

No. 12 of 2006.

Lutheran University of Papua New Guinea Act 2006.

Certified on: 18 DEC 2006



INDEPENDENT STATE OF PAPUA NEW GUINEA.

No. of 2006.

Lutheran University of Papua New Guinea Act 2006.

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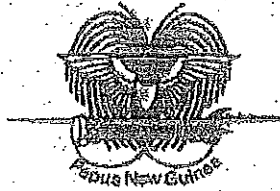
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INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Lutheran University of Papua New Guinea Act 2006,

Being an Act to provide for the establishment and operation of a University under the name and style Lutheran University of Papua New Guinea 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. - INTERPRETATION.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

"Chairman" means the Chairman of the Council;

"Chancellor" means the Chancellor of the University appointed under Section 17;

"Council" means the Council of the University established under Section 7;

"Degree" means degree, diploma or trade certificate or other formal recognition of the completion of academic requirements as set by the University Council for the relevant qualification;

"Faculties" means any academic department of the University and includes schools and any other division or section with an academic function;

"Fund" means the Lutheran University of Papua New Guinea Education Fund established under Section 3;

"Lutheran Churches of Papua New Guinea" means Evangelical Lutheran Church of Papua New Guinea and the Gutnius Lutheran Church of Papua New Guinea;

"Member" means a member of the Council;

"Minister" means the Minister responsible for Higher Education matters including all matters provided for by the *Higher Education Act*, Chapter 397;

"By-Laws" means the By-Laws made by the Council under Section 19;

"Trustees" means the persons appointed as trustees of the Fund;

"University" means the Lutheran University of Papua New Guinea established by Section 2;

“University Company” means the company appointed from time to time by the University to manage the University;
“Vice Chancellor” means the person appointed under Section 18.

(2) A reference in this Act to the holder of an office in the University shall be read as including a reference to a person for the time being performing the duties of that office.

PART II.— LUTHERAN UNIVERSITY OF PAPUA NEW GUINEA.

Division 1.—Establishment and Functions.

2. LUTHERAN UNIVERSITY OF PAPUA NEW GUINEA.

(1) Lutheran University of Papua New Guinea is hereby established and subject to the law and this Act has all the rights and powers of a natural person.

(2) The University may appoint or remove a University Company.

(3) The functions and powers of the University Company is to manage the University and may act in the name of the University.

(4) Nothing in this Act shall be construed so as to excuse or exempt the University Company from complying with any laws.

(5) The University and the University Company shall have exclusive use of the name “Lutheran University of Papua New Guinea” and all intellectual property rights thereto are vested in the University.

(6) In the event that a receiver is appointed to the company appointed as the University Company, or it goes into Liquidation, its appointment as manager of the University is deemed terminated and the Council shall forthwith appoint a replacement University Company.

(7) The Common Seal of the University shall be kept in such custody as the Council directs and shall not be used except on the order of the Council.

(8) All courts, Judges and persons acting judicially shall take judicial notice of the common seal of the University affixed to a document and shall presume that it was duly fixed.

PART III. - LUTHERAN UNIVERSITY OF PAPUA NEW GUINEA EDUCATION FUND.

3. LUTHERAN UNIVERSITY OF PAPUA NEW GUINEA TRUST.

(1) The Lutheran University of Papua New Guinea Education Fund is hereby established as a public charitable purposes trust.

(2) The objects of the Fund shall be such charitable purposes, within the meaning of that term under English common law, as relates to the education of the people of Papua New Guinea.

(3) The trustees of the Fund shall be appointed by the University with a maximum number of 5 and a minimum number of 3 shall comprise a quorum, and shall consist of the following:-

- (a) the Chancellor of the University, who shall be Chairman of the trustees or his nominee; and
- (b) the Head Bishop of the Gutnius Lutheran Church of Papua New Guinea or his nominee; and
- (c) The Head Bishop of the Evangelical Lutheran Church of Papua New Guinea or his nominee; and
- (d) a person nominated by the Chancellor as a person suitable to represent private industry in Morobe Province; and
- (e) A person nominated by the Governor of Morobe Province.

(4) Alternate trustees may be appointed by each trustee.

(5) The power of appointment of a trustee includes the power of removal.

