



CIVIL AVIATION ACT 2000

Consolidated

2023



CIVIL AVIATION ACT 2000

OFFICE OF COMMISSIONER-REVISED LAWS

2023

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**Department of Prime Minister and National Executive Council
P.O. Box 639
WAIGANI, NCD.**

2023



No. 20 of 2000.

Civil Aviation Act 2000.

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SCHEDULE 1.

SCHEDULE 2. - ACTS AND REGULATIONS REPEALED.



No. 20 of 2000.

AN ACT

entitled

Civil Aviation Act 2000,

Being an Act relating to civil aviation in Papua New Guinea, to enable the civil aviation to contribute to economic and social development, and in particular -

- (a) to promote and regulate civil aviation safety and security; and
- (b) to enhance safety, security, efficiency and service quality in the civil aviation system in a substantial 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 for related purposes.¹

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; and
- (b) the right to freedom of employment conferred by Section 48; and
- (c) the right to privacy conferred by Section 49; and
- (d) the right to freedom of information conferred by Section 51; and
- (e) the right to freedom of movement conferred by Section 52,

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

¹ Long Title repealed and replaced by No. 7 of 2010, s.1.

(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; and
- (b) construction of facilities for navigational installations and aviation related services; and
- (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 divisions of responsibility within the Papua New Guinea civil aviation system in order to promote aviation safety and security at a reasonable cost; and²
- (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.³

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

² Paragraph (b) amended by No. 7 of 2010, s.2.

³ Section 3 amended by No. 33 of 2016, s.1(a). Note, according to s.1(b) of No. 33 of 2016, the words “the Authority” or “THE AUTHORITY” appearing throughout the Act is repealed and replaced with “CASA”.

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the injuries are to stowaway's hiding outside the areas normally 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 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;

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“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 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 authorised under Section 133(6) to exercise the powers of an airport authority; and
- (c) an airport company; and
- (d) National Airports Corporation Ltd;⁴

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

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

“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 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 a certified aviation security organisation;⁵

“Aviation Security Service” means the Aviation Security Service established under Section 12(f);

“CASA” means the Civil Aviation Safety Authority of Papua New Guinea established by Section 18;⁶

“Chairman” means -

- (a) in respect of CASA, the person appointed, for the time being, chairman of CASA under Section 21; and
- (b) in respect of the Commission, the person appointed, for the time being, Chief Commissioner under Section 224;⁷

“Chief Commissioner” means the member of the Commission appointed Chief Commissioner under Section 223;⁸

“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;

⁴ Paragraph (d) repealed and replaced by No. 7 of 2010, s.3(a).

⁵ The definition of “Aviation Security Officer” repealed and replaced by No. 33 of 2016, s.1(c).

⁶ The definition of “CASA” added by No. 33 of 2016, s.1(d).

⁷ The definition of “Chairman” added by No. 7 of 2010, s.3(b).

⁸ The definition of “Chief Commissioner” added by No. 7 of 2010, s.3(b).

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“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 control 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 transport policy matters, including licensing of domestic and international air services under Parts XI and XII;⁹

“Departmental Head” means the person appointed, for the time being, as head of the Department responsible for transport policy matters including licensing of domestic and international air services under Parts XI and XII;¹⁰

“Deputy Chairman” means -

(a) in respect of CASA, the person appointed, for the time being, deputy chairman of CASA under Section 21; and

(b) in respect of the Commission, the person appointed, for the time being, deputy chairman of the Commission under Section 224;¹¹

⁹ The definition of “Department” repealed and replaced by No. 33 of 2016, s.1(e).

¹⁰ The definition of “Departmental Head” repealed and replaced by No. 33 of 2016, s.1(f).

¹¹ The definition of “Deputy Chairman” added by No. 7 of 2010, s.3(c).

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- “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;
- “enhanced security area” means an area that the Director has declared to be a security enhanced area under Section 155(1);¹²
- “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 enterprises -
- (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) including matters in respect of civil aviation safety and security;¹³
- “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;

¹² The definition of “enhanced security area” added by No. 33 of 2016, s.1(g).

¹³ The definition of “international agreement” amended by No. 7 of 2010, s.3(d).

- “member” means a person appointed under Section 20 as a member of CASA;
- “NAC” means National Airports Corporation Ltd. and is the company incorporated under the ***Companies Act 1997*** pursuant to Section 132;¹⁴
- “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;
- “NICTA” means National Information and Communications Technology Authority established under Section 8 of the ***National Information and Communications Technology Act 2009***;¹⁵
- “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;
- “Niusky Pacific Ltd” means the company established under Section 143, and registered under the ***Companies Act 1997***;¹⁶
- “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;

¹⁴ The definition of “NAC” added by No. 7 of 2010, s.3(e).

¹⁵ The definition of “NICTA” added by No. 33 of 2016, s.1(h).

¹⁶ The definition of “Papua New Guinea Air Services Ltd” amended by No. 7 of 2010, s.3(f). Further amended by No. 62 of 2022, s.1.

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

“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);

“sterile area” means the area at an aerodrome, between the passenger inspection and screening station and the aircraft, into which access is strictly controlled;¹⁷

“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 CASA, the Commission, Niusky Pacific Ltd, NAC, 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;¹⁸

“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;

¹⁷ The definition of “sterile area” added by No. 33 of 2016, s.1(k).

¹⁸ The definition of “State Aviation Enterprise” repealed and replaced by No. 7 of 2010, s.3(g). Further amended by No. 62 of 2022, s.1.

“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; and
- (b) every Papua New Guinea registered aircraft whether within or outside Papua New Guinea; and
- (c) every holder of an aviation document whether within or outside Papua New Guinea exercising or purporting to exercise privileges accorded by that document; and
- (d) every foreign registered aircraft operating in Papua New Guinea.

(2) The Minister, acting on the recommendation of CASA 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 CASA or the Director has under this Act; or
- (b) vest in CASA 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; or
- (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; and
- (b) the compliance by Papua New Guinea with international agreements that relate to civil aviation safety and security; and¹⁹
- (c) the independence of CASA and the Commission from the providers of air services and aviation related services; and
- (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 ASL”; or²⁰
- (c) “Papua New Guinea Air Services”; or²¹
- (d) “Accident Investigation Commission; or²²
- (e) “Papua New Guinea Airports”; or²³
- (f) “PNG Airports”; or²⁴
- (g) “National Airports Ltd”; or²⁵
- (h) “NAC”; or²⁶

¹⁹ Paragraph (b) repealed and replaced by No. 7 of 2010, s.4.

²⁰ Ibid, amended, s.5(a).

²¹ Ibid, amended, s.5(b).

²² Ibid, amended, s.5(c).

²³ Ibid, new paragraph, s.5(d).

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

(i) Civil Aviation Safety Authority or CASA,²⁷ 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 and security in civil aviation at a reasonable cost; and²⁸
 - (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 X; and²⁹
 - (e) to ensure the provision of the meteorological warning services as required by Part XIV; and³⁰
 - (f) to administer civil aviation policy and legislation in Papua New Guinea; and³¹
 - (g) to ensure a National Civil Aviation Security Programme is established.³²
- (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; and
 - (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; and

²⁷ Paragraph (i) added by No. 33 of 2016, s.2.

²⁸ Paragraph (a) repealed and replaced by No. 7 of 2010, s.6(a).

²⁹ Ibid, repealed and replaced, s.6(b).

³⁰ Paragraph (e) repealed and replaced by No. 33 of 2016, s.3(a).

³¹ Ibid.

³² Ibid, new paragraph, s.3(a).

- (c) to enter into international agreements with any person, government or international organisations in relation to matters pertaining to civil aviation and meteorology; and
- (d) to perform such other functions as are set out in this Act; and
- (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 organisation, other than those authorised by or under this Act, of any power or function under this Act, a reference in this Act to a person or an officer or authority of Papua New Guinea shall read, as appropriate, as a reference to the relevant person or international organisation specified in the document so published.³³

(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.

(6) Any changes to the Civil Aviation Security Programme established by the Minister under Section 8(1)(g) shall not have effect until approved by the Director.³⁴

8A. SEARCH AND RESCUE OPERATIONS.³⁵

- (1) The Minister -
 - (a) shall establish, maintain, and operate a search and rescue co-ordination centre to co-ordinate and conduct aviation search and rescue operations; and
 - (b) may exercise any powers that may be necessary or desirable -
 - (i) for effective co-ordination and performance of a search and rescue operation specified in Subsection (1); and
 - (ii) to implement any international convention or agreement relating to search and rescue to which Papua New Guinea is a party; and
 - (c) may appoint persons to, either generally or in any particular case, participate in or co-ordinate a search and rescue operation specified in Paragraph (a).

³³ Subsection (4) amended by No. 33 of 2016, s.3(b).

³⁴ Ibid, new subsection, s.3(c).

³⁵ Ibid, new section, s.4.

- (2) The Minister may authorise the payment, out of money appropriated for the purpose by Parliament, of an amount that the Minister considers appropriate to -
- (a) any person who assisted in a search and rescue operation specified in Subsection (1)(a) at the request of a person appointed under Subsection (1)(c); or
 - (b) the owner of any vehicle, ship, or aircraft used in a search and rescue operation specified in Subsection (1)(a) in response to a request by a person appointed under Subsection (1)(c).

8B. MINISTER MAY DIRECT AGENCIES WITH RESPECT TO SEARCH AND RESCUE OPERATIONS.³⁶

The Minister may direct CASA, Papua New Guinea ASL or any government agency for which the Minister is responsible and whose functions are consistent with search and rescue operations, to do any or all of the following:

- (a) operate and maintain the search and rescue co-ordination centre established under Section 8A(1)(a); or
- (b) co-ordinate, or participate in the co-ordination of any search and rescue operation specified in Section 8A(1)(a); or
- (c) perform, or participate in the performance of any search and rescue operation specified in Section 8A(1)(a); or
- (d) exercise any or all of the powers of the Minister under Section 8A(1)(b) and (c) and Section 8A(2), as duly authorised by instrument of delegation.

9. MINISTER CAN REQUEST INFORMATION.³⁷

(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) Despite 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

³⁶ Ibid, new subsection, s.4.

³⁷ Section 9 amended by No. 7 of 2010, s.7.

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 CASA 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; and³⁸
 - (k) to administer Papua New Guinea's membership to any regional safety and security oversight organisation.³⁹

³⁸ Paragraph (j) repealed and replaced by No. 33 of 2016, s.5.

³⁹ Ibid, new paragraph, s.5.

Division 3. - General Objects and Functions of CASA.

11. GENERAL OBJECTS AND FUNCTIONS OF CASA.

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

- (a) efficient in its activities, provided that in pursuing this objective CASA does not compromise aviation safety or security; and⁴⁰
- (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 organisation 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 function of CASA shall be to undertake activities that promote safety and security in civil aviation at a reasonable cost.⁴¹

(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. PRINCIPAL SAFETY AND SECURITY FUNCTION.⁴²

In furtherance of its principal safety function under Section 11(2)(a), the functions of CASA 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 CASA; and
- (c) conducting comprehensive aviation industry surveillance on an individual and industry-wide basis; and
- [(d) repealed by No. 33 of 2016, s.7(a)]*
- (e) ensuring regular reviews of the civil aviation system to monitor performance and

⁴⁰ Paragraph (a) repealed and replaced by No. 7 of 2010, s.8(a).

⁴¹ Subsection (2) repealed and replaced by No. 33 of 2016, s.6.

⁴² Heading of Section 12 repealed and replaced by No. 7 of 2010, s.9(a).

- to promote the improvement and development of its safety and security; and
- (f) continuing and maintaining a service to be called the Aviation Security Service; and⁴³
- (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 62 of accidents and incidents notified to CASA; and⁴⁴
- (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 organisation to collect, publish and distribute such charts and information; and⁴⁵
- (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.

[Section 13 repealed by No. 7 of 2010, s.10.]

[Section 14 repealed by No. 7 of 2010, s.10.]

[Section 15 repealed by No. 7 of 2010, s.10.]

16. ADDITIONAL FUNCTIONS OF CASA.

(1) In furtherance of its functions under Sections 11 and 12 inclusive, CASA shall also have the following functions:⁴⁶

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

⁴³ Paragraph (f) amended by No. 7 of 2010, s.9(b).

⁴⁴ Paragraph (h) amended by No. 33 of 2016, s.7(b).

⁴⁵ Paragraph (j) reinserted by No. 33 of 2016, s.7(d). *Note*, Paragraph (j) was previously repealed by No. 7 of 2010, s.9(c).

⁴⁶ Subsection (1) amended by No. 7 of 2010, s.11(a).

- (2) CASA -
- (a) shall carry out such other civil aviation functions and duties as the Minister may, from time to time, prescribe by notice in the National Gazette; and⁴⁷
 - (b) in carrying out any of its principal functions listed in Subsection (1)(b) to (d) CASA 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

⁴⁷ Paragraph (a) amended by No. 7 of 2010, s.11(b).

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- (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,

act independently, and not be responsible to the Minister or CASA for the performance or exercise of such functions and powers.⁴⁸

[(f) repealed by No. 33 of 2016, s.8]

[(g) repealed by No. 33 of 2016, s.8]

(5) It is hereby declared by the Minister, the Departmental Head or a member of CASA 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. - CASA.

Division 1. - Establishment, etc.,

18. CIVIL AVIATION SAFETY AUTHORITY OF PAPUA NEW GUINEA.⁴⁹

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

(2) CASA -

- (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 CASA affixed to a document and shall presume that it was duly affixed.

⁴⁸ Paragraph (e) repealed and replaced by No. 33 of 2016, s.8.

⁴⁹ Section 18 repealed and replaced by No. 7 of 2010, s.12.

19. AUTHORITY TO COMPLY WITH POLICY DIRECTIONS.

- (1) In the exercise of its functions and powers under this Act, CASA 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 CASA 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 CASA.⁵⁰

- (1) The Board of CASA shall comprise of the following seven members:
- (a) the Director, *ex officio*; and
 - (b) the Departmental Head of the Department responsible for transport matters or his nominee at no less than Deputy Secretary level, *ex officio*; and
 - (c) the Departmental Head of the Department responsible for finance matters or his nominee at no less than Deputy Secretary level, *ex officio*; and
 - (d) four independent members, appointed by notice in the National Gazette by the Head of State, acting on advice of the National Executive Council, given after consideration of the recommendations from the Minister, being persons whom the Minister considers shall represent the public interest in civil aviation, and not being employees of CASA.⁵¹

(2) Before making any recommendation for the appointment of the four independent members under Subsection (1)(d), the Minister shall, in respect of the four independent members -

- (a) request from such organisations, as the Minister considers necessary, which represent those who have a substantial interest in the fields of aviation safety management, aviation industry, law and community affairs; and
- (b) recommend to the National Executive Council four such persons for appointment.⁵²

⁵⁰ Section 20 repealed and replaced by No. 7 of 2010, s.13.

⁵¹ Subsection (1) repealed and replaced by No. 33 of 2016, s.9(a).

⁵² Ibid, repealed and replaced, s.9(b).

(3) The four independent members of CASA appointed under Subsection (1)(d) shall, in the reasonable opinion of the Minister -

- (a) be competent and of sound judgment for fulfilling the duties of a member of CASA; and
- (b) possess professional skills or wide industrial or management experience, and have the ability to participate meaningfully as a member of CASA; and
- (c) have a reputable standing within the community and be unlikely to do anything to undermine the interests of Papua New Guinea in favour of personal, business or other interests; and
- (d) be of good character and have not been convicted of any offence (or found liable civilly for any claim) involving fraud or dishonesty or which may diminish the integrity or reputation of CASA or have been charged with any such offence and awaiting trial.⁵³

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

(5) The member appointed under Subsection (1)(d) -

- (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.⁵⁴

The Minister shall appoint the members appointed under Section 20(1)(d) to be the chairman and deputy chairman of CASA.

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.

⁵³ Ibid, repealed and replaced, s.9(c).

⁵⁴ Section 21 repealed and replaced by No.7 of 2010., s.14.

23. RESIGNATION.⁵⁵

A member appointed under Section 20(1)(d) 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 CASA; 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 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.⁵⁶

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

⁵⁵ Ibid, repealed and replaced, s.15.

⁵⁶ Ibid, amended, s.16.

26. MEETINGS OF THE BOARD OF CASA.⁵⁷

(1) Subject to Subsections (2) and (3), the Board of CASA shall meet at such times as, in the opinion of the Board of CASA or the Chairman, are necessary for the efficient conduct of the business of the Board of CASA, and shall meet at such places and times and on such days as the Board of CASA or Chairman determines.⁵⁸

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

(3) The Board of CASA shall meet at least once in every three months.

(4) At a meeting of the Board of CASA -

(a) not less than one half of the members of the Board of CASA 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 Board of CASA appointed by the members of the Board of CASA 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 Board of CASA and shall be -

(i) confirmed by the Board of CASA at the next meeting of the Board of CASA; 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 the Board of CASA, whether or not one or more of the members is outside of Papua New Guinea, is deemed to constitute a meeting of the Board of CASA where⁵⁹

(a) notice of the meeting has been given to every person entitled to receive notice of a meeting of the Board of CASA; and

⁵⁷ Heading of Section 26 repealed and replaced by No. 7 of 2010, s.17(a). Section 26 amended by No. 7 of 2010, s.17(c).

⁵⁸ Ibid, amended, s.17(b).

⁵⁹ Ibid, amended, s.17(d).

- (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; and
 - (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 CASA; or
- (b) any arrangement, agreement or contract made or entered into, or proposed to be made or entered into, by CASA,

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 CASA.

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

(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 CASA with respect to that contract; and
- (b) shall be disregarded for the purpose of constituting a quorum of CASA for any such deliberation or decision.

(4) The Minister may, by written notice to CASA, 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) CASA may from time to time establish such committees as it considers necessary in relation to its functions.

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

29. AUTHENTICATION OF DOCUMENTS, ETC.,

The seal of CASA 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 CASA 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 CASA at the office of CASA.

31. PROTECTION OF CASA AND OF MEMBERS, ETC., OF CASA.

- (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 CASA; 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 CASA in respect of any act done *bona fide* in pursuance or execution or intended execution of this Act.

32. REPORTS.

(1) CASA 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 CASA during the year; and
 - (b) the annual financial statements of CASA prepared under this Act; and

- (c) the performance agreement under Section 36 for that year between the Minister and CASA; and
- (d) an analysis of the performance of CASA 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 CASA; and
- (f) a report on the extent to which there has been compliance with the equal opportunity programme of CASA 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) CASA 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, CASA and all other State Aviation Enterprises, shall, where appropriate and practicable, consult with Government, commercial, industrial, consumer, community and other relevant bodies and organisations (including ICAO and bodies representing the aviation industry).

(2) CASA and all State Aviation Enterprises shall, annually prepare and make available to the public, a service charter including (but not limited to) -⁶⁰

- (a) a statement by CASA and all other State Aviation Enterprise of the standards of service which the public can expect to apply in the carrying out of functions of CASA and the Director, and all other State Aviation Enterprises under this Act and any regulations or rules made under this Act; and⁶¹
- (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 CASA or the relevant State Aviation Enterprise that the standards were not met; and⁶²
- (d) provision for the appointment by CASA and all other State Aviation Enterprise 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.⁶³

⁶⁰ Subsection (2) repealed and replaced by No. 7 of 2010, s.19(a).

⁶¹ Ibid, repealed and replaced, s.19(b).

⁶² Ibid, amended, s.19(c).

⁶³ Ibid, amended, s.19(d).

(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) CASA, the Director, any other State Aviation Enterprise or head of such State Aviation Enterprise, any employee or agent of CASA or State Aviation Enterprise and any agent of the Director or head of a State Aviation Enterprise shall have a public duty to observe the provisions of the service charter.⁶⁴

(5) Where CASA or a State Aviation Enterprise fails to comply with Subsection (1), the Minister shall prepare the service charter and shall make it available to the public.⁶⁵

(6) CASA or other State Aviation Enterprise 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.⁶⁶

(7) CASA or other State Aviation Enterprise shall not amend the service charter under Subsection (5) where the service charter has been prepared by the Minister under Subsection (4).⁶⁷

(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 CASA.

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

35. FUNDS OF CASA.

(1) The funds of CASA 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 -

[Paragraph (a) repealed by No. 7 of 2010, s.20(a).]

(b) fees, charges, rents, levies and other sums payable to CASA in the performance of its functions under this Act or any other Act, regulation or rule; or

⁶⁴ Ibid, repealed and replaced, s.19(e).

⁶⁵ Ibid, amended, s.19(f).

⁶⁶ Ibid, amended, s.19(g).

⁶⁷ Ibid.

- (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 CASA.
- (2) The monies of CASA shall be expended only -⁶⁸
 - (a) in payment or discharge of expenses, obligations and liabilities of CASA; and
 - (b) in payment of the remuneration of the staff of CASA and of allowances to the members of the board; and
 - (c) for such other purposes as are authorised by this Act or as are consistent with the functions of CASA.

36. PERFORMANCE AGREEMENT.

- (1) Not later than three months before the commencement of each financial year, CASA 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 CASA intends to meet those objectives during that year; and⁶⁹
 - (c) how CASA intends to report on the extent to which it meets 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 CASA 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 CASA'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.

⁶⁸ Ibid, amended, s.20(b).

⁶⁹ Ibid, repealed and replaced, s.21.

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

(4) After receiving a draft performance agreement from CASA 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 CASA with directions to CASA to amend it.

(5) Where a draft performance agreement is returned to CASA under Subsection (4)(b), CASA 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 CASA for that year.

(7) Where CASA 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 CASA for that year.

(8) Where CASA 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 CASA 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 CASA, subject to Subsection (3), to amend any provision of the performance agreement in respect of that year and CASA 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 CASA 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 CASA.
- (2) The Director of Civil Aviation -
 - (a) shall be appointed by the Head of State, acting on advice of the National Executive Council on the preferred candidate as recommended by the Ministerial Executive Appointments Committee⁷⁰, or such other person or body authorised by an Act of the Parliament, from a short-list of three candidates recommended by the board of CASA through the Minister; and⁷¹
 - (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 executive by the Chairman on behalf of CASA and by the Director.

(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 CASA under Section 42.

