

Chapter 74.

Defence Act 1974.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.

Chapter 74.

Defence Act 1974.

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SCHEDULE 1 – Code of Military Discipline.
INDEPENDENT STATE OF PAPUA NEW GUINEA.

AN ACT

entitled

Defence Act 1974,

Being an Act to establish a Papua New Guinea Defence Force and to provide for its control, maintenance and discipline, and for related matters.

PART I. – PRELIMINARY.

1. Interpretation.

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

“**aircraft**” means any machine that can derive support from the reactions of the air, whether manned or unmanned, and includes an aeroplane, balloon, kite balloon, airship or glider;

“**the Code of Military Discipline**” means the code set out in Schedule 1;

“**the Commander of the Defence Force**” means the Commander of the Defence Force appointed under Section 6;

“**co-operating force**” means the forces of another country, or a part of any such forces, declared under Section 25 to be forces acting in co-operation with the Defence Force or a part of the Defence Force;

“**defence area**” means any land, water, air-space, or part of the sea-bed or the sub-soil of the sea-bed, or any building or part of a building, whether within or outside the country, that is reserved under the *Land Act 1996*, or set apart, used, occupied or otherwise controlled for defence purposes;

“**the Defence Council**” means the Defence Council established by Section 7;

“**the Defence Council Orders**” means the Defence Council Orders issued under Section 8(2);

“**the Defence Force Judge**” means the Defence Force Judge appointed under Section 45, and in relation to the exercise or performance of any power or function delegated to a Deputy Defence Force Judge under that section includes that Deputy Defence Force Judge;

“**Defence Force Magistrate**” means a Defence Force Magistrate appointed under Section 46;

- “defence stand-by”** means a period during which a notice under Section 42 is in force;
- “the Department”** means the Department of Defence established in accordance with Section 5;
- “Deputy Defence Force Judge”** means a Deputy Defence Force Judge appointed under Section 45;
- “disciplinary officer”** means a person who is a disciplinary officer within the meaning of the Code of Military Discipline;
- “disciplined force”** means the Police Force, the Correctional institutions Service or any service or force prescribed by the regulations or any other Act to be a disciplined force for the purposes of this definition;
- “member of the Defence Force”** means a person enlisted in the Defence Force under Section 30;
- “military”** shall be construed as relating to all or any part of the Defence Force;
- “non-commissioned member”** means a member of the Defence Force other than an officer;
- “non-commissioned officer”** means a person holding a rank in the Defence Force referred to in Section 17(1)(b), or a person holding any other rank prescribed under Section 17(3) to be a non-commissioned officer rank;
- “officer”** means a person holding a rank in the Defence Force referred to in Section 17(1)(a) or any other rank prescribed under Section 17(3) to be a commissioned rank, and includes a chaplain;
- “Papua New Guinea service law”** means the law governing the Defence Force or a part of the Defence Force;
- “person subject to the Code of Military Discipline”** means a person referred to in Section C3 of the Code of Military Discipline;
- “prescribed”** means prescribed in this Act, the regulations or the Defence Council Orders;
- “rank”**, in relation to a member of the Defence Force, means the rank provided for, by or under, Section 17 held by him;
- “the Regular Force”** means the Regular Force provided for by Section 12(a);
- “the regulations”** means any regulations made under this Act;
- “the Reserve Force”** means the Reserve Force provided for by Section 12(b);
- “service authorities”**, in relation to a country, means the military, naval or air force authorities of that country;
- “service law”**, in relation to a country, means the law governing the military, naval or air forces of that country, or any part of those forces;
- “superior officer”**, in relation to a member of the Defence Force, means a member who—
- (a) is superior to him in rank; or
 - (b) is, in the particular circumstances or at the particular time, entitled to give

lawful orders to him;

“**this Act**” includes the Code of Military Discipline, the regulations and the Defence Council Orders;

“**unit**” means a unit of the Defence Force established under Section 15;

“**vehicle**” means a conveyance, whether or not manned, that is propelled, boosted or towed for transporting a burden on land, but does not include an amphibious vehicle while in the water;

“**vessel**” means any kind of water-craft, however propelled and whether manned or unmanned, and includes an amphibious vehicle while in the water.

(2) For the purposes of this Act, a person who—

- (a) with intent to remain permanently absent from duty, leaves, or fails to attend at, his place of duty without authority; or
- (b) having left or failed to attend at his place of duty, forms the intention, or behaves in a manner that shows the intention, to remain permanently absent from duty without authority; or
- (c) having been warned for operational service, is absent from duty with intent to avoid that service,

is said to desert.

(3) A reference in this Act to a person’s being on operational service shall be read as a reference to any period during which a unit of which he is a member, or to which he is attached, is on operational service under Section 43.

2. Application.

- (1) This Act binds the State.
- (2) This Act applies inside and outside the country.

PART II. – THE DEFENCE FORCE.

3. Functions, etc., of the Defence Force.

The functions and duties of the Defence Force are as provided by or under the Constitution and this and any other Act.

4. Duty of the Defence Force.

(1) Subject to this Act and any other law, it is the duty of the Defence Force and of the members of the Defence Force to carry out the lawful orders of the Government and of superior officers in achieving the purposes of this Act, and in doing so such force (including lethal force) may be used as appears to be reasonably necessary.