(6) The rule against perpetuities shall not apply to the Fund.

4. POWERS AND DUTIES OF THE TRUSTEES OF THE FUND.

(1) The trustees shall manage the affairs of the Fund and in which respect they shall have all the powers and duties of a director of a company and Part VIII of the Companies Act shall apply, *mutatis mutandis*, to the trustees as if they were directors of a company and the Fund was the company. In particular, the trustees shall act in accordance with the principles of good corporate governance in the best interest of the Fund.

(2) In relation to all matters touching and concerning the Fund, including in relation to investments, the Trustees shall have the powers of a natural person including the power to borrow and encumber the assets of the Fund.

(3) The Fund is a trust within the meaning of the Trustees and Executors Act and the provisions of the said Act, except for Part II – Investments, shall apply to the Fund.

5. FUND ESTABLISHED AS A CHARITABLE PURPOSE TRUST.

The Fund is hereby established as a charitable purposes trust and the Trustees shall use their best endeavours to obtain and maintain approval of the Fund as a charitable body pursuant to Section 25A of the *Income Tax Act*.

PART IV. – ADMINISTRATION OF THE UNIVERSITY.

Division 1. - Functions.

6. FUNCTIONS OF THE UNIVERSITY.

The functions of the University are -

- (a) to encourage and provide facilities for study and education in all subjects and to give instruction and training in all branches of learning and skills; and
- (b) to provide for research into all branches of learning and to assist its practical application; and

- (c) subject to the *Higher Education Act* (Chapter 397) and to the By-Laws, to award and confer degrees, diplomas, certificates and other academic honours; and
- (d) to provide facilities for higher education throughout the country by the affiliation of educational institutions, by the establishment of tutorial classes, correspondence classes, extension classes and vacation classes and by such other means as the Council considers appropriate; and
- (e) to liaise, collaborate and reciprocate with other institutions of learning and training institutions, whether within or outside the country, in the provisions of facilities, the recognition of degrees and certificates and status and the interchange of staff, students and information, and in any other way not inconsistent with its status as a University.

Division 2. - Council of the University.

7. COUNCIL OF THE UNIVERSITY.

(1) There is hereby established the Council of the University, which shall be the governing body of the University.

(2) The Council of the University shall consist of -

- (a) the Chancellor; and
- (b) the following *ex officio* members:-
 - (i) the Vice-Chancellor of the University who shall be the executive secretary to the Council; and
 - (ii) the Head Bishop of the Evangelical Lutheran Church of Papua New Guinea or his nominee; and
 - (iii) the Head Bishop of the Gutnius Lutheran Church of Papua New Guinea or his nominee; and
 - (iv) the Director-General, Office of Higher Education, or his nominee; and
 - (v) the Deputy Vice-Chancellor of the University; and
 - (vi) the Bursar of the University; and
 - (vii) a nominee of the Morobe Provincial Government; and
 - (viii) any other office holder or person who under the By-Laws is made an *ex officio* member of the Council; and
- (c) not more than seven other persons appointed to the Council by a majority decision of the persons responsible for appointing the Chancellor of the University.

(3) The Council (and any other appointor) has power to remove any person from the Council for just cause, including any conduct of a member in his personal life which is inconsistent with that of a Council member.

(4) A member referred to in Subsection (2)(b)(vii) and (viii) and (c) -

- (a) shall hold office, subject to this Act, for a period not exceeding five years, fixed by Council at the time of his appointment; and

- (b) shall meet the qualifications for office applicable to a director under the Companies Act; and
- (c) is eligible for re-appointment.

(5) Subject to this Act, the Council -

- (a) shall control the management of the affairs and concerns of the University; and
- (b) may from time to time appoint and may dismiss teaching staff and other staff and employees of the University as the Council considers necessary; and
- (c) may act in all matters concerning the University in the manner that appears to it best calculated to promote higher education in Papua New Guinea and the Pacific Islands Nations; and
- (d) shall determine and maintain objectives for the University within the framework of the educational philosophy of the Lutheran Churches of Papua New Guinea; and
- (e) may by written instrument, delegate all its powers and functions to the University Company and in that event, unless the context indicates otherwise, the expression "University" means and includes the University Company.

