

No. 1 of 2018.

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment) Act 2018.

Certified on: 21 MAY 2018



No. 1 of 2018.

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment) Act 2018.

ARRANGEMENT OF SECTIONS.

1. Compliance with constitutional requirements (Amendment of Section 1).
2. New Section 1A.

"1A. APPLICATION OF OTHER LAWS AND CERTAIN AGREEMENTS."

3. Interpretation (Amendment of Section 2).
4. Application (Amendment of Section 3).
5. Joint Task Force (Amendment of Part II).
6. Functions of the Commander (Amendment of Section 8).
7. Functions of the Deputy Commanders (Amendment of Section 9).
8. New Sections 14A and 14B.

**"14A. REASONABLE USE OF FORCE.
14B. PRE-AUTHORISATION."**

9. New Section 15A.

"15A. ACTIVE SERVICE."

10. New Section 18A.

"18A. ACCESS TO INFORMATION."

11. Repeal of Section 21.
12. Involvement of foreign safety and security personnel in safety and security operations (Amendment of Section 44).
13. New Section 44A.

**"44A. EXTRATERRITORIALITY IN RELATION TO CERTAIN DEFENCE
FORCE MEMBERS."**

14. Immunities and privileges of foreign safety and security personnel (Amendment of Section 46).
15. Repeal and replacement of Section 50.

"50. SUNSET CLAUSE".



No. 1 of 2018

AN ACT

entitled

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment) Act 2018,

Being an Act to amend the *Asia Pacific Economic Cooperation (APEC) Safety and Security Act 2017*, and for related purposes,

MADE by the National Parliament.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended -

(a) by repealing Subsection (3) and replacing it with the following:

“Section 200(1) of the *Constitution* does not apply to the armed forces of any other country, or to the civilian components of, or to the non-combatant units or organisations whether attached or associated with such forces, involved in safety and security operations.”; and

(b) by repealing Subsection (4) and replacing it with the following:

“For the purposes of Section 206 of the *Constitution*, defence forces of other States engaged in safety and security operations, together with their civilian components or civilians accompanying, shall be considered a visiting force under the *Defence (Visiting Forces) Act* (Chapter No. 77).”

2. NEW SECTION 1A.

The Principal Act is amended by inserting after Section (1), the following new section:

“1A. APPLICATION OF OTHER LAWS AND CERTAIN AGREEMENTS.

(1) This Act shall be in addition to, and not in derogation of, any other Act and insofar as the provisions of any other Acts are applicable for the purpose of safety and security for APEC 2018 or where reference has been made to other laws, this Act shall be interpreted to achieve the full intents and purposes of safety and security operations.

(2) As it relates to the defence forces of other countries, these Acts include but are not limited to -

- (a) the *Defence Act* (Chapter No. 74); and
- (b) the *Defence (Visiting Forces) Act* (Chapter No. 77); and
- (c) the *Organic Law on the Relief of Members of Disciplined Forces from the Responsibility for the Consequences of Carrying out a Lawful Order*.”.

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment)

3. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended -

(a) in Subsection (1) -

(i) by repealing the definition of “foreign safety and security personnel” and replacing it with the following:

““foreign safety and security personnel” means -

- (a) a member of the defence forces of another State who is involved in safety and security operations, whether or not such member is operating within or outside of Papua New Guinea; or
- (b) a person included in a class of persons involved in safety and security operations prescribed by instrument signed by the Commander for the purposes of this paragraph; or
- (c) any other persons who is involved in safety and security operations under an international arrangement;” and

(ii) by repealing the definition of “international arrangement” and replacing it with the following:

““international arrangement” means binding or not binding instrument with another State, whether in force on the commencement of this Act or made in accordance with this Act, and includes, but is not limited to a treaty or memorandum of understanding;” and

(iii) by deleting the words “Joint Task Force” and replacing them with the words “Joint Security Task Force”; and

(iv) by inserting the following new definitions in their correct alphabetical order:

““imminent threat” means a threat that is assessed to put the public safety and security at immediate risk of danger or serious harm”; and

““operations order” means written orders or directions issued by the relevant authorities for the purposes of safety and security operations;” and

(b) by adding after Subsection (1), the following new subsection:

“(2) Any reference to an Act of Parliament in this Act, is a reference to that Act of Parliament, as amended and in force from time to time.”.

4. APPLICATION (AMENDMENT OF SECTION 3).

(1) Section 3 of the Principal Act is amended by -

(a) deleting “This” and substituting “(1) This”; and

(b) inserting after Subsection (1), the following new subsection:

“(2) This Act shall have extraterritorial application.”.

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment)

5. JOINT TASK FORCE (AMENDMENT OF PART II).

Part II of the Principal Act is amended -

- (a) by repealing the heading and replacing it with the following:

“JOINT SECURITY TASK FORCE.”; and

- (b) by repealing the words “Joint Task Force” wherever occurring in this Act and replacing them with the following words:

“Joint Security Task Force.”.

6. FUNCTIONS OF THE COMMANDER (AMENDMENT OF SECTION 8).

Section 8 of the Principal Act is amended by inserting after Paragraph (a) the following new paragraph -

- “(aa) command of the command centre established under Section 10.”.

7. FUNCTIONS OF THE DEPUTY COMMANDERS (AMENDMENT OF SECTION 9).

Section 9 of the Principal Act is amended in Subsection (1) by repealing Paragraph (a) and replacing it with the following new paragraph:

- “(a) facilitating the operations of the Joint Security Task Force, as the operations relate to the functions of their respective forces under the *Constitution*.”.