37A. ACTING DIRECTOR OF CIVIL AVIATION.⁷²

- (1) In the case of absence from duty of the Director (from whatever cause arising) or on the occurrence from any cause of a vacancy in that position (whether by reason of death, resignation, or otherwise) and from time to time while the absence or vacancy continues, all or any of the powers and duties of the Director or powers and duties pertaining to that position, may be exercised and performed by -
- (a) any other employee of CASA for the time being directed by the board of CASA to exercise and perform them; or
 - (b) any other person, for the time being, appointed by the board of CASA to exercise and perform them, notwithstanding -
 - (i) the direction has been given to an employee of CASA; or
 - (ii) the appointment has been made before the absence or vacancy occurs; or

⁷⁰ Note, the “Ministerial Executive Appointment Committee” created under the Public Services (Management) Act 2014 has been declared invalid by the Supreme Court reference *Kereme v O’Neil [2019] SC1781*. It should be read as “Public Services Commission” according to the Public Services (Management) Act 1995.

⁷¹ Paragraph (a) repealed and replaced by No. 33 of 2016, s.10.

⁷² Ibid, new section, s.11.

(iii) while the absence or vacancy continues.

(2) No such direction or appointment, and no acts done by any employee or other person acting pursuant to any such direction or appointment, shall, in any proceedings, be questioned on the ground that the occasion for the direction or appointment had not arisen or had ceased, or on the ground that the employee or other person has not been appointed to any position to which the direction or appointment relates.

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, operator, principal, or otherwise, he -
 - (i) is engaged in an aviation business or corporate organisation 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. VACATION OF OFFICE.⁷³

(1) The Minister may, at any time, by written notice to the Chairman, advise that he intends to recommend to the National Executive Council, the termination of the appointment of the Director on the grounds of misconduct in office or incapacity, and such notice shall specify the details of the misconduct or incapacity alleged.

(2) Within 14 days of the receipt of the notice from the Minister, the Chairman shall notify the Director, in writing, of the intention of the Minister and specify to the Director details of the alleged misconduct or incapacity.

⁷³ Ibid, section repealed and replaced by No. 33 of 2016, s.12.

(3) The Director shall, within 14 days of receipt of the notice under Subsection (4), reply in writing to the Chairman.

(4) The Chairman shall then convene a special meeting of the board to consider the alleged misconduct or incapacity, and the Director's reply and forward to the Minister within seven days the Board's recommendation together with the Director's reply.

(5) The revocation of the appointment of the Director shall be made by the National Executive Council after considering a report of the Ministerial Executive Appointments Committee⁷⁴, or such other person or body authorised by an Act of the Parliament, and the recommendation of the board of CASA and being satisfied that the revocation of the Director's appointment is warranted.

Division 4. - Staff of CASA.

40. STAFF OF CASA.

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

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

(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 CASA, 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).

⁷⁴ See Footnote 70.

42. DELEGATION OF CASA'S FUNCTIONS OR POWERS TO EMPLOYEES OF CASA.⁷⁵

(1) CASA may, by writing under the hand of the Chairman, delegate to the Director or any other employees of CASA all or any of the functions or powers of CASA under this Act or any other Act, including functions or powers delegated to CASA under this Act.⁷⁶

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

(3) In any case where CASA has delegated any functions or powers to an employee of CASA under this section, that employee may, with the prior approval in writing of CASA, delegate to any other employee of CASA 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 CASA under this section shall be delegated by the Director without the written consent of CASA.⁷⁷

(5) A delegation under this section may be to a specified employee of CASA 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 CASA.

(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 CASA.

(1) Subject to Subsection (2), the Director may, by writing under his hand, delegate to any employee of CASA, 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 CASA without the written consent of CASA; 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 CASA were references to the Director; and

⁷⁵ Heading of Section 42 amended by No. 33 of 2016, s.13(a).

⁷⁶ Ibid, amended, s.13(b).

⁷⁷ Ibid, amended, s.13(c).

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

44. DELEGATION OF CASA'S OR DIRECTOR'S FUNCTIONS OR POWERS TO PERSONS OUTSIDE CASA.

(1) Subject to this section, CASA may, by writing under the hand of the Chairman, delegate to a person who is not an employee of CASA 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 this hand, delegate to a person who is not an employee of CASA 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 CASA.

(5) A person purporting to act under a delegation under this section shall when reasonably requested to do so produce evidence of this 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 authorises 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 CASA 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; and
- (b) aircraft pilots; and

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- (c) flight crewmembers; and
- (d) air traffic services personnel; and
- (e) aviation security services personnel; and
- (f) aircraft maintenance personnel; and
- (g) air services; and
- (h) air traffic services; and
- (i) aerodromes and aerodrome operators; and
- (j) aeronautical navigation service providers; and
- (k) aviation training organizations; and
- (l) aircraft design, manufacture and maintenance organizations; and
- (m) aeronautical procedures; and
- (n) aviation security services; and
- (o) aviation meteorological services; and
- (p) aviation communication services; and
- (q) aviation medical services; and
- (r) aviation personnel licensing and examining; and
- (s) any persons, services, or things within any of the classes specified in Paragraphs (a) to (r) inclusive; and
- (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.

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(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; and
- (b) the person's related experience, if any, within the transport industry; and
- (c) the person's knowledge of the applicable civil aviation regulatory requirements; and
- (d) any history of physical or mental health or serious behavioural problems; and
- (e) any conviction for any transport safety offence, whether or not the conviction was in a Papua New Guinea Court; and
- (f) any offence committed before the coming into operation of this Act; and⁷⁸
- (g) any evidence that the person has committed a transport safety offence or has contravened or failed to comply with any regulation or rule made under this Act.⁷⁹

(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), (f) and (g) of that subsection shall be read as if they refer to the body corporate and its officers; and⁸⁰

⁷⁸ Paragraph (f) repealed and replaced by No. 33 of 2016, s.14(a).

⁷⁹ Ibid, new paragraph, s.14(a).

⁸⁰ Ibid, repealed and replaced, s.14(b).

- (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; 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.

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- (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; and
 - (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; and
 - (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 the person such information as the Director considers relevant to the inspection or the monitoring.

52A. POWER OF DIRECTOR TO INVESTIGATE HOLDER OF AVIATION DOCUMENT.⁸¹

(1) The Director may, in writing, require a holder of an aviation document to undergo an investigation conducted by the Director if the Director believes on reasonable grounds, that it is necessary in the interests of civil aviation safety and security, and if the Director -

- (a) has reasonable grounds to believe that the holder has failed to comply with any conditions of an aviation document or with the requirements of Section 45; or
- (b) 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) If the Director requires a holder to undergo an investigation, the Director shall -

- (a) conclude the investigation as soon as practicable; and
- (b) inform the holder, in writing, of -
 - (i) the date on which the investigation shall begin; and
 - (ii) the results of the investigation, including -
 - (A) any recommendations arising out of the investigation; and
 - (B) the grounds for those recommendations.

⁸¹ Section 52A added by No. 33 of 2016, s.15.

53. POWER OF THE DIRECTOR TO SUSPEND AVIATION DOCUMENT OR IMPOSE CONDITIONS.⁸²

(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.

⁸² Section number amended by No. 7 of 2010, s.23.

54. POWER OF DIRECTOR TO REVOKE AVIATION DOCUMENT OR IMPOSE CONDITIONS.⁸³

(1) The Director may, if the Director considers necessary in the interests of aviation safety after an inspection, monitoring or investigation carried out under this Act, revoke an aviation document or impose conditions on an aviation document.

(2) The revocation of an aviation document under this section may be in respect of the whole or any part of the aviation document.

(3) If the Director proposes to take action under this section, the Director shall give notice in accordance with Section 51, which applies as if the proposed action to revoke an aviation document or impose conditions on an aviation document were a proposed adverse decision under this Act.

(4) A person whose aviation document is revoked or made subject to permanent conditions under this section shall -

- (a) if the document is made subject to conditions or revoked in part, immediately produce the document to the Director for appropriate endorsement; or
- (b) if the whole document is revoked, immediately surrender the document to the Director.

(5) Any person in respect of whom any 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 CASA to maintain a safe civil aviation system; and
- (b) the person's compliance history with transport safety regulatory requirements; and
- (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; and

⁸³ Section 54 repealed and replaced by No. 33 of 2016, s. 16.

- (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 respect of an aviation document under Section 53.⁸⁴

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; or
 - (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; or
 - (c) amend an aviation document to correct any clerical error or obvious mistake on the face of the document.

⁸⁴ Ibid, amended, s.17.

(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 period of time, which shall not exceed 21 days, to comment or make submissions on the proposed action.⁸⁵

- (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 authorised 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; and
- (b) seize the aeronautical product or any aeronautical products of that class; and
- (c) destroy any aeronautical product or any products of that class; and
- (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 products 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 aircrafts of that class; and
- (b) prohibit or impose conditions on the use of the aeronautical product or aeronautical products of that class; and
- (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

⁸⁵ Ibid, repealed and replaced, s.18.

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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 authorised by the Director shall have right of access at any reasonable time to the following:

- (a) any aircraft, aerodrome, building or place; and
- (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 authorised 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 authorised 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 authorised 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 authorised 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 authorised by the Director under this section.

59. POWERS OF ENTRY OF CASA, NAC AND PNG ASL.⁸⁶

- (1) Subject to Subsection (3), CASA, NAC and PNG ASL⁸⁷ 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 CASA, NAC and PNG ASL; and

⁸⁶ Heading repealed and replaced by No. 7 of 2010, s.24. Section 59 amended by No. 7 of 2010, s.25.

⁸⁷ Note, PNG ASL is "Papua New Guinea Air Services Ltd." as defined in Section 3.

- (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 CASA, NAC and PNG ASL authorized in writing or by persons under the immediate control of such an officer, employee or agent; and
- (b) entry shall be made at reasonable times; and
- (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 CASA or PNG ASL that is fixed to or installed over or under land not owned by CASA or PNG ASL is deemed to be lawfully fixed or installed and shall continue to be fixed or installed until CASA or PNG ASL otherwise decides, and no person other than CASA or PNG ASL 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 or incident shall notify the accident or incident to CASA as soon as practicable.⁸⁸

(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 accident,

shall, where required to do so under rules made under this Act, notify the accident or incident to CASA.⁸⁹

(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 CASA of the operation as soon as possible.

⁸⁸ Subsection (1) repealed and replaced by No. 33 of 2016, s.19.

⁸⁹ Ibid.

(5) CASA may, on being notified under this section request such additional information, in such form as CASA 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 immediately.

60A. OBLIGATION TO IDENTIFY PILOT-IN-COMMAND.⁹⁰

(1) If a pilot-in-command of an aircraft is alleged to have committed an offence under this Act or the rules, the Director or a member of the Police Force may -

- (a) inform the operator of the aircraft or the holder of the certificate of registration for the aircraft of the alleged offence; and
- (b) require that person to give all information in that person's possession or reasonably obtainable by that person that may lead to the identification of the pilot-in-command.

(2) A request under Subsection (1) may be made orally or in writing, and the operator or holder of the certificate of registration (as the case may be) shall comply with the request within 14 working days.

(3) Subsection (1) does not apply if the operator or holder of the certificate of registration has been arrested or detained in relation to the suspected offence.

61. NOTIFICATION OF ACCIDENTS OR INCIDENTS.⁹¹

(1) Without limiting the generality of the provisions of Section 60, the responsible person who is required to notify CASA of an accident or incident shall advise by the quickest means, such of the following information as is immediately available:⁹²

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

⁹⁰ Section 60A added by No. 33 of 2016, s.20.

⁹¹ Ibid, Heading amended, s.21(a).

⁹² Ibid, amended, s. 21(b).

(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 CASA as soon as possible.

(3) Where the aircraft to which the accident or incident has occurred is registered in a state other than Papua New Guinea, CASA 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 or incident.⁹³

62. DUTY OF CASA TO NOTIFY ACCIDENTS AND INCIDENTS TO THE COMMISSION.

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

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

(2) Where CASA has been notified of a search and rescue operation under Section 60(4), CASA 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 air craft 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

⁹³ Ibid.

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- 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 IVA. - MEDICAL CERTIFICATION.⁹⁴

64A. INTERPRETATION.⁹⁵

- (1) In this part, unless the context otherwise requires -
- “accredited medical conclusion” means the conclusion reached by one or more medical experts acceptable to the Director for the purposes of the case concerned, in consultation with flight operations or any other experts that may be necessary;
 - “applicant” means a person who has applied for a medical certificate, and includes a licence holder who has reapplied for a medical certificate;
 - “licence holder” means a person who -
 - (a) holds an aviation document or is a pilot; and
 - (b) holds, or is required under the rules, to hold a medical certificate;
 - “medical certificate” means a certificate issued by the Director under this Part to an applicant or licence holder;
 - “operator” includes an air traffic service provider.
- (2) For the purposes of this part, a medical certificate is an aviation document.
- (3) In this Part, the phrase “*privileges to which a medical certificate relates*”, and its variations, means those privileges under this Act that may be exercised by a person who -
- (a) holds a current aviation document; or
 - (b) is permitted under the rules to operate an aircraft solo as a pilot.

64B. POWER OF DIRECTOR TO ISSUE MEDICAL CERTIFICATE.⁹⁶

- (1) After considering an application for a medical certificate, the Director shall, as soon as practicable but no later than 30 working days after the date of receiving the report of the medical examiner, issue the medical certificate if the Director is satisfied that the applicant meets the medical standards prescribed in the rules, unless the Director has reasonable grounds to believe that the applicant has any characteristic that may interfere with the safe exercise of the privileges to which the medical certificate relates.
- (2) Notwithstanding Subsection (1), the Director may, relying on flexibility, issue a medical certificate to the applicant.

⁹⁴ Part IVA added by No. 33 of 2016, s.22.

⁹⁵ Ibid.

⁹⁶ Ibid.

(3) In Subsection (2), “flexibility” means the use of medical judgment to issue a medical certificate if the following conditions are fulfilled:

- (a) an accredited medical conclusion indicates that in special circumstances the applicant’s failure to meet any medical standard prescribed in the rules is such that the exercise of the privileges to which a medical certificate relates is not likely to compromise aviation safety; and
- (b) the relevant ability, skill, and experiences of the applicant and operational conditions have been given due consideration; and
- (c) the medical certificate is endorsed with any conditions, restrictions, or endorsements when the safe performance of the applicant’s duties is dependent on compliance with those conditions, restrictions, or endorsements.

(4) The Director may impose any conditions, restrictions, or endorsements on a medical certificate issued under this section.

(5) Before issuing a medical certificate, the Director -

- (a) shall have regard to the report of the medical examiner and any other information that may be relevant; and
- (b) may require the applicant, at the applicant’s expense, to undertake any other tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, as the Director reasonably considers necessary to assess the applicant.

(6) If the Director requires an applicant to undertake any other test, examination, or re-examination, or to provide any medical information, the period in which the Director shall make a decision in relation to the medical certificate under this section does not include the number of days that are required to conduct and deliver the results of the test, examination, or re-examination, or to provide the medical information, to the Director.

(7) The Director shall maintain a register of current medical certificates issued under this section.

(8) Any decision made under this section by the Director in relation to a medical certificate other than a decision under Subsection (5)(b) is subject to Section 64L (review of decisions regarding medical certificates or applications).

64C. CHANGES IN MEDICAL CONDITION OF LICENCE HOLDER.⁹⁷

(1) Subject to any directions that the Director may issue under Section 64G(1)(b), if a licence holder is aware of, or has reasonable grounds to suspect, any change in his medical

⁹⁷ Section 64C added by No. 33 of 2016, s.22.

condition or the existence of any previously undetected medical condition that may interfere with the safe exercise of the privileges to which his medical certificate relates, the licence holder -

- (a) shall advise the Director of the change as soon as practicable; and
- (b) may not exercise the privileges to which the licence holder's medical certificate relates.

(2) Subject to any directions that the Director may issue under Section 64G(1)(b), if an aviation examiner or medical examiner or operator is aware of, or has reasonable grounds to suspect, any change in the medical condition of a licence holder or the existence of any previously undetected medical condition in the licence holder that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the aviation examiner or medical examiner or operator shall advise both the licence holder and the Director of the change as soon as practicable.

(3) Subject to any directions that the Director may issue under Section 64G(1)(b), if a registered medical practitioner has reasonable grounds to believe that a person is a licence holder and is aware, or has reasonable grounds to suspect, that the licence holder has a medical condition that may interfere with the safe exercise of the privileges to which the licence holder's medical certificate relates, the registered medical practitioner shall, as soon as practicable -

- (a) inform the licence holder that the Director shall be advised of the condition; and
- (b) advise the Director of the condition.

(4) An aviation examiner or medical examiner or a registered medical practitioner is not subject to any civil or criminal liability for -

- (a) doing an indemnified act in good faith in the course of carrying out his functions under this part; or
- (b) doing an indemnified act in good faith in the course of answering any questions put to him by the Director that -
 - (i) concern a licence holder; and
 - (ii) are relevant to any action the Director may take under this part.

(5) In this section, "*indemnified act*" means any of the following acts -

- (a) advising the Director, whether in writing or otherwise, that a licence holder -
 - (i) may not meet the medical standards prescribed in the rules; or
 - (ii) may be unable to exercise safely the privileges to which the licence holder's medical certificate relates; or
- (b) expressing to the Director, whether in writing or otherwise, an opinion that the licence holder who the aviation examiner or medical examiner or registered

medical practitioner has examined or treated may be unable to exercise safely the privileges to which the licence holder's medical certificate relates because of -

- (i) illness or any bodily or mental infirmity, defect, incapacity, or risk of incapacity suffered by the licence holder; or
 - (ii) the effect on the licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity; or
- (c) stating to the Director, whether in writing or otherwise -
- (i) the nature of a licence holder's illness, infirmity, defect, incapacity, or risk of incapacity; or
 - (ii) the effect on a licence holder of treatment for any illness, infirmity, defect, incapacity, or risk of incapacity.

64D. MEDICAL EXAMINATION, REPORT, AND DISCLOSURE.⁹⁸

(1) Before the Director issues a medical certificate, an applicant shall have a medical examination by a medical examiner who shall forward his report to the Director.

(2) The Director may, by written notice, require any applicant to disclose, or authorise the disclosure of, any information relevant to his medical condition or history for the purpose of determining whether or not the applicant is eligible for a medical certificate under Section 64B.

64E. EXPIRY OF MEDICAL CERTIFICATE.⁹⁹

The Director may, on receiving an application for a medical certificate from a licence holder before the expiry of his existing medical certificate, grant an extension of no more than 45 days from the expiry date of the licence holder's existing medical certificate with any additional conditions, restrictions, or endorsements as the Director considers necessary.

64F. DESIGNATION OF AVIATION EXAMINERS AND MEDICAL EXAMINERS.¹⁰⁰

(1) The Director shall designate, by issuing an aviation document under Section 49, one or more medical examiners to conduct examinations under Section 64D.

(2) The Director may designate, by issuing an aviation document under Section 49, one or more aviation examiners to conduct specified examinations that the Director may require under this Part.

64G. GENERAL DIRECTIONS AND EMERGENCY DIRECTIVES.¹⁰¹

- (1) The Director may, by written notice, issue general directives in relation to -
- (a) conducting examinations of applicants and licence holders, and reporting the

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

- results of those examinations to the Director; and
- (b) providing exceptions for temporary medical conditions to the reporting requirements set out in Section 64C; and
- (c) specifying the requirements of examinations or other clinical matters, which shall be reasonable, including, but not limited to -
 - (i) the medical content of examinations; and
 - (ii) the interpretation and analysis of results of examinations; and
 - (iii) the significance of results of examinations for the purpose of determining whether or not an applicant is eligible for a medical certificate under Section 64B.

(2) Before issuing general directives under Subsection (1), the Director shall consult with such persons, health professionals with aviation medical experience, representative groups within the aviation industry or elsewhere, government departments and State agencies that the Director considers appropriate.

(3) General directives in relation to the matters specified in Subsection (1)(a) or (c) shall be -

- (a) issued in writing, to aviation examiners or medical examiners; and
- (b) incorporated in a medical manual issued by the Director.

(4) The Director may issue verbal directives in emergency situations without consultation or prior notice, but those directives -

- (a) shall be confirmed in writing as soon as practicable after they are issued; and
- (b) expire on the day that is 90 days after the date on which they are issued.

(5) The Director may reissue, under Subsection (1), directives issued under Subsection (4) before or after they expire.

64H. INVESTIGATION OF MEDICAL CONDITION OF LICENCE HOLDER.¹⁰²

(1) The Director may, by written notice, require any licence holder, at the licence holder's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate, if the Director has reasonable grounds to believe that the licence holder -

- (a) may be unable to safely exercise the privileges to which the medical certificate relates; or
- (b) has fraudulently obtained his medical certificate.

¹⁰² Ibid.

(2) If the Director has delegated, under Section 64O, the authority to issue medical certificates to any medical examiner, the Director may, by written notice to the relevant licence holder, withdraw any medical certificate that the medical examiner has issued under the authority within 60 days after the date it was issued if the Director requires the licence holder to supply additional medical information, in which case the Director shall decide whether to reissue the medical certificate in accordance with Section 64B.

(3) The Director may, by written notice, require any licence holder, at CASA's expense, to undertake any tests, examinations, or re-examinations conducted by any suitably qualified and experienced person, or to provide any medical information, at any time before the expiry of his medical certificate if -

- (a) the Director -
 - (i) is monitoring licence holders on the basis of random selection from the register of current medical certificates that is required to be maintained under Section 64B(7); or
 - (ii) has reasonable grounds to believe that the licence holder's medical certificate was issued in error; or
 - (iii) is monitoring aviation examiners or medical examiners for compliance with the requirements of this Act or the rules; and
- (b) the Director has reasonable grounds to believe that any of those tests, examinations, re-examinations, or medical information are necessary to investigate the matters specified in Paragraph (a).

(4) The Director may, by written notice, require any licence holder to disclose, or authorise the disclosure of, any relevant information for the purpose of determining whether or not the licence holder -

- (a) meets the medical standards prescribed in the rules; or
- (b) is able to exercise safely the privileges to which the medical certificate relates.

64I. REVOCATION, SUSPENSION, AMENDMENT, AND SURRENDER OF MEDICAL CERTIFICATE.¹⁰³

(1) If the Director has reasonable grounds to believe that a licence holder may be unable to safely exercise the privileges to which the licence holder's medical certificate relates, the Director may, by written notice to the licence holder -

- (a) suspend the medical certificate issued to the licence holder; or
- (b) impose or amend any conditions, restrictions, or endorsements on the medical certificate issued to the licence holder.

¹⁰³ Ibid.

(2) If the Director has reasonable grounds to believe that a licence holder is unable to safely exercise the privileges to which the licence holder's medical certificate relates, the Director shall, by written notice to the licence holder -

- (a) suspend the medical certificate issued to the licence holder; or
- (b) revoke the medical certificate issued to the licence holder; or
- (c) impose or amend any conditions, restrictions, or endorsements on the medical certificate issued to the licence holder.