8. CASUAL VACANCY IN THE COUNCIL.

(1) In the event of a casual vacancy in the Council a replacement member shall be appointed by the Council for the residue of his predecessor's term of office.

(2) If a vacancy occurs within three months of the expiration of the term of office of the member whose position is vacant, the vacancy shall not be filled as a casual vacancy and a member shall be appointed by the same appointing body who made the appointment for the previous member.

9. VACANCY IN THE COUNCIL.

Where a member of the Council -

- (a) dies; or
- (b) declines to act; or
- (c) resigns his seat; or
- (d) is absent without leave of the Council from three consecutive meetings of the Council; or
- (e) is disqualified from office for being of unsound mind, or bankrupt or being convicted of an indictable offence; or
- (f) is removed by the Council,

his seat shall be vacant and Section 8 shall apply.

10. CHANCELLOR TO PRESIDE, ETC.,

(1) The Chancellor shall preside at all meetings of the Council at which he is present.

(2) At any meeting of the Council at which the Chancellor is not present, the Vice Chancellor shall preside and in their absence, a member elected by the Council shall preside.

11. PROCEDURE AT MEETINGS.

(1) Subject to any other provisions of this Act, all questions to be decided at a meeting of the Council shall be decided by a majority of votes of the members present.

(2) The Chairman at a meeting shall have a deliberate vote and, in the case of an equality of votes on a question, a casting vote.

(3) At a meeting of the Council seven members constitute a quorum.

(4) Subject to this Act, the procedures of the Council are as determined by it.

12. MEMBER WITH PECUNIARY INTEREST NOT TO VOTE.

A member shall not be entitled to vote either in the Council or in committee thereof on a subject in which he has a direct pecuniary interest, and if such a member votes his vote shall be disallowed.

13. APPOINTMENT OF COMMITTEES.

(1) The Council may, by resolution, constitute and appoint such committees as it thinks fit.

(2) A committee constituted under this section shall exercise the powers and perform the functions conferred on it by the Council.

14. DELEGATION.

The Council may, in relation to matter or class of matters, or in relation to an activity or function of the University, by resolution, delegate all or any of its powers and functions under this Act (except this power of delegation and its powers in relation to the making of By-Laws) to a member or a committee consisting of members with or without any other person, or to a member of the staff of the University.

15. VALIDATION.

No act or proceedings of the members of a committee of the Council, and no act done by a person acting as Chancellor or Vice-Chancellor shall be invalidated by reason of—

- (a) a defect in the appointment, or choosing of a member of the Council; or
- (b) disqualification of a member; or
- (c) a defect in the convening of a meeting; or
- (d) a vacancy in the number of members of the Council.

16. GRANTING OF DEGREES, DIPLOMAS, CERTIFICATES, ETC.,

(1) Subject to the *Higher Education Act* (Chapter 397) and to the By-Laws, the Council may after examination confer a degree, diploma or certificate in respect of a course of study determined by the Council.

(2) All degrees, diplomas and certificates conferred by the University shall be in writing under the common seal of the University signed by the Chancellor and Vice-Chancellor.

Division 3. - Officers of the University.

17. CHANCELLOR.

(1) There shall be a Chancellor of the University who shall be a prominent practising member of the Lutheran Churches and shall have such qualifications as shall be desired necessary for the position and shall be appointed by the majority decision of the Head Bishops of the Lutheran Churches of Papua New Guinea and a representative of the Morobe Provincial Government.

(2) The Chancellor holds office for such period and on such conditions as are specified in the By-Laws.

18. APPOINTMENT OF VICE-CHANCELLOR, STAFF, ETC., OF THE UNIVERSITY.

(1) There shall be a Vice-Chancellor of the University who shall be a prominent practicing member of the Lutheran Churches and be appointed by the majority decision of the Head Bishops of the Lutheran Churches of Papua New Guinea and a representative of the Morobe Provincial Government and shall be appointed in accordance with any applicable legislation and otherwise for a term not exceeding 5 years, and the power of appointment includes a power to remove.

(2) The Council may from time to time appoint teaching staff and other staff and employees of the University as the Council considers necessary.

PART V. - BY-LAWS, STATUTES, ETC.,

19. BY-LAWS.

(1) The Council may, from time to time, make By-Laws with respect to all or any of the following matters:-

- (a) the management, good government and discipline of the University; and
- (b) the use and custody of the common seal; and
- (c) the manner and time of convening, holding and adjourning a meeting of the Council, the voting at meetings (including postal and proxy voting), the conduct and record of business, the appointment of committees of the Council and the quorum, powers and duties of those committees; and
- (d) the resignation of members of the Council; and
- (e) the tenure of office, stipend, powers and duties of the Vice-Chancellor; and
- (f) the tenure of the holder of an office or place established by or under this Act in respect of which this Act does not specify a term of office or provide for the fixing of the term of office otherwise than by the By-Laws; and
- (g) the number, stipend, manner of appointment, and dismissal of the teaching and other staff and employees of the University; and

- (h) the subjects to be taught and courses of study to be undertaken at the University; and
- (i) the admission or expulsion and attendance of students; and
- (f) the times, places and manner of holding lectures, classes and examinations, and the number and character of such lectures, classes and examinations; and
- (k) the promotion and extension of higher education; and
- (l) the granting of degrees, diplomas, certificates and honours; and
- (m) the granting of scholarships, exhibitions, bursaries and prizes; and
- (n) the admission of students of other universities, colleges or institutions to a corresponding degree, diploma or certificate without examination; and
- (o) the fees to be paid to the University and the exemption of a person or of a class of persons from payment of the fees; and
- (p) the establishment, management and control of libraries, laboratories, museums and other institutions or establishments in connection with the University; and
- (q) the establishment or affiliation of residential halls within or connected with the University; and
- (r) the affiliation or admission to the University of any educational or research establishment wheresoever situated; and
- (s) the control and investment of the property of the University; and
- (t) the provision of superannuation benefits for the families of, the salaried teachers and other salaried staff of the University or any class of teachers or staff; and
- (u) the recognition, instead of or for the purpose of, an examination or course of study, of a course of study completed or examination passed in a university, technical institute, school or college, high school or secondary school or in a correspondence course or tutorial class; and
- (v) the licensing of boarding houses intended for the accommodation of students; and
- (w) all other matters authorized by this Act or necessary or convenient for giving effect to this Act.

(2) By-Laws may provide for empowering an authority (including the Council) or officer of the University to make rules or orders (not inconsistent with this Act or with any By-Law) for regulating, or providing for the regulation of, a specified matter (being a matter with respect to which a By-Laws may be made) or for carrying out or giving effect to the By-Laws, and that rule or order shall have the same force and effect as a By-Law.

20. BY-LAW TO BE SEALED, ETC.,

(1) Every By-Law made by the Council shall be sealed with the common seal, and shall take effect when approved by the Minister, acting on advice of the Council and notified in the National Gazette.

(2) A By-Law shall not be expressed to take effect from a date before the date of notification under Subsection (1) in a case where, if it so took effect –

- (a) the rights of a person (other than the University) existing at the date of notification would be affected in a manner prejudicial to that person; or
- (b) liabilities would be imposed on a person (other than the University) in respect of anything done or omitted to be done before the date of notification, and where, in a By-Law, a provision is made in contravention of this subsection, that provision shall be void and of no effect; or
- (c) the production of a copy of a duly published By-Law bearing the common seal of the University shall, in all proceedings, be sufficient evidence of the By-Law.

PART VI. – FINANCE, PROPERTY, ETC.,

21. POWER TO ACQUIRE BY GIFT, ETC.,

(1) Subject to Subsection (2), the University may acquire by gift, bequest or devise any property, and agree to and carry out the conditions of the gift, bequest or devise and the Council may create and administer such trust funds as may be necessary or expedient for carrying out the conditions of a gift, bequest or devise.

(2) A simple majority vote of the entire Council shall be required for the acceptance by the University of a gift, bequest or devise that imposes restrictions on the use by the University of the gift, bequest or devise.

(3) The Council may establish one or more investment funds for the collective investment of trust funds held by or in custody of the University.

(4) The Council may, from time to time, without liability for breach of trust, bring into or withdraw from an investment fund the whole or part of any trust fund held by or in the custody of the University.

(5) The University shall not have power to borrow or encumber its assets.

22. ACQUISITION OF MAJOR CAPITAL ASSETS.

The acquisition by the University of major capital assets shall only be effected after a simple majority vote of the entire Council.

23. BOOKS AND ACCOUNTS TO BE KEPT.

(1) The Council shall establish and keep full and complete books and accounts of all money received and paid by the University.

(2) The books of account of the University shall be audited annually in accordance with accounting best practice.

PART VII. - MISCELLANEOUS.

24. ADMISSION TO UNIVERSITY.

A person shall not be denied admission as a student of the University solely on grounds of religious belief, sex or race.

25. LEGAL CAPACITY OF THE LUTHERAN CHURCHES.

The Head Bishop of the Evangelical Lutheran Church of Papua New Guinea and the Head Bishop of the Gutnius Lutheran Church in PNG shall have standing to make application, in the name of their respective Church, to the Court, for any orders or directions in relation to any decision of the Council or on any matter dealt with in this Act.

PART VIII. - TRANSITIONAL.

26. INTERPRETATION.

In this Part the expression "the former College" means the Balob Teachers College or the Martin Luther Seminary established by the Lutheran Churches of Papua New Guinea.

27. STAFF OF THE FORMER COLLEGE.

All staff of the former College shall, on and from the date of coming into operation of this Act, hold equivalent offices in the University on the same terms and conditions until -

- (a) the expiry of the period for which they were elected, appointed or nominated; or
- (b) the termination of their employment otherwise according to law; or
- (c) elections, appointments or nominations to such offices are made under this Act,

whichever first happens.

28. VESTING OF ASSETS OF THE FORMER COLLEGE.

(1) All assets held by, and obligations and liabilities of, the former College immediately before the coming into operation of this Act are, on that coming into operation, transferred to and become assets held by, and obligations and liabilities of the University.

(2) Where any property vested in the former College to which Subsection (1) applies is land registered under the Land Registration Act (Chapter 191), the Registrar of Titles shall, without formal transfer and without fee, on application in that behalf by the University, enter or register the University or its nominee in the register kept under that Act and, on entry and registration grant a certificate of title, lease or other instrument evidencing title to the land within that Act if so required and at the application in writing by the Council.

(3) Where any property which is used by the former College is vested or otherwise registered in the name of the Evangelical Lutheran Church of Papua New Guinea and/or the Gutnius Lutheran Church of Papua New Guinea and/or owned or registered in their names jointly under the Land Registration Act, the Registrar will without formal transfer and without fees upon application in writing on behalf of the University by the Council enter or register the University and/or a nominee of the University within that Act.

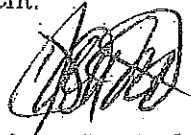
29. SAVINGS OF CONTRACTS.

All contracts, agreements, conveyances, leases, deeds, licences and other instruments and undertakings (so far as relating to any person transferred by Section 28) entered into by, made with or addressed to the former College whether alone or with any other person, before, and in effect immediately before, the coming into operation of this Act, continue on that coming into operation, to the extent that they were previously binding on and enforceable against the former College to be binding and of full force and effect in every respect against or in favour of the University as if entered into, made with or addressed to the University after the coming into operation of this Act.

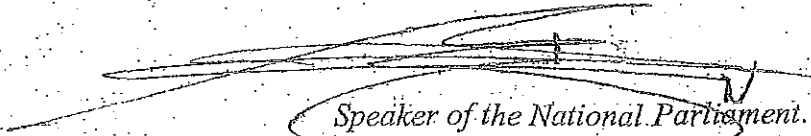
30. ACTIONS, ETC., NOT TO ABATE.

Where, immediately before the coming into operation of this Act, any action, arbitration or proceeding, or any cause of action, arbitration or proceeding (so far as relating to any person transferred by Section 28) was pending or existing by, against or in favour of the former College it does not, on that coming into operation, abate or discontinue or be in anyway affected by any provision of this Act, but it may be prosecuted, continued and enforced by, against or in favour of the University.

I hereby certify that the above is a fair print of the *Lutheran University of Papua New Guinea Act 2006* which has been made by the National Parliament.


Clerk of the National Parliament.
18 DEC 2006

I hereby certify that the *Lutheran University of Papua New Guinea Act 2006* was made by the National Parliament on 15 November 2006.


Speaker of the National Parliament.
18 DEC 2006