8. NEW SECTIONS 14A AND 14B.

The Principal Act is amended by inserting, after Section 14, the following new sections:

“14A. REASONABLE USE OF FORCE.

(1) All persons authorised to carry out functions and exercise powers under this Act, particularly but not limited to the conduct of arrests, detention, searches and seizures, shall use reasonable force as the circumstances warrant or take reasonable measures, taking into account the purpose of the Act and having proper regard for the rights and dignity of mankind.

(2) Notwithstanding Subsection (1), the use of force under the *Defence Act* (Chapter No. 74) applies in respect to the exercise of functions and powers of the Defence Force in APEC safety and security operations.

(3) The provisions of the *Defence Act* (Chapter No. 74) apply to the members of the Defence Forces of other States carrying out functions or duties or exercising powers for the purposes of safety and security operations under this Act and they may use such force, including up to lethal force, as the circumstances warrant or take reasonable measures, taking into account the purpose of this Act and having proper regard for the rights and dignity of mankind.

14B. PRE-AUTHORISATION.

In order for authorised officers or authorised persons to respond to an imminent threat that warrants action to clear, interdict or neutralise such an imminent threat, pre-authorisation may be given by the relevant authority in accordance with law, the command and control structure, rules of engagement and an international arrangement.”.

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment)

9. **NEW SECTION 15A.**

The Principal Act is amended by inserting after Section 15, the following new section:

“15A. ACTIVE SERVICE.

Pursuant to Section 205 of the *Constitution*, and in accordance with the *Defence Act* (Chapter No. 74), the Head of State, acting on advice, may order the Papua New Guinea Defence Force or part of the Papua New Guinea Defence Force on active service to become engaged in military combat operations of a warlike or armed conflict nature, including counter-terrorist operations and insurgencies, and low-risk non-combat operations or when performing their functions as part of safety and security operations.”.

10. **NEW SECTION 18A.**

The Principal Act is amended by inserting after Section 18, the following new section:

“18A. ACCESS TO INFORMATION.

Where the Commander assesses that there is an imminent threat, from which information relevant to that threat needs to be made available immediately, he may order reasonable measures to be taken to obtain the information without a warrant.”.

11. **REPEAL OF SECTION 21.**

Section 21 of the Principal Act is repealed.

12. **INVOLVEMENT OF FOREIGN SAFETY AND SECURITY PERSONNEL IN SAFETY AND SECURITY OPERATIONS (AMENDMENT OF SECTION 44).**

Section 44 of the Principal Act is amended by -

(a) inserting after Subsection (1), the following new subsection:

“(1A) In order to respond to an imminent threat to public safety and security that warrants an action to be taken to clear, interdict or neutralise such an imminent threat, pre-authorisation may be given by the relevant authority in accordance with law, the command and control structure and rules of engagement.”; and

(b) repealing Subsection (3) and replacing it with the following:

“(3) Subject to Subsection (1A), all co-ordination of safety and security operations involving foreign safety and security personnel will be through the Command Centre established under Section 10.”.

13. **NEW SECTION 44A.**

The Principal Act is amended by inserting after Section 44, the following new section:

“44A. EXTRATERRITORIALITY IN RELATION TO CERTAIN DEFENCE FORCE MEMBERS.

If a member of the Defence Force of another State is outside of Papua New Guinea and the member -

(a) is involved in safety and security operations; or

(b) is carrying out other functions for the purposes of safety and security for APEC 2018,

then, notwithstanding the member is outside of Papua New Guinea, this Act, the *Defence (Visiting Forces) Act* (Chapter No. 77), the *Defence Act* (Chapter No. 74), and the *Organic Law on the Relief of Members of Disciplined Forces from the Responsibility for the Consequences of Carrying out a Lawful Order* are deemed to apply to the member as if the member were present in Papua New Guinea.”.

Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment)

14. IMMUNITIES AND PRIVILEGES OF FOREIGN SAFETY AND SECURITY PERSONNEL (AMENDMENT OF SECTION 46).

Section 46 of the Principal Act is amended by -

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

“(1) For the specific purpose of providing safety and security in relation to APEC 2018 and only for the duration of APEC 2018 related activities, a member of the foreign safety and security personnel shall not be held civilly liable or criminally responsible for acts or omissions carried out in accordance with Section 44 or for the purposes of this Act.”; and

(b) repealing Subsection (4).

15. REPEAL AND REPLACEMENT OF SECTION 50.

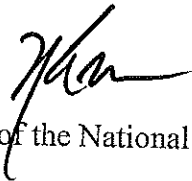
Section 50 of the Principal Act is repealed and replaced with the following:

“50. SUNSET CLAUSE.

(1) Safety and security operations including Part IX shall cease on and from 1 December 2018.

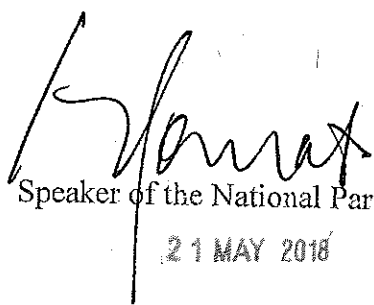
(2) The cessation of this Act does not suspend any criminal responsibility arising from or civil liability incurred as a result of any acts or omissions under this Act.”.

I hereby certify that the above is a fair print of the *Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment) Act 2018* which has been made by the National Parliament.


Clerk of the National Parliament.

21 MAY 2018

I hereby certify that the *Asia Pacific Economic Cooperation (APEC) Safety and Security (Amendment) Act 2018* was made by the National Parliament on 13 April, 2018.


Speaker of the National Parliament.

21 MAY 2018