(2) For the purposes of this section, a direction or order that is inconsistent with the laws and usages of war is not a lawful direction or order.

PART III. – HIGHER DEFENCE ORGANIZATION.

Division 1.

Structure.

5. Department of Defence.

Under the *Public Services (Management) Act 1995*, there shall be—

- (a) a Department of Defence, which shall have such functions as are prescribed by or under this Act and any other Act; and
- (b) an office of Secretary for Defence, which shall be the office of Departmental Head of the Department.

6. Commander of the Defence Force.

(1) An office of Commander of the Defence Force is hereby established.

(2) The Commander of the Defence Force—

- (a) shall be appointed in accordance with Section 193 (*appointments to certain offices*) of the *Constitution*; and
- (b) may be suspended or dismissed at any time by the Head of State, acting on advice, by notice in the National Gazette.

(3) The terms and conditions of appointment of the Commander of the Defence Force are as determined by the Head of State, acting on advice, and, except where the contrary intention appears, Part VII does not apply to or in relation to the Commander.

7. Defence Council.

(1) A Defence Council is hereby established.

(2) The Council shall consist of—

- (a) the Minister; and
- (b) the Secretary of Defence; and
- (c) the Commander of the Defence Force.

(3) The Minister is the Chairman of the Council.

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

(5) Where it is provided by or under this Act or any other law that a matter or thing shall or may be done by the Defence Council—

- (a) that matter or thing shall or may, as the case may be, be done by the Minister after having received the advice of the Defence Council; and
- (b) except with the approval of the Head of State, acting on advice, the Minister shall act only in accordance with the advice of the Defence Council.

Division 2.

Functions.

8. Functions of the Defence Council.

(1) Subject to this Act and to any other Act, and to any directions given by the Head of State, acting on advice, the Defence Council has the following functions:–

- (a) through the Commander of the Defence Force, to have control of the Defence Force;
- (b) to supervise the administration of the Defence Force and the Department;
- (c) after consultation with the Public Services Commission, to determine the terms and conditions of service (including pay and allowances) of members of the Defence Force;
- (d) such other functions as are provided for by the regulations.

(2) Subject to this Act and the regulations, the Defence Council may make and issue Defence Council Orders as to any matter that may be provided for by the regulations, and the Orders are binding, in accordance with their tenor, on–

- (a) members of the Defence Force; and
- (b) other persons subject to the Code of Military Discipline; and
- (c) officers and employees of the Public Service in the Department.

(3) The Minister may, by written notice, authorize the Secretary for Defence and the Commander of the Defence Force to exercise and perform jointly, in the name of the Defence Council, any of the powers and functions of the Council, but this subsection does not prevent the exercise of a power or the performance of a function by the Council.

(4) A document purporting to be a Defence Council Order or a copy of a Defence Council Order bearing the signature or a facsimile of the signature of the Secretary for Defence is *prima facie* evidence that it is such an Order or a copy of such an Order.

9. Functions of the Secretary.

(1) In addition to his other powers, functions, duties and responsibilities under this or any other Act, the Secretary for Defence–

- (a) is the principal civilian adviser to the Minister on matters relating to the Defence Force; and
- (b) is responsible for the efficient administration of, and the control and accounting for, all public moneys appropriated or otherwise legally available for the purposes of defence administration; and
- (c) is responsible for the control of all civilian and military personnel employed in respect of his functions; and
- (d) is the Secretary to the Defence Council.

(2) Except as provided in Subsection (1)(c), Subsection (1) does not give the Secretary for Defence any power of command in the Defence Force, except that, for the purpose of the exercise and performance of his powers, functions, duties and responsibilities, and in other cases when so directed by the Minister, he is entitled to full and free access to–

- (a) all vehicles, vessels and aircraft of the Defence Force and all defence areas; and
- (b) all books, accounts and records relating to public moneys appropriated or

otherwise legally available for the purposes of defence administration; and

- (c) such other places and things relating to or under the control of the Defence Force as are directed by the Minister.

10. Functions of the Commander of the Defence Force.

(1) In addition to his other powers, functions, duties and responsibilities under this or any other Act, the Commander of the Defence Force—

- (a) is the principal military adviser to the Minister; and
- (b) subject to this Act, has the command of the Defence Force; and
- (c) is responsible for the efficient administration and operational readiness of the Defence Force; and
- (d) has and shall exercise such financial delegations in relation to the Defence Force as are conferred on him under any Act; and
- (e) is responsible for the control of all civilian personnel employed in respect of his functions.

(2) Where in his opinion exceptional circumstances warrant it, the Commander of the Defence Force has the right of direct access to the Prime Minister, but when he intends to exercise, or exercises, that right he shall inform the Minister as soon as practicable.

(3) Subject to Section 8, in addition to his other functions under this Act the Commander of the Defence Force has, subject to the National Executive Council and the Minister by virtue of Section 201 (*control of the defence force*) of the *Constitution*, the command, direction and general superintendence of the Defence Force.

(4) Unless the Head of State, acting on advice, otherwise directs, all orders and instructions to the Defence Force (other than Defence Council Orders) that are required to give effect to the decisions and to carry out the directions of the Government, the Minister or the Defence Council, shall be given by or through the Commander of the Defence Force.

11. Delegation.

(1) The Commander of the Defence Force may, by instrument, delegate to any prescribed person or class of persons all or any of his powers or functions under this Act.

(2) A delegation under Subsection (1) may provide for further delegations or subdelegations to any prescribed person or class of persons.

(3) A subdelegation under this section is revocable, in writing, at will.

PART IV. – CONSTITUTION, MEMBERSHIP, ETC., OF THE DEFENCE FORCE.

12. Constitution of the Force.

The Defence Force shall consist of—

- (a) a Regular Force; and
- (b) a Reserve Force.

13. Constitution of the Regular Force.

(1) The Regular Force shall consist of persons who are enlisted in the Defence Force for continuous full-time service or who are transferred from the Reserve Force to the Regular Force under this Act.

(2) The Head of State, acting on advice, from time to time shall determine the maximum number of members in the Regular Force.

14. Constitution of the Reserve Force.

(1) The Reserve Force shall consist of—

- (a) persons who, having been discharged from the Regular Force, have volunteered and been accepted for service in and have been enlisted in the Defence Force otherwise than for continuous full-time service; and
- (b) persons transferred from the Regular Force to the Reserve Force under this Act; and
- (c) subject to Section 41, other persons enlisted in the Reserve Force otherwise than for continuous full-time service.

(2) The Head of the State, acting on advice, may from time to time determine the maximum number of members in the Reserve Force under Subsection (1)(a), (b) or (c).

(3) Members of the Reserve Force shall render such service as is prescribed.

15. Units, etc.

The units of the Defence Force are as prescribed.

16. Attachment of members of other disciplined forces.

(1) By arrangement with the Minister responsible for another disciplined force, the Minister may attach to the Defence Force a unit or element of that disciplined force.

(2) For the purposes of this Act, a member of a unit or element of another disciplined force attached under Subsection (1) shall be deemed to be a member of the Defence Force and this Act, subject to any prescribed modifications, applies accordingly.

17. Ranks in the Defence Force.

(1) Subject to Subsections (2) and (3), the ranks in the Defence Force are as follows:—

- (a) commissioned officer ranks—
 - (i) Brigadier-General;
 - (ii) Colonel;
 - (iii) Lieutenant-Colonel;
 - (iv) Major;
 - (v) Captain;

- (vi) Lieutenant;
- (vii) Second Lieutenant;
- (b) non-commissioned officer ranks–
 - (i) Chief Warrant Officer;
 - (ii) Warrant Officer;
 - (iii) Sergeant;
 - (iv) Corporal;
 - (v) Lance-Corporal;
- (c) private.

(2) Subject to Subsection (3), there is a commissioned officer rank of chaplain, and the regulations or the Defence Council Orders may–

- (a) provide for different grades within that rank; and
- (b) accord for the purposes of administration and discipline, to each grade, status corresponding to the appropriate commissioned officer rank set out in Subsection (1)(a).

(3) The regulations or the Defence Council Orders may provide for–

- (a) ranks in addition to or in substitution for the ranks set out in Subsections (1) and (2); and
- (b) substantive, probationary, provisional or other tenure of any rank.

18. Senior officers.

Appointments and promotions of members of the Defence Force (other than appointments and promotions to the office of Commander of the Defence Force), to the rank of Colonel or above, shall be made by the Head of State, acting on advice.

PART V. – EMPLOYMENT OF THE FORCE.

Division 1.

General.

19. General functions of the Defence Force.

The functions of the Defence Force are as provided for by Part VII (*the State Services*) of the *Constitution*, and this Part shall be read subject to that Part.

Division 2.

Aid to Civil Power.

20. Aid to civil power.

(1) At the request of the appropriate civil authority, the Defence Force, or a part of the Defence Force, may be called out by the Head of State, acting on advice, for prescribed service in aid of the civil power where, in the opinion of the Head of State, acting on advice, a situation threatening national security or the preservation of public order exists such that the intervention

of the Defence Force to support the civil power is required.

(2) The Prime Minister shall immediately send a statement of the reason for the call-out under Subsection (1) to the Speaker, for presentation to the Parliament.

(3) If the Parliament is not in session on the date of the call-out under Subsection (1), it shall be summoned to meet within 10 days after that date.

21. Police powers of members of the Defence Force.

(1) Subject to Subsection (4), a member of the Defence Force on duty under Section 20—

(a) in addition to his other powers and duties, has such of the powers and duties of a member of the Police Force as are conferred on him by order of the Head of State, acting on advice; and

(b) has all the immunities and protection of a member of the Police Force,

but this section does not derogate any immunities and protections that any member of the Defence Force has under any other law.

(2) In the case of an officer, Subsection (1) applies as though he were a commissioned officer of the Police Force of the equivalent rank.

(3) For the purposes of Subsection (2), the regulations may declare what are the ranks in the Defence Force that are the equivalents of ranks in the Police Force.

(4) Notwithstanding any other law, members of the Defence Force on duty under Section 20 must act as a military force, and are individually liable to obey the orders of their superior officers.

22. Civil disasters.

(1) In this section, “**civil disaster**” means a disturbance of the earth’s surface, oceanic disturbance, fire, flood, famine or food shortage, tempest, epidemic, pest, plague, shipping or aircraft disaster or other disaster.

(2) At the request of the appropriate civil authority, the Defence Force or a part of the Defence Force, at the direction of the Minister, may give assistance to the civil power in the event of a civil disaster.

23. Service in the public interest.

(1) If the Minister thinks that it is in the public interest to do so, he may authorize any part of the Defence Force to perform any public service within or outside the country that is capable of being performed by the Defence Force, on such conditions (including conditions as to payment) as he determines.

(2) An authority given under Subsection (1) may authorize any vehicles, vessels, aircraft or equipment of the Defence Force to be used in connection with the public service to which it relates.

(3) If any vehicle, vessel, aircraft or equipment referred to in Subsection (2) is used for payment otherwise than for or on behalf of the service authorities of another country, all laws of Papua New Guinea relating to the carriage of passengers or goods apply as if the vehicle,

vessel, aircraft or equipment were not in use by the Defence Force.

24. States of emergency.

This Division does not derogate the provisions of any law relating to the powers, functions, duties and responsibilities of the Defence Force and members of the Defence Force during a period of declared national emergency declared within the meaning of Section 226 (*definitions*) of the *Constitution*.

PART VI. – CO-OPERATION WITH OTHER FORCES.

25. Co-operating forces.

(1) Where he considers it appropriate to do so, the Head of State, acting on advice, may declare the forces of another country, or any part of any such forces, to be forces acting in co-operation with the Defence Force or a part of the Defence Force.

(2) Where the officer commanding any co-operating force is senior in rank to all the officers of the part of the Defence Force concerned, the Head of State, acting on advice, may authorize all or any units of that part of the Defence Force to be placed under the control of that officer.

26. Attachment, etc., to Defence Force.

(1) The forces to which this section applies are the military, naval and air forces of any country that the Head of State, acting on advice, declares, by notice in the National Gazette, to be a country to which this section applies.

(2) Where the authorities having apparent control over any force to which this section applies place any member of the force at the disposal of the Defence Force, the member may, by order of the Minister, be attached to the Defence Force and, during the attachment, shall be deemed to be a member of the Defence Force.

(3) The Minister may, by order, declare—

- (a) in the case of a member of a force to which this section applies who is attached to the Defence Force under Subsection (2) and who remains subject to the service law of the first-mentioned force—that the provisions of this Act, except with respect to any matter specified in the order, do not apply to or in relation to him; or
- (b) in the case of any member so attached—that the provisions of this Act apply to and in relation to him with such exceptions and subject to such modifications as are specified in the order,

but in the absence of any such order he is bound by the Code of Military Discipline as if he were a member of the Defence Force of equivalent rank.

27. Command of officers of co-operating and other forces.

(1) A member of a co-operating force or a person attached to the Defence Force under Section 26 shall be treated, and has the same power of command over members of the Defence Force, as if he were a member of the Defence Force of equivalent rank.

(2) The Minister may, by order, provide that a person attached to the Defence Force

under Section 26 has the same power of discipline over members of the Defence Force as if he were a member of the Defence Force of equivalent rank.

(3) The Minister may, by order, provide that a member of the military, naval or air forces of any other country who is acting in association with the Defence Force shall be accorded courtesy precedence in accordance with his rank.

28. Attachment to forces of other countries.

(1) The countries to which this section applies are any countries that the Head of State, acting on advice, declares, by notice in the National Gazette, to be countries to which this section applies.

(2) The Minister or, subject to any directions of the Minister, the Commander of the Defence Force may place a member of the Defence Force at the disposal of the service authorities of a country to which this section applies, in order that he may be attached by those authorities to the forces of that country.

(3) A member of the Defence Force to whom Subsection (2) applies does not cease to be subject to Papua New Guinea service law by reason only of his being attached to the forces of another country as provided by that subsection.

29. Equivalent ranks, etc.

For the purposes of this Act, the equivalence of ranks and the relative seniority and order of precedence of ranks of the Defence Force and ranks of forces of other countries are as determined by the Defence Council Orders.

PART VII. – TERMS AND CONDITIONS OF SERVICE.

30. Enlistment.

(1) Persons may be enlisted in the Defence Force in the prescribed manner.

(2) A person who is under 18 years of age may not be enlisted without the written consent of his parents or guardians or, where the parents or guardians are dead or unknown, or where it is unreasonable in all the circumstances that their consent be obtained, of a Provincial Administrator.

(3) A person who is under 16 years of age may not be enlisted.

(4) On enlistment, a person shall be appointed, as prescribed, to a rank in the Defence Force.

31. Effect of irregular enlistment.

(1) Where, although there has been an error or irregularity in his enlistment, a person has received pay as a member of the Defence Force, he shall be deemed to be a member of the Force and, subject to this section and except as otherwise prescribed, is not entitled to be discharged on the ground of the error or irregularity.

(2) Where a person who, by virtue of Subsection (1) is deemed to be a member of the Defence Force, claims within three months after his first receipt of pay as a member to be released from the Force, he shall be discharged, except in time of war or when he is on

operational service.

(3) If the member is under 18 years of age and was enlisted without the consent required by Section 30(2), he shall be discharged at the request of a parent or guardian.

(4) If the member is under 16 years of age, he shall be discharged automatically.

32. Period of service.

(1) Subject to this Act, the period of service required of a member of the Defence Force is as prescribed by the regulations.

(2) The period may be—

(a) a fixed period; or

(b) a period ending when the member attains a prescribed age,

and may be a different one for each different rank or class of members.

(3) A member of the Defence Force may re-engage, in such manner and on such conditions as are prescribed, for a further period of service, to commence at the conclusion of his current period of service.

(4) At the end of his period of service, a member of the Defence Force is entitled to be discharged with all convenient speed from the Force, except in time of war or during a defence stand-by, when the Defence Council may extend the period of service for a period ending not later than the end of the war or defence stand-by.

33. Termination of service.

A member of the Defence Force may be discharged from the Defence Force by such authority and on such grounds (if any) as are prescribed.

34. Suspension from duty.

(1) Where a disciplinary or other offence or suspected offence is such, or the circumstances in which it is committed are such, that the member of the Defence Force concerned should not continue to perform his duty, the member may be suspended by his superior officer.

(2) Suspension under Subsection (1) may be effected before, at the time of, or after the laying of the charge and may be lifted by a superior officer of the member of the Defence Force concerned.

(3) Where a member of the Defence Force is suspended under Subsection (1), the suspension—

(a) ceases on the expiration of the period of eight days after the suspension takes effect, unless before that time a charge is laid against the member; and

(b) may continue once a charge has been laid.

(4) Where the charge is not sustained the suspension shall be lifted immediately on a finding to that effect.

(5) Suspension may be imposed and removed by a superior officer of the member of

the Defence Force concerned, by written notice to the member.

(6) Where a member of the Defence Force has been suspended under this section he is entitled to receive his normal pay and allowances unless—

- (a) he absents himself without leave or deserts whilst under suspension; or
- (b) suspension of his pay is directed by the Commander of the Defence Force.

35. Re-enlistment, etc., generally.

(1) A member of the Defence Force who has been discharged from the Defence Force may be re-enlisted in such manner and on such conditions as are prescribed.

(2) A member of the Reserve Force may, at his request, be transferred to the Regular Force in such manner and on such conditions as are prescribed.

(3) Subject to Section 36, a person shall be appointed on re-enlistment to such rank, and with such seniority, as the Commander of the Defence Force determines.

36. Re-enlistment of certain persons.

(1) This section applies to a person who has been discharged from the Defence Force on the ground of, or on the basis of, conviction of an offence, and subsequently—

- (a) the conviction is quashed; or
- (b) the convicted person receives a pardon; or
- (c) the conviction is otherwise nullified; or
- (d) the convicted person is released from custody as a result of an inquiry into the conviction.

(2) A person to whom this section applies may, with the approval of the Commander of the Defence Force, be re-enlisted in the Defence Force in the rank equivalent to the rank that he held immediately before his discharge.

(3) A person re-enlisted under this section shall be deemed to have continued in the Defence Force as if he had not been discharged but had been on leave of absence without pay during the period from the day on which his discharge became effective to the day on which he was re-enlisted.

(4) For all purposes, the period referred to in Subsection (3) shall be deemed to form part of the member's service in the Defence Force.

37. Promotion, reduction and reversion.

(1) Subject to Section 18, members of the Defence Force may be promoted by such authority and on such conditions as are prescribed.

(2) A member of the Defence Force may not be reduced in rank except—

- (a) at his own request; or
- (b) in accordance with the Code of Military Discipline; or
- (c) if he is, in the opinion of the prescribed authority, inefficient in or unsuitable for

his rank; or

(d) as otherwise prescribed.

38. Other terms and conditions of service.

Pay, allowances, deductions from pay or allowances, leave and other conditions of service not otherwise provided for in this Part are as determined by the Defence Council in accordance with Section 8(1)(c).

39. Workers' Compensation.

(1) For the purposes of the *Workers' Compensation Act 1978* a member of the Defence Force is a worker, as defined in that Act, employed by the State.

(2) In relation to members of the Reserve Force, Subsection (1) applies only in relation to periods of service under Section 14(3).

PART VIII. – SERVICE OBLIGATIONS OF MEMBERS OF THE DEFENCE FORCE.

40. The Regular Force.

(1) The Regular Force, and all units and members of the Regular Force, are at all times on continuous full-time service and liable to perform duty inside and outside the country.

(2) Subsection (1) extends to members of the Reserve Force while ordered to be on continuous full-time military service.

41. Mobilization of the Reserve Force.

(1) If in times of war or defence stand-by the National Executive Council thinks it necessary, the Head of State, acting on advice, may order the whole or any part of the Reserve Force to be on continuous full-time military service.

(2) All members of the Reserve Force to whom Subsection (1) applies shall remain on continuous full-time military service until the Head of State, acting on advice, orders the termination of such service.

42. Declaration of defence stand-by.

Where in the opinion of the National Executive Council it is necessary in the interests of national security to do so, the Head of State, acting on advice, may, by notice in the National Gazette, declare a condition of defence stand-by.

43. Declaration of operational service.

(1) Where—

(a) in the opinion of the National Executive Council it is necessary in the national interest to do so—the Head of State, acting on advice; or

(b) during time of war, and with the approval of the Head of State, acting on advice, and on such conditions as the Head of State, acting on advice, determines—the

Minister,

may declare that some or all of the units of the Defence Force are on operational service.

(2) The Head of State, acting on advice, or the Minister, as the case may be, shall immediately send to the Speaker, for presentation to the Parliament, a statement of the reason for a declaration under Subsection (1).

(3) If the Parliament is not in session at the date of a declaration under Subsection (1), it shall be summoned to meet within 10 days after that date.

44. Commitment into action.

(1) Subject to Subsection (2), before, or in case of emergency as soon as possible after, the Defence Force or a part of the Defence Force—

- (a) is ordered or committed into action in any area of, or under the control of, any other country against—
 - (i) any armed, guerilla or irregular force; or
 - (ii) any unit or personnel of such a force; or
 - (iii) persons co-operating with such a force; or
- (b) is ordered or committed into action for the purpose of the preservation of peace or law and order in a place outside the country; or
- (c) is placed in a situation where it is likely that it will be so ordered or committed into action,

the Minister shall send to the Speaker, for presentation to the Parliament, a statement as to the situation requiring or likely to require the Defence Force or the part of the Defence Force to be so ordered or committed into action.

(2) Subsection (1) does not apply—

- (a) in time of war; or
- (b) when Papua New Guinea is under, or is in imminent danger of, attack from outside and such action is required for the more effective defence of the country; or
- (c) in any particular case, with the prior approval of the Parliament and on such conditions (if any) as the Parliament determines.

(3) If the Parliament is not in session on the date when the statement is received by the Speaker, it shall be summoned to meet within 10 days after that date.

(4) If the Defence Force or a part of the Defence Force has not been ordered or committed into action as referred to in Subsection (1), it shall not be so ordered or committed into action without the approval of the Parliament.

(5) If the Defence Force or a part of the Defence Force has been ordered or committed into action as referred to in Subsection (1), it shall be withdrawn from action as quickly as is consistent with its safety (and in the case of a part of the Defence Force the safety of any other part of the Defence Force in action with it), unless the Parliament, within 10 days after the statement is received by the Speaker, approves otherwise.

PART IX. – SERVICE LAW AND DISCIPLINE.

45. The Defence Force Judge and Deputy Judges.

(1) There shall be a Defence Force Judge and such number of Deputy Defence Force Judges as the Head of State, acting on advice, determines.

(2) The Defence Force Judge and the Deputy Defence Force Judges shall be appointed by the Head of State, acting on advice given after consultation with the Chief Justice.

(3) The Defence Force Judge shall be a person who is a Judge of the Supreme Court or the National Court.

(4) The Deputy Defence Force Judges shall be persons who are qualified to be the Judges of the Supreme Court or the National Court.

(5) The powers, functions and duties of the Defence Force Judge and the Deputy Defence Force Judges are as provided in this Act.

(6) The Defence Force Judge may, by instrument under his hand, delegate to Deputy Defence Force Judge all or any of his powers and functions under this Act.

(7) A delegation under Subsection (6) is revocable, in writing, at will, but this subsection does not allow the Defence Force Judge to intervene in a proceeding before a Deputy Defence Force Judge.

(8) The Defence Force Judge has and may exercise and perform, in any part of the world, the jurisdiction, powers and functions of the National Court or a Judge of the National Court in relation to persons subject to the Code of Military Discipline, and the National Court may be constituted in any place by the Defence Force Judge.

(9) The jurisdiction of the Defence Force Judge under Subsection (8) may be exercised in relation to an offence against the law of Papua New Guinea notwithstanding that the offence is expressed to be triable summarily or that it is within the exclusive jurisdiction of a court other than the National Court.

46. Defence Force Magistrates.

(1) After consultation with the Defence Force Judge, the Chief Justice may appoint persons who are Magistrates of District Courts to be Defence Force Magistrates.

(2) A Defence Force Magistrate has and may exercise and perform, in any part of the world directed by the Defence Force Judge, the jurisdiction, powers and functions of Principal Magistrates. in relation to persons subject to the Code of Military Discipline, and for that purpose a District Court may be constituted by a Defence Force Magistrate.

47. Procedures.

(1) Notwithstanding any other law the Defence Force Judge may, with the consent of the Chief Justice, by written order, make such provision as seem to him necessary to adapt the laws relating to the practice and procedures of the National Court and District Courts to the requirements of overseas and operational service.

(2) Sections 75 and 76 of the *Interpretation Act 1975* apply to and in relation to orders made under Subsection (1) in the same way that they apply to regulations.

(3) An indictment may be presented in the National Court constituted by the Defence Force Judge notwithstanding that no person has been committed for trial, or that committal proceedings have not been taken.

48. Prosecutors and defenders.

(1) For the purpose of proceedings before the Defence Force Judge or a Defence Force Magistrate, the Commander of the Defence Force may appoint members of the Defence Force approved by the Defence Force Judge to be prosecutors or defenders.

(2) A prosecutor is entitled—

- (a) to present an indictment or lay an information; and
- (b) to withdraw an indictment or information; and
- (c) to appear and be heard on an indictment or information,

and for the purpose of, and for purposes connected with, any proceedings before the Defence Force Judge or a Defence Force Magistrate he shall be deemed to be a person admitted to practise as a lawyer under the *Lawyers Act 1986*.

Note The *Lawyers Act* (Chapter 91) was repealed and replaced by the *Lawyers Act 1986*.

(3) A defender is entitled to appear and be heard on behalf of a person accused or charged before the Defence Force Judge or a Defence Force Magistrate, and for the purposes of, and for purposes connected with, any proceedings before the Defence Force Judge or a Defence Force Magistrate he shall be deemed to be a person admitted to practise as a lawyer under the *Lawyers Act 1986*.

49. Representation of accused.

(1) At a trial before the Defence Force Judge or a Defence Force Magistrate, the accused may be represented by—

- (a) a member of the Defence Force; or
- (b) a lawyer; or
- (c) where the trial is held in a country outside Papua New Guinea, a person qualified to practice before the courts of that country.

(2) An accused awaiting trial before the Defence Force Judge or a Defence Force Magistrate shall be afforded the opportunity to be represented at the trial and to be advised before trial by a defender.

(3) A suitable representative shall be assigned to an accused who makes no choice.

(4) An accused person who is advised or represented by a member of the Defence Force shall be advised or represented without expense to him.

50. Redress of grievances.

(1) Except in respect of a matter that would properly be the subject of an appeal or review under the Code of Military Discipline, a member of the Defence Force who thinks that—

- (a) he has suffered any personal oppression, injustice or ill-treatment; or
- (b) he has any other cause for grievance,

may complain as a matter of right to such superior officer, in such manner and on such conditions as are prescribed.

(2) Where—

- (a) the complainant is not satisfied with the decision or action on the complaint by the superior officer to whom the complaint was made; and
- (b) the superior officer fails, when requested to do so, to forward the complaint to the prescribed next superior officer,

the complainant is entitled to make a complaint of the original grievance or against the failure (or both), and this subsection applies to any such further complaint.

(3) It is the duty of an officer receiving a complaint under this section—

- (a) to investigate it or have it investigated as soon as practicable; and
- (b) to take such steps within his authority for redressing the grievance as appear to him to be necessary,

whether or not the act or omission that gave rise to the complaint was procedurally correct.

51. Boards of Inquiry.

(1) Where the Minister or a prescribed authority thinks it expedient that he or it should be informed on any matter—

- (a) connected with the government, discipline, administration or functions of the Defence Force or a part of the Defence Force; or
- (b) affecting any member of the Defence Force,

he or it may convene a Board of Inquiry to investigate and report to him on the matter.

(2) A Board of Inquiry shall be constituted as prescribed, and its powers and procedures are as prescribed by the regulations.

(3) The regulations may provide for the application, with the necessary modifications, of all or any of the provisions of the *Commissions of Inquiry Act 1951* to a Board of Inquiry as if it were a commission under that Act.

52. Witnesses.

(1) A Board of Inquiry investigating a matter under Section 51, or the Commander of the Defence Force or his delegate dealing with a charge of a breach of service discipline, may—

- (a) summon any person whose evidence is likely to be material to the consideration of the matter before the authority or disciplinary officer; and
- (b) administer an oath or affirmation to any person appearing to give evidence; and
- (c) require any person to produce documents within his possession or subject to his control.

(2) A person who knowingly makes any false or misleading statement in evidence

before a Board of Inquiry or disciplinary officer under Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(3) A member of the Defence Force, the Public Service or a disciplined force who fails, without reasonable excuse (proof of which is on him), to attend in obedience to a summons under Subsection (1), or to be sworn or make an affirmation or answer questions or to produce documents, when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(4) A person other than a person referred to in Subsection (1) who fails, without reasonable excuse (proof of which is on him), to attend in obedience to a summons under Subsection (1), or to be sworn or make an affirmation, or to produce documents, when required to do so under that subsection, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(5) A person shall not fail to answer a question or produce a document on the ground that it might incriminate him, but any statement or disclosure is admissible in evidence against him only in proceedings for an offence against this section or for making a false statement.

PART X. – OFFENCES.

Division 1.

Division 1.-Serious Offences.

53. Interpretation of Division 1.

In this Division–

“**enemy**” includes–

- (a) any country or armed forces, or an authority or *de jure* or *de facto* government controlling any armed forces or a guerilla or irregular force, with which Papua New Guinea or any force acting in co-operation with the Defence Force, is at war or against which it is engaged in armed combat operations; and
- (b) any persons or group declared by the Head of State, acting on advice, by notice in the National Gazette, to be enemies or an enemy; and
- (c) any member of any such armed forces, or such a guerilla or irregular force; and
- (d) any member of such an authority or government; and
- (e) any person materially assisting the country, force, authority or government in its war effort or in armed combat operations; and
- (f) a pirate; and
- (g) an armed person who is engaged in a mutiny, rebellion or riot against Papua New Guinea or against any service authority of the Defence Force or an ally of Papua New Guinea;

“**mutiny**” means a combination of two or more persons subject to the Code of Military Discipline or the service law of an ally of Papua New Guinea, or between

persons of whom at least two are such persons–

- (a) to overthrow or resist lawful authority in the Defence Force or any force co-operating with the Defence Force, or in any part of the Defence Force or any such force; or
- (b) to disobey any such authority in such circumstances as to make the disobedience subversive to discipline, or with the object of avoiding any service or duty against, or in connection with operations against, an enemy; or
- (c) to impede the performance of any duty or service in the Defence Force or any force co-operating with the Defence Force, or in any part of the Defence Force or any such force.

54. Aiding the enemy.

(1) For the purposes of this section and without limiting its generality, assistance to the enemy includes–

- (a) concealing, sheltering or assisting a member of the enemy; and
- (b) concealing or taking care of any munitions or goods of or intended for the use of the enemy; and
- (c) failing to report to a member of the Police Force or other appropriate authority the presence or suspected presence in any place or in any locality of a member of the enemy, or of munitions or goods of or intended for the use of the enemy.

(2) A person subject to the Code of Military Discipline who, with intent to assist the enemy–

- (a) assists an enemy in any way, or does any act or makes any omission to act that is calculated, or is likely, to assist an enemy in any way; or
- (b) except as authorized by law, communicates to any person any information that–
 - (i) it is his duty to keep secret; and
 - (ii) is likely to assist the enemy,

is guilty of an offence.

Penalty: Imprisonment for life or for a lesser term.

(3) Subsection (2)(a) does not apply in relation to an act or omission that is otherwise lawful and that–

- (a) is directed to the relief of the distress of a sick, injured or otherwise distressed individual in his private and personal capacity; and
- (b) is not calculated, and is not likely, to assist the enemy in any material military or political sense,

but the burden of proof of any such matter is on the accused person.

(4) A person who, knowing or having reasonable grounds for suspecting that an offence against Subsection (2) has been or is likely to be committed, does not immediately report the fact, together with the grounds of his belief or suspicion, to a member of the Police

Force or other appropriate authority is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 10 years.

55. Mutiny.

(1) A person subject to the Code of Military Discipline who takes part in a mutiny is guilty of an offence.

Penalty: Imprisonment for life or for a lesser term.

(2) A person subject to the Code of Military Discipline who, knowing that a mutiny is taking place or is intended—

- (a) fails to use his utmost endeavours to suppress or prevent it; or
- (b) fails to report to an appropriate authority that the meeting is taking place or is intended,

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 10 years.

56. Desertion.

A member of the Defence Force who deserts while on operational service, or after having been warned for operational service, is guilty of an offence.

Penalty: Imprisonment for life or for a lesser term.

57. Looting.

A person subject to the Code of Military Discipline who—

- (a) steals from, or with intent to steal searches, the person of anyone killed, wounded or captured in the course of any war or warlike operations, or any operations of the Defence Force or any force co-operating with the Defence Force, or of any part of the Defence Force or any such force; or
- (b) steals any property that has been left exposed or unprotected in consequence of—
 - (i) any act of war or warlike operation; or
 - (ii) a riot or civil commotion or disorder; or
 - (iii) an accident; or
 - (iv) a natural disaster, whether actual or apprehended; or
- (c) takes otherwise than in execution of his duty or for the public service any vehicle, vessel, aircraft, equipment or stores abandoned by an enemy,

is guilty of the offence of looting.

Penalty: Imprisonment for a term not exceeding 10 years.

58. Misconduct on operational service.

(1) In this section, “**misconduct**” includes—

- (a) a breach of service discipline; and
- (b) negligence in the performance of duty; and
- (c) failure to use the utmost exertions in the performance of duty; and
- (d) failure to use all lawful means to prevent or suppress misconduct by any other person.

(2) A person subject to the Code of Military Discipline who, while on operational service, is guilty of misconduct is guilty of an offence.

Penalty: Imprisonment for a term not exceeding 10 years.

Division 2.

Other Offences.

59. Information relating to enlistment.

A person who, when required to give any information needed to comply with the provisions of this Act relating to enlistment, fails, without reasonable excuse (proof of which is on him), to give the information, or gives false information, is guilty of an offence.

Penalty: A fine not exceeding K40.00 for each item of information in respect of which the offence is committed, or imprisonment for a term not exceeding 12 months.

60. Unlawfully disposing of arms, etc.

(1) In this section, “**Defence Force property**” means any property of or in the possession or under the control of the Defence Force or any part or unit of it.

(2) A person who—

- (a) unlawfully disposes of or removes; or
- (b) fails to deliver up when lawfully required to do so; or
- (c) has in his possession without reasonable excuse (proof of which is on him),

any arms, accoutrements or other Defence Force property, is guilty of an offence.

Penalty: A fine not exceeding K40.00.

(3) In addition to any penalty that may be imposed under Subsection (2), the court that convicts the offender may order him to be imprisoned for a term not exceeding three months unless in the meantime he delivers up the thing concerned or pays its value.

(4) In a prosecution for an offence against Subsection (2)(b)—

- (a) if it is proved to the satisfaction of the court that any thing the subject of the charge was in the possession of the defendant at any time before the time at which he was required to deliver it up, he shall be deemed, in the absence of proof of the lawful disposal of the thing, to have continued in possession of it until the time when he was required to deliver it up; and
- (b) inability to deliver up the thing is not a defence unless the defendant proves to the satisfaction of the court that the inability did not arise from any negligence or

wrongful act or omