

Chapter 80.  
***Legislative Drafting Service Act 1972.***

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 80.

*Legislative Drafting Service Act 1972.*

ARRANGEMENT OF SECTIONS.

1. Interpretation.  
    “Legislative Counsel”  
    “the Office”
2. Establishment of the Legislative Drafting Service.
3. Membership of the Service.
4. Office of Legislative Counsel.
5. Appointment of members of the Service.
6. Qualifications of members of the Service.
7. Tenure of office and conditions of employment.
8. Salaries and allowances.
9. Leave of absence.
10. Resignation.
11. Private practice.
12. Termination of appointment.
13. Public Service rights of members.
14. Oath and affirmation of office.
15. Staff.
16. General functions of the Office.
17. Status of members of the Service.
18. Special functions, etc., of the First Legislative Counsel.
19. Special responsibility of Legislative Counsel.

**SCHEDULE 1 – Oath and Affirmation of Office.**



INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

*Legislative Drafting Service Act 1972,*

Being an Act to establish a Legislative Drafting Service and an Office of Legislative Counsel, and for related purposes.

**1. INTERPRETATION.**

In this Act—

“**Legislative Counsel**” means the First Legislative Counsel or a Second Legislative Counsel;

“**the Office**” means the Office of Legislative Counsel established by this Act.

**2. ESTABLISHMENT OF THE LEGISLATIVE DRAFTING SERVICE.**

A Legislative Drafting Service is hereby established.

**3. MEMBERSHIP OF THE SERVICE.**

(1) The Legislative Drafting Service shall consist of a First Legislative Counsel and such numbers of Second Legislative Counsel and Assistant Legislative Counsel as are respectively determined by the Prime Minister.

(2) The First Legislative Counsel is the head of the Legislative Drafting Service.

**4. OFFICE OF LEGISLATIVE COUNSEL.**

(1) An Office of Legislative Counsel is hereby established.

(2) The Office of Legislative Counsel shall consist of the members of the Legislative Drafting Service and the staff referred to in Section 15(1).

**5. APPOINTMENT OF MEMBERS OF THE SERVICE.**

Each member of the Legislative Drafting Service shall be appointed by the Head of State, acting on advice.

**6. QUALIFICATIONS OF MEMBERS OF THE SERVICE.**

(1) A person is not eligible for appointment as a Legislative Counsel unless he—

(a) has been a barrister or a solicitor, or a barrister and solicitor, of the Supreme Court, the National Court, the Supreme Court of a State or Territory of Australia, the Supreme Court of Judicature of England or the Supreme Court of New Zealand; or

(b) has been called to the Bar of one of the Inns of Court in London,

for not less than five years.

(2) A person is not eligible for appointment as an Assistant Legislative Counsel unless he—

(a) is a barrister or a solicitor, or a barrister and solicitor, of the Supreme Court, the National Court, the Supreme Court of a State or Territory of Australia, the Supreme Court of Judicature of England or the Supreme Court of New Zealand; or

(b) has been called to the Bar of one of the Inns of Court in London.

**7. TENURE OF OFFICE AND CONDITIONS OF EMPLOYMENT.**

(1) Subject to this Act, a member of the Legislative Drafting Service holds office—

(a) for such period as is specified in the instrument of his appointment; and

(b) subject to this Act, on such terms and conditions as the Prime Minister determines,

and is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed or re-appointed as a member of the Legislative Drafting Service, and a person shall not be appointed or re-appointed as a member for a period that extends beyond the date on which he will attain the age of 65 years.

**8. SALARIES AND ALLOWANCES.**

The members of the Legislative Drafting Service shall be paid salaries and allowances at such rates, or in accordance with such scales of rates, as are determined by the Head of State, acting on advice given after consultation with the Public Services Commission.

**9. LEAVE OF ABSENCE.**

The Prime Minister may grant leave of absence to a member of the Legislative Drafting Service on such terms and conditions as to remuneration or otherwise as are determined by the Head of State, acting on advice.

**10. RESIGNATION.**

A member of the Legislative Drafting Service may resign his office by writing under his hand delivered to the Prime Minister, but the resignation does not have effect until accepted by that Minister.

**11. PRIVATE PRACTICE.**

A member of the Legislative Drafting Service shall not, without the approval of the Prime Minister, engage in practice as a barrister or solicitor, or engage in paid employment, outside the duties of his office.

**12. TERMINATION OF APPOINTMENT.**

(1) The Prime Minister may terminate the appointment of a member of the Legislative Drafting Service for misbehaviour or physical or mental incapacity.

(2) The appointment of a member of the Legislative Drafting Service shall be terminated if—

- (a) he absents himself from duty for 14 consecutive days, or for 28 days in any period of 12 months, except on leave granted by the Prime Minister; or
- (b) he becomes bankrupt, applies to take the benefits of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit.

**13. PUBLIC SERVICE RIGHTS OF MEMBERS.**

(1) If an officer of the Public Service is appointed to be a member of the Legislative Drafting Service, his period as such a member shall be counted as a service in the Public Service for the purpose of determining his rights (if any) in respect of—

- (a) leave of absence on the ground of illness; and
- (b) long leave or furlough, or pay in lieu (including pay to dependants or personal representatives on the death of the officer).

(2) The provisions of the *Public Services (Management) Act 1995* relating to leave to serve in an office established under an Act apply in relation to an office in the Legislative Drafting Service.

**14. OATH AND AFFIRMATION OF OFFICE.**

(1) Before entering on the duties of his office, the First Legislative Counsel, a Second Legislative Counsel or an Assistant Legislative Counsel shall take an oath or make an affirmation in the form in Schedule 1.

(2) The oath or affirmation shall be taken or made before the Prime Minister or a person appointed by the Prime Minister for the purpose.

**15. STAFF.**

(1) Subject to Subsection (2), any staff (other than members of the Legislative Drafting Service) required for the purpose of this Act shall be officers or employees of the Public Service.

(2) Nothing in Subsection (1) prevents any person from being employed, on contract or otherwise, under any other law to perform functions in relation to the Office.

**16. GENERAL FUNCTIONS OF THE OFFICE.**

The functions of the Office are—

- (a) the drafting of proposed laws for introduction into the Parliament; and
- (b) the drafting of amendments of proposed laws that are being considered by the Parliament; and
- (c) the drafting of subordinate legislation; and
- (d) the drafting of other instruments that are to have or be given the force of law, or are otherwise related to legislation; and
- (e) the making of arrangements for the printing of the laws, including the reprinting of any laws with amendments and the periodical or other consolidation of any such laws; and
- (f) such other functions as are prescribed by or under any other law or as are directed by the Prime Minister; and
- (g) functions incidental to any of the preceding functions.

**17. STATUS OF MEMBERS OF THE SERVICE.**

(1) In carrying out their respective duties in relation to the drafting functions of the Office, the First Legislative Counsel and the Second Legislative Counsel shall act as counsel.

(2) Except as otherwise directed by the First Legislative Counsel, an Assistant Legislative Counsel is responsible to the First Legislative Counsel or to a Second Legislative Counsel.

## 18. SPECIAL FUNCTIONS, ETC., OF THE FIRST LEGISLATIVE COUNSEL.

(1) In addition to his general functions as Legislative Counsel, the First Legislative Counsel—

- (a) shall control the Office; and
- (b) is administratively responsible to the Prime Minister for the efficient performance of the functions of the Office; and
- (c) subject to any directions of the Prime Minister as to priorities, is administratively responsible for the allocation of work of the Office; and
- (d) in consultation with other appropriate authorities, shall devise and implement, and where appropriate give instructions concerning, the adoption of uniform and simplified styles, form, wording and procedures in drafting instruments for which the Office is responsible, and generally for the purposes of the written law; and
- (e) shall consult and co-operate with the University of Papua New Guinea and other appropriate professional and academic bodies with a view to the encouragement of interest in legislative drafting as a career and the improvement of the art of legislative drafting, and on other matters of common concern; and
- (f) has such other functions, duties and responsibilities as the Prime Minister directs.

(2)<sup>1 2</sup>For the purposes of the *Public Services (Management) Act 1995* and of any other law, the First Legislative Counsel shall, in respect of the staff referred to in Section 15(1), be deemed to be the Departmental Head within the meaning of that Act.

## 19. SPECIAL RESPONSIBILITY OF LEGISLATIVE COUNSEL.

(1) Each Legislative Counsel shall, as appropriate, draw the attention of the Prime Minister to any case that comes to his attention in which, in his opinion, any instructions for the drafting of an instrument, a proposed law or a proposed amendment to a proposed law—

- (a) departs from any instructions given or decision made by the Prime Minister or by other competent authority; or
- (b) is contrary to the canons of good legislation; or
- (c) makes an unusual or unexpected use of any power conferred; or
- (d) is ultra vires; or

<sup>1</sup> Section 18(2) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s33.

<sup>2</sup> Section 18(2) amended by *Public Service (Management) (Consequential Amendments) Act 1986* (No. 29 of 1986), s33.

**s. 19.**

*Legislative Drafting Service 9999*

(e) otherwise ought to be specifically referred to the Prime Minister.

(2) It is the duty of the Office to comply with the decision of the Prime Minister on any matter referred to him under Subsection (1).

**SCHEDULE 1 – OATH AND AFFIRMATION OF OFFICE.**

Sec. 14.

*Oath.*

“I, ... , do swear that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of First Legislative Counsel (*or* Second Legislative Counsel *or* Assistant Legislative Counsel) of Papua New Guinea.

So help me God!”

*Affirmation.*

“I, ... , do solemnly and sincerely promise and declare that I will well and truly serve the Independent State of Papua New Guinea and its People in the office of First Legislative Counsel (*or* Second Legislative Counsel *or* Assistant Legislative Counsel) of Papua New Guinea.”

Office of Legislative Counsel, PNG