

Chapter 77.
Defence (Visiting Forces) Act 1975.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 77.

Defence (Visiting Forces) Act 1975.

ARRANGEMENT OF SECTIONS.

PART I – PRELIMINARY.

1. Interpretation—
 - “authorized officer”
 - “dependant”
 - “forces”
 - “Papua New Guinea service law”
 - “the regulations”
 - “the sending country”
 - “service authorities”
 - “service law”
 - “service tribunal”
 - “this Act”
 - “visiting force”
 - “visiting forces agreement”
2. General application of laws.
3. Village Courts.
4. Effect of visiting forces agreements.
5. Part VI of the Defence Act.
6. Countries to which this Act applies.

PART II – VISITING FORCES AGREEMENTS.

7. Visiting forces agreements.
8. Claims.

PART III – JURISDICTION.

9. Basic right to jurisdiction of foreign service tribunals, etc.
10. Persons subject to service tribunals.
11. Exclusive jurisdiction of foreign service tribunals, etc.
12. Exclusive jurisdiction of Papua New Guinea tribunals, etc.
13. Concurrent jurisdiction.

14. Procedural provisions.
15. Effect of decisions of foreign service tribunals.
16. Arrest, custody, etc., of offenders against Papua New Guinea law.
17. Imprisonment, etc., of persons sentenced by foreign service tribunals.
18. Carrying out of death penalties.
19. Validity of acts of foreign service tribunals, etc.
20. Assistance to foreign service tribunals, etc.

PART IV – DESERTERS AND ABSENTEES WITHOUT LEAVE.

21. Interpretation of Part IV.
22. Apprehension of deserters and absentees without leave.
23. Detention of illegal absentees.
24. Disposal of detained illegal absentees.
25. Evidence.

PART V – INQUESTS AND REMOVAL OF DEAD BODIES.

26. Inquests.
27. Removal of dead bodies.

PART VI – RESTRICTION OF CERTAIN PROCEEDINGS.

28. Restrictions on proceedings in respect of service.

PART VII – CONCESSIONS, PRIVILEGES, ETC.

29. General.
30. Application of certain laws.
31. Official documents of visiting forces.
32. Imports.
33. Dangerous goods.
34. Official vehicles, vessels and aircraft.
35. Movement of official vehicles, vessels and aircraft.
36. Occupation of land, premises and places.
37. Control of installations.
38. Telecommunications.
39. Navigational aids.
40. Surveys, etc.
41. Postal services.
42. Employment.

PART VIII – PROVISIONS RELATING TO INDIVIDUALS.

43. Application of Part VIII.
44. Modification of certain laws.
45. Currency.
46. Quarantine and health.
47. Customs and migration formalities.
48. Employment of dependants.

PART IX – EVIDENCE.

49. Evidence of certain matters.
50. Proof of facts by certificates.

PART X – MISCELLANEOUS.

51. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Defence (Visiting Forces) Act 1975,

Being an Act—

- (a) to set out the basic conditions on which Defence Forces of friendly countries, together with certain civilian support staff, may be in Papua New Guinea; and
- (b) to provide for agreements to be entered into by the State with other countries in this regard,

and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION—.

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

“**authorized officer**” means an officer of the Defence Force appointed by the Commander of the Defence Force to be an authorized officer for the purposes of this Act;

“**dependant**”, in relation to a member of a visiting force or of a civilian component of a visiting force, means a person, not being a citizen of, or a person ordinarily resident in, Papua New Guinea, who—

- (a) is the wife or husband of the member; or
- (b) is wholly or mainly maintained by the member; or
- (c) is in the custody, care or charge of the member; or
- (d) is one of the family of the member residing with the member;

“**forces**”, in relation to a country, means the naval, military or air forces of that country;

“Papua New Guinea service law”, means the law (including any instrument having the force of law) governing the Defence Force or a part of the Defence Force;

“the regulations” means any regulations made under this Act;

“the sending country”, in relation to a visiting force, means the country to whose forces the visiting force belongs;

“service authorities”, in relation to a country, means the naval, military or air force authorities of that country;

“service law”, in relation to a country, means the law (including any instrument having the force of law) governing all or any of the forces of that country;

“service tribunal”, in relation to a country or a visiting force, means a court-martial or other similar tribunal established under service law of that country or of the country sending the visiting force, as the case may be, and includes any authority of that country that is empowered by or under the law of that country—

(a) to review the proceedings of such a tribunal; or

(b) to try or investigate charges brought against persons subject to the service law of that country;

“this Act” includes the regulations;

“visiting force” means any body, contingent or detachment of the forces of a country that is for the time being present in Papua New Guinea under an agreement under Part II;

“visiting forces agreement” means an agreement of a kind referred to in Section 7.

(2) A reference in this Act to a member of a visiting force shall be read as a reference to a person who, in accordance with the law of the sending country, is serving as a member of the visiting force.

(3) A reference in this Act to a member of a civilian component of a visiting force shall be read as a reference to a person, not being a member of that visiting force or a citizen of, or a person ordinarily resident in, Papua New Guinea, who—

(a) is employed by or in the service of—

(i) the visiting force or a part of the visiting force; or

(ii) an organization established for the benefit or welfare of members of the visiting force and recognized by the designated authority of the sending country; or

(b) is—

- (i) serving in an organization that, with the approval of the Minister or in accordance with an agreement under Part II, is accompanying the visiting force; or
- (ii) attached to or is accompanying the visiting force and, in accordance with the law of the sending country, is subject to the service law of that country,

but does not include a dependant of a member of the visiting force or of a person referred to in Paragraph (a) or (b).

(4) A reference in this Act to a person's having at any time a relevant association with a visiting force shall be read as a reference to his being at that time—

- (a) a member of the visiting force or of a civilian component of that force; or
- (b) a person, not being a citizen of, or a person ordinarily resident in, Papua New Guinea, who is a dependant of a member of—
 - (i) the visiting force; or
 - (ii) a civilian component of that force.

(5) For the purposes of this Act, in determining whether a person is, or was at any time, ordinarily resident in Papua New Guinea, account shall not be taken of any period during which he has been or intends to be in Papua New Guinea as—

- (a) a member of a visiting force or of a civilian component of a visiting force; or
- (b) a dependant of a member of a visiting force or of a member of a civilian component of a visiting force.

(6) For the purposes of this Act, a member of a force of a country that is in the nature of a reserve or auxiliary force shall be deemed to be a member of the forces of that country while he—

- (a) is called into actual service (by whatever expression described) with those forces; or
- (b) is called out for training with those forces,

and any reference in this Act to a person's becoming a member of the forces of a country shall be read accordingly.

(7) A reference in any provision of this Act to the designated authority of a country shall be read as a reference to the authority designated for the purposes of that provision by the appropriate authority or officer of that country, and where any question arises as to what or who is the appropriate authority or officer the certificate of the Minister is final.

2. GENERAL APPLICATION OF LAWS.

(1) Except as expressly provided by or under this Act, all members of visiting forces and of civilian support staff, and their dependants, are subject to all laws of Papua New Guinea.

(2) Subject to Part II, this Act does not confer any rights or privileges on members of a visiting force, or on civilian support staff, or their dependants, who are citizens of, or persons ordinarily resident in, Papua New Guinea.

3. VILLAGE COURTS.

This Act binds all Village Courts established under the *Village Courts Act 1989*.

4. EFFECT OF VISITING FORCES AGREEMENTS.

This Act (other than Part II) shall be read subject to any provision to the contrary contained in an agreement under Part II.

5. PART VI OF THE DEFENCE ACT.

This Act does not affect the operation of Part VI of the *Defence Act 1974*.

6. COUNTRIES TO WHICH THIS ACT APPLIES.

A reference in this Act to a country in relation to which a provision of this Act applies shall be read as a reference to a country declared by the Head of State, acting on advice, by notice in the National Gazette, to be a country to which that provision applies.

PART II. – VISITING FORCES AGREEMENTS.

7. VISITING FORCES AGREEMENTS.

(1)¹ ²An agreement with the appropriate authorities of a country relating to–

- (a) the presence of the forces, or a part of the forces, of that country in Papua New Guinea; and
- (b) for purposes connected with their presence in the country,

may, subject to this Act, be entered into by–

- (c) the Head of State, acting on advice; or
- (d) in respect of any particular agreement, by the Minister, after being authorized to do so by the Head of State, acting on advice.

(2) An agreement under Subsection (1) may provide that any of the provisions of this Act–

- (a) do not apply; or
- (b) apply subject to such variations, conditions or restrictions as are provided for in the agreement,

to–

- (c) part or all of a visiting force of a country that is a party to the agreement or of a civilian component of any such force; or
- (d) a dependant of a member of such a force or civilian component.

(3) An agreement referred to in Subsection (2)–

- (a) shall be laid before the Parliament within 15 sitting days of the Parliament after being entered into; and
- (b) may be disallowed by the Parliament by resolution made within 10 sitting days after it is laid before the Parliament.

8. CLAIMS.

(1) An agreement entered into under this Part may provide for the settlement of claims arising out of death or injury to persons or damage to property.

(2) Where an agreement has been entered into under this Part by which payments of amounts in satisfaction of claims arising out of acts or omissions of–

- (a) members of a visiting force; or
- (b) members of a civilian component of a visiting force; or
- (c) persons connected with a visiting force; or
- (d) the civilian component of a visiting force,

¹ Section 7(1) replaced by No. 20 of 1978.

² Section 7(1) replaced by No. 20 of 1978.

s. 8.

Defence (Visiting Forces) 9999

are to be, or may be, made by the State, payment by the State of such an amount, as agreed on or determined by judicial process between the State and the claimant, is a full discharge of the liability of the State or other person against whom the claim was made.

PART III. – JURISDICTION.

9. BASIC RIGHT TO JURISDICTION OF FOREIGN SERVICE TRIBUNALS, ETC.

For all purposes of the law of Papua New Guinea, the service tribunals and service authorities of a country in relation to which an agreement under Section 7 has been entered into may, within Papua New Guinea or on board a vessel or aircraft belonging to or used by the Defence Force and to the extent provided for by this Part, exercise over persons subject to their jurisdiction all such powers as are conferred on them by the laws of that country.

10. PERSONS SUBJECT TO SERVICE TRIBUNALS.

(1) Subject to Subsection (2), the persons subject to the jurisdiction of the service tribunals and service authorities of another country for the purposes of this Part include—

- (a) members of any visiting force of the other country; and
- (b) all other persons, not being citizens of, or persons ordinarily resident in, Papua New Guinea, who are otherwise subject to the service law of the other country, as provided in that law.

(2) For the purposes of Subsection (1), a person shall be treated as not being a member of a visiting force of another country if he became, or last became, a member of the other country's forces at a time when he was in Papua New Guinea, unless he then became a member of those forces with his consent.

11. EXCLUSIVE JURISDICTION OF FOREIGN SERVICE TRIBUNALS, ETC.

Subject to Sections 12 and 13, the service tribunals and service authorities of a country to which Part II applies have jurisdiction to the exclusion of the courts, tribunals and authorities of Papua New Guinea in respect of all acts and omissions in Papua New Guinea committed by persons subject to their jurisdiction that are punishable under the laws of that country but not under the laws of Papua New Guinea.

12. EXCLUSIVE JURISDICTION OF PAPUA NEW GUINEA TRIBUNALS, ETC.

The courts, tribunals and authorities of Papua New Guinea have jurisdiction to the exclusion of the courts, tribunals and authorities of another country to which an agreement under Part II applies in respect of all acts and omissions committed in Papua New Guinea by persons subject to the jurisdiction of the courts, tribunals and authorities of the other country that are punishable under the laws of Papua New Guinea but not under the laws of that country.

13. CONCURRENT JURISDICTION.

In the case of an act or omission by a person subject to the jurisdiction of the service tribunals and service authorities of another country to which an agreement under Part II applies that is punishable under the laws of Papua New Guinea and under the laws of the other country, then unless the Minister, on behalf of Papua New Guinea, or the designated authority of the other country, on behalf of his country, waives jurisdiction by written notice to the other—

- (a) the service tribunals and the service authorities of the other country have, subject to Section 14, exclusive jurisdiction if the act or omission constitutes an offence under the laws of Papua New Guinea that—
 - (i) arose out of and in the course of the duties of the member as a person subject to the jurisdiction of the service tribunals and service authorities of the other country; or
 - (ii) is an offence solely against the property or security of the other country; or
 - (iii) is an offence solely against the person or the property of a member of a visiting force or a member of a civilian component of a visiting force, or a dependant of any such person; and
- (b) in any other case the courts and tribunals of Papua New Guinea have exclusive jurisdiction.

14. PROCEDURAL PROVISIONS.

(1) This Part—

- (a) does not prevent a person from being tried by a court or tribunal of Papua New Guinea in a case where the Public Prosecutor certifies in writing, before or during the course of the trial, that the designated authority of the sending country has notified him that it is not proposed to deal with the case under the law of that country; and
- (b) does not affect anything done or omitted in the course of a trial before a court or tribunal of Papua New Guinea unless in the course of the trial objection has already been made that, by reason of this Part, the court or tribunal is not competent to deal with the case; and
- (c) shall not be treated after the conclusion of a trial, as having affected the validity of the trial, if no objection was made in the proceedings at any stage before the conclusion of the trial.

(2) Where the charge is a charge (by whatever words expressed) of attempting or conspiring to commit an offence, or of aiding, abetting, inciting, procuring or being accessory to the commission of an offence—

- (a) Section 13(a)(ii) and (iii) have effect as if the references in those subparagraphs to the alleged offence were references to the offence—

- (i) that the person charged is alleged to have attempted or conspired to commit; or
 - (ii) the commission of which it is alleged that he aided, abetted, incited or procured; or
 - (iii) to the commission of which he was accessory; and
- (b) references in those subparagraphs to a person in relation to whom, or property in relation to which, the offence is alleged to have been committed shall be construed accordingly.

(3) The preceding provisions of this Part do not derogate any provision of any law that restricts the prosecution of any proceedings, or requires the consent of any authority to the prosecution of any proceedings.

15. EFFECT OF DECISIONS OF FOREIGN SERVICE TRIBUNALS.

(1) Where a person has, in accordance with this Part, been tried for an offence by a service tribunal of another country, he shall not be tried by a court or tribunal of Papua New Guinea for an offence that is substantially the same offence.

(2) Where—

- (a) a person who has, in accordance with this Part, been convicted of an offence by a service tribunal of another country is convicted by a court or tribunal of Papua New Guinea of a different offence; but
- (b) it appears to the court or tribunal that the conviction by the service tribunal was wholly or partly in respect of acts or omissions in respect of which he is convicted by the court or tribunal,

then in determining any penalty that may be imposed or order that may be made, the court or tribunal may have regard to the sentence of the service tribunal.

16. ARREST, CUSTODY, ETC., OF OFFENDERS AGAINST PAPUA NEW GUINEA LAW.

(1) The preceding provisions of this Part do not affect—

- (a) any power of arrest, search, entry, seizure or custody exercisable under any law with respect to offences; or
- (b) any obligation of a person in respect of a recognizance or bail bond entered into in consequence of his arrest, or the arrest of another person; or
- (c) any power of a court or tribunal to remand (whether in custody or otherwise) a person brought before a court or tribunal in connection with an offence.

(2) Where a person is charged with an offence against a law of Papua New Guinea and it appears he is subject to the jurisdiction of the service tribunal of a

country to which this Part applies, the designated authority of that country shall be notified.

(3) Where a person is charged with an offence against a law of Papua New Guinea and it appears to the court or tribunal before which he is charged that he is a person subject to the jurisdiction of a country to which this Part applies, the court or tribunal shall determine a period that it thinks reasonable to enable enquiries to be made with a view to determining whether he should be dealt with by a court or tribunal of Papua New Guinea or by a service tribunal of that country, and further proceedings with respect to the offence are stayed for that period.

(4) Where—

- (a) a person referred to in Subsection (3) is remanded in custody by order of a court or tribunal; and
- (b) the Minister, by writing under his hand—
 - (i) states that the designated authority of the sending country has requested that the person be delivered into the custody of a service authority of that country pending trial; and
 - (ii) requests that he be so delivered,

the court or tribunal shall revoke the order and order that the person be so delivered.

(5) Where a member of a visiting force or of any civilian component of a visiting force, or a dependant of such a person, is sentenced to a term of imprisonment by a court or tribunal of Papua New Guinea, the Minister may arrange with the authorities of the country to which the force belongs for all or part of that sentence to be served under agreed conditions in that country.

17. IMPRISONMENT, ETC., OF PERSONS SENTENCED BY FOREIGN SERVICE TRIBUNALS.

(1) Where the designated authority of a country to which this Part applies asks the Minister that assistance be given in carrying out a sentence of imprisonment or detention imposed on a person by a service tribunal of that country, the Minister, by writing under his hand, may authorize—

- (a) the reception of the person sentenced; and
- (b) his confinement for the whole or part of the term of his sentence,

in a correctional institution or other place in Papua New Guinea for the confinement of persons convicted of offences against the law of Papua New Guinea.

(2) Where a Papua New Guinea force is serving in another country and a member of that force or of any civilian component of that force, or a dependant of such a person, is sentenced to a term of imprisonment by a court or tribunal of the other country, the Minister may authorize the sentence or part of the sentence to be served in a correctional institution or other place in Papua New Guinea for the confinement of persons convicted of offences against the law of Papua New Guinea.

(3) A person held under custody or restraint, or kept in confinement, for the purpose of giving effect to an authority under Subsection (1) or (2) is in lawful custody, and the *Correctional Service Act 1995* applies to and in relation to him as if he were a detainee serving a sentence of imprisonment (with or without hard labour, as specified by the Minister in the authority).

(4) The regulations may make provision with respect to the circumstances under which persons imprisoned or detained in accordance with this section may be discharged or returned to the service authorities of the country under the service law of which they were sentenced.

18. CARRYING OUT OF DEATH PENALTIES.

Notwithstanding any other law, a sentence of death passed by a service tribunal of another country to which this Part applies shall not be carried out in Papua New Guinea.

19. VALIDITY OF ACTS OF FOREIGN SERVICE TRIBUNALS, ETC.

(1) Where a sentence has been passed, whether inside or outside Papua New Guinea, by a service tribunal of a country to which this Part applies on a person who, immediately before the sentence was passed, was subject to the jurisdiction of the tribunal, then, for the purpose of any proceedings before a court or tribunal of Papua New Guinea—

- (a) the service tribunal shall be deemed to have been properly constituted; and
- (b) the sentence shall be deemed to be within the jurisdiction of the service tribunal and in accordance with the laws of that country; and
- (c) subject to Section 18 the sentence, if executed according to its tenor, shall be deemed to have been lawfully executed.

(2) For the purpose of any proceeding before a court or tribunal of Papua New Guinea, a person who—

- (a) is detained in custody under a sentence with respect to which Subsection (1) has effect; or
- (b) being subject to the jurisdiction of a country to which this Part applies— is detained in custody pending or during the trial, by a service tribunal of that country, of a charge brought against him,

shall be deemed to be in lawful custody.

20. ASSISTANCE TO FOREIGN SERVICE TRIBUNALS, ETC.

For the purpose of enabling the service tribunals and service authorities of a country to which an agreement under Part II applies to exercise more effectively their powers under this Part, the Minister, if requested by the designated authority

of that country, may authorize members of the Defence Force or members of the Police Force, or both—

- (a) to arrest any person who, being a member of a visiting force of that country, is alleged to have committed an act or omission punishable under the law of that country; and
- (b) to deliver him to such service authority of that country as the Minister specifies.

PART IV. – DESERTERS AND ABSENTEES WITHOUT LEAVE.

21. INTERPRETATION OF PART IV.

Subject to Section 25, a reference in this Part to the country to which a person belongs shall be read as a reference to the country from whose forces he is suspected of being, or, where he has surrendered himself, appears from his statement to be, a deserter or absentee without leave.

22. APPREHENSION OF DESERTERS AND ABSENTEES WITHOUT LEAVE.

Where the designated authority of a country to which an agreement under Part II applies requests, in writing, an authorized officer for assistance in the apprehension of a member of the forces of that country who is a deserter or an absentee without leave from those forces, the authorized officer may in his discretion, issue a warrant in the prescribed form authorizing any member of the Police Force or of the Defence Force to arrest the deserter or absentee.

23. DETENTION OF ILLEGAL ABSENTEES.

(1) A member of the Police Force may detain—

- (a) a person arrested under Section 22; or
- (b) a person who surrenders himself as being illegally absent from the forces of a country to which an agreement under Part II applies,

at a police station or at a place provided for the confinement of persons in lawful custody for such time as is reasonably necessary to enable the person to be dealt with in accordance with Section 24.

(2) A member of the Defence Force may detain—

- (a) a person arrested under Section 22; or
- (b) a person who surrenders himself as being illegally absent from the forces of a country to which this Act applies,

at a place provided for the confinement of members of the Defence Force who are accused or convicted of an offence for such time as is reasonably necessary to enable the person to be dealt with in accordance with Section 24.

24. DISPOSAL OF DETAINED ILLEGAL ABSENTEES.

(1) Subject to this section, a person detained under Section 23 shall be delivered into the custody of the authority of the forces of the country to which he belongs at the place, inside or outside Papua New Guinea, specified in the warrant or otherwise directed by the authorized officer who issued the warrant or by another authorized officer.

(2) Where the person detained claims that there is a good and sufficient reason why he should be released from custody, his claim shall be referred to the officer who issued the warrant or to another authorized officer.

(3) After such investigation of the matter as he thinks necessary, the officer may—

- (a) if he is satisfied that the person detained should be released—direct that he be released; or
- (b) if he is not so satisfied—
 - (i) direct that he be delivered into custody in accordance with Subsection (1); and
 - (ii) refer the matter to the Minister.

(4) Where a matter is referred to the Minister under Subsection (3)(b)(ii), the Minister may direct that the person detained be released or be delivered into custody in accordance with Subsection (1).

(5) Where the Minister or an officer directs under this section that a person be released, he shall be released accordingly.

(6) For the purposes of any law of Papua New Guinea, a person detained under Section 23 or delivered into custody in accordance with Subsection (1) is a person in lawful custody.

25. EVIDENCE.

For the purposes of this Part and of any proceedings in a court or otherwise arising in connection with any action taken under this Part, where the designated authority of a country in relation to which Section 22 applies certifies in writing that a person named and described in the certificate was, on a specified date, a deserter or an absentee without leave from the forces of that country, the certificate is sufficient evidence of the facts certified, unless the contrary is proved.

PART V. – INQUESTS AND REMOVAL OF DEAD BODIES.

26. INQUESTS.

(1) In this section, “**homicide**” includes wilful murder, murder, manslaughter and infanticide, and any other offence under the law of the country concerned that is substantially similar to any of those offences.

(2) Where a coroner having jurisdiction to hold an inquest into the manner and cause of a death is satisfied that the deceased person had, at the time of his death, a relevant association with a visiting force, the coroner shall advise the Attorney-General accordingly and—

- (a) shall not hold the inquest; or
- (b) where the inquest has been commenced, but has not been completed, shall adjourn the inquest.

(3) Subject to Subsection (4), if on an inquest into the manner and cause of a death the coroner is satisfied that—

- (a) a person who, in accordance with Part III, is subject to the jurisdiction of the service tribunals of a country to which an agreement under Part II applies, has been charged before a service tribunal of that country with the homicide of the deceased person, whether or not the charge has been dealt with; or
- (b) such a person is being detained by an authority of that country with a view to his being so charged,

the coroner shall adjourn the inquest and advise the Attorney-General accordingly.

(4) Subsection (3) does not prevent the coroner from—

- (a) taking evidence of the identity of the deceased person and of the time and place of his death; or
- (b) furnishing information to the appropriate authority of Papua New Guinea for the purpose of the registration of the death; or
- (c) authorizing the burial, cremation or other disposal of the body of the deceased person.

(5) Notwithstanding this section, the Attorney-General may notify the coroner that there are no circumstances connected with the operation of this Act that make it undesirable that an inquest into the manner and cause of a specified death should be held or continued, as the case may be, and if the Attorney-General gives such a notification the inquest may be held or resumed.

27. REMOVAL OF DEAD BODIES.

No law that imposes restrictions on the removal out of Papua New Guinea, or a part of Papua New Guinea, of a body of a deceased person applies to or in relation to the body of the deceased person who at the time of his death had a relevant

s. 27.

Defence (Visiting Forces) 9999

association with a visiting force, and the body of such a deceased person may be disposed of as the Minister determines, having regard to any request by the designated authority of the country concerned.

PART VI. – RESTRICTION OF CERTAIN PROCEEDINGS.

28. RESTRICTIONS ON PROCEEDINGS IN RESPECT OF SERVICE.

Proceedings shall not be brought in any court in respect of—

- (a) the pay or allowances of a person in respect of his service as a member;
or
- (b) the terms of a person's service as a member; or
- (c) a person's discharge from the service,

of a visiting force or of a civilian component of a visiting force.

PART VII. – CONCESSIONS, PRIVILEGES, ETC.**29. GENERAL.**

In any case not provided for in this Part, where any power, privilege or exemption is or may be conferred by or under any law on the Defence Force or members of a class of members of the Defence Force—

- (a) a visiting forces agreement may provide that the corresponding power, privilege, protection or exemption may be possessed by or conferred on a visiting force or the members, or a class of members, of a visiting force; or
- (b) at the request of the designated authority of the sending country, the Minister may, by instrument, confer the corresponding power, privilege, protection or exemption on a visiting force or the members, or a class of members, of a visiting force,

to be held subject to—

- (c) any conditions and limitations to which the Defence Force or members of the Defence Force are or may be made subject; and
- (d) any conditions and limitations imposed in the visiting forces agreement or by the Minister, as the case requires.

30. APPLICATION OF CERTAIN LAWS.

(1) Subject to this Act, with the necessary modifications, all laws relating to—

- (a) quarantine; and
- (b) public health and buildings; and
- (c) plant and animal diseases and pests; and
- (d) firearms; and
- (e) explosives and ammunition; and
- (f) inflammable liquids; and
- (g) intoxicating liquor; and
- (h) drugs and poisons; and
- (i) motor traffic,

apply to and in relation to a visiting force or a civilian component of a visiting force in the same way that they apply to and in relation to the Defence Force.

(2) The regulations, or in any particular case a visiting forces agreement, may determine the modifications to be made for the purpose of Subsection (1) to any law referred to in that subsection.

31. OFFICIAL DOCUMENTS OF VISITING FORCES.

(1) Official documents and official correspondence to or with a visiting force are not subject to Customs or other inspection under any law.

(2) For the purpose of identifying official documents and correspondence, the sending country may provide to the Minister a facsimile of an official seal which, when placed on a document or placed on or attached to a container, shall be taken as a certificate that—

- (a) the document is an official document; or
- (b) the container contains only official documents and correspondence,

as the case may be.

32. IMPORTS.

(1) Subject to this section, all goods required by a visiting force or a civilian component of a visiting force for its official use may be imported free of all duties, levies or taxes.

(2) The Minister or a visiting forces agreement may impose limitations and restrictions on the exercise of the privilege granted by Subsection (1) in order to ensure that, subject to considerations of operational efficiency, the maximum use is made of goods and services available in Papua New Guinea.

(3) Goods imported in accordance with Subsection (1) may be disposed of only—

- (a) by destruction or re-export; or
- (b) in the case of unforeseen surpluses or damaged or unserviceable goods, and with the consent of the Minister—by gift or sale.

(4) Unless the Minister otherwise determines, where goods are disposed of in accordance with Subsection (3)(b) the person to whom they are disposed of, or at its option the visiting force, is liable to pay the amount, as assessed by the Comptroller of Customs, of all duties, levies and taxes that would be payable if the goods were imported from the sending country on the date of disposal, less an allowance for any part or component of the goods or of their value that represents goods or services obtained in Papua New Guinea.

33. DANGEROUS GOODS.

(1) The Minister may direct that explosives, oil, nuclear material or any other prescribed dangerous substance or thing shall not be imported, held or disposed of except into or in such places, and in such manner, as he directs.

(2) The Minister may direct that nuclear material or any other prescribed dangerous substance or thing shall not be imported or brought into the territorial waters of Papua New Guinea (whether as part of the equipment of a vessel or aircraft or otherwise) except with his prior consent and subject to such conditions as he thinks proper.

34. OFFICIAL VEHICLES, VESSELS AND AIRCRAFT.

(1) A vehicle, vessel or aircraft—

- (a) that is for the official use of a visiting force or of a civilian component of a visiting force; and
- (b) as to which there is an official certificate by the designated authority of its roadworthiness, seaworthiness or airworthiness, as the case may be, to the standard required of vehicles, vessels or aircraft for the official use of the Defence Force,

is exempt from any requirement of any law for the registration or licensing of vehicles, vessels or aircraft, as the case may be.

(2) Notwithstanding Subsection (1), the regulations may require that certain prescribed details of a vehicle, vessel or aircraft to which that subsection refers be furnished to the prescribed authority.

(3) The *Motor Vehicles (Third Party Insurance) Act 1974* and the provisions of any other law relating to—

- (a) compensation or damages arising out of the use of a vehicle, vessel or aircraft; or
- (b) insurance against liability for any such compensation or damages arising out of the use of a vehicle, vessel or aircraft; or
- (c) insurance against liability for any such compensation or damages,

apply to a vehicle, vessel or aircraft to which Subsection (1) applies.

(4) Subsection (2) applies to and in respect of Division I.2 of the *Wrongs (Miscellaneous Provisions) Act 1962* as if references in that Division to the State were references to the visiting force.

(5) A licence or similar document issued by a visiting force or a civilian component of a visiting force authorizing a member of that force or civilian component to drive, or to perform any other function in relation to, a vehicle, vessel or aircraft to which Subsection (1) applies shall be deemed to be a licence or other document required by any law to be held by persons driving or performing that function in relation to other vehicles, vessels or aircraft.

(6) The privileges conferred by this section apply only while a vehicle, vessel or aircraft is in official use by the visiting force or the civilian component.

35. MOVEMENT OF OFFICIAL VEHICLES, VESSELS AND AIRCRAFT.

(1) Subject to this Act, official vehicles, vessels and aircraft of a visiting force, or a civilian component of a visiting force, may enter and move about, and use facilities in, Papua New Guinea on the same conditions (including conditions relating to fees, charges and tolls) as vehicles, vessels and aircraft of the Defence Force.

(2) Subject to this Act and to any directions of the Minister as to the manner of exercise of the privilege, official vehicles, vessels and aircraft of a visiting force, or of

a civilian component of a visiting force, have the right of freedom of movement into and out of any land, premises or place occupied or used by the visiting force under Section 36.

36. OCCUPATION OF LAND, PREMISES AND PLACES.

(1) Subject to any directions of the Minister, a visiting force, or a civilian component of a visiting force, may enter into an agreement or arrangement with any person for the occupation or use by it of any land, premises or place.

(2) By arrangement with the Minister, a visiting force may occupy or use any land, premises or place the property of, or under the control of, the State.

(3) Unless the arrangement under Subsection (2) provide otherwise, all installations placed on any land, premises or place occupied or used under that subsection become, on the cessation of the occupation or use, the property of the State.

37. CONTROL OF INSTALLATIONS.

(1) Subject to any arrangement with the Minister, where a visiting force, or a civilian component of a visiting force, has the use or occupation of any land, premises or place under Section 36 it has the same control over—

- (a) the land, premises or place; and
- (b) persons, goods, vehicles, vessels and aircraft entering or leaving or being on or in the land, premises or place,

as the Defence Force would have if it had the equivalent use or occupation, and the laws that would apply to the powers of the Defence Force if it had the use or occupation apply, with the necessary modifications, in relation to the visiting force or civilian component in the same way as they apply in relation to the Defence Force.

(2) Notwithstanding Subsection (1) but subject to Part III, a visiting force, or a civilian component of a visiting force, may exercise in relation to—

- (a) its members and dependants of its members on or in the land, premises or place of which it has the use or occupation under Section 36; and
- (b) other persons on or in the land, premises or place only by permission or at the invitation of the visiting force or civilian component, or of a member of or a dependant of such a member,

any power that it might exercise if the land, premises or place were situated in the sending country.

38. TELECOMMUNICATIONS.

(1) By arrangement with the Minister, a visiting force may install, maintain and operate telecommunication systems and telecommunication stations for the purpose of command and control of the force, subject to the same technical and

operational requirements that apply to such systems and stations installed, maintained or operated by or on behalf of the State.

(2) A visiting force is entitled—

- (a) to have granted to it, within the limits of frequencies available, radio frequencies for the purpose of telecommunication systems and stations installed, maintained or operated under Subsection (1) on the same conditions as those on which frequencies are granted to the Defence Force; and
- (b) with the consent of the Minister, to make use of telecommunication systems and stations owned or operated by any other person (including the State) on the same conditions as those on which the Defence Force may do so.

(3) A visiting force does not require, for or in connection with the installation, maintenance or operation of a telecommunication system or station under Subsection (1), any permit, approval or licence under the *Radio Spectrum Act 1996* (including any licence otherwise required by members of the visiting force, or of a civilian component of it, employed in connection with the system or station).

(4) Notwithstanding this section, a visiting force shall comply with any reasonable requirement of the Minister with regard to the operation of any telecommunication system or station operated under Subsection (1).

39. NAVIGATIONAL AIDS.

By arrangement with the Minister a visiting force may install, maintain and operate navigational aids and tracking stations (other than any such aids and stations to which Section 38 applies), subject to the same technical and operational requirements as apply to such aids or stations installed, maintained or operated by or on behalf of the State.

40. SURVEYS, ETC.

(1) Subject to any directions of the Minister, a visiting force may conduct topographical, hydrographical, geodetic and other surveys, provided that details and results are made available to the State.

(2) The details and results of any survey referred to in Subsection (1) shall not be made available to any person other than the State without the consent of the State.

41. POSTAL SERVICES.

(1) By arrangement with the Minister, a visiting force, or a civilian component of a visiting force, may conduct postal services for the members of the force and of the civilian component, both within Papua New Guinea and between Papua New Guinea and other places.

(2) An arrangement under Subsection (1) may include provision for payment to the State of amounts by way of compensation for loss of revenue.

(3) Subject to Section 31, all laws relating to the protection of postal services conducted by the Government, and the protection and inspection of postal articles carried in any such service, apply to and in relation to a postal service conducted under Subsection (1), and for the purpose of any prosecution the property in any postal article may be laid in the commanding officer of the visiting force.

42. EMPLOYMENT.

All laws relating to employment apply to the employment of persons (other than members of the visiting force or the civilian component) by a visiting force or a civilian component of a visiting force.

PART VIII. – PROVISIONS RELATING TO INDIVIDUALS.**43. APPLICATION OF PART VIII.**

This Part does not apply to persons who are citizens of, or who are ordinarily resident in, Papua New Guinea, or to the dependants of any such persons.

44. MODIFICATION OF CERTAIN LAWS.

Subject to this Act, the Minister may enter into an agreement on behalf of the State, exempting the members of a visiting force or of a civilian component of a visiting force, or the persons connected with a visiting force or a civilian component of a visiting force, from compliance with all or any provisions of the laws of Papua New Guinea relating to–

- (a) income tax; and
- (b) entry requirements; and
- (c) importation of personal effects; and
- (d) importation of vehicles and vessels,

subject to such conditions, limitations or requirements as are specified in the agreement.

45. CURRENCY.

Members of a visiting force and members of a civilian component of a visiting force, and dependants of such members, are bound by all laws of Papua New Guinea relating to currency and exchange control.

46. QUARANTINE AND HEALTH.

This Part does not exempt any person from the provisions of any law relating to quarantine or health.

47. CUSTOMS AND MIGRATION FORMALITIES.

This Part does not exempt any persons from any customs or migration formalities.

48. EMPLOYMENT OF DEPENDANTS.

Notwithstanding this Act, the *Employment of Non-citizens Act 1978* applies to and in relation to a dependant of a member of a visiting force or of a member of a civilian component of a visiting force.

PART IX. – EVIDENCE.

49. EVIDENCE OF CERTAIN MATTERS.

(1) Where the designated authority of a country to which Part III applies certifies in writing that, at a time specified in the certificate, a person specified was or was not—

- (a) a member of a visiting force of that country; or
- (b) a member of a civilian component of a visiting force of that country; or
- (c) a person otherwise subject to the service law of that country, as provided in that law,

the certificate is, in any proceedings in a court or tribunal of Papua New Guinea, sufficient evidence of the facts so certified, unless the contrary is proved.

(2) Where in connection with a charge against a person of having committed an offence against a law of Papua New Guinea the designated authority of a country to which an agreement under Section 7 applies certifies in writing that the act or omission the subject of the charge is punishable under the law of that country, the certificate is, in any proceedings before a court or tribunal of Papua New Guinea, conclusive evidence, for the purposes of Sections 11 and 12, of the matter certified.

(3) Where the designated authority of a country to which Part III applies certifies in writing that a person specified in the certificate—

- (a) was on a specified date sentenced by a service tribunal of that country to a specified punishment; or
- (b) is, or was at a specified time, detained in custody under a sentence passed on him by a service tribunal of that country, or pending or during the trial by such a service tribunal of a charge brought against him; or
- (c) has been tried, at a specified time and place by a service tribunal of that country for a specified offence,

the certificate is, in any proceedings before a court or tribunal of Papua New Guinea, conclusive evidence of the fact certified.

(4) Where—

- (a) a person is charged with an offence against a law of Papua New Guinea; and
- (b) at the time when the offence is alleged to have been committed he was a member of a visiting force or of a civilian component of a visiting force; and
- (c) the Attorney-General certifies in writing that, if the alleged offence was committed by that person, it arose out of and in the course of his duties as a person subject to the jurisdiction of the service tribunals of a

country in relation to which an agreement under Part II has been entered into,

the certificate is, in any proceedings before a court or tribunal of Papua New Guinea, sufficient evidence of the facts certified, unless the contrary is proved.

50. PROOF OF FACTS BY CERTIFICATES.

(1) Where the designated authority of a country certifies in writing that a body, contingent or detachment of the forces of that country is, or was at a time specified in the certificate, present in Papua New Guinea, the certificate is, in any proceedings before a court or tribunal of Papua New Guinea, conclusive evidence of the facts certified.

(2) Where in any proceedings before a court or tribunal it is admitted or proved (whether by means of a certificate under Subsection (1) or otherwise) that a body, contingent or detachment of the forces of a country is, or was at a certain time, present in Papua New Guinea, then, for the purposes of those proceedings the body, contingent or detachment shall be deemed to be, or to have been at that time, as the case may be, present in Papua New Guinea by virtue of a visiting forces agreement, unless—

- (a) the Minister certifies to the contrary; or
- (b) the contrary is proved.

(3) Where—

- (a) in a certificate given for the purposes of this Act reference is made to a person by name; and
- (b) the certificate includes a description of the person named by reference to his physical characteristics; and
- (c) a court or tribunal is satisfied that a person before it is—
 - (i) a person having that name and answering to the description in the certificate; or
 - (ii) where his name cannot be determined with certainty—a person answering to the description,

the certificate shall be taken to refer to him unless the contrary is proved.

(4) A document purporting to be a certificate, request or notification given or made for the purposes of this Act, and to be signed by an authority or person specified in the document, shall on its production in any proceedings before a court or tribunal—

- (a) be received in evidence; and
- (b) be taken to be a certificate, request or notification given or made by that authority or person, unless the contrary is proved.

(5) Where under this Act a certificate, request or notification is required or permitted to be given or made for a purpose of this Act, and a certificate, request or

notification purports to be signed by a person described in the document as the designated authority of a country, he shall, in any proceedings before a court or tribunal, be taken to be the designated authority of the country, unless the contrary is proved.

PART X. – MISCELLANEOUS.

51. REGULATIONS.

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

Office of Legislative Counsel, PNG