a person is or may be engaged;

“**place of engagement**” has the meaning assigned to it in Section 6;

“**the register**” means the register of work permits kept by the Secretary under Section 10;

“**self-employed**” means engaged in an occupation but not employed by an employer;

“**the Secretary**” means the Head of the Department administering this Act;

“**this Act**” includes the regulations;

“**work permit**” means a work permit granted under Section 7;

3. APPLICATION TO STATE.

(1) This Act binds the State.

(2) Where the provisions of—

- (a) the *Mining (Bougainville Copper Agreement) Act 1967*; or
- (b) the *Mining (Ok Tedi Agreement) Act 1976*; or
- (c) the *Petroleum (Gulf of Papua) Agreements Act 1976*; or
- (d) any other law in force in the country,

are inconsistent with the provisions of this Act, the provisions of this Act apply.

4. PROHIBITION OF EMPLOYMENT OF NON-CITIZEN WITHOUT WORK PERMIT, ETC.

¹(1) Subject to Sections 5 and 21, a person who—

- (a) recruits a non-citizen for an occupation unless an approval to recruit has been granted and is still valid in respect of that occupation; or
- (b) employs a non-citizen for a period exceeding two months in an occupation unless a work permit—
 - (i) has been granted and is still valid; or
 - (ii) has been applied for,

in respect of that non-citizen and that occupation,

is guilty of an offence.

¹ Section 4 amended by No. 27 of 1983, s. 1.

Penalty: ²A fine not exceeding K5,000.00.

Default penalty: ³A fine not exceeding K500.00.

(2) Subject to Section 5, a non-citizen who engages in any occupation, whether self-employed or in the employment of another person, unless a work permit has been granted in respect of that non-citizen and that occupation and is still valid, is guilty of an offence.

Penalty: ⁴A fine not exceeding K1,000.00.

Default penalty: ⁵A fine not exceeding K500.00.

5. EMPLOYMENT OF NON-CITIZENS BEFORE COMMENCEMENT DATE.

Where immediately before the commencement date, a non-citizen was in employment or self-employment in the country—

- (a) the employer of that non-citizen; or
- (b) the self-employed non-citizen,

shall, within six months after that date, make application in the prescribed form for the issue of a work permit for that non-citizen for that employment, or himself, as the case may be.

5A. APPLICATION FOR APPROVAL TO RECRUIT.

⁶(1) Every employer who wishes to engage a non-citizen shall make an application on the prescribed form to the Secretary for approval to recruit.

(2) An application under Subsection (1) shall be accompanied by—

- (a) a training and localization programme on the prescribed form and containing the prescribed particulars; and
- (b) such other information as is prescribed; and
- (c) the prescribed fee.

5B. SECRETARY MAY GRANT APPROVAL TO RECRUIT.

⁷(1) The Secretary may grant or refuse to grant an application for approval to recruit.

(2) An approval to recruit is subject to such conditions (if any) as are specified in the approval and permits a specified employer—

- (a) to recruit a non-citizen for a specified occupation; and

² Section 4(1): Penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s1(a)(i).

³ Section 4(1): Default penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s1(a)(ii).

⁴ Section 4(1): Penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s1(b)(i).

⁵ Section 4(1): Default penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s1(b)(ii).

⁶ Section 5A added by No. 27 of 1983, s. 2.

⁷ Section 5B added by No. 27 of 1983, s. 2.

- (b) to employ that non-citizen in that occupation for a period of two months, provided that within that period an application under Section 6 is lodged in respect of that non-citizen in that occupation; and
- (c) subject to Paragraph (b)–to continue to employ that non-citizen in that occupation until a work permit has been granted or refused under Section 7.

(3) An approval to recruit is valid–

- (a) only in respect of the employer and the occupation specified in the approval; and
- (b) until–
 - (i) the expiry of the period specified in the approval; or
 - (ii) a non-citizen has been recruited and granted a work permit in respect of that occupation,

whichever first occurs; and

- (c) in so far as the provisions of Subsection (2)(b) and (c) are applicable, provided that the non-citizen is the holder of a valid entry permit under the *Migration Act 1963*.

(4) The Secretary may by written notice, at any time, vary or revoke any condition or impose new or additional conditions in an approval.

(5) A person aggrieved by a decision of the Secretary under Subsection (1) or (4) may appeal to the Minister whose decision is final.

6. APPLICATION FOR WORK PERMIT, ETC.

(1) Every–

- (a) employer, prior to engaging a non-citizen in any occupation; and
- (b) self-employed non-citizen before commencing any occupation,

shall make an application for a work permit to the Secretary in the prescribed form.

(2) An application under Subsection (1) or Section 5 shall be accompanied by–

- (a) subject to Subsection (3)–a notification of the place of engagement, being the town in a country outside Papua New Guinea to which country the non-citizen, who is the subject of the application, has right of entry and residence and to which town the employer is liable, under Section 15, for the repatriation of the non-citizen and his dependants on the termination of the employment of the non-citizen; and
- (b) such other particulars as are prescribed or as the Minister may require; and
- (c) the prescribed fee,

and shall state that the application is made by the employer in respect of a non-citizen, or by a self-employed non-citizen, in respect of a specified occupation.

(3) Where the subject of an application is a dependant of a non-citizen in respect of whom a work permit has been granted, the provisions of Subsection (2)(a) do not apply.

7. SECRETARY MAY GRANT WORK PERMIT.

(1) The Secretary may grant or refuse an application for a work permit.

(2) A work permit is subject to such conditions (if any) as are specified in the work permit and allows—

- (a) a specified self-employed non-citizen to engage in a specified occupation; or
- (b) a specified employer to employ a specified non-citizen in a specified occupation.

(3) A work permit is valid—

- (a) only in respect of the employer and the non-citizen and the occupation specified in the permit; and
- (b) for a period of five years from the date of issue or for the period specified in the permit, whichever is the lesser; and
- (c) provided that it has not been cancelled under Section 9; and
- (d) provided that the non-citizen is the holder of a valid entry permit under the *Migration Act 1963*.

(4) The Secretary may, by written notice at any time, vary or revoke any conditions or impose new or additional conditions in the work permit.

(5) Any person aggrieved by a decision of the Secretary under Subsection (1) or (4) may appeal to the Minister whose decision is final.

(6) A work permit issued under this section is not transferable in respect of the employer or the non-citizen or the occupation.

8. REQUIREMENTS AS TO SKILLS.

(1) Where it is necessary for an employee to possess certain skills or standards in respect of a particular type of employment, the Secretary may direct that the employee give evidence of those skills as prescribed.

(2) Where the Secretary is satisfied that an employee does not possess the skills or standards required under Subsection (1) he may—

- (a) refuse to issue a work permit; or
- (b) cancel a work permit already issued.

9. CANCELLATION OF WORK PERMIT OR APPROVAL TO RECRUIT.

⁸(1) Where the Secretary is satisfied that—

- (a) the application for a work permit or an approval to recruit contained information that was false or misleading in any material particular; or
- (b) there has been a contravention of any conditions of the work permit or an approval to recruit,

he may cancel the work permit or approval to recruit.

⁸ Section 9 amended by No. 27 of 1983, s. 3.

(2) Where the Secretary is satisfied that a non-citizen in respect of whom a work permit has been granted is not a fit and proper person to continue to have a work permit, he may cancel it.

(3) The Secretary shall give written notification of any cancellation of a work permit or an approval to recruit under this section to the employer and to the non-citizen and the work permit or approval to recruit shall cease to be valid on the expiry of 14 days from the date of notification.

(4) Any person aggrieved by the cancellation of a work permit or an approval to recruit under Subsection (1) or (2) may, within 14 days of notification of cancellation, appeal to the Minister whose decision is final.

10. REGISTER OF WORK PERMITS.

(1) The Secretary shall keep or cause to be kept, in the prescribed manner, a register of work permits granted under Section 7.

(2) The register shall contain—

- (a) all applications for work permits; and
- (b) copies of all work permits issued; and
- (c) any other prescribed information.

(3) The production of the register, or a copy or an extract from the register certified by the Secretary or a person authorized by him for the purpose, to be the register, or a true copy of the register or a true extract from the register is evidence of the matters contained in it.

11. TERMINATION OF EMPLOYMENT.

(1) Notwithstanding the provisions of any other law or of any term or conditions of any contract or agreement, an employer shall terminate the employment of a non-citizen who is in his employment within 14 days of his being notified in writing by the Secretary that a work permit in respect of that non-citizen—

- (a) has not been issued under Section 7; or
- (b) has been cancelled under Section 9.

(2) Every employer who, under Subsection (1) terminates the employment of a non-citizen shall inform the Secretary of that termination within 14 days by notice in writing.

(3) Where for any other reason the employment of a non-citizen is terminated, the employer shall inform the Secretary of that termination within 14 days by notice in writing.

(4) The termination of the employment of a non-citizen under Subsection (1) shall not be—

- (a) capable of negotiation with an industrial organization representing the non-citizen; or
- (b) a matter in respect of which any form of industrial action may be taken by that industrial organization; or
- (c) the subject of a trade dispute or of conciliation proceedings or any method of redress; or
- (d) an industrial matter within the meaning of the *Industrial Organizations Act 1962*.

12. DUPLICATE WORK PERMIT.

(1) Where the Secretary is satisfied that the work permit granted to an employer or a self-employed non-citizen or a non-citizen's copy of a work permit has been lost or destroyed, he may, on payment of the prescribed fee, issue a duplicate work permit or copy work permit.

(2) Where possession of a lost work permit or copy is recovered, the employer, self-employed non-citizen, or employee shall promptly notify the Secretary of that recovery and the work permit or copy work permit may, where a duplicate work permit or copy work permit has not been issued under Subsection (1), be retained.

(3) Where any employer, self-employed non-citizen or employee recovers his work permit or copy work permit after the issue of a duplicate, he must promptly return the work permit or copy work permit to the Secretary for cancellation.

Penalty: ⁹A fine not exceeding K500.00.

(4) Any person who finds or comes into possession of a work permit or copy work permit other than his own shall promptly return it to the Secretary.

13. CUSTODY OF WORK PERMIT.

(1) Where a work permit has been granted under Section 7(1), it shall—

- (a) in the case of an employee—be issued in duplicate and one copy shall be kept by the employer and one copy shall be kept by the employee; and
- (b) in the case of a self-employed non-citizen—be issued to that self-employed non-citizen.

(2) A work permit shall be produced by the employer or the employee or the self-employed non-citizen, as the case may be, when required to do so by an authorized officer.

(3) Where—

- (a) a work permit is cancelled; or
- (b) employment is terminated by the employer or the employee,

each shall return his copy of the work permit to the Secretary within 14 days of the termination of the employment.

14. EMPLOYER'S REGISTER.

(1) Every employer shall keep or cause to be kept in the prescribed manner at his sole or principal place of business a register of non-citizen employees in respect of whom a work permit has been granted under Section 7.

(2) The employer's register shall contain—

- (a) all current work permits granted in respect of non-citizen employees employed by the employer; and
- (b) notice of cancellation of a work permit under Section 9; and
- (c) any other prescribed information.

⁹ Section 12(3): Penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s2.

(3) The Secretary, or an authorized officer may at any reasonable time enter any premises and inspect an employer's register.

(4) Any person who without reasonable excuse (proof of which is on him) fails to produce the employer's register when required to do so by the Secretary or an authorized officer is guilty of an offence.

Penalty: ¹⁰A fine not exceeding K1,000.00.

15. REPATRIATION.

(1) This section does not apply in respect of an employer of a non-citizen who is the dependant of a non-citizen in respect of whom a work permit has been granted.

(2) Where for any reason the employment of a non-citizen is terminated, the employer is liable for the expenses of repatriation of the non-citizen to the place of engagement.

(3) Every non-citizen who is employed in Papua New Guinea and who is ordered to leave Papua New Guinea in accordance with the provisions of any law for the time being in force in Papua New Guinea, shall be repatriated at the expense of the employer to the place of engagement.

(4) Where any dependant of any non-citizen has been brought to the place of employment by the employer or by any person acting on behalf of the employer, such dependant shall be repatriated at the expense of the employer when the non-citizen is repatriated or in the event of his death.

(5) The expenses of repatriation shall include—

- (a) travelling and subsistence expenses during the journey; and
- (b) subsistence expenses (if any) between the date of termination of the employment and the date of repatriation; and
- (c) provision of decent interment and the payment of the reasonable expenses of burial in the event of death of a non-citizen occurring during the course of, or pending, repatriation.

(6) The employer is not liable for subsistence expenses in respect of any period during which the repatriation of the non-citizen has been delayed—

- (a) by the non-citizen's own choice; or
- (b) for reasons of force majeure,

unless the employer has been able during that period to use the services of the worker.

(7) If the employer fails to fulfil his obligation in respect of repatriation that obligation shall be discharged by or under the directions of the Minister and any sum so expended may be recovered from the employer as a debt due to the State and, notwithstanding any law to the contrary, shall be a first charge on the property of the employer.

¹⁰ Section 14(4): Penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s3.

16. AUTHORIZED OFFICERS.

(1) The Minister may, by notice in the National Gazette, appoint persons to be authorized officers for the purpose of this Act.

(2) An authorized officer may, at all reasonable times, enter and inspect any premises or place on or in which an employee to whom this Act applies is employed or on or in which he reasonably believes that such an employee is employed.

(3) An authorized officer may require any person to give any information, or to produce any document, register or thing, in his possession or under his control relating to the employment of employees to whom this Act applies, or to any conditions of employment of such employees.

(4) Any person who—

(a) refuses or fails without reasonable cause (proof of which is on him), to give any information or to produce any document, register or thing, or who gives any information that he knows to be false in any material particular when required to do so under Subsection (3); or

(b) hinders or obstructs an authorized officer in the exercise or performance of his powers or functions under this Act,

is guilty of an offence.

Penalty: ¹¹A fine not exceeding K1,000.00 or imprisonment for a term not exceeding six months.

16A. INSTITUTION OF PROSECUTION OR PROCEEDINGS.

¹²(1) The Secretary or any officer authorized by the Secretary, may—

(a) institute any prosecutions or proceedings for a breach or contravention of any provision of this Act; and

(b) appear in any prosecution or proceeding referred to in Paragraph (a).

(2) Where a prosecution or proceeding is instituted by an authorized officer under Subsection (1), the prosecution or proceeding shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Secretary.

(3) Production of a telegram or facsimile purporting—

(a) to be signed by the Secretary; and

(b) to authorize an officer to institute any prosecution or proceeding under this Act,

is admissible in the prosecution or proceeding, and shall be accepted as evidence of the authority of the officer to institute the prosecution or proceeding.

(4) A prosecution or proceeding under this Act may be instituted—

(a) in the National Court; or

(b) in the District Court where the penalty amount does not exceed K10,000.00.

¹¹ Section 16: Penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s4.

¹² Section 16A inserted by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s5.

(5) A prosecution or proceeding under this Act may be instituted in the name of the Secretary.

(6) The prosecution or proceeding under this Act may be commenced, prosecuted and proceeded with in accordance with rules of practice of the National Court or the District Court, as the case requires.

17. OFFENCES BY OFFICERS OF A COMPANY.

Where an offence against this Act committed by a corporation is proved to have been committed with the consent or connivance of any director, manager, secretary or other officer of the corporation, he, as well as the corporation, shall be deemed to have committed the offence.

18. GUIDELINES.

The Minister may from time to time issue guidelines for the benefit of employers or self-employed persons seeking to make application for work permits.

19. GENERAL PENALTY.

Any person who fails to comply with a provision of this Act in respect of which a specific penalty is not provided is guilty of an offence.

Penalty: ¹³A fine not exceeding K1,000.00.

20. REGULATIONS.

¹⁴The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for prescribing—

- (a) particulars concerning any type of occupation; and
- (b) tests as to standards or skills required by employees in respect of a particular type of employment; and
- (c) fees to be paid in connection with the lodgement of an application for an approval to recruit, and the circumstances in which the Secretary may exempt an employer or a class of employers from payment of the whole or part of a fee; and
- (d)¹⁵ penalties of fines not exceeding K500.00 for any offence against the regulations; and
- (e) particulars to be contained in a training and localization programme.

21. EXEMPTIONS.

¹⁶(1) The Minister may exempt—

¹³ Section 17: Penalty clause amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s6.

¹⁴ Section 20 amended by No. 27 of 1983, s. 4.

¹⁵ Section 20(d) amended by *Employment of Non-Citizens (Amendment) Act 1996* (No. 11 of 1996), s7.

¹⁶ Section 21 added by No. 27 of 1983, s. 5.

- (a) an employee, or class of employees; or
- (b) an employer, or class of employers,

from all or any of the provisions of this Act.

(2) Notification of an exemption granted under Subsection (1) shall be published in the National Gazette.

22. WORK PERMIT TRUST ACCOUNT.

¹⁷(1) There is established within the Trust Fund a Trust Account to be known as the Work Permit Trust Account.

(2) There shall be paid into the Work Permit Trust Account 50% of all fees and penalties paid under this Act.

(3) There shall be paid out of the Work Permit Trust Account such amounts as the Departmental Head of the Department responsible for labour and employment matters considers appropriate for the purposes of improving and making more effective the administration and implementation of this Act.

(4) The Work Permit Trust Account shall be administered by the Departmental Head of the Department responsible for labour and employment matters who shall—

- (a) authorize all payments out of the Trust Account only for the purposes specified in Subsection (3); and
- (b) maintain such records pertaining to the account as are required by the Departmental Head of the Department responsible for financial management; and
- (c) furnish monthly statements and summaries of the account to the First Assistant Secretary (Public Accounts) of the Department responsible for financial management.

Office of Legislative Counsel, PNG

¹⁷ Section 22 added by No. 11 of 1996 s 8.