(3) If the Director has reasonable grounds to believe that a person who has been delegated authority under Section 64O to issue a medical certificate has issued a medical certificate other than in accordance with this Part or the terms of the delegated authority, the Director may -

- (a) by written notice to the licence holder -
 - (i) suspend the medical certificate issued to the licence holder; or
 - (ii) revoke the medical certificate issued to the licence holder; or
 - (iii) impose or amend any conditions, restrictions, or endorsements on the medical certificate issued to the licence holder; and
- (b) by written notice to the person with delegated authority, revoke that person's delegated authority.

(4) Any notice issued under this section shall state the grounds for the Director's decision.

(5) A notice of suspension issued under Subsection (1)(a) or Subsection (2)(a) or Subsection (3)(a)(i) remains in force until the Director determines what action, if any, referred to in Subsection (7) is to be taken, but any such suspension expires 14 working days after the date the suspension is imposed unless, before the expiry of that 14 working days period, the Director extends the suspension for a further specified period not exceeding 14 working days (the aggregate suspension period shall not exceed 28 working days after the date on which the suspension is imposed).

(6) Any conditions, restrictions, or endorsements that are imposed or made under Subsection (1)(b) or Subsection (2)(c) or Subsection (3)(a)(iii) remain in force until the Director determines what action, if any, referred to in Subsection (7) is to be taken, but any of those conditions, restrictions, or endorsements expire 14 working days after the date they are imposed unless, before the expiry of that 14 working days period, the Director extends the conditions, restrictions, or endorsements for a further specified period not exceeding 14 working days (the aggregate period shall not exceed 28 working days after the date on which the conditions, restrictions, or endorsements are imposed).

(7) If a notice is issued under Subsection (1) or Subsection (2) or Subsection (3), the Director may, by written notice, take one or more of the following actions:

- (a) impose or amend conditions, restrictions or endorsements for a specified period; or
- (b) withdraw any conditions, restrictions or endorsements; or
- (c) disqualify the licence holder from holding the medical certificate for a specified period; or
- (d) revoke the medical certificate; or
- (e) cancel the suspension.

(8) If the Director revokes a medical certificate under Subsection (2)(b) or Subsection (3)(a)(ii) or Subsection (7)(d) or Subsection (11) or imposes any conditions, restrictions or endorsements on a medical certificate under Subsection (7)(a) or disqualifies a licence holder under Subsection (7)(c), the licence holder has 28 working days from the date of the decision to ask the convener to review the decision under Section 64L, after which time the decision shall not be referred to the convener.

(9) A person who has had his medical certificate revoked, withdrawn, or suspended or who is disqualified from holding the medical certificate for a specified period shall surrender the medical certificate to the Director, or a person authorised by the Director.

(10) If the Director issues a notice under this section, the Director -

- (a) shall, if practicable, notify any aviation document holder affected by the notice, other than the licence holder, if the Director considers it necessary for reasons of aviation safety; and
- (b) may notify any other affected aviation document holder.

(11) The Director may, by written notice, revoke a medical certificate if a licence holder fails, without reasonable excuse, to comply with a demand under Section 64H(1) or Section 64H(3) or Section 64H(4) within a reasonable period of time.

(12) Any licence holder may return his medical certificate to the Director and request the Director, in writing, to cancel the medical certificate.

(13) If a licence holder requests the Director to cancel his medical certificate, the Director shall -

- (a) cancel the medical certificate; and
- (b) update the register of current medical certificates.

64J. APPOINTMENT OF CONVENER AND DEPUTY CONVENER.¹⁰⁴

- (1) The Minister shall -
 - (a) appoint a convener and a deputy convener for a period of time, no longer than three years; and
 - (b) consult with the Director, and other parties as the Minister considers appropriate, before making either appointment; and
 - (c) take into account any representations made under Paragraph (b).
- (2) The Minister may renew an appointment as convener or deputy convener for one or more periods of time, each of which shall not exceed three years.
- (3) If the Minister renews an appointment, the Minister shall -
 - (a) consult with the Director, and other parties as the Minister considers appropriate, before making the renewal; and
 - (b) take into account any representations made under Paragraph (a).
- (4) The convener and the deputy convener shall -
 - (a) be registered medical practitioners who are suitably qualified, and experienced or knowledgeable in civil aviation; and
 - (b) be able to represent the public interest in aviation safety.
- (5) If the convener is unavailable for any reason, the deputy convener shall discharge the duties of the convener under this section until -
 - (a) the convener is available; or
 - (b) the Minister has appointed a new convener.

64K. CANCELLATION OF APPOINTMENT AS CONVENER OR DEPUTY CONVENER.¹⁰⁵

- (1) The Minister may cancel a person's appointment made under Section 64J(1)(a) if the person fails to discharge satisfactorily his duties as convener or deputy convener, as the case may be.
- (2) Before cancelling an appointment, the Minister shall -
 - (a) give the person written notice of the matters that constitute grounds for cancellation; and
 - (b) give the person a reasonable opportunity to make representations that explain why the appointment should not be cancelled; and
 - (c) take into account any representations made under Paragraph (b).

¹⁰⁴ Ibid.

¹⁰⁵ Ibid.

(3) If the Minister cancels an appointment, the Minister shall give written notice of the cancellation and set out the grounds for the cancellation.

64L. REVIEW OF DECISIONS REGARDING MEDICAL CERTIFICATES OR APPLICATIONS.¹⁰⁶

(1) A licence holder or an applicant may, within 28 working days of a decision being made, request the convener, in writing, to review the following decisions made by the Director regarding that person's medical certificate or application:

- (a) any decision made under Section 64B, other than a decision made under Section 64B(5)(b); or
- (b) any decision made under Section 64I, other than a decision made under -
 - (i) Section 64I(1); or
 - (ii) Section 64I(2)(a); or
 - (iii) Section 64I(2)(c); or
 - (iv) Section 64I(3)(a)(i); or
 - (v) Section 64I(3)(a)(iii).

(2) If such a request is made, the convener shall, as soon as practicable, review the decision.

(3) The convener -

- (a) shall draw on the advice and expertise of at least one person who the convener is satisfied is suitably qualified and experienced to assist the convener in his assessment of the decision that is under review; and
- (b) shall have regard to the purpose and scheme of the Act and the Director's duties under the Act when carrying out his review of the decision; and
- (c) may require the person who requested for the review, at that person's expense, to undertake any other tests, examinations, or re-examinations conducted by a suitably qualified and experienced person, or to provide any medical information, as the convener considers reasonably necessary to review the decision; and
- (d) shall receive and consider the relevant evidence provided under Subsection (6).

(4) The convener shall, as soon as practicable, report the results of his review to the Director in writing.

(5) The Director shall, within 14 working days of receiving the convener's report, implement the results of the decision contained within the convener's report or, if the Director does

¹⁰⁶ Ibid.

not implement the convener's report, notify the licence holder or applicant, in writing, of the Director's reasons for not doing so.

(6) The licence holder or applicant or Director may, either directly or through his medical experts, participate in the review process by providing relevant evidence to the convener regarding any medical matter at issue with respect to the decision that is under review.

- (7) The convener may not review a decision made by the Director if the convener -
- (a) acted as an aviation examiner or medical examiner of the person requesting the review with respect to that person's application for a medical certificate; or
 - (b) has any other conflict of interest with respect to the person's medical certificate.

(8) Any decision by the Director under review by the convener remains in force until the Director makes a final decision under Subsection (5).

(9) For the purpose of review of the Director's decision under Subsection (6), no lawyer is allowed to represent any party.

64M. REFERRAL TO CONVENER BY AGREEMENT.¹⁰⁷

(1) An application for a medical certificate may, by agreement in writing between the Director and the applicant, be referred to the convener for advice before the Director makes a decision on the application.

- (2) If an application is referred to the convener under Subsection (1) -
- (a) the deadline imposed on the Director under Section 64B(1) does not apply; and
 - (b) the convener shall -
 - (i) as soon as practicable, assess the application; and
 - (ii) draw on the advice and expertise of at least one person who the convener is satisfied is suitably qualified and experienced to assist the convener in the assessment of the application; and
 - (iii) require the applicant, at the applicant's expense, to undertake any tests, examinations, or re-examinations conducted by suitably qualified and experienced person, or to provide any medical information, that the convener considers reasonably necessary to carry out his assessment of the application; and
 - (iv) have regard to the purpose and scheme of the Act and the Director's duties under the Act when making his assessment of the application; and
 - (v) as soon as practicable, report the results of his assessment to the Director in writing; and

¹⁰⁷ Ibid.

(vi) receive and consider the relevant evidence provided under Subsection (5).

(3) The Director shall, within 14 days of receiving the convener's report -

- (a) consider the convener's report; and
- (b) make his decision in writing; and
- (c) provide to the applicant:
 - (i) a copy of the convener's report; and
 - (ii) a copy of the Director's decision.

(4) If an application is referred to the convener under this section, the applicant shall not request the convener to review the Director's eventual decision.

(5) The applicant or Director may, either directly or through his medical experts, participate in the convener's assessment of the application by providing relevant evidence to the convener regarding any medical matter at issue with respect to that application.

(6) The convener shall not assess the application if the convener -

- (a) acted as an aviation examiner or medical examiner of the applicant with respect to that person's application for a medical certificate; or
- (b) has any other conflict of interest with respect to the person's medical certificate.

64N. DELEGATION OF DIRECTOR'S POWERS UNDER THIS PART TO REGISTERED MEDICAL PRACTITIONERS WHO ARE EMPLOYEES OF CASA.¹⁰⁸

(1) The Director may, either generally or particularly, delegate to any suitably qualified registered medical practitioner who is an employee of CASA, any of the Director's functions and powers under this Part or under the rules relating to medical certification.

(2) Every delegation under this section shall be in writing.

(3) The Director shall not delegate the power to delegate under this section.

(4) The provisions of Section 43 apply to delegations under this section.

(5) Any delegation under this section may be made to a suitably qualified registered medical practitioner who is the holder of a specified office of CASA.

¹⁰⁸ Ibid.

64O. DELEGATION OF DIRECTOR'S POWERS UNDER THIS PART TO MEDICAL EXAMINERS WHO ARE NOT EMPLOYEES OF CASA.¹⁰⁹

(1) The Director may, either generally or particularly, delegate to any suitably qualified medical examiner who is not an employee of CASA any of the Director's functions and powers under this Part or under the rules relating to medical certification other than the power under this Part to revoke medical certificates.

(2) Despite Subsection (1), the Director may delegate to suitably qualified medical examiners who are not employees of CASA, the power to issue medical certificates to any person who qualifies for a medical certificate under Section 64B(1) or who otherwise meets the criteria for a standard medical assessment as prescribed in the rules or by the Minister under Section 64Q(3).

(3) Every delegation under this section shall be in writing.

(4) Subject to any general or special directions given or conditions imposed by the Director, any medical examiner to whom any functions or powers are delegated under this section may exercise those functions and powers in the same manner and with the same effect as if they had been conferred or imposed on that person directly by this Act and not by delegation.

(5) Any delegation under this section may be made to a specified medical examiner or a specified class of medical examiners or to the holder or holders of a specified office.

(6) Every delegation under this section shall be given for a specified period but, in any event, shall be revocable at will.

(7) No delegation under this section may -

- (a) affect or prevent the exercise of any function or power by the Director; or
- (b) affect the responsibility of the Director for the actions of any person acting under the delegation.

(8) Every delegation under this section continues in force until it is revoked or expires, whether or not the person who made the delegation ceases to hold office.

(9) Every person purporting to act under a delegation under this section may, when reasonably requested to do so, produce evidence of his authority to so act.

¹⁰⁹ Ibid.

(10) The Director shall not delegate under this section any of his functions or powers under Section 64L or Section 64M.

64P. RIGHT OF APPEAL TO NATIONAL COURT.¹¹⁰

Any person affected by a decision of the Director under Section 64B, other than a decision made under Section 64B(5)(b), Section 64I(7), Section 64I(11), Section 64L, or Section 64M, has a right of appeal to the National Court under Section 310.

64Q. TRANSITIONAL PROVISIONS.¹¹¹

(1) Part 67 of the rules, as it is read immediately before the commencement of this part, shall continue to apply to -

- (a) any application for a medical certificate lodged before the commencement of this part; and
- (b) any action begun with respect to a medical certificate before the commencement of this part.

(2) In the absence of rules providing for the issue of aviation documents to aviation examiners or medical examiners -

- (a) the Minister shall establish the selection criteria for the issue of aviation documents to aviation examiners or medical examiners or classes of aviation examiners or medical examiners that the Director shall use to issue those aviation documents, including any reasonable requirements -
 - (i) for examinations, training, and experience; and
 - (ii) for on-going training and development; and
 - (iii) relating to the classification of aviation examiners and medical examiners and any related standards and restrictions on the exercise of their functions and powers; and
- (b) the Director shall designate, by issuing an aviation document under Section 49, one or more medical examiners to conduct examinations under Section 64D; and
- (c) the Director may designate, by issuing an aviation document under Section 49, one or more aviation examiners to conduct specified examinations that the Director may require under this part.

(3) In the absence of rules under Section 72(a)(x) or (xi), the Minister shall establish the criteria for the grant of delegations, including -

- (a) any requirements for the grant of delegations by the Director under Section 64O(2); and

¹¹⁰ Ibid.

¹¹¹ Ibid.

- (b) any requirements for the purposes of determining suitably qualified medical examiners and establishing the criteria for standard medical assessments under Section 64O(2).

64R. SAVINGS.¹¹²

Any medical certificate issued under the rules before the commencement of this part is deemed to be a medical certificate issued under this part.

PART V. - REGISTRIES AND INFORMATION SERVICES.

65. PAPUA NEW GUINEA REGISTER OF AIRCRAFT.

- (1) CASA shall establish a register to be called the Papua New Guinea Register of Aircraft.
- (2) CASA 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 111.¹¹³
- (4) The Director may, in his absolute discretion and without any responsibility or liability to the State, CASA 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) CASA 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; and
 - (b) every current aviation document; and
 - (c) the Register; and
 - (d) every regulation made under this Act, and every rule notified in the National Gazette and for the time being in force; and
 - (e) any material incorporated into a rule by reference under Section 78; and
 - (f) every accident and incident notification given under Section 60; and
 - (g) every airworthiness directive issued by the Director under Section 17(2); and
 - (h) every delegation, authorization, and exemption granted in writing under this Act; and

¹¹² Ibid.

¹¹³ Subsection (3) amended by No. 7 of 2010, s.26.

- (i) the address for service of every current applicant for an aviation document and of every current aviation document holder; and
- (j) every document required to be lodged at the Registry under Part XI and Part XII; and
- (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 CASA 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) PNG ASL 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.¹¹⁴

(2) PNG ASL 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 PNG ASL.¹¹⁵

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; and
- (b) the provision of aviation meteorological services, search and rescue services, and civil aviation security programmes and services; and
- (c) any matter related or reasonably incidental to any of the functions of CASA, the Departmental Head, the Director or the Minister as set out in this Act; and
- (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

¹¹⁴ Ibid, amended, s.27(a).

¹¹⁵ Ibid, repealed and replaced, s.27(b).

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 CASA or the Director or any other person, or allows CASA or any other person to impose requirements as to the performance of any activities.¹¹⁶

(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 provincial government 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.¹¹⁷

(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; and
 - (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
 - (ii) the prevention of aircraft endangering persons or property; and

¹¹⁶ Subsection (5) repealed and replaced by No. 33 of 2016, s.23.

¹¹⁷ Subsection (7) amended by No. 7 of 2010, s.28(b).

- (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; and
 - (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; and
 - (ii) aircraft pilots; and
 - (iii) flight crewmembers; and
 - (iv) air traffic service personnel; and
 - (v) aviation security personnel; and
 - (vi) aircraft maintenance personnel; and
 - (vii) air services; and
 - (viii) air traffic services; and
 - (ix) aerodromes and aerodrome operators; and
 - (x) aeronautical navigation service providers; and
 - (xi) aviation training organisations; and
 - (xii) aircraft design, manufacture, and maintenance organisations; and
 - (xiii) aeronautical procedures; and
 - (xiv) aviation security providers; and
 - (xv) aviation meteorological services; and
 - (xvi) aeronautical communications services; and
 - (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

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- such persons, aircraft, aeronautical products, aviation related services, facilities and equipment operated in support of the civil aviation system; and
- (b) the setting of standards, specifications, restrictions and licensing requirements for all or any of those person 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; and
 - (ii) the setting of standards for training system and techniques, including recurrent training requirements; and
 - (iii) the setting of medical standards for personnel; and
 - (iv) the requirement for proof of access to appropriate weather services; and
 - (v) the specification of standards of design, construction, manufacture, maintenance, processing, testing, supply, approval and identification of aircraft and aeronautical products; and
 - (vi) air services, including the requirements for insurance coverage for air services; and
 - (vii) the format of aviation documents, forms and applications, including the specification of information required on all application forms for aviation documents; and
 - (viii) the provision of information to CASA by applicants or holders of aviation documents; and
 - (c) the conditions of operation of foreign aircraft and international flights to, from or within Papua New Guinea; and
 - (d) the definitions, abbreviations and units of measurement to apply within the civil aviation system; and
 - (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 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; and
 - (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; and
 - (b) the level of risk existing to aviation safety in each proposed activity or service; and
 - (c) the nature of the particular activity or service for which the rule is being established; and
 - (d) the level of risk existing to aviation safety and security in Papua New Guinea in general; and
 - (e) the need to maintain aviation safety and security; and
 - (f) the costs of implementing aviation safety and security measures; and
 - (g) the international circumstances in respect of aviation safety and security; and
 - (h) such other matters as the Minister or the Director considers appropriate in the circumstances.

76. PROCEDURES 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 CASA 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 CASA 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 date 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.¹¹⁸

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 CASA 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 it 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.¹¹⁹

¹¹⁸ Subsection (4) amended by No. 7 of 2010, s.29.

¹¹⁹ Subsection (3) amended by No. 33 of 2016, s.24(a).

(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 (5) for a further period not exceeding 180 days from the date of notification.¹²⁰

(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 organisations; or
- (b) standards, requirements or rules prescribed under law by any other Contracting State of ICAO; or
- (c) standards, requirements or rules of any aviation sport or aviation recreational organisation; or
- (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 organisation originating the material, subject to Subsections (3) and (4),
- shall be deemed to be part of the rule.

¹²⁰ Ibid, amended, s.24(b).

(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 circumstance 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 of 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, runaways, taxiways and parking aprons for aircraft; and

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- (ii) facilities and services for air traffic and parking apron control; and
- (iii) airfield and associated lighting; and
- (iv) services to maintain and repair airfields, runways, taxiways and parking aprons for aircraft; and
- (v) rescue, fire, safety and environmental hazard control services; and
- (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 CASA, PNG ASL, NAC or any airport authority or an airport company;¹²¹

“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 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; and
- (b) specified passenger terminal activities; and
- (c) air traffic services, aeronautical navigation services, navigation installations, aeronautical meteorological services, aeronautical information services and aeronautical communication services; and
- (d) civil aviation safety regulation services; and
- (e) aviation security services; and

¹²¹ The definition of “aviation service provider” repealed and replaced by No. 7 of 2010, s.30.

- (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” means 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; and
 - (ii) flight information and public address systems; and
 - (iii) facilities and services for the operation of customs, immigration and quarantine checks and control; and
 - (iv) facilities for the collection of duty-free items; and
 - (v) facilities and services for the operation of security and Police services; and
 - (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; and
 - (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 services.

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, establish policies consistent with this Act concerning the levels of services it provides.¹²²
- (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

¹²² Ibid, amended, s.31(a).

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 service provider 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.¹²³

(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.

¹²³ Ibid, amended, s.31(b).

[Section 83 repealed by No. 33 of 2016, s.25.]

[Section 84 repealed by N. 33 of 2016, s.25.]

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 CASA 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 charges 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; and
- (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; and
- (c) charges for the same services shall not differentiate between domestic and international flights; and
- (d) charges for the same services shall not differentiate among Papua New Guinea persons or among foreign persons or between them; and
- (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; and
- (g) charges in respect of recreational and private aircraft shall not be unreasonable or undue; and
- (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 recognise that the value of the services differs among users.

(3) Where the charging methodology of an aviation service provider recognises 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) any tax liability; and
- (i) reasonable services 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).¹²⁴

(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

¹²⁴ Subsection (5) amended by No. 7 of 2010, s.32.

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 organisations 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 notice on an officially designated website,¹²⁵ 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) where Subsection (2) applies -
 - (i) specify that the charge set out in the announcement is different from the charge proposed in the notice required under Section 89; and¹²⁶
 - (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.

¹²⁵ Ibid, repealed and replaced, s.33.

¹²⁶ Ibid, amended, s.34(a).

- (4) An aviation service provider shall -
- (a) send, by mail or by electronic means, a copy of the announcement to -
 - (i) representative organisation 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 on an officially designated website,¹²⁷

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 organisation of users,

may appeal to the Departmental Head and 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; or
 - (ii) that the notice requirements in Section 89 have not been complied with; or
 - (iii) that the announcement requirements in Section 90 have not been complied with; or
 - (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

¹²⁷ Ibid, repealed and replaced, s.34(b).

- 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 quickly 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 the weight of the 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 circumstance, 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; or
- (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; or
- (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) prescribed 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 travelling time, accommodation and other expenses; and¹²⁸
 - (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 class 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.

¹²⁸ Paragraph (c) amended by No. 7 of 2010, s.35.

(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 service provider with such information as would identify the actual user.

Division 5. - Levies for Civil Aviation Purposes.

105. IMPOSITION OF LEVIES.¹²⁹

(1) Subject to Subsection (3), for the purpose of enabling CASA and State Aviation Enterprise 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 CASA and State Aviation Enterprise, 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.

¹²⁹ Ibid, amended, s.36.

- (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 CASA and State Aviation Enterprise; and
 - (b) he is satisfied that the income of CASA and State Aviation Enterprise 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 CASA and State Aviation Enterprise 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.¹³⁰

(1) Different rates of levies may be imposed or varied under Section 105 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 105 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; or
- (b) the number of passengers able to be carried on an aircraft; or
- (c) the number of passengers actually carried on an aircraft; or
- (d) the amount of freight able to be carried on an aircraft; or
- (e) the amount of freight actually carried on an aircraft; or
- (f) the distance flown by an aircraft; or
- (g) aircraft size or capacity; or
- (h) arriving or departing passengers using an airport; or¹³¹
- (i) the purpose for which an aircraft or aeronautical product is used or for which an aviation related service is supplied; or
- (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 privilege exercisable under an aviation document; or¹³²
 - (v) an airport; or
 - (vi) the air traffic services or air navigation system.

¹³⁰ Ibid, amended, s.37(a).

¹³¹ Ibid, amended, s.37(b)(i).

¹³² Ibid, amended, s.37(b)(ii).

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 cease to be payable; and
- (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 of the amount payable, the person in respect of whom the payment was made shall, upon application made to CASA, 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 CASA and shall contain such information as CASA 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 CASA to be applied by CASA 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 authorise CASA 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 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 in the aircraft -

- (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 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 after being notified, 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 persons, namely:
 - (A) owner; and
 - (B) operator; and
 - (C) lessee; and
 - (D) hirer; and
 - (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 the claimant may keep possession of the aircraft until all outstanding amounts are paid.¹³³

- (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.

¹³³ Subsection (1) amended by No. 7 of 2010, s.38.

(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; and
- (b) the person who appears to the Director to be the operator of the aircraft; and
- (c) the person who appears to the Director to be a charterer or hirer of the aircraft; and
- (d) any person who is registered as a mortgagee of the aircraft under the Register; and
- (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 leave of the National Court shall be further subject to such conditions as the National Court may, as it thinks just, impose.¹³⁴

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; and
- (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; and
- (c) any 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; and
- (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; and
- (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. SALES 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

¹³⁴ Subsection (2) amended by No. 7 of 2010, s.39.

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 of an outstanding amount 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 authorised 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 willfully 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; and
- (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; and
- (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; and
- (d) prescribing the information and other matters that shall be included in disclosure financial statements and disclosure financial forecasts; and
- (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; and
- (f) prescribing any standard or standards with which disclosure financial statements and disclosure financial forecasts shall comply; and
- (g) prescribing any methodology or methodologies that shall be used in completing disclosure financial statements and disclosure financial forecasts; and
- (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; and
- (i) providing that compliance with the guidelines is deemed to constitute compliance with the relevant requirements of the regulations; and
- (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; and
- (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 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 any of 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 authorised to enter into any agreement under Section 135.¹³⁵

(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.

¹³⁵ Subsection (2) amended by No. 7 of 2010, s.40.

(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 organisation, 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 provincial governments, 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 authorised by this Act as may to them seem most suited to the circumstances.¹³⁶

(3) An agreement entered into under Subsection (1) may provide for all or any of the following:¹³⁷

- (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; or
- (b) the vesting of aerodrome buildings and facilities in trust for aerodrome purposes in an airport authority, provincial government, body or person approved by the Minister in that behalf; or
- (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; or
- (d) the transfer of the management of an aerodrome under the control of the Minister or a provincial government or of any facilities connected with the operation of any such aerodrome, from the Minister or provincial government to any other party or parties to the agreement at such time and subject to such terms and conditions as may be agreed upon; or
- (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 provincial government, 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; or

¹³⁶ Ibid, amended, s.41(a).

¹³⁷ Ibid, amended, s.41(b).

- (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; or
- (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; or
- (h) the contributions by parties to the agreement in respect of the cost of any work or undertaking to which the agreement relates; or
- (i) the apportionment or allocation between parties to the agreement of the cost of any work or undertaking to which the agreement relates; or
- (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; or
- (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; or
- (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.¹³⁸

- (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 -

¹³⁸ Ibid, amended, s.42.

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- (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 authorised 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 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 Consolidation 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 provincial government 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 provincial government of the net proceeds of any fees or charges imposed under this Act, after deducting the share of expenses and costs due by the provincial government; or
 - (c) representing the share due to the provincial government 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 provincial government; and
 - (e) subject to the liability (if any) of the provincial government under any enactment, deed, order or agreement to pay any part of the money's 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 provincial government 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 CASA.

(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. PROVINCIAL GOVERNMENTS AS AIRPORT AUTHORITIES TO ESTABLISH AND CARRY ON AIRPORTS.¹³⁹

(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 provincial government as an airport authority for the purpose of establishing, improving, maintaining, operating or managing airports (include 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 provincial government is established as an airport authority -

- (a) the provincial government and the Minister shall enter into an agreement under either Section 130 or 135 for the development, management, control and

¹³⁹ Heading of Section 133 amended by No. 7 of 2010, s.43(a). Section 133 amended by No. 7 of 2010, s.43(b).

- maintenance of the airport; and
- (b) the provincial government 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 provincial government 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 provincial government 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 provincial government 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 that is a provincial government may, with the consent of the Minister, acquire or purchase an interest in real property associated with the airport.¹⁴⁰

(6) The powers conferred on provincial governments 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 published in the National Gazette.¹⁴¹

(7) A notice under this section may at any time in like manner be amended or revoked.

(8) An airport authority that is a provincial government 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 provincial government 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 to properly

¹⁴⁰ Ibid, amended, s.43(c).

¹⁴¹ Ibid, amended, s.43(d)(i) and (ii).

and efficiently 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 provincial government 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 finance matters.¹⁴²

134. POWERS OF AIRPORT AUTHORITIES.¹⁴³

- (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 functions 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 provincial government the powers contained in this Act are in addition to and not in derogation of any of the powers of a provincial government under any other Act.

¹⁴² Ibid, amended, s.43(e).

¹⁴³ Ibid, amended, s.44.

135. AIRPORT AUTHORITY SHALL ACT IN ASSOCIATION WITH MINISTERS.¹⁴⁴

- (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 provincial government 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 with the undertaking; 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 of such land or any property acquired in connection with the undertaking to be vested in any party to the agreement; and
 - (d) for the management, control or maintenance of the undertaking, or any part of the undertaking, 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 costs of the undertaking either in one sum or by instalment spread over any period or by yearly or other payments as and when the costs are ascertained; and¹⁴⁵
 - (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 provincial government to carrying out the work of the airport authority; and

¹⁴⁴ Ibid, amended, s.45(a).

¹⁴⁵ Ibid, amended, s.45(b).

- (l) for reimbursing the provincial government 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 the 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 under Subsection (4) 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 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 *Aerodrome (Business Concessions) Act 2000* and for the purposes of that Act the airport authority shall have powers of the Minister.¹⁴⁶

137. PROVINCIAL GOVERNMENTS MAY ASSIST AIRPORT AUTHORITIES.¹⁴⁷

A provincial government 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

¹⁴⁶ Subsection (2) amended by No. 7 of 2010, s.46.

¹⁴⁷ Heading of Section 137 amended by No. 7 of 2010, s.47(a). Section 137 further amended by No. 7 of 2010, s.47(b) and (c).

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; or
- (b) the more effectual carrying out of the functions and powers of the airport authority in respect of the airport; or
- (c) protecting any property used in connection with the airport from damage or injury; or
- (d) prescribing precautions to be taken for the protection of persons or property from accident or damage; or
- (e) regulating traffic, whether pedestrian or vehicular, and the provision and use of parking places for vehicles at the airport; or
- (f) prescribing the times, terms, and conditions upon which the public may enter or be in or upon the airport; or
- (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 CASA 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 CASA; or

- (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; or
- (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; or
- (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; or
- (k) generally for the administration of the airport, or for the control of trading activities on the airport or for the management of any business ancillary to these activities 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 that money shall form part of its funds.

(4) A by-law made by an airport authority that is a provincial government under this section -¹⁴⁸

- (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.

¹⁴⁸ Subsection (4) amended by No. 7 of 2010, s.48(a).

(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, despite anything in any other Act, on application by the airport authority before a Grade 5 Magistrate, the Court may grant an injunction restraining the further continuance of the breach by that person.¹⁴⁹

- (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

¹⁴⁹ Subsection (8) repealed and replaced by No. 7 of 2010, s.48(b).

arriving in Papua New Guinea, being passengers or crew members who have attained the age of 20 years; or

- (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.¹⁵⁰

- (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).

(3) An aircraft arriving in Papua New Guinea from outside Papua New Guinea or an aircraft departing from Papua New Guinea for a place outside of Papua New Guinea that -

- (a) lands on; or
- (b) takes off from,

an aerodrome not designated as an international airport under Subsection (1) is guilty of an offence.

Penalty: Where a person convicted of an offence is -

- (a) a corporation - 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 two years or both.¹⁵¹

¹⁵⁰ Ibid, amended, s.49.

¹⁵¹ Ibid, new subsection, s.50.

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 CASA, NAC and PNG ASL¹⁵² on the impact of making such a designation, with particular regard to the requirements and the cost of providing to international air services -¹⁵³

- (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 Subsections (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 CASA, NAC, PNG ASL 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.¹⁵⁴

(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.

¹⁵² Note, PNG ASL is "Papua New Guinea Air Services Ltd." as defined in Section 3.

¹⁵³ Subsection (2) amended by No. 7 of 2010, s.51(a).

¹⁵⁴ Ibid, amended, s.51(b).

(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. - PAPUA NEW GUINEA AIR SERVICES LTD.¹⁵⁵

143. INCORPORATION OF PAPUA NEW GUINEA AIR SERVICES LTD.¹⁵⁶

(1) A company has been incorporated 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) In furtherance of its principal air traffic services, aeronautical communications services and aeronautical navigation services functions under Section 143(1), the functions of the PNG ASL shall include any function delegated by any person or authority duly authorised by this Act or any other law to delegate those functions.

(3) The Company referred to in Subsection (1) shall be called “Papua New Guinea Air Services Ltd” (PNG ASL) or, subject to the approval of the Registrar of Companies, such other name as the Board of PNG ASL or the Minister may decide, from time to time.

(4) The Board of Directors of PNG ASL shall comprise -

- (a) the Managing Director; *ex officio*; and
- (b) two directors, one representing the Department responsible for finance matters and the other representing the Department responsible for transport matters appointed by the Minister on the recommendation of the Departmental Heads; *ex officio*; and

¹⁵⁵ Heading of Part IX repealed and replaced by No. 7 of 2010, s.52.

¹⁵⁶ Ibid, repealed and replaced, s.53.

- (c) two directors appointed by the Minister after undertaking a selection process to identify suitable candidates in accordance with the procedures for appointment and revocation of appointment of officers of statutory authorities under the ***Regulatory Statutory Authorities (Appointment of Certain Officers) Act 2004***.

(5) The directors of PNG ASL shall elect one of the directors appointed under Subsection 4(c) to be the Chairman and the other to be the Deputy Chairman of PNG ASL.

(6) PNG ASL shall operate independently and no person other than the Minister and 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 ASL to any other person upon such terms and conditions as they think fit.

(7) No director or employee of PNG ASL shall be personally liable for any liability of PNG ASL, or for any act done or omitted by PNG ASL, or by the chief executive of PNG ASL or any other employee of PNG ASL in good faith in pursuance or intended pursuance of the functions or powers of PNG ASL.

(8) The company, the board, each director, and each shareholder of PNG ASL shall have the rights, powers, duties, and obligations set out in the ***Companies Act 1997*** and any constitution subsequently adopted by PNG ASL shall be consistent with the objects and functions of PNG ASL set out in this Act.

143B. LEAVE OF ABSENCE OF DIRECTORS OF THE BOARD.¹⁵⁷

(1) A director shall in writing notify the Minister that he will not be available for a scheduled meeting of the Board.

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

(3) Unless the Minister grants leave of absence to a director under Subsection (2), the director shall be deemed absent from the scheduled Board meeting.

(4) A director who is absent from three consecutive scheduled meetings of the Board shall be dismissed by the Minister.

¹⁵⁷ Section 143B added by No. 62 of 2022, s.3.

Note: Section 143A repealed by No. 62 of 2022, s.2.

143C. RESIGNATION FROM OFFICE.¹⁵⁸

A director appointed under Section 143(4)(c) may resign from office by written notice to the Minister.

143D. VACATION OF OFFICE.¹⁵⁹

- (1) If a director who is appointed under Section 143(4)(c) -
- (a) dies or is permanently incapable of performing his duties; or
 - (b) resigns from office under Section 143C; or
 - (c) he is absent from three consecutive meetings of the Board, without obtaining special leave of absence granted by the Minister under Section 143B; or
 - (d) he becomes bankrupt or makes any assignment or composition with his creditors generally; or
 - (e) he is convicted of a criminal offence in Papua New Guinea or in any other jurisdiction,

the Minister shall terminate his appointment.

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

(3) Within seven days of the receipt of a notice under Subsection (2), the director may reply in writing to the Minister who shall consider the reply and where appropriate proceed to recommend the termination of the appointment.

(4) Where a Director is given notice under Subsection (2) fails to reply in accordance with Subsection (3), his appointment is deemed terminated.

(5) Where the appointment of the Director is terminated under Subsection (4), the Minister shall request the interest group of the terminated director to nominate a candidate to fill the vacancy.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

143E. APPOINTMENT OF MANAGING DIRECTOR.¹⁶⁰

- (1) There shall be a Managing Director who is the chief executive officer of the Company.
- (2) The Managing Director shall be appointed -
 - (a) under the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*; and
 - (b) for a term of three years and is eligible for re-appointment subject to his performance in accordance with this contract of employment.
- (3) The terms and conditions of the Managing Director shall be as determined by the National Executive Council and contained in a written contract of employment which shall be signed by the Minister and by the Managing Director.
- (4) The person considered for appointment as Managing Director shall -
 - (a) be the holder of an academic degree in a field from an accredited university that is recognised by the department responsible for higher education, and considered by the Public Service Commission to be related to the position; and
 - (b) have at least 10 years practical experience in a field considered by the Public Service Commission to be related to the position, at least five of which were in an executive managerial capacity equivalent to head or deputy head level of a reputable organisation; and
 - (c) be a fit and proper person -
 - (i) by passing the fit and proper person test prescribed under Section 50; and
 - (ii) by obtaining a medical clearance from a certified medical practitioner; and
 - (iii) by obtaining a police clearance.
- (5) The Managing Director shall be terminated if he -
 - (a) fails one of the requirements under Subsection (4)(c); or
 - (b) becomes incapable of performing his duties; or
 - (c) other than with written consent of the Minister, engages in any paid employment or carries on business outside the duties of his office; or
 - (d) becomes bankrupt, applies for the relief of the law for bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
 - (e) is convicted of an offence that is punishable by law with a sentence for imprisonment; or

¹⁶⁰ Ibid.

- (f) ceases to be ordinarily resident in the country; or
- (g) commits an offence against this Act.

143F. APPOINTMENT OF ACTING MANAGING DIRECTOR.¹⁶¹

(1) In the interest of the aviation sector, the Minister shall suspend the Managing Director, with or without cause, if -

- (a) the Managing Director is absent from duty (from whatever cause arising); or
- (b) there is a vacancy (whether by reason of death, resignation, or otherwise); or
- (c) from time to time while the absence or vacancy continues,

and appoint a senior person in the company in terms of the number of years he has worked in the company or a suitable person to act in the position.

(2) The process of appointment under Section 143E is not applicable to Subsection (1).

(3) The appointment made under Subsection (1) shall be for a maximum period of three months and shall be published in the National Gazette.

(4) Any extension of the period prescribed under Subsection (3) shall be made in accordance with Section 143E.

143G. CHAIRMAN AND DEPUTY CHAIRMAN.¹⁶²

(1) The Chairman of the Board shall be appointed by the National Executive Council from among the independent members appointed under Section 143(4)(c).

(2) The Deputy Chairman shall be appointed from among the independent directors appointed under Section 143(4)(c) by the members of the Board.

144. SOLE PROVIDER.

(1) Subject to Subsection (3), after the commencement of this Act, no person other than PNG ASL 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; and
- (b) approach control services; and
- (c) area flight information services; and
- (d) aerodrome control services.

(2) Nothing in this section shall apply to aerodrome flight information services.

¹⁶¹ Section 143F added by No. 62 of 2022, s.3.

¹⁶² Ibid.

(3) Subject to obtaining the consent of -

- (a) the Minister; and
- (b) the Director as to safety aspects,

PNG ASL 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 ASL 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 ASL 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 ASL, 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 ASL for exempt flights and the amount of compensation shall be equivalent to the sum which would have been charged by PNG ASL to those flight's as if they had not been exempted from charges.

146. TELECOMMUNICATIONS.

(1) Notwithstanding any of the provisions of the *National Information and Communications Technology Act 2009*, PNG ASL is authorised to provide for any of the following:¹⁶³

- (a) telecommunications services utilising line links and reserved link lines; or
- (b) telecommunications services utilising satellite links and satellite based facilities; and¹⁶⁴
- (c) telecommunications services utilising microwave links and microwave facilities.

(2) PNG ASL shall be entitled to supply the services described in Subsection (1) under a licence(s) to be granted by NICTA pursuant to the *National Information and Communications Technology Act 2009*, and upon payment of the prescribed fees.¹⁶⁵

¹⁶³ Subsection (1) amended by No. 33 of 2016, s.26(a).

¹⁶⁴ Paragraph (b) amended by No. 7 of 2010, s.55.

¹⁶⁵ Subsection (2) amended by No. 33 of 2016, s.26(b).

147. ANNUAL REPORT.

(1) PNG ASL 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 ASL 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.

147A. INCORPORATION OF NATIONAL AIRPORTS CORPORATION LTD., BY MINISTERS.¹⁶⁶

(1) A company has been incorporated pursuant to Section 132 under the *Companies Act 1997* for the purpose of owning, operating, managing and maintaining airports and providing all related services in Papua New Guinea.

(2) The company referred to in Subsection (1) is called “National Airports Corporation Ltd.” (NAC) or, subject to the approval of the Registrar of Companies, such other name as the Ministers and the shareholders may decide from time to time.

(3) In furtherance of its principal airport function under Subsection (1), the functions of NAC shall include any function as determined by the shareholders and included in its constitution approved by the Registrar of Companies.

(4) The board of directors of the National Airports Corporation Limited shall have seven members comprising -

- (a) the Managing Director of National Airports Corporation, *ex officio*; and
- (b) the Departmental Head of the Department responsible for transport matters or his nominee, *ex officio*; and
- (c) the Departmental Head of the Department responsible for treasury matters or his nominee, *ex officio*; and
- (d) one independent director representing the aviation industry nominated by the industry; and
- (e) one independent director representing the business community nominated by the Papua New Guinea Chamber of Commerce and Industry; and
- (f) one independent director representing the tourism industry nominated by the Tourism Promotion Authority; and

¹⁶⁶ Section 147A added by No. 7 of 2010, s.56.

- (g) one independent director representing the shareholders being a person who has sufficient experience and knowledge in the aviation sector and who has a high reputable standing in the business community and can contribute to the delivery of aviation services in Papua New Guinea.¹⁶⁷

(5) The Minister shall advise the industry organisations or body referred to in Subsection (4)(d), (e) and (f) in the event of a vacancy or where a vacancy is likely to occur in the position of a director representing the particular industry or body.¹⁶⁸

(5A) Upon receipt of the advise of vacancy, an industry organisation or body referred to in Subsection (4)(d), (e) and (f) shall provide to the Minister, a list of three persons nominated for

appointment as a director and the alternate, within 21 days or such other period as determined by the Minister.¹⁶⁹

(5B) In the case where an industry organisation or body referred to in Subsection (4)(d), (e) and (f) is unable for any reason to provide a list of three persons to the Minister within 21 days, the Minister shall take reasonable steps to consult widely with industry participants, as he considers appropriate.¹⁷⁰

(5C) The Minister shall submit to the National Executive Council a list of directors and the alternates under Subsection (4)(f), (g) and (h) in accordance with the procedures for appointment and revocation of directors of statutory authorities under the ***Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004***.¹⁷¹

(6) No person other than the Minister and 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 the company to any other person on such terms and conditions as they think fit.

(7) No director or employee of the company shall be personally liable for any liability of the company, or for any act done or omitted by the company, or by the chief executive of the company or any other employee of the company in good faith in pursuance or intended pursuance of the functions or powers of the company.

¹⁶⁷ Subsection (4) repealed and replaced by No. 33 of 2016, s.27(a).

¹⁶⁸ Subsection (5) repealed and replaced by No. 33 of 2016, s.27(b).

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

(8) The term of appointment of all independent directors to the Board of NAC shall be four years.¹⁷²

(8A) A minimum period of four years separation shall apply before a person shall be available for reappointment as a director unless the Minister waives this requirement, in the interest of NAC.¹⁷³

(9) The company, the board, each director, and each shareholder of the company shall have the rights, powers, duties, and obligations set out in the *Companies Act 1997* and the company's constitution approved by the Registrar of Companies consistent with the objects and functions of the NAC as set out in this Act.

147AB. CHAIRMAN AND DEPUTY CHAIRMAN.¹⁷⁴

(1) The Chairman of the Board shall be appointed by the National Executive Council from among the independent members appointed under Section 147A(4)(d), (e), (f) and (g).

(2) The Deputy Chairman shall be appointed from among the independent directors appointed under Section 147A(4)(d), (e), (f) and (g) by the members of the Board.

147AC. LEAVE OF ABSENCE OF DIRECTORS OF THE BOARD.¹⁷⁵

(1) A director shall in writing notify the Minister that he will not be available for a scheduled meeting of the Board.

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

(3) Unless the Minister grants leave of absence to a director under Subsection (2), the director shall be deemed absent from the scheduled Board meeting.

(4) A director who is absent from three consecutive scheduled meetings of the Board shall be dismissed by the Minister.

147AD. RESIGNATION OF INDEPENDENT DIRECTORS.¹⁷⁶

An independent director under Section 147A(4)(d), (e), (f) and (g) may resign from office by written notice to the Minister.

¹⁷² Ibid, repealed and replaced, s.27(c).

¹⁷³ Ibid, new subsection.

¹⁷⁴ Ibid, new section, s.28.

¹⁷⁵ Section 147AC added by No. 65 of 2022.

¹⁷⁶ Ibid.

147AE. VACATION OF OFFICE BY INDEPENDENT DIRECTORS.¹⁷⁷

- (1) If an independent director under Section 147A(4)(d), (e), (f) and (g) -
 - (a) dies or is permanently incapable of performing his duties; or
 - (b) resigns from office; or
 - (c) is absent from three consecutive meetings of the Board, without obtaining special leave of absence granted by the Minister; or
 - (d) becomes bankrupt or makes any assignment or composition with his creditors generally; or
 - (e) is convicted of a criminal offence in Papua New Guinea or in any other jurisdiction,

the Minister shall terminate his appointment.

(2) The Minister may, at any time, by written notice, advise an independent director that he intends to terminate the appointment of the independent director on the grounds of inability, non-performance or misbehaviour.

(3) Within seven days of the receipt of a notice under Subsection (2), the independent director may reply in writing to the Minister who shall consider the reply and where appropriate proceed to recommend the termination of the appointment.

(4) Where an independent director is given notice under Subsection (2) fails to reply in accordance with Subsection (3), his appointment is deemed terminated.

(5) Where the appointment of the independent director is terminated under Subsection (4), the Minister shall request the interest group of the terminated director to nominate a candidate to fill the vacancy.

147AF. APPOINTMENT OF MANAGING DIRECTOR.¹⁷⁸

(1) There shall be a Managing Director who is the chief executive of the Company who shall be appointed in accordance with the procedures for the appointment, suspension and revocation of appointment of chief executive officers of Regulatory Statutory Authorities under the *Regulatory Statutory Authorities (Appointment to Certain Offices) Act 2004*.

(2) The Managing Director shall be appointed for a term of three years and is eligible for re-appointment subject to his performance in accordance with his contractual provisions.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid.

(3) The terms and conditions of the Managing Director shall be as determined by the National Executive Council and contained in a written contract of employment which shall be signed by the Minister and by the Managing Director.

- (4) The person considered for appointment as Managing Director shall -
- (a) be the holder of an academic degree in a field, considered by the Public Service Commission to be related to the position, from an accredited university that is recognised by the department responsible for higher education; and
 - (b) has at least 10 years practical experience in a field considered by the Public Service Commission to be related to the position, at least five of which were in an executive managerial capacity equivalent to head or deputy head level of a reputable organisation; and
 - (c) be a fit and proper person, which includes -
 - (i) passing the fit and proper person test prescribed under Section 50 of the Act; and
 - (ii) medical clearance from a certified medical practitioner; and
 - (iii) police clearance.
- (5) The Managing Director shall be terminated if he -
- (a) fails one of the requirements under Subsection (4)(c); or
 - (b) becomes incapable of performing his duties; or
 - (c) other than with written consent of the Minister, engages in any paid employment or carries on business outside the duties of his office; or
 - (d) becomes bankrupt, applies for the relief of the law for bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his salary for their benefit; or
 - (e) is convicted of an offence that is punishable by law with a sentence of imprisonment; or
 - (f) ceases to be ordinarily resident in the country; or
 - (g) commits an offence against this Act.

147AG. APPOINTMENT OF ACTING MANAGING DIRECTOR.¹⁷⁹

(1) In the interest of the Aviation Sector, the Minister shall suspend the Managing Director, with or without cause, if -

- (a) the Managing Director is absent from duty (from whatever cause arising); or
- (b) there is a vacancy (whether by reason of death, resignation, or otherwise); or

¹⁷⁹ Section 147AG added by No. 65 of 2022.

(c) from time to time while the absence or vacancy continues, and appoint a senior person in the company in terms of the number of years he has worked in the company or a suitable person to act in the position.

(2) The appointment process under Section 147AF is not applicable to Subsection (1).

(3) The appointment made under Subsection (1) shall be for a maximum period of three months and shall be published in the National Gazette.

(4) Any extension of the period prescribed under Subsection (3) shall be made in accordance with Section 147AF.

147B. NATIONAL AIRPORT CORPORATION LTD.¹⁸⁰

(1) The National Airport Corporation Ltd. is a company incorporated under the *Companies Act 1997* pursuant to Section 132 of this Act.

(2) Subject to Subsection (4), after the commencement date of the amendment to this Act as declared by the Minister, no person other than the NAC shall provide the following services in respect of Papua New Guinea airports -

- (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 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 contract for the management and operations of the airport; and
- (h) set charges as an aviation service provider in accordance with this Act; 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 Company; and

¹⁸⁰ Section 147B added by No. 7 of 2010, s.56.

- (k) develop policies and corporate strategies directed to achieve the greatest benefit to the State and the people of Papua New Guinea.

(3) Nothing in this section shall apply to aerodrome flight information services.

(4) Subject to obtaining the consent of -

(a) the Minister; and

(b) the Director as to safety aspects,

the NAC may contract with any other person for the provision of airport services in Papua New Guinea.

(5) Subject to obtaining the consent of the Director as to safety aspects, the NAC may consent in, writing, to any other person providing airport services in Papua New Guinea in the event that the NAC is unable to for any reason.

147C. POWER TO EXEMPT CERTAIN FLIGHTS FROM FEES.¹⁸¹

(1) The Minister may, by notice in the National Gazette, after consulting with NAC, exempt flights of a particular class from payment of fees for the use of airport services.

(2) The Minister shall, with the concurrence of the Minister responsible for finance matters, out of moneys appropriated by Parliament, compensate NAC for exempt flights and the amount of compensation shall be equivalent to the sum which would have been charged by NAC to those flights as if they had not been exempted from charges.

147D. ANNUAL REPORT.¹⁸²

(1) The company shall submit to the Minister an annual report, including the audited and approved financial statements endorsed by the board 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 airport service customers of the NAC who operated scheduled services within or to and from Papua New Guinea.

(3) A copy of the annual report shall be supplied to other airport service users on request.

¹⁸¹ Ibid, new section, s.56.

¹⁸² Ibid.

147E. PAYMENT TO CASA BY NAC AND PNG ASL.¹⁸³

(1) As from the commencement date of the amendment to this Act as declared by the Minister, the NAC and PNG ASL shall pay to CASA a percentage, as prescribed in Subsection (3), of all annual income earned from -

- (a) international terminal facility charges; and
- (b) domestic terminal facility charges; and
- (c) security levy; and
- (d) aeronautical charges.

(2) The payments shall be made -

- (a) for each passenger; and
- (b) at the end of each calendar month; and
- (c) no later than fourteen days after the payment has been received from the operator.

(3) The percentages shall be paid by the NAC and PNG ASL as follows:

- (a) the NAC -
 - (i) fifteen percent of international terminal facility charges; and
 - (ii) ten percent of domestic facility charges; and
 - (iii) ten percent of security levy; and
- (b) the PNG ASL shall pay ten percent of aeronautical charges for upper airspace.

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 unlawful interference; and¹⁸⁴
- (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 authorised 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.

¹⁸³ Ibid.

¹⁸⁴ Note, s.57 of No. 7 of 2010 amended Paragraph (a), *semble*, the correct reference is Paragraph (b).

149A. POWERS AND DUTIES OF MINISTER TO REQUIRE SCREENING, SEARCHING AND SEIZING.¹⁸⁵

(1) The Minister may, if the Minister considers necessary to improve or enhance aviation security to enable Papua New Guinea to be part of a concerted international response to a risk to aviation security, or if the Minister considers it is in the public interest or national interest to do so, direct an aviation security service provider, in writing to -

- (a) screen -
 - (i) any person boarding an aircraft; or
 - (ii) anything to be carried on an aircraft; or
 - (iii) any person, item or substance -
 - (A) before the person, item or substance enters a sterile area; or
 - (B) present in a sterile area; or
 - (iv) any person, item, substance or vehicle -
 - (A) before the person, item, substance or vehicle enters an enhanced security area; or
 - (B) present in an enhanced security area; or
 - (v) any unattended item, substance or vehicle in an enhanced security area; and
- (b) if necessary, undertake reasonable searches of -
 - (i) any person boarding an aircraft; or
 - (ii) anything to be carried on an aircraft; or
 - (iii) any (as specified in the direction) -
 - (A) aircraft or class of aircrafts; or
 - (B) aerodrome or class of aerodromes; or
 - (C) navigation installation or class of navigation installations; or
 - (iv) any person, item, substance or vehicle -
 - (A) before the person, item, substance or vehicle enters a sterile area; or
 - (B) present in a sterile area; or
 - (v) any person, item, substance or vehicle -
 - (A) before the person, item, substance or vehicle enters an enhanced security area; or
 - (B) present in an enhanced security area; or
 - (vi) any unattended item, substance or vehicle in an enhanced security area; and
- (c) seize any item or substance specified in the directive if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.

¹⁸⁵ Section 149A added by No. 33 of 2016, s.29.

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- (2) An aviation security service provider directed under Subsection (1) shall screen and search for any item or substance specified in the directive.
- (3) Before directing an aviation security provider under Subsection (1), the Minister shall consult -
- (a) the Director; and
 - (b) as the Minister, in each case considers appropriate and practical, other Ministers, representative groups in the aviation industry, government departments or State agencies.
- (4) A directive issued by the Minister under Subsection (1) shall take effect on the date specified in the notice.
- (5) The Minister may give a verbal directive, if the Minister -
- (a) considers on reasonable grounds that urgent action is required; and
 - (b) has consulted the Director before giving that directive; and
 - (c) has notified all affected parties (other than persons boarding an aircraft).
- (6) A directive under Subsection (1) shall take effect on a date specified and expires 90 days after that date unless the Minister, after complying with Subsection (3)(a) and (b), extends the period for a further specified period not exceeding 90 days (the total aggregate period not exceeding 180 days).
- (7) A directive under Subsection (5) shall expire within one day unless the Minister, after complying with Subsection (3)(a) and (b), extends the period by written direction under Subsection (1) for a further specified period not exceeding the total aggregate period of 180 days in Subsection (6).
- (8) Despite Subsection (6), if the Minister has reasonable grounds to believe that there is a real or perceived risk to the national security interests of Papua New Guinea from persons or groups using air transport, the Minister may direct, in writing, that screening and searches shall be conducted for a period not exceeding the total aggregate period of 180 days.
- (9) No directive issued under Subsection (1) is a rule for the purposes of Part VI.
- (10) Nothing in this section empowers the Minister to exercise the Director's powers under Section 149B.

149B. POWERS AND DUTIES OF DIRECTOR TO REQUIRE SCREENING, SEARCHING, AND SEIZING.¹⁸⁶

(1) The Director may, if the Director believes on reasonable grounds that a security risk exists, direct an aviation security service provider, in writing to -

- (a) screen:
 - (i) any person boarding an aircraft; or
 - (ii) anything to be carried on an aircraft; or
 - (iii) any person, item or substance -
 - (A) before the person, item or substance enters a sterile area; or
 - (B) present in a sterile area; or
 - (iv) any person, item, substance or vehicle -
 - (A) before the person, item, substance or vehicle enters an enhanced security area; or
 - (B) present in an enhanced security area; or
 - (v) any unattended item, substance or vehicle in an enhanced security area; and
- (b) if necessary, undertake reasonable searches of -
 - (i) any person boarding an aircraft; or
 - (ii) anything to be carried on an aircraft; or
 - (iii) any (as specified in the direction) -
 - (A) aircraft or class of aircrafts; or
 - (B) aerodrome or class of aerodromes; or
 - (C) navigation installation or class of navigation installations; or
 - (iv) any person, item, substance or vehicle -
 - (A) before the person, item, substance or vehicle enters a sterile area; or
 - (B) present in a sterile area; or
 - (v) any person, item, substance or vehicle -
 - (A) before the person, item, substance or vehicle enters an enhanced security area; or
 - (B) present in an enhanced security area; or
 - (vi) any unattended item, substance or vehicle in an enhanced security area; and
- (c) seize any item or substance specified in the directive if the aviation security officer has reasonable grounds to believe that there is no lawful authority or reasonable excuse for the item or substance to be carried on an aircraft.

(2) An aviation security service provider directed under Subsection (1) shall screen and search for any item or substance specified in the directive.

¹⁸⁶ Ibid.

(3) Before directing an aviation security provider under Subsection (1), the Director shall determine whether or not, the directive is necessary to meet the security risk and consult, as the Director, in each case, considers appropriate and practical, representative groups in the aviation industry, government departments or State agencies.

(4) A directive under Subsection (1) shall take effect on the date specified in the notice.

(5) The Director may give a verbal directive, if the Director -

(a) considers on reasonable grounds that urgent action is required; and

(b) has notified all affected parties (other than persons boarding an aircraft),
before giving the verbal directive.

(6) A directive given under Subsection (1) shall take effect on a date specified and expires 90 days after that date unless the Director, after complying with Subsection (5)(b), extends the period for a further specified period not exceeding 90 days (the total aggregate period not exceeding 180 days).

(7) Despite Subsection (6), if the Director has reasonable grounds to believe that there is a real or perceived risk to aviation security in connection with elements of trans-national crime or suchlike, the Director may direct, in writing, that screening and searches be conducted for an indefinite period until the direction is rescinded by the Director.

(8) A directive under Subsection (5) shall expire within one day unless the Director, after complying with Subsection (5)(b), extends the period by written notice, for a further specified period not exceeding the total aggregate period of 180 days in Subsection (6).

(9) No directive issued under Subsection (1) is a rule for the purposes of Part VI.

149C. DIRECTIVES NOT TO INCLUDE SECURITY SENSITIVE INFORMATION.¹⁸⁷

(1) A directive issued under Section 149A(1) or 149B(1) in relation to enhanced security areas shall not include security sensitive information.

(2) For the purposes of this section, “security sensitive information” means information that would prejudice the national security interests of Papua New Guinea if disclosed.

¹⁸⁷ Ibid.

149D. TRANSITIONAL PROVISIONS FOR SCREENING.¹⁸⁸

(1) A directive under Section 149B(1) requiring the screening of domestic aircraft passenger services made by the Director before the coming into operation of this provision continues in force until the date published by the Head of State bringing this provision into operation, on which date the directive expires.

(2) The Director may rescind the directive before this provision comes into operation in accordance with the provisions of this Act.

(3) A person carrying out the screening of domestic aircraft passenger services under a directive made before the coming into operation of this provision may continue to carry out that screening (or search in accordance with such a directive) until the date published by the Head of State bringing this provision into operation, on which date he ceases to provide the service.

149E. POWERS AND DUTIES OF DIRECTOR RELATING TO BACKGROUND SECURITY CHECKS.¹⁸⁹

(1) The Director may carry out a background security check of a person who falls within a category of persons specified in the rules as requiring a background security check if -

- (a) the background security check is for the purpose of determining whether the person poses a risk to aviation security; and
- (b) the person consents.

(2) If a person refuses consent to a background security check under Subsection (1), the person shall not be granted any authorisation under the rules if the rules require a favourable background security check determination.

(3) The Director may grant a favourable background security check determination if the Director decides that the person has undergone an alternative background security check that is acceptable to the Director.

(4) For the purpose of determining whether a person poses a threat to aviation security, the Director may -

- (a) seek and receive any information that the Director considers relevant, including, but not limited to, a recommendation made by the Papua New Guinea National Intelligence Organisation or the Commissioner of Police; and
- (b) give weight to any component of the information as the Director considers appropriate in the circumstances.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid.

(5) If the Director determines that a person does not pose a risk to aviation security, the Director shall advise the person of the favourable background security check determination.

(6) The Director may reconsider any previous background security check determination that the Director has made if -

- (a) new information is made available; or
- (b) the Director has reason to believe that the person may pose a risk to aviation security.

(7) If the Director proposes to reconsider any previous background security check determination, the Director shall -

- (a) advise the person to whom the background security check determination relates, that the Director is reconsidering that determination; and
- (b) complete the reconsideration of that determination within 21 working days of advising the person under Paragraph (a); and
- (c) if reconsideration results in an adverse background security check determination or a proposed adverse background security check determination, initiate the review process set out in Section 149F; and
- (d) if a favourable background security check determination is required for any previous authorisation granted to the person under the rules, withdraw that authorisation for -
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under Section 149F; and
- (e) if a favourable background security check determination is required for any previous authorisation granted to the person by any other entity, require that entity to withdraw the authorisation for -
 - (i) the period of the reconsideration; and
 - (ii) any subsequent review period under Section 149F.

(8) Nothing in this section limits the power of the Director to grant an exemption under Section 79.

149F. REVIEW PROCEDURES FOR BACKGROUND SECURITY CHECK DETERMINATIONS.¹⁹⁰

(1) If the Director makes an adverse background security check determination with respect to a citizen based on a recommendation made by the Papua New Guinea National Intelligence Organisation or the Commissioner of Police, the Director shall advise the citizen of the adverse background security check determination and of the person's right of appeal under Section 310.

¹⁹⁰ Ibid.

(2) If the Director proposes to make an adverse background security check determination with respect to a person based on information other than a recommendation made by the Papua New Guinea National Intelligence Organisation or the Commissioner of Police, the Director shall -

- (a) advise the person of the proposed determination and the reasons for the proposed determination; and
- (b) give the person written notice that, within 21 working days of the date of the notice, the person may -
 - (i) seek legal advice or assistance with respect to the proposed determination; and
 - (ii) respond to, comment on, or make submissions on the proposed determination; and
 - (iii) provide new information relevant to the proposed determination; and
- (c) give the person notice of the date on which the proposed determination is, unless the Director decides otherwise, to be made (which shall be a date that is as soon as practicable) after the expiry of the 21 working day period referred to in Paragraph (b); and
- (d) consider any response, comment, submission or new information that the person provides, along with the information on which the proposed determination was made; and
- (e) make a final determination and inform -
 - (i) the person of the final determination and the reasons for the final determination; and
 - (ii) any other affected party of the final determination but not the reasons for the final determination.

(3) If the Director proposes to make an adverse background security check determination based on a recommendation made by the Papua New Guinea National Intelligence Organisation or the Commissioner of Police and on information other than that recommendation, the Director shall -

- (a) follow the procedure set out in Subsection (2) with respect to the information other than the recommendation and advise the person that the proposed determination is based on -
 - (i) a recommendation made by the Papua New Guinea National Intelligence Organisation or the Commissioner of Police; and
 - (ii) information other than the recommendation; and
- (b) then follow the procedure set out in Subsection (1) with respect to the recommendation if -
 - (i) the Director is satisfied that the information other than the recommendation is no longer sufficient to support an adverse background security check determination; and
 - (ii) the person is a citizen.

- (4) If the Director makes a final adverse background security check determination, the Director shall -
- (a) revoke any authorisation granted to the person by the Director under the rules, if a favourable background security check determination is required under the rules for the authorisation; and
 - (b) require any other entity to revoke any authorisation granted to the person, if a favourable background security check determination is required under the rules for the authorisation.
- (5) For the purposes of this section -
- “citizen” means a person who is either an automatic or naturalised citizen of Papua New Guinea;
 - “Commissioner of Police” means the person, for the time being, who is the head of the Police Force;
 - “Papua New Guinea National Intelligence Organisation” means the organisation that is responsible for investigating and advising the National Government on security issues affecting or likely to affect Papua New Guinea.

149G. OFFENCE TO CARRY OUT ACTIVITY WHILE AUTHORISATION WITHDRAWN OR AUTHORISATION REVOKED.¹⁹¹

- (1) A person who carries out an activity that requires an authorisation -
- (a) during a period when that authorisation has been withdrawn under Section 149E(7)(d) or (e); or
 - (b) if that authorisation has been revoked under Section 149F(4),
- commits an offence.
- (2) A person who commits an offence under Subsection (1) is liable, on conviction, to a fine not exceeding K15,000.00.

149H. OFFENCE TO FAIL TO COMPLY WITH DIRECTOR’S REQUIREMENT TO WITHDRAW OR REVOKE AUTHORISATION.¹⁹²

- (1) A person who fails, without reasonable excuse, to comply with the Director’s requirement to -
- (a) withdraw an authorisation under Section 149E(7)(e); or
 - (b) revoke an authorisation under Section 149F(4)(b),
- commits an offence.

¹⁹¹ Ibid.

¹⁹² Ibid.

(2) A person who commits an offence under Subsection (1) is liable, on conviction, to a fine not exceeding K25, 000.00.

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 (2) shall comply with the relevant prescribed requirements and standards.¹⁹³

151. MINISTER MAY DESIGNATE AVIATION SECURITY SERVICE AS SOLE PROVIDER.

(1) Despite 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) Despite 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.

¹⁹³ Subsection (3) amended by No. 7 of 2010, s.58.

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; and
- (b) to carry out aerodrome security patrols and patrols of navigation installations; and
- (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; and
- (d) to undertake and encourage and supervise such experimental or research work in respect of any aspect of aviation security as the Director may specify; and¹⁹⁴
- (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 organisation; and
- (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.

¹⁹⁴ Ibid, amended, s.59.

(2) A designation under Subsection (1) may at any time be revoked, in whole or in part, or amended by the Minister, by notice in the National Gazette.¹⁹⁵

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-forceful 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 AREAS.

(1) The Director may declare, by a sign or signs affixed at the perimeter of a designated aerodrome or a designated navigation installation, 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 authorised 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.

¹⁹⁵ Ibid, amended, s.60.

(4) Where a person -

- (a) fails or refuse 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 authorised 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 authorised 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 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.¹⁹⁶

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).

¹⁹⁶ Subsection (3) amended by No. 7 of 2010, s.61.

(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 CASA 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; and
 - (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; and
 - (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 (i) 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; and
 - (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; and

- (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; and
- (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 authorise the licensee to carry on the domestic air service specified in the licence subject to and in accordance with the provisions¹⁹⁷.

(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

¹⁹⁷ *Semble*, provisions of this Act.

(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 authorised 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 have effect on such day, whether before or after the date, as may be stated in the licence 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 the 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 stated above.

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; or
- (b) cancel any conditions imposed under Subsection 8(b) or modify it so that it is less onerous.¹⁹⁸

(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 Court named in the order and shall be enforceable in all respects as a final judgment of that Court in its civil jurisdiction.¹⁹⁹

170. APPEALS FROM DECISIONS OF DEPARTMENTAL HEAD.

(1) There shall be a right of appeal to the National Court by 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 revocation or imposition of a condition by him.²⁰⁰

(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.

¹⁹⁸ Paragraph (b) amended by No. 7 of 2010, s.62.

¹⁹⁹ Ibid, amended, s.63.

²⁰⁰ Ibid, amended, s.64.

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 XII. - INTERNATIONAL AIR SERVICES AND TARIFFS.²⁰¹

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.

²⁰¹ Part XII repealed and replaced by No. 7 of 2010, s.65.

(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; and
- (b) Government policy; and
- (c) the safety and security requirements of the Director; and
- (d) the financial ability of the applicant to carry on the proposed service; and
- (e) the likelihood of the applicant carrying on the proposed service satisfactorily; and
- (f) any written representations received by the Minister in relation to the application; and
- (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); and
- (h) the applicant's liability for loss 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 shall 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 Departmental 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 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; and
- (b) the safety and security requirements of the Director; and
- (c) such other matters as the Departmental Head considers 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 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 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 licenses 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; and
- (b) the safety and security requirements of the Director; and
- (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 AUTHORISATION.

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 authorisation under Section 201.

Division 5. - Non-scheduled International Flights.

201. NON-SCHEDULED INTERNATIONAL FLIGHTS NOT TO BE OPERATED EXCEPT AS AUTHORISED 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 authorised 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.

201A. NON-SCHEDULED FLIGHTS BY FOREIGN REGISTERED AIRCRAFT.²⁰²

(1) Despite anything in Section 201, if CASA considers that a foreign registered aircraft possessing the nationality of a Contracting State intends, in the course of a non-scheduled flight

²⁰² Section 201A added by No. 33 of 2016, s.30.

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over Papua New Guinea territory, to proceed over regions that are inaccessible or without adequate air navigation facilities, CASA may direct -

- (a) that the aircraft follow an established air route; or
- (b) that the flight be conducted in accordance with conditions specified by CASA.

(2) Where a foreign registered aircraft possessing the nationality of a Contracting State makes a non-scheduled flight into Papua New Guinea territory, it shall not take on or discharge passengers, cargo or mail in Papua New Guinea territory (being passengers, cargo or mail carried, or to be carried, for reward) except with the permission of CASA and in accordance with any conditions to which the permission is subject.

(3) A foreign registered aircraft, not possessing the nationality of a Contracting State, shall not make a non-scheduled flight over or into Papua New Guinea territory except with the permission of CASA and in accordance with any conditions to which the permission is subject.

(4) If a person applies to CASA for a permission under Subsection (2) or (3), CASA shall grant the permission if CASA is satisfied that the person has complied with, or is capable of complying with -

- (a) the condition referred to in Paragraph (5)(a) (if applicable); and
- (b) in any case - the safety rules.

(5) A permission granted under Subsection (2) or (3) is subject to -

- (a) the condition that Section 49 of the ***Civil Aviation (Aircraft Operators' Liability) Act*** (Chapter 292) (which deals with compulsory insurance) is complied with (if applicable); and
- (b) any conditions specified in the permission.

(6) CASA shall not do either of the following, except to ensure compliance with the safety rules -

- (a) specify a condition under Paragraph (5)(b); or
- (b) vary a condition specified under Paragraph (5)(b).

(7) CASA shall not suspend or cancel a permission granted under Subsections (2) or (3), except -

- (a) if the condition referred to in Paragraph (5)(a) is not complied with; or
- (b) to ensure compliance with the safety rules.

(8) All directions or permissions issued under this section by CASA shall be in writing signed by the Director or a person exercising delegated authority under Section 43.

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 authorised by the licence is not commenced on the date specified in the licence; or
- (b) the Minister is satisfied that the service authorised by the licence is not being carried on in conformity with the terms and conditions of the licence; or
- (c) the service authorised 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 to the international agreement) 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, the Departmental Head may on payment of a prescribed fee and (where the licence has been defaced) on the surrender to the Departmental Head of the licence, issue a duplicate licence which shall be signed by the Departmental Head and endorsed as a duplicate licence.²⁰³

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; or
- (b) the holder of the licence in respect of which the decision was given; or
- (c) the holder of an international air services licence for the market that is the subject of the applications appeal; or
- (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

²⁰³ Subsection (4) repealed and replaced by No. 7 of 2010, s.66.

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 the 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 it being used in connection with that service or flight, be exempt from the operation of any regulation or rules made under this Act.²⁰⁴

Division 7. - Authorisation of contracts, arrangements, and understandings relating to international carriage by air.

²⁰⁴ Ibid, amended, s.67.

215. AUTHORISATION 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; or
 - (b) international carriage by air arranged by persons of different classes; or
 - (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 authorise 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 of fixing of tariffs, application of tariffs or fixing of capacity.

(3) In considering whether to grant authorisation 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), authorisation 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 authorise any provision of any contract, arrangement or understanding under this section where the Minister believes that to decline authorisation would have an undesirable effect on international comity between Papua New Guinea and any other country.

(6) Where the Minister declines to authorise a provision of a contract, arrangement or understanding under this section, the Minister shall give notice in the National Gazette that authorisation 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. AUTHORISATION OF TARIFFS BY MINISTER.

(1) The Minister may from time to time specially authorise a tariff in respect of international carriage by air where the relevant places of departure and destination are within 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 authorisation under this section the Minister shall have regard to -
- (a) whether the proposed tariff 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 authorisation will not prejudice compliance with any international convention, agreement, or arrangement to which Papua New Guinea is a party.

PART XIII.A. - INTERNATIONAL CARRIAGE BY AIR.²⁰⁵

217A. INTERNATIONAL CARRIAGE BY AIR.²⁰⁶

This Part is in addition to and not in derogation of the *Civil Aviation (Aircraft Operators' Liability) Act* (Chapter 292), and in the event of any conflict, the provisions of this part prevail.

217B. INTERPRETATION.²⁰⁷

In this part, unless the context otherwise requires -

“Additional Protocol No. 1” means the Additional Protocol No. 1 to amend the Warsaw Convention which was opened for signature at Montreal on 25 September 1975;

“Additional Protocol No. 2” means the Additional Protocol No. 2 to amend the Warsaw Convention and the Hague Protocol which was opened for signature at Montreal on 25 September 1975;

“the amended Convention” means the Convention, the English text of which is set out in Schedule 1, being the Warsaw Convention as amended by the following protocols:

- (a) the Hague Protocol; and
- (b) Additional Protocols Nos.1 and 2, and Protocol No. 4;

“court”, in relation to an arbitration allowed by the Montreal Convention, the amended Convention, or the Guadalajara Convention, includes an arbitrator;

“the Guadalajara Convention” means the Convention, the English text of which is set out in Schedule 2, being a Convention, supplementary to the Warsaw Convention, for the unification of certain rules relating to international carriage by air performed by a

²⁰⁵ Part XIII.A added by No. 33 of 2016, s.31. *Note*, Schedule 1, 2 and 3 referred to in this Part is stated in No. 33 of 2016, *Civil Aviation (Amendment) Act 2016*.

²⁰⁶ Ibid new section, s.31.

²⁰⁷ Ibid.

person other than the contracting carrier, which opened for signature at Guadalajara on 18 September 1961;

“the Hague Protocol” means the Protocol opened for signature at the Hague on 28 September 1955;

“High Contracting Party” has the same meaning as in Article 40A of the amended Convention;

“Montreal Convention” means the Convention, the English text of which is set out in Schedule 3, for the unification of certain rules for international carriage by air done at Montreal on 28 May 1999;

“Protocol No. 4” means the Protocol No. 4 to amend the Warsaw Convention and the Hague Protocol which was opened for signature at Montreal on 25 September 1975;

“the Warsaw Convention” means the Convention for the unification of certain rules relating to international carriage by air, which opened for signature at Warsaw on 12 October 1929, and includes the Additional Protocol to that Convention.

217C. APPLICATION.²⁰⁸

In this part, references to the amended Convention or to an Article of that Convention are, where applicable and subject to any necessary modifications, to be read as references to that Convention or Article as supplemented by the Guadalajara Convention.

217D. CONVENTIONS TO HAVE FORCE OF LAW.²⁰⁹

(1) The provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention have the force of law in Papua New Guinea in relation to any carriage by air to which the Montreal Convention, the amended Convention or the Guadalajara Convention, as the case may require, applies.

(2) Despite Subsection (1), the provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention have the force of law in Papua New Guinea only in so far as they relate to the rights and liabilities of carriers, carriers’ servants and agents, passengers, consignors, consignees, and other persons.

(3) The provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention apply in Papua New Guinea in accordance with Subsection (1), irrespective of the nationality of the aircraft performing that carriage.

(4) The provisions of the Montreal Convention, the amended Convention and the Guadalajara Convention apply in Papua New Guinea subject to the provisions of this part.

²⁰⁸ Ibid.

²⁰⁹ Ibid.

(5) Each version of Article 22 of the amended Convention set out in Schedule 1 applies in the circumstances outlined in the heading of that version.

217E. INCONSISTENCY BETWEEN FRENCH AND ENGLISH TEXTS.²¹⁰

(1) If there is any inconsistency between the English text of the amended Convention which is set out in Schedule 1 and the corresponding text in French, the text in French prevails.

(2) If there is any inconsistency between the English text of the Guadalajara Convention which is set out in Schedule 2 and the corresponding text in French, the text in French prevails.

(3) A certificate may be given by or on behalf of the Head of the Department responsible for foreign affairs matters stating that a document to which the certificate is annexed is a true copy of the authentic text in the French language of one or more of the following:

- (a) additional Protocol No. 1; or
- (b) additional Protocol No. 2; or
- (c) the Guadalajara Convention; or
- (d) the Hague Protocol; or
- (e) Protocol No. 4; or
- (f) the Warsaw Convention.

(4) Any certificate given under Subsection (3) shall be received in evidence in any proceedings, and in the absence of proof to the contrary, is sufficient evidence of the matters stated in the certificate.

217F. FATAL ACCIDENTS.²¹¹

References in Section 13 of the *Wrongs (Miscellaneous Provisions) Act* (Chapter 297) to accident includes references to any occurrence which gives rise to a liability under Article 17(1) of the Montreal Convention or Article 17 of the amended Convention.

217G. CONTRIBUTORY NEGLIGENCE.²¹²

For the purposes of Article 20 of the Montreal Convention or Article 21 of the amended Convention, the provisions which have the force of law under which a court may exonerate the carrier wholly or partly from the carrier's liability applies.

²¹⁰ Ibid.

²¹¹ Ibid.

²¹² Ibid.

217H. LIMITATION OF LIABILITY.²¹³

(1) The limitations on liability referred to in Articles 21 and 22 of the Montreal Convention or in Article 22 of the amended Convention apply, whatever the nature of the proceedings by which liability may be enforced, and in particular -

- (a) those limitations apply where proceedings are brought by a tortfeasor to obtain contribution from another tortfeasor from whom contribution is sought is the carrier or a servant or agent of the carrier; and
- (b) the limitation of each passenger referred to in Article 21 of the Montreal Convention or in Paragraph (1) of Article 22 of the amended Convention applies to the aggregate liability of the carrier in all proceedings which may be brought against the carrier under the laws of Papua New Guinea, together with any proceedings brought against the carrier outside Papua New Guinea.

(2) A court before which proceedings are brought to enforce a liability which is limited by Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention may, at any stage of the proceedings, make any order that appears to the court to be just and equitable, in view of -

- (a) the provisions of Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention; and
- (b) any other proceedings which have been, or are likely to be, commenced in Papua New Guinea or elsewhere to enforce the liability in whole or in part.

(3) A court before which proceedings are brought to enforce a liability that is limited by Article 21 or Article 22 of the Montreal Convention or Article 22 of the amended Convention has jurisdiction, where the liability is, or may be, partly enforceable in other proceedings in Papua New Guinea or elsewhere, to -

- (a) award an amount less than the court would have awarded if the limitation applied solely to the proceedings before the court; or
- (b) make any part of its award conditional on the result of any other proceedings.

(4) The provisions of Subsection (3) do not limit the powers conferred on a court by Subsection (2).

(5) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention.

²¹³ Ibid.

217I. VALUE OF SPECIAL DRAWING RIGHT.²¹⁴

(1) For the purposes of Article 23 of the Montreal Convention or Article 22 of the amended Convention, the value of one special drawing right shall be treated as equal to such a sum in Papua New Guinea currency, as is fixed by the International Monetary Fund as being the equivalent of one special drawing right from -

- (a) the date of judgment; or
- (b) any other relevant date; or
- (c) if no sum has been so fixed for that date, the last preceding date for which a sum has been so fixed.

(2) For the purposes of Subsection (1), a certificate may be given by or on behalf of the Head of the Department responsible for finance matters stating that -

- (a) particular sum in Papua New Guinea currency has been fixed as the equivalent of one special drawing right for a particular date; or
- (b) no sum has been fixed for that date, and that a particular sum has been so fixed for the date most recently preceding a particular date.

(3) Any certificate given under Subsection (2) shall be received in evidence in any proceedings, and in the absence of proof to the contrary, is sufficient evidence of the value of one special drawing right in terms of the Papua New Guinea currency for the purposes of Subsection (1).

(4) Unless the context otherwise requires, references in this section to Article 22 of the amended Convention are, subject to any necessary modifications, to be read as references to that Article as applied or supplemented by Article 25A of the amended Convention and Articles V and VI of the Guadalajara Convention.

217J. TIME FOR BRINGING PROCEEDINGS.²¹⁵

(1) No action against a carrier's servant or agent, which arises out of damage to which this Part relates, may be brought after more than two years if the servant or agent was acting within the scope of that person's employment.

(2) For the purposes of Subsection (1), the period of two years is calculated from the earliest of the following dates:

- (a) the date of arrival at the destination; or
- (b) the date the aircraft ought to have arrived; or
- (c) the date carriage stopped.

²¹⁴ Ibid.

²¹⁵ Ibid.

(3) Neither Article 35 of the Montreal Convention nor Article 29 of the amended Convention applies to any proceedings for contribution between tortfeasors.

(4) Despite Subsection (3), no action may be brought by a tortfeasor to obtain a contribution from a carrier in respect of a tort to which Article 35 of the Montreal Convention or Article 29 of the amended Convention applies after the expiration of two years from the time when judgment is obtained against the person seeking to obtain the contribution.

(5) Subsections (1) to (4) and the provisions of Article 35 of the Montreal Convention and Article 29 of the amended Convention have effect as if references in those provisions to an action included references to an arbitration.

(6) Subsections (7) and (8), which determine the time at which an arbitration is deemed to have commenced, apply for the purposes of Subsection (5).

(7) An arbitration, whether under an enactment or under an arbitration agreement, shall be treated as being commenced in the same manner as provided under the *Arbitration Act* (Chapter 46).

(8) If the National Court orders that an award be set aside, it may also order that the period between the commencement of the arbitration and the date of the setting aside order shall be excluded in computing the time prescribed by this section for the commencement of civil proceedings, including arbitration, with respect to the dispute referred.

(9) Subsections (6) to (8) do not limit or affect Section 16 of the *Frauds and Limitations Act 1988*.

217K. ACTIONS AGAINST HIGH CONTRACTING PARTIES.²¹⁶

(1) Every High Contracting Party to the amended Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in Subsection (2).

(2) Subsection (1) applies where any action is brought in a court in Papua New Guinea by a High Contracting Party in accordance with the provisions of Article 28 of the amended Convention or Article VIII of the Guadalajara Convention to enforce a claim in respect of carriage undertaken by that party.

(3) Rules of court may provide for the manner in which any action to which Subsection (1) applies is to be commenced and prosecuted.

²¹⁶ Ibid.

(4) Nothing in this section authorises the issue of execution against the property of any High Contracting Party.

(5) Subsection (1) does not apply to a High Contracting Party to the amended Convention which has availed itself of the provisions of the Additional Protocol, which appears before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in Schedule 1.

217L. ACTIONS AGAINST PARTIES TO MONTREAL CONVENTION.²¹⁷

(1) Every party to the Montreal Convention is to be regarded as having submitted to the jurisdiction of the court in the circumstances described in Subsection (2).

(2) Subsection (1) applies if any action is brought in a court in Papua New Guinea by a party to the Montreal Convention in accordance with Article 46 of the Montreal Convention to enforce a claim in respect of carriage undertaken by that party.

(3) Rules of court may provide for the manner in which any action to which Subsection (1) applies is to be commenced and prosecuted.

(4) Nothing in this section authorises the issue of execution against the property of any Party to the Montreal Convention.

217M. DESIGNATION OF PARTIES.²¹⁸

(1) The Minister may, from time to time, on the advice of the Director, by notice in the National Gazette, certify -

- (a) the identity of -
 - (i) the High Contracting Parties to the amended Convention; or
 - (ii) the Parties to the Guadalajara Convention; or
 - (iii) the Parties to the Hague Protocol; or
 - (iv) the Parties to Additional Protocol No. 1; or
 - (v) the Parties to Additional Protocol No. 2; or
 - (vi) the Parties to Protocol No. 4; or
 - (vii) the High Contracting Parties to the Warsaw Convention; or
 - (viii) the Parties to the Montreal Convention; and
- (b) the territories in respect of which the parties referred to in Paragraph (a)(i), (ii), (iii), (iv), (v), (vi), (vii), or (viii) are respectively parties; or
- (c) to what extent the parties referred to in Paragraph (a)(i), (ii), (iii), (iv), (v), (vi), (vii) or (viii) have availed themselves of the Additional Protocol, which appears

²¹⁷ Ibid.

²¹⁸ Ibid.

before the Additional Provisions of the Hague Protocol affecting the Warsaw Convention in the amended Convention, as set out in Schedule 1.

- (2) A notice published under this section -
- (a) shall, except in so far as it has been superseded by a subsequent publication in the National Gazette, be sufficient evidence of the matters so certified; and
 - (b) may contain such transitional and other consequential provisions as the Minister, on advice of the Director, considers desirable.

(3) The notice published under Subsection (1) certifying the High Contracting Parties to the amended Convention or the Parties to the Guadalajara Convention or the Parties to the Hague Protocol or the Parties to Additional Protocol No. 1 or No. 2 or to Protocol No. 4 or the High Contracting Parties to the Warsaw Convention or the Parties to the Montreal Convention, shall specify the date on and from which any such party became or ceased to be a party.

217N. ARTICLE 40 OF AMENDED CONVENTION.²¹⁹

(1) Paragraph (2) of Article 40A of the amended Convention does not extend references in the amended Convention to the territory of a High Contracting Party to include any territory in respect of which that High Contracting Party is not a party.

(2) Subsection (1) does not apply to references in the amended Convention to the territory of any State, whether a High Contracting Party or not.

217O. POWER TO EXCLUDE AIRCRAFT IN USE FOR MILITARY PURPOSES.²²⁰

(1) The Minister may, from time to time, and on the advice of the Director, by notice in the National Gazette, direct that Subsection (2) applies or ceases to apply to Papua New Guinea or any other State specified in the order.

(2) The Montreal Convention or the amended Convention do not apply to the carriage of persons, cargo, or baggage for the military authorities of a State to which this subsection applies in aircraft registered in that State if the whole capacity of the aircraft has been reserved by, or on behalf of, those authorities.

217P. OCCURRENCES BEFORE COMMENCEMENT OF THIS PART.²²¹

This part does not apply so as to affect the rights or liabilities arising out of an occurrence before the commencement of this part.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

217Q. HIGH CONTRACTING PARTIES NOT PARTY TO HAGUE PROTOCOL.²²²

(1) Subsection (2) applies where, by reason of the fact that a High Contracting Party to the Warsaw Convention is not a Party to the Hague Protocol, the amended Convention is not applicable to any carriage by air.

(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted.

(3) Despite Subsection (2), if the Guadalajara Convention applies to carriage by air, where that subsection applies, the applicable law includes the provisions of that Convention which have the force of law in Papua New Guinea under Section 217D.

(4) Despite Subsection (2), if Additional Protocol No. 1 applies to carriage by air, where that subsection applies, the applicable law includes -

- (a) the provisions of Article 22 of the Warsaw Convention as substituted by additional Protocol No. 1; and
- (b) the provisions of Section 217I.

217R. HIGH CONTRACTING PARTIES NOT PARTY TO MONTREAL PROTOCOLS.²²³

(1) Subsection (2) applies where, by reason of the fact that a High Contracting Party or a party, as the case may be, to the Warsaw Convention and the Hague Protocol is not a party to any of the Additional Protocols Nos. 1 and 2 and Protocol No. 4, the amended Convention is not applicable to any carriage by air.

(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted.

217S. HIGH CONTRACTING PARTIES NOT PARTY TO PROTOCOL NO. 4.²²⁴

(1) Subsection (2) applies where, by reason of the fact that a High Contracting Party or a party, as the case may be, to the Warsaw Convention and the Hague Protocol is a Party to Additional Protocol No. 2 but not Protocol No. 4, which is not applicable to any carriage by air.

(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No. 4.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

217T. HIGH CONTRACTING PARTIES NOT PARTY TO PROTOCOL NO. 2.²²⁵

(1) Subsection (2) applies where, by reason of the fact that a High Contracting Party or a party, as the case may be, to the Warsaw Convention and the Hague Protocol is a Party to Protocol No. 4 but not Additional Protocol No. 2, which is not applicable to any carriage by air.

(2) If this subsection applies, the law applicable to any carriage by air is the law which would have been applicable if the amended Convention had not included the amendments inserted by Protocol No. 2.

217U. HIGH CONTRACTING PARTY OR A PARTY NOT PARTY TO MONTREAL CONVENTION.²²⁶

(1) Subsection (2) applies where, by reason of the fact that a High Contracting Party or a party, as the case may be, is not a party to the Montreal Convention, the Montreal Convention does not apply.

(2) If this subsection applies and the High Contracting Party or a party referred to in Subsection (1) is a party to the Warsaw Convention or to the Hague Protocol or to Additional Protocol No. 1 or Additional Protocol No. 2 or to Protocol No. 4, the law applicable to any carriage by air is the law referred to in any of the following sections that is applicable to that High Contracting Party or party -

- (a) Sections 217A to 217N; or
- (b) Section 217P; or
- (c) Section 217Q; or
- (d) Section 217R; or
- (e) Section 217S.

(3) Subsection (4) applies if a High Contracting Party to the amended Convention is not a party to the Montreal Convention.

(4) If this subsection applies -

- (a) the law applicable to any carriage by air is the law set out in the amended Convention; and
- (b) each version of Article 22 of the amended Convention set out in Schedule 1 applies in the circumstances outlined in the heading of that version.

²²⁵ Ibid.

²²⁶ Ibid.

217V. CURRENCY EQUIVALENT NOTICES.²²⁷

The Minister responsible for finance matters may, from time to time, by notice in the National Gazette, specify the respective amounts which, for the purpose of Article 22 of the Warsaw Convention, as amended by the Hague Protocol, are to be taken as equivalent to the sums expressed in francs which are mentioned in that Article.

217W. REGULATIONS.²²⁸

(1) The Minister may, from time to time, on advice of the Director, by notice in the National Gazette -

- (a) prescribe any advance payments for compensation that carriers shall make to natural persons under Article 28 of the Montreal Convention; and
- (b) prescribe any arrangements for making advance payments for compensation that carriers shall make to natural persons under Article 28 of the Montreal Convention; and
- (c) amend Schedule 6 by making such amendments to the text of the Montreal Convention set out in that Schedule as are required to bring that text up to date; and
- (d) revoke Schedule 6, and substitute a new Schedule setting out, in an up-to-date form, the text of the Montreal Convention.

(2) The notice published under Subsection (1) is a legislative instrument and a disallowable instrument and shall be presented to the Parliament but the failure to present the notice to Parliament does not affect the purpose of the notice.

(3) The Head of State may, from time to time, on advice of the Minister, make regulations providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Part and for its due administration.

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.

²²⁷ Ibid.

²²⁸ Ibid.

- (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 sure inquiries and investigations as it considers appropriate in order to ascertain the cause or causes of accidents or incidents; and
- (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; and
- (c) to prepare and publish findings and recommendations, if any, in respect of any such inquiries and investigation; and
- (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; and
- (e) to co-ordinate and co-operate with other accident investigation organizations of Contracting States, including taking or collecting evidence on their behalf; and

- (f) to request from CASA, PNG ASL or NAC 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; and²²⁹
- (g) to perform any other function or duty conferred on the Commission under any Act or prescribed by regulations; and
- (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.²³⁰

223. MEMBERSHIP OF THE COMMISSION.

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

²²⁹ Paragraph (f) is amended by No. 7 of 2010, s.68.

²³⁰ Ibid, amended, s.69.

- (ii) appointed by notice in the National Gazette by the Head of State, acting on advice, given after considerations of recommendations by the Minister; and²³¹
- (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 the 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

²³¹ Ibid, amended, s.70.

- (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 advice, shall terminate his appointment.²³²

(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 OR FUNCTIONS.²³³

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.²³⁴

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

²³² Ibid, amended, s.71.

²³³ Ibid, amended, s.72.

²³⁴ Ibid, amended, s.73(a).

- (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; and²³⁵
 - (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, either 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 proposed to be made or entered into by the Commission,shall, as soon as it is practicable, after all the relevant facts have come to his notice, disclose the nature of his interest at a meeting of the Commission.²³⁶
- (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,

²³⁵ Ibid, amended, s.73(b).

²³⁶ Ibid, repealed and replaced, s.74.

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 effected by delivering or sending the same to the Chairman of the Commission at the office of the Commission.²³⁷

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 affecting the merits of the case.²³⁸

(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 preceding.²³⁹
- (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.

²³⁷ Ibid, amended, s.75.

²³⁸ Ibid, amended, s.76.

²³⁹ Ibid, amended, s.77.

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 to its powers and functions, 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 that generally apply to commercial practice.²⁴⁰

- (3) The Commission shall do all things to ensure that -
 - (a) all payments by the Commission are correctly made and properly authorised; and

²⁴⁰ Ibid, amended, s.78.

- (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. - Chief Executive of the Commission, etc.,²⁴¹

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.
- (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 organisation 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

²⁴¹ Ibid, amended, s.79.

(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 authorisation, 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 of bankrupt or insolvent debtors, compounds with his creditors makes an assignment of his remuneration for their benefit; or²⁴²
- (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 conviction is sentenced to imprisonment or death,²⁴³

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.

²⁴² Ibid, amended, s.80(a).

²⁴³ Ibid, amended, s.80(b).

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 organisation, 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 to 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 CASA 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 CASA OF ACCIDENTS AND INCIDENTS NOT BEING INVESTIGATED.

The Commission shall notify CASA 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 of the aircraft) 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 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 authorised 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; and

- (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; and
- (c) where necessary to preserve or record evidence, or to prevent the tampering 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; and
- (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 dwellinghouse unless the entry is authorised 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 authorised 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 CASA 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

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- (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) Despite 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 251, no person other than the following may be present at the examination:²⁴⁴

- (a) persons constituting the court; and
- (b) the legal representatives to the parties to the proceedings; and
- (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

²⁴⁴ Subsection (1) amended by No. 7 of 2010, s.81.

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 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) a corporation - a fine not exceeding K100,000.00; and²⁴⁵
- (b) other than a corporation - a fine not exceeding K30,000.00 or imprisonment for a term not exceeding one year, or both.

²⁴⁵ Ibid, amended, s.82.

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.

256A. REOPENING OF INVESTIGATIONS.²⁴⁶

- (1) The Minister may, by notice in the National Gazette, cause the Commission's investigation or inquiry which has been closed to be reopened.
- (2) The Commission shall reopen the investigation or inquiry -
 - (a) if new and important evidence has been discovered after the completion of the investigation; or
 - (b) if the investigation or inquiry was closed because of financial constraints, weather conditions or other factors which prevented its completion; or
 - (c) if, for any reason, there is ground for suspecting that a miscarriage of justice has occurred.
- (3) Any investigation or inquiry that is reopened is subject to the provisions of the regulations or rules under this Act, as the case may be.

256B. OBSTRUCTION.²⁴⁷

A person who -

- (a) obstructs or impedes the Commission, an inspector, assessor or any other person acting under CASA of the Commission, in the exercise of any powers or duties relating to the investigation of the accident or incident; or
- (b) without reasonable excuse, fails to comply with a summons to appear at any inquiry or any direction of the Commission to produce evidence on an accident or incident of which he was an eye witness,

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.

²⁴⁶ Ibid, new section, s.83.

²⁴⁷ Ibid.

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 258A(1)(b).²⁴⁸

(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 organisation, other than CASA, to enable him to fulfil his obligations under this section.

258. MINISTER TO DESIGNATE METEOROLOGICAL WARNING SERVICE.

The Minister shall, from time to time, by notice published in the National Gazette, designate a person who shall be responsible to provide the authorised meteorological warning service in Papua New Guinea.

[Subsection (2) repealed by No. 33 of 2016, s.32.]

258A. FUNCTIONS OF DESIGNATED PERSON IN RELATION TO METEOROLOGICAL WARNING SERVICE.²⁴⁹

The functions of the Departmental Head shall include -

- (a) maintaining and operating a service to be called the National Weather Service; and
- (b) ensuring the provision of a meteorological warning service in Papua New Guinea; and
- (c) arranging for the provision of, and 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.

²⁴⁸ Ibid, amended, s.84.

²⁴⁹ Ibid, new section, s.86.

259. THE NATIONAL WEATHER SERVICE.²⁵⁰

(1) The Departmental Head shall maintain the National Weather Service whose primary functions 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.²⁵¹

(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 fulfilment of Papua New Guinea's international meteorological obligations.

(3) The Head of State, acting on advice, may by notice published in the National Gazette transfer the National Weather Service to any other Department, Government agency or authority upon such terms and conditions as are specified in the Order^{252, 253}.

(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 Departmental Head may, with the consent of the Minister and the Minister responsible for finance 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.²⁵⁴

²⁵⁰ Ibid, heading amended, s.87(a).

²⁵¹ Ibid, amended, s.87(b).

²⁵² *Seemle*, "Order" means the "notice published in the National Gazette".

²⁵³ Subsection (3) amended by No. 7 of 2010, s.87(c).

²⁵⁴ Ibid, amended, s.87(d)(i) and (ii).

(6) Where a company is established under Subsection (5) it shall be deemed to be a State Aviation Enterprise for the purposes of this Act.²⁵⁵

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

²⁵⁵ Ibid, amended, s.87(e)(i) and (ii).

- (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 Section 267(1), irrespective of whether or not they are in his personal possession, with the intention of preventing the aircraft from taxing or taking-off or otherwise interfering with the aircraft movement as planned by the pilot-in-command; or²⁵⁶
- (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.²⁵⁷

(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 2005*, the crime of hijacking referred to in Section 261 (including aiding, abetting, inciting, counselling, or procuring any person to commit

²⁵⁶ Ibid, amended, s.88.

²⁵⁷ Ibid, amended, s.89(a).

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 matters that any foreign country is a party as shall be sufficient evidence of that fact.²⁵⁸

(3) For the purposes of the ***Extradition Act 2005*** 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 2005***, 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 in this section shall be deemed to be an offence described in the extradition treaty.²⁵⁹

264. SURRENDER OF OFFENDERS.

(1) Where the surrender of a person is sought under the ***Extradition Act 2005*** 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

²⁵⁸ Ibid, amended, s.88(b).

²⁵⁹ Ibid, amended, s.88(c).

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 matters that a country is a party to either Convention shall be sufficient evidence of that fact.²⁶⁰

(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 ACT* (CHAPTER 262).

(1) Nothing in the *Criminal Code Act* (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.

²⁶⁰ Ibid, amended, s.90(a) and (b).

(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 Act* (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 seven years.²⁶¹

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).

²⁶¹ Ibid, amended, s.92.

(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 reasons 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; and
- (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 Section 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 CASA of the pilot-in-command of the aircraft, and a member of the crew shall where so required by a 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 to 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 of his 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 K1,000.00.

(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 Section 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. PUBLIC PROSECUTOR'S CONSENT REQUIRED FOR PROSECUTIONS.²⁶²

(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 Public Prosecutor.

²⁶² Heading of Section 274 amended by No. 7 of 2010, s.93(a). Section 274 further amended, s.93(b).

(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 Public Prosecutor 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 XVA. - UNRULY PASSENGER OFFENCES.²⁶³

275A. APPLICATION OF THIS PART.²⁶⁴

- (1) This Part applies to any unruly passenger offence committed -
- (a) on an aircraft in Papua New Guinea, regardless of the nationality of the aircraft; or
 - (b) outside Papua New Guinea on an aircraft in flight, regardless of the nationality of the aircraft, if the next landing of the aircraft is Papua New Guinea.

(2) For the purposes of this part, an aircraft is in flight from the time when all its external doors are closed after embarkation until the time when any external door is opened for disembarkation.

(3) Despite Subsection (2), 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, in the case of a forced landing in a place that is not within the territorial limits of any country, the competent authorities of any country, assume responsibility for the aircraft and for persons and property on board the aircraft.

(4) A person authorised by the Director to exercise a power or function under this part shall carry a warrant of authority issued by the Director that specifies -

- (a) the name of, and the office or offices held by, that person; and
- (b) the powers and functions that the person is authorised to exercise under this part.

(5) A member of the Police Force may exercise all or any of the powers and functions that may be conferred on a person authorised by the Director under this part.

²⁶³ Part XVA added by No. 33 of 2016, s.33.

²⁶⁴ Ibid, new section, s.33.

(6) For the purposes of this part, a person authorised by the Director includes, but is not limited to, an aviation security officer authorised by the Director.

275B. LIABILITY FOR OFFENCES AGAINST THIS PART DESPITE EXTRA TERRITORIALITY.²⁶⁵

Any person who commits an act or omission on an aircraft in flight outside Papua New Guinea that would be an offence against this part if it occurred within Papua New Guinea is, subject to this Act, liable as if the act or omission had occurred in Papua New Guinea.

275C. LIABILITY FOR OFFENCES UNDER SUMMARY OFFENCES ACT (CHAPTER 264) DESPITE EXTRA TERRITORIALITY.²⁶⁶

(1) Any person who commits an act or omission on an aircraft in flight outside Papua New Guinea that would, if it occurred in Papua New Guinea, be an offence against Sections 4 (*drunk and disorderly*), 6 (*assault*), 10 (*fighting*), 23 (*indecent exposure*) or 47 (*damaging property*), of the *Summary Offences Act* (Chapter 264), is liable under that Act as if the act or omission had occurred in Papua New Guinea.

(2) To avoid doubt, any person who commits an act or omission on an aircraft that would be an offence against Section 4 (*drunk and disorderly*) or 23 (*indecent exposure*) of the *Summary Offences Act* (Chapter 264) is liable under that Act as if the reference to public place in any of those provisions includes an aircraft.

275D. FOREIGN AIRCRAFT OUTSIDE PAPUA NEW GUINEA.²⁶⁷

(1) An infringement notice may be issued, or proceedings commenced, for an unruly passenger offence committed on a foreign aircraft outside Papua New Guinea if -

- (a) the pilot-in-command -
 - (i) makes a request in the prescribed form to the Director or a person authorised by the Director to issue an infringement notice or to commence proceedings; and
 - (ii) provides an undertaking in the prescribed form that he, or the operator of the aircraft, has not made or shall not make a similar request to the authorities of any other State; and
- (b) in the case of proceedings, the Public Prosecutor consents.

(2) To avoid doubt, a person may, in respect of an unruly passenger offence, be arrested, charged, remanded in custody, or released on bail before the Public Prosecutor decides whether or not to consent to proceedings.

²⁶⁵ Ibid.

²⁶⁶ Ibid.

²⁶⁷ Ibid.

(3) Despite Subsection (1)(b), proceedings for an unruly passenger offence committed on a foreign aircraft outside of Papua New Guinea may be commenced without the Public Prosecutor's consent if -

- (a) a copy of the infringement notice is filed under Section 275S(1); or
- (b) the defendant requests a hearing in respect of the infringement offence to which the infringement notice relates.

(4) In any proceedings for an offence under this part, the pilot-in- command's request and undertaking, if made in the prescribed form or forms, are -

- (a) admissible in evidence; and
- (b) in the absence of proof to the contrary, sufficient evidence of the matters stated in the form or forms.

275E. PROCEEDINGS FOR OFFENCES.²⁶⁸

(1) Subject to Section 275Q(2), the offences specified in this part, except Sections 275F and 275G(1)(d) are triable summarily.

(2) The offences specified in Sections 275F and 275G(1)(d) are triable on indictment.

(3) Despite anything to the contrary in the *Summary Offences Act* (Chapter 264), any information for an offence referred to in Subsection (1) may be laid at any time within 12 months after the date of the offence.

(4) Subject to Section 275C, nothing in this Part affects the liability of any person under any other law.

275F. STRICT LIABILITY FOR ACTS ENDANGERING SAFETY.²⁶⁹

(1) A person who acts in a manner that endangers an aircraft or any person in an aircraft commits an offence.

(2) A person who commits an offence under Subsection (1) is liable to imprisonment for a term not exceeding ten years or a fine not exceeding K100,000.00.

275G. DISRUPTIVE CONDUCT TOWARDS CREW MEMBER.²⁷⁰

- (1) A person who, while in an aircraft -
 - (a) uses any threatening, offensive, or insulting words towards a crew member; or
 - (b) behaves in a threatening, offensive, insulting, or disorderly manner towards a

²⁶⁸ Ibid.

²⁶⁹ Ibid.

²⁷⁰ Ibid.

- crew member; or
- (c) behaves in a manner that interferes with the performance, by a crew member, of his duties; or
- (d) intentionally interferes with the performance by a crew member of his duties,

commits an offence.

(2) A person who commits an offence under Subsection (1)(a) or (b) or (c) is liable to a fine not exceeding K20,000.00.

(3) A person who commits an offence under Subsection (1)(d) is liable to imprisonment for a term not exceeding two years or a fine not exceeding K50,000.00.

(4) It is a defence in a prosecution under Subsection (1)(a) for using offensive or insulting words if the defendant proves that he had reasonable grounds to believe that his words would not be overheard by a crew member.

275H. INTERFERENCE WITH AIRCRAFT.²⁷¹

(1) A person who tampers or interferes with any aircraft, any component of an aircraft, or its equipment, including, but not limited to, smoke detectors commits an offence.

(2) A person who commits an offence under Subsection (1) is liable to a fine not exceeding K100,000.00.

275I. INTOXICATED PERSONS ON AIRCRAFT.²⁷²

(1) A person, except a person under medical care, who -

- (a) is intoxicated and boards an aircraft; or
- (b) becomes intoxicated on an aircraft,

commits an offence.

(2) A person who commits an offence under -

- (a) Subsection (1)(a) is liable to a fine not exceeding K50,000.00; and
- (b) Subsection (1)(b) is liable to a fine not exceeding K30,000.00.

(3) For the purposes of this section, a person is intoxicated if the pilot-in-command, or senior flight attendant authorised by the pilot-in-command for this purpose, has reasonable grounds to believe that the person is under the influence of an intoxicating liquor, or substance to such an extent as to -

- (a) be incapable of properly looking after himself; or

²⁷¹ Ibid.

²⁷² Ibid.

- (b) actively present a hazard to the aircraft or to persons on the aircraft; or
 - (c) offend against the good order and discipline required on an aircraft.
- (4) For the purposes of this section, person under medical care means a person who -
- (a) is under the supervision of an attendant; and
 - (b) has become intoxicated as a result of taking prescription medication in accordance with a medical authorisation.

275J. NON-COMPLIANCE WITH COMMANDS GIVEN BY PILOT-IN-COMMAND.²⁷³

(1) A person who fails to comply with any commands given to him directly by the pilot-in-command, or indirectly by the pilot-in-command through a crew member, in accordance with his duties under Section 63 or the rules commits an offence.

(2) Despite Section 69(6), a person who commits an offence under Subsection (1) is liable to a fine not exceeding K100,000.00.

275K. OFFENSIVE BEHAVIOUR OR WORDS.²⁷⁴

(1) A person who, on an aircraft -

- (a) behaves in a threatening, offensive, insulting, or disorderly manner; or
- (b) uses threatening, offensive, or insulting words,

commits an offence.

(2) A person who commits an offence under Subsection (1) is liable to a fine not exceeding K50,000.00.

(3) It is a defence in a prosecution under Subsection (1)(b) for using offensive or insulting words if the defendant proves that he had reasonable grounds to believe that his words would not be overheard.

275L. PORTABLE ELECTRONIC DEVICES NOT TO BE OPERATED.²⁷⁵

(1) A person who operates a portable electronic device on board an aircraft in breach of the rules commits an offence.

(2) Despite Section 69(6), a person who commits an offence under Subsection (1) is liable to a fine not exceeding K50,000.00.

²⁷³ Ibid.

²⁷⁴ Ibid.

²⁷⁵ Ibid.

275M. NON-COMPLIANCE WITH SEATING AND SEATBELT INSTRUCTIONS.²⁷⁶

(1) A person who fails to comply with an instruction given by a crew member, passenger information signs, or placards to -

- (a) occupy a seat or berth; and
- (b) fasten and keep fastened about the person any installed safety belt or safety harness,

commits an offence.

(2) A person who commits an offence under Subsection (1) is liable to a fine not exceeding K50,000.00.

275N. DANGEROUS GOODS.²⁷⁷

(1) A person who, in breach of the rules, carries or causes to be carried on an aircraft any dangerous goods commits an offence.

(2) Despite Section 69(6), a person who commits an offence under Subsection (1) is liable to a fine not exceeding K75,000.00.

275O. PROCEDURE FOR CERTAIN UNRULY PASSENGER OFFENCES.²⁷⁸

(1) If any offence specified in Section 275P(2) is alleged to have been committed by a person, the pilot-in-command of the aircraft may, at the time of the alleged offence, by any available means, notify, or cause to be notified -

- (a) the Director; or
- (b) a person authorised by the Director.

(2) If the Director or a person authorised by the Director has reason to believe that a person has committed an offence specified under this part, the Director or the person authorised by the Director may issue an infringement notice in respect of the alleged offence.

(3) If the Director or a person authorised by the Director has reasonable cause to suspect that a person has committed an offence specified in Section 275G(1)(a) to (c) or Section 275H or Section 275J or Section 275K, he may require the person to give his full name, address, and date of birth.

(4) If the Director or the person authorised by the Director has reasonable grounds to suppose that any details provided under Subsection (3) are false or misleading, he may require the

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

person to give such verification of those details as it is reasonable in the circumstances to require that person to provide.

(5) If the person, without reasonable excuse, refuses or fails to comply with a request under Subsection (3) or Subsection (4), and persists in that refusal or failure after being warned by the Director or a person authorised by the Director that he may be arrested for committing an offence by that refusal or failure, a member of the Police Force may arrest that person without a warrant.

(6) A person who, without reasonable excuse -

(a) refuses or fails to comply with a request under Subsection (3) or Subsection (4); or

(b) gives details that are false or misleading in a material respect to the Director or a person authorised by the Director in response to such a request,

commits an offence and is liable, on summary conviction, to a fine not exceeding K75,000.00.

(7) Evidence produced by the defendant to the Director or the person authorised by the Director under Subsection (4) shall be inspected without delay and returned to the defendant as soon as practicable after the inspection is concluded.

(8) The Director or a person authorised by the Director may -

(a) deliver an infringement notice, or a copy of the notice, to the defendant personally; or

(b) send the notice, or a copy of it, to the defendant, by post, addressed to the defendant's last known place of residence or business.

275P. FORM OF INFRINGEMENT NOTICE.²⁷⁹

(1) An infringement notice under Section 275O shall be in the prescribed form, as formulated by the Director, and shall specify -

(a) enough details to inform the defendant fairly of the time, place, and nature of the offence alleged; and

(b) the amount of the infringement fine specified in respect of that offence in Subsection (2); and

(c) where the fine may be paid; and

(d) the time within which the fine may be paid; and

(e) how and where payment may be made under Section 275Q; and

(f) that the defendant has a right to request a hearing by the Director or a person authorised by the Director; and

²⁷⁹ Ibid.

- (g) a statement of the consequences if the defendant neither pays the fine nor requests a hearing; and
 - (h) any other particulars as are prescribed by regulations or rules made under this Act.
- (2) The infringement fine is -
- (a) in the case of an offence under Section 275I(1)(a), K5,000.00; and
 - (b) in the case of an offence under Section 275I(1)(b), K2,000.00; and
 - (c) in the case of an offence under Section 275L, K1,000.00; and
 - (d) in the case of an offence under Section 275M, K1,000.00; and
 - (e) in the case of an offence under Section 275N, K1,000.00.

275Q. PAYMENT OF FEES.²⁸⁰

(1) If an infringement notice under Section 275O, or a copy of the notice, is served by delivering it to the defendant on arrival at an international airport for an offence on an international flight, the defendant may choose to pay, immediately, the infringement fine in the manner specified in the notice.

(2) All infringement fines received in respect of an infringement notice under Section 275O, whether immediately after service or later, shall be paid into CASA's operating account to maintain its regulatory function.

275R. FILING OF NOTICES.²⁸¹

(1) The Director or a person authorised by the Director may file, in the District Court, a copy of the infringement notice under Section 275O after a period of 14 days from the date of service of the infringement notice, or a copy of the infringement notice, if -

- (a) the infringement fine for the offence has not been paid to the Director as specified in the notice; and
- (b) the Director has not received, at the address specified in the notice, a notice requesting a hearing in respect of that offence.

(2) The copy of the infringement notice filed under Subsection (1) shall have the date and method of service on the defendant recorded on it.

(3) For the purpose of Subsection (1), an infringement notice sent by post is deemed to have been served on the defendant when it was posted.

²⁸⁰ Ibid.

²⁸¹ Ibid.

275S. SAVINGS.²⁸²

- (1) Nothing in this part applies to any -
- (a) proceedings commenced before the coming into force of this part; or
 - (b) cause of action that arose before the coming into force of this part; or
 - (c) act or omission that occurred before the coming into force of this part.

(2) All proceedings commenced under any other enactment for an offence committed before the commencement of this part may be continued and completed under that other enactment as if this part had not come into force.

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 two years, or both.²⁸³

(2) The provisions of Subsection (1) are in addition to and not in derogation of any regulations or rules made under this Act.²⁸⁴

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.

²⁸² Ibid.

²⁸³ Paragraph (b) amended by No. 7 of 2010, s.94(a).

²⁸⁴ Ibid, amended, s.94(b).

(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, OBJECTS AFFECTING NAVIGABLE AIRSPACE OR AVIATION RELATED SERVICE.²⁸⁵

- (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 objects affecting navigable airspace; or²⁸⁶
 - (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 two 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.

278A. FAILURE TO COMPLY WITH INSPECTION OR MONITORING REQUEST.²⁸⁷

- (1) A person who, without reasonable excuse, fails to comply with any requirement of the Director under Section 52(1) or (3) commits an offence.
- (2) A person who commits an offence under Subsection (1) is liable, on conviction -
- (a) in the case of an individual, to a fine not exceeding K10,000.00 and, if the offence is a continuing one, to a further fine not exceeding K5,000.00 for every day or part of a day during which the offence continues; or
 - (b) in the case of a body corporate, to a fine not exceeding K100,000.00 and, if the offence is a continuing one, to a further fine not exceeding K20,000.00 for every day or part of a day during which the offence continues.

²⁸⁵ Ibid, heading repealed and replaced, s.95(a).

²⁸⁶ Ibid, amended, s. 95(b).

²⁸⁷ Section 278A added by No. 33 of 2016, s.34.

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 276 to 278 (inclusive), the Court may, on convicting any person of an offence against any of those sections ⁻²⁸⁸

- (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 court 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.

²⁸⁸ Subsection (1) amended by No. 7 of 2010, s.96.

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 -

- (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 AUTHORISED 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, CASA or the Director, the NAC or the Commission 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.²⁸⁹

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 authorised in writing for that purpose by the Minister, the Departmental Head or the Director or the Managing Director or by a member of the Police Force or an aviation security officer; or²⁹⁰

²⁸⁹ Subsection (1) amended by No. 7 of 2010, s.97.

²⁹⁰ Ibid, amended, s.98.

- (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.

289A. FAILURE TO PROVIDE IDENTIFYING INFORMATION.²⁹¹

(1) An operator of an aircraft or a holder of a certificate of registration who, without reasonable excuse, fails to comply with Section 60A(1), which relates to the identification of the pilot-in-command of an aircraft, commits an offence.

(2) An operator or a holder of a certificate of registration who commits an offence under Subsection (1) is liable -

- (a) in the case of an individual, to a fine not exceeding K15,000.00; or
(b) in the case of a body corporate, to a fine not exceeding K50,000.00.

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.

²⁹¹ Section 289A added by No. 33 of 2016, s.35.

(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 authorised; 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 authorised under the law of the foreign country or territory to issue directions to aircraft flying over that country or territory.

290A. INTERCEPTION ETC., OF AIRCRAFT.²⁹²

(1) In this section -

“authorised official” in relation to a foreign country means a member of the military, police, customs or air traffic control services of the foreign country or territory and includes a person authorised by the foreign country or territory to give directions to aircraft flying over the territory of the foreign country;

“territory” in relation to a foreign country, means the land and the adjacent territorial sea under the sovereignty, suzerainty, protection or mandate of the foreign country;

“weapon” in relation to the interception of an aircraft in flight, means any instrument or instrumentality that has the potential to destroy an aircraft or endanger the lives of persons on board the aircraft or cause unnecessary danger to any person or property.

(2) This section applies to any aircraft (including an aircraft that is not registered anywhere) that is, at the relevant time, being operated in a foreign country.

(3) The pilot-in-command of an aircraft that is in flight over the territory of a foreign country who operates the aircraft for a purpose that is prejudicial to the security of, or public order or public health of, or the safety of air navigation in relation to, that country or territory is guilty of an offence.²⁹³

Penalty: Imprisonment for a term not exceeding two years.

(4) Where an aircraft flies over the territory of a foreign country and either the flight is required to be authorised by a foreign country and is not so authorized, or there are reasonable grounds for believing that the aircraft is being operated for a purpose that is prejudicial to the

²⁹² Section 290A added by No. 7 of 2010, s.99.

²⁹³ Subsection (3) amended by No. 33 of 2016, s.36(a).

security or public order or public health of, or to the safety of air navigation in relation to, that country or territory, the pilot-in-command of the aircraft who fails to comply with any direction given by the Minister, Director or an authorized official of the country or territory -

- (a) requiring that the aircraft land at a specific aerodrome in the country or territory; or
- (b) for the purpose of preserving the security or public order or public health of, or the safety of air navigation in relation to, that country or territory,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding two years.

(5) Where the pilot-in-command of an aircraft does not comply with the direction given under Subsection (4), the Director or the authorised official of the country or territory may authorize the interception of the aircraft by another aircraft, and the pilot-in-command of the aircraft which is intercepted shall immediately follow the directions given by the intercepting aircraft.

(6) A pilot-in-command, who, without reasonable excuse, fails to comply with the directions given by the intercepting aircraft is guilty of an offence.

Penalty: A fine not exceeding K30,000.00 or imprisonment for a term not exceeding two years, or both.

(7) No person shall institute in-flight surveillance against, given an interception signal in connection with or give an instruction to land to a civilian aircraft suspected of being operated for a purpose that is prejudicial to the security or public order or public health of, or to the safety of air navigation in relation to, that country or territory, except -

- (a) on the direction given by the Minister, the Director or an authorized official of the country or territory; and
- (b) the in-flight surveillance, interception signal or direction to land is in the public interest; and
- (c) the in-flight surveillance, interception signal or direction to land shall be executive in a manner that does not unduly affect aviation safety; and
- (d) the intercepted aircraft shall follow the directions of the intercepting aircraft as prescribed in the regulations or the rules.

(8) No country or territory shall use any weapon against a civil aircraft, that is-

- (a) operated contrary to Subsection (3); or
- (b) intercepted.

(9) An person who authorises or uses any weapon against a civil aircraft is guilty of an offence.

Penalty: Imprisonment for a term up to life.

[Subsection (10) repealed by No. 33 of 2016, s.36(b).]

(11) Subsections (3) and (4) do not affect any other obligations imposed by law, including the law of a foreign country or territory to comply with a direction given by the Minister, Director or an authorised official of a foreign country or territory.

(12) Where a person has been convicted of an offence in respect of an act or omission under the law of the foreign country or territory, the person is not liable to be convicted of an offence arising under Subsections (3) and (4) in respect of the same act or omission.

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. IMPERSONATION OR OBSTRUCTION OF AVIATION SECURITY OFFICER.²⁹⁴

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) wilfully obstructs, or incites or encourages any person to obstruct an aviation security officer in the execution of his duty,²⁹⁵

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 with the safety of an aircraft, aerodrome, aeronautical product, etc., 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.

²⁹⁴ Heading of Section 294 amended by No. 7 of 2010, s.100(a).

²⁹⁵ Ibid, amended, s.100(b).

(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 immediately, and whether or not demand is made, surrender the document -

- (a) to the Court where the order was made; or
- (b) to any person authorised by the Director to accept such documents.

(2) Where an aviation document is so surrendered, it shall immediately 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 299 removing any disqualification, particulars of the order shall be sent by the Registrar of the Court to the Director.²⁹⁶

301. APPEALS AGAINST DISQUALIFICATION.

(1) An order of the National Court by which any person is disqualified from holding or obtaining an aviation document is deemed to be the sentence or part of the sentence, as the case may be.²⁹⁷

(2) Where a notice of appeal against any order referred to in Subsection (1) is filed, the Court may, where it thinks fit, defer the operation of the order pending the appeal, but otherwise the order shall have immediate effect.²⁹⁸

(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.

²⁹⁶ Section 300 amended by No. 7 of 2010, s.102.

²⁹⁷ Ibid, amended, s.103(a). *Semble*, this amendment is intended to apply before "National Court".

²⁹⁸ Ibid, amended, s.103(b). *Semble*, this amendment is intended to apply before "Court".

(4) Notice of every appeal under Subsection (2) shall be served on the Director who shall be a party to the appeal unless the Director 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.²⁹⁹

(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 CASA 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 CASA 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 CASA of a licence operated under Part XII; and

²⁹⁹ Ibid, amended, s.103(c).

- (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; or
- (e) operates a non-scheduled international flight to which Section 201 applies contrary to the provisions of that section; or³⁰⁰
- (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 provide 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 -

- (i) a corporation - a fine not exceeding K100,000.00; and
- (ii) other than a corporation - a fine not exceeding K25,000.00 or imprisonment for a term not exceeding one year, or both.

³⁰⁰ Ibid, amended, s.104.

Division 6. - Provisions regarding offences.

305. INSTITUTION OF PROCEEDINGS.³⁰¹

(1) An offence against this Act, except those under Sections 260 and 261, 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 Sections 260 and 261.

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 commits -

- (a) a crime; or
- (b) an indictable offence; or

³⁰¹ Ibid, amended, s.105.

(c) an offence,
under this Act, any director, officer or employee or agent of the corporate body who directed, authorised, assented to or acquiesced or participated in -

- (d) the commission of the crime; or
- (e) the commission of an indictable offence; or
- (f) the commission of an offence,

is a party to and is 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 CASA authorised in that behalf by the Director shall be sufficient, in the absence of proof to the contrary, to prove that document; and
- (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 CASA authorised 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; and
- (c) the production of a certificate signed by the Director or by an officer of CASA authorised in that behalf by the Director to the effect that on a specified date a person or organisation 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; and
- (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 CASA authorised 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 when the section specifies that the right of appeal applies to a particular decision or directions, a decision in respect of a person within the meaning of Subsection (1) may be appealed against under this section.³⁰²

- (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 in charge of any aircraft or aeronautical product of any class, as the case may be, in respect of whom the decision was made; or ³⁰³
 - (d) an affected document holder pursuant to Section 51(1).³⁰⁴

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

³⁰² Subsection (2) repealed and replaced by No. 7 of 2010, s.106(a).

³⁰³ Ibid, amended, s.106(b).

³⁰⁴ Ibid, new paragraph, s.106(c).

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) Despite 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 thereunder 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 effect to the foreign rules adopted.³⁰⁵

(3) No foreign rule, or part of a foreign rule, 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) despite Sub-paragraph (i), where 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 place 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 this control.

³⁰⁵ Subsection (2) amended by No. 7 of 2010, s.107.

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. PROHIBITION OF SMOKING ON AIR ROUTES.³⁰⁶

(1) All air routes used for domestic and international flights by any airline registered in Papua New Guinea or in a Contracting State, are non-smoking routes.

(2) A person who smokes or permits smoking in an air route used for domestic or international flight, is guilty of an offence.

Penalty: Where a person convicted of the offence is -

(a) a corporation, a fine not exceeding K100,000.00; and

³⁰⁶ Section 318 repealed and replaced by No. 33 of 2016, s.37.

- (b) other than a corporation, a fine not exceeding K50,000.00 or imprisonment for a term not exceeding two years, or both.

(3) The provisions of Subsection (2) are in addition to and not in derogation of any regulations or rules made under this Act.

[Section 319 repealed by No. 33 of 2016, s.38.]

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 the owner's 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.³⁰⁷

(4) Where damage or loss is caused in the manner described in Subsection (3) and in circumstances 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.

³⁰⁷ Subsection (3) amended by No. 7 of 2010, s.109(a).

(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) Act** (Chapter 297) as to apportionment shall apply.³⁰⁸

(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 of the aircraft, 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.³⁰⁹

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 affect the safety of any aircraft) transmitted through any aeronautical communication service established under this Act.

322. REGULATIONS.

(1) The Head of State, acting on advice of the 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; or

³⁰⁸ Ibid, amended, s.109(b).

³⁰⁹ Ibid, amended, s.109(c).

- (b) prescribing those breaches of rules made under this Act that constitute offences against this Act; or
- (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 K10,000.00; or³¹⁰
 - (ii) in the case of a body corporate, shall be a fine not exceeding K50,000.00; or³¹¹
- (d) prescribing forms for the purposes of this Act; or
- (e) prescribing for CASA, 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 CASA, the Commission or the airport authority as the Minister may recommend; or
- (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 -
 - “employee” means any person employed in the Papua New Guinea civil aviation sector or a company established under this Act who holds a current aviation document issued by the Director under Section 49;³¹²
 - “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

³¹⁰ Ibid, amended, s.110(a).

³¹¹ Ibid, amended, s.110(b).

³¹² The definition of “employee” repealed and replaced by No. 7 of 2010, s.111(a).

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;

"to strike" means to become a party to a strike;

(2) Despite 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 authorised 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 unlawful -

- (a) 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 -
 - (i) the employee; and
 - (ii) any person, including an incorporated body and its officers, who aided, abetted or counselled the employee to strike unlawfully; and

(b) the employee may be summarily dismissed.³¹³

(8) Any person who aids, abets or counsels an employee or a group of employees to go on an unlawful strike which -

(a) interferes with or prevents; or

(b) is intended or calculated to interfere with or prevent, the carrying out or the provision of a service within the civil aviation system prescribed under this Act or any other law, or who attempts to do so,

is guilty of an offence.

Penalty: A fine not exceeding K25,000.00 or imprisonment for a term not exceeding six months or both.³¹⁴

PART XXI. - REPEAL, TRANSITION, ADMINISTRATION AND SAVINGS.

324. REPEAL OF ACTS AND REGULATIONS.³¹⁵

The Acts and regulations specified in Schedule 2 to this Act are repealed.

324A. SUCCESSION OF CERTAIN ASSETS AND LIABILITIES OF CIVIL AVIATION AUTHORITY BY CASA, PNG ASL AND NAC.³¹⁶

(1) As from the date declared by the Minister in the National Gazette, CASA, PNG ASL and NAC succeed to all of the assets and liabilities of the Civil Aviation Authority, to the extent that such assets and liabilities relate to the objects and functions of CASA, PNG ASL and NAC as set out in Sections 11, 12, 16, 143, 144, 145, 146, 147, 147A, 147B, 147C and 147D, in the same capacity as such assets and liabilities were vested in the Civil Aviation Authority.

(2) Without limiting Subsection (1) -

(a) all assets and rights and all management or control of anything (including as trustee) which, immediately prior to the succession date were vested, payable to, recoverable by, or which belong to the Civil Aviation Authority are, as from the date declared by the Minister by notice in the National Gazette, transferred to, vested in, payable to or recoverable by and belong to CASA, PNG ASL or NAC as the case may be, to the extent that such assets, rights, management or control relate to the objects and functions of CASA, PNG ASL or NAC set out at Sections 11, 12, 16, 143, 144, 145, 146, 147, 147A, 147B, 147C and 147D without any transfer, assignment, notice or assurance other than by this Act and despite any other Act or law; and

³¹³ Subsection (7) repealed and replaced by No. 7 of 2010, s.111(b).

³¹⁴ Ibid, new subsection, s.111(b).

³¹⁵ Ibid, amended, s.112.

³¹⁶ Ibid, new section, s.113.

- (b) all suits, actions and proceedings commenced and pending immediately prior to the succession date by or against the Civil Aviation Authority are, as from the date declared by the Minister by notice in the National Gazette, to be taken to be pending and may be carried on and prosecuted by or against CASA, PNG ASL or NAC, to the extent that such assets, rights, management or control relate to the objects and functions of CASA, PNG ASL or NAC as set out in Sections 11, 12, 16, 143, 144, 145, 146, 147, 147A, 147B, 147C and 147D and no such suit, action or proceeding is abated or prejudicially affected by this Act; and
- (c) all contracts (including for employment), deeds, or other instruments (written or otherwise) entered into by or with the Civil Aviation Authority and in force immediately prior to the date declared by the Minister by notice in the National Gazette are, as from the date declared by the Minister by notice in the National Gazette, to be taken to be contracts, deeds or other instruments entered into by or with CASA, PNG ASL or NAC, to the extent that such contracts, deeds or instruments relate to the objects and functions of CASA, PNG ASL or NAC as set out in Sections 11, 12, 16, 143, 144, 145, 146, 147, 147A, 147B, 147C and 147D; and
- (d) all State appropriations in the name or for the benefit of the Civil Aviation Authority shall, as from the date declared by the Minister by notice in the National Gazette, accrue to, and be for the benefit of CASA, PNG ASL and NAC, to the extent that such appropriations relate to the objects and functions of CASA, PNG ASL and NAC as set out in Sections 11, 12, 16, 143, 144, 145, 146, 147, 147A, 147B, 147C and 147D; and
- (e) CASA, PNG ASL and NAC are, as from the date declared by the Minister by notice in the National Gazette, to be taken to be operated independently with their own individual boards.

324B. TRANSITIONAL PROVISIONS.³¹⁷

Despite any other provisions of this Act, CASA, PNG ASL and NAC have all the powers, authorities, duties and functions in relation to assets, liabilities and other matters and things to which they succeed under this Part as the Civil Aviation Authority had (in any capacity) immediately prior to the date declared by the Minister by notice in the National Gazette.

³¹⁷ Ibid.

325. EFFECT OF ACT ON CIVIL AVIATION REGULATIONS.³¹⁸

(1) The following shall continue in force as if the *Civil Aviation Act* (Chapter 239) (repealed), had not been repealed by Section 324:

- (a) all orders, notices, requirements, circulars, and other publications issued under the *Civil Aviation Regulation* (Chapter 239); and
- (b) the *Civil Aviation (Aircraft Charges) Regulation* (Chapter 239).

(2) Despite Section 324, the orders, notices, requirements, circulars, and other publications referred to in Subsection (1)(b) may be amended or revoked by the Director.

326. INTERPRETATION RELATING TO TRANSFER OF ASSETS AND LIABILITIES.

(1) In this section and Sections 328 to 333 (inclusive), unless the context otherwise requires ⁻³¹⁹

“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 to buildings, vehicles, plant, equipment and machinery; 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 Finances (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;

³¹⁸ Ibid, repealed and replaced, s.114.

³¹⁹ Ibid, amended, s.115.

“rights” includes powers, privileges, interests, licences, approvals, consents, benefits, and equities of any kind, whether actual, contingent, or prospective;
“State Aviation Enterprise” includes CASA, the Commission, PNG ASL, 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”, “authorise”, or “grant” includes entering into an agreement to transfer, authorise, 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, despite 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 CASA 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.³²⁰

All monies, immediately before the coming into operation of the amendments to this Act, standing to the credit of, and in accounts opened by the Civil Aviation Authority, including any trust account opened under the *Public Finances (Management) Act 1995* are, on the coming into operation of the amendments to this Act, transferred to and stand to the credit of CASA, PNG ASL or NAC, as the case may be, insofar as those accounts relate to the functions of CASA, PNG ASL or NAC as the case may be, as set out in Sections 11, 12, 16, 143, 144, 145, 146, 147, 147A, 147B, 147C and 147D.

³²⁰ Section 328 repealed and replaced by No. 7 of 2010, s.116. Amended by No. 33 of 2016, s.39.

329. TRANSFER OF STATE ASSETS AND LIABILITIES TO STATE AVIATION ENTERPRISES.³²¹

(1) Despite any Act, rule of law, or agreement, the Minister and the Minister responsible for finance 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); or
- (b) authorise 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; or
- (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; or
- (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 finance 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 registerable, the person responsible for keeping the register shall register the transfer immediately after written notice of the transfer is received by him from any person authorised 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

³²¹ Section 329 amended by No. 7 of 2010, s.117(a) and (b).

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 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, despite 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, despite 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; and
- (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 and 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) Despite 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.³²²

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; or
- (b) vest land in a State Aviation Enterprise for the purposes of Section 329(1); or
- (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; or
- (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; or
- (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; or
- (f) declare, in respect of any assets or liabilities transferred to a State Aviation

³²² Section 330 amended by No. 7 of 2010, s.118.

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; or

- (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; or
- (h) direct any authority or other person to register or record any such vesting or declaration.

331. EXEMPTION FROM TRANSFER TAXES, DUTIES AND FEES.³²³

No stamp duty, income tax, value added tax, provincial tax or fee is payable on any agreement, contract, transfer, conveyance, order, lease or licence made for the purpose of this Act in establishing CASA, PNG ASL, NAC, 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) Despite 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.³²⁴

(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.

³²³ Heading of Section 331 amended by No. 7 of 2010, s.119(a). Section 331 is further amended, s.119(b) and (c). Note, the words “stamp duty” in Paragraph (b) of Section 119 of No. 7 of 2021, is not included as the words “stamp duty” is already stated in this provision.

³²⁴ Ibid, amended, s.120(a).

(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.³²⁵

(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 aerodromes listed in Schedule 1; or³²⁶
- (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 NAC, or an airport authority or an airport company or a province on such terms and conditions 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.³²⁷

(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 NAC or an airport company wholly owned by the State; or³²⁸
- (b) the land, or any part of it, making up any of the aerodromes listed in Part 2 of Schedule 1 to any person other than either the NAC or an airport authority established by the provincial government within which the aerodrome is located.³²⁹

333. TITLE TO LAND.³³⁰

(1) A Registrar of Titles shall, on written application by a person authorised 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

³²⁵ Ibid, amended, s.120(b).

³²⁶ Ibid, amended, s.120(c)(i).

³²⁷ Ibid, amended, s.120(c)(ii).

³²⁸ Ibid, amended, s.120(d)(i).

³²⁹ Ibid, repealed and replaced, s.120(d)(ii).

³³⁰ Ibid, amended, s.121.

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- (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 authorised 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.

[Section 334 repealed by No. 7 of 2010, s.122.]

335. PROVISIONS RELATING TO MINISTERS' SHAREHOLDING.³³¹

(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) Despite 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, authorise (on such terms and conditions as are specified in the notice) such person as the Minister thinks fit to act as the Minister's representatives 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 authorised 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.

³³¹ Section 335 amended by No. 7 of 2010, s.123(a) and (b).

(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 CASA 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 Regulation* (Chapter 239) (repealed), and being current at the time of 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.³³²

(2) Despite Subsection (1) any aviation document issued under the *Civil Aviation Act* (Chapter 239) (repealed), or *Civil Aviation Regulation* (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 Regulation* (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 of Civil Aviation or Acting Director of Civil Aviation or any delegate of them since 1 January 2001 purporting to be in the name of or under CASA of the Director of Civil Aviation appointed under Section 37 (repealed) of the *Civil Aviation Act 2000*, shall be deemed to be valid and lawful as if those persons were properly appointed under Section 37 (repealed) 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.³³³

(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.

³³² Ibid, amended, s.124(a).

³³³ Ibid, repealed and replaced, s.124(b).

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(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, despite 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.³³⁴

Civil Aviation Act (Chapter 239).

Civil Aviation (Crimes) Act (Chapter 266).

Civil Aviation Regulations (Chapter 239).

Office of the Commissioner-Revised Laws, PNG

³³⁴ Schedule 2 repealed and replaced by No. 7 of 2010, s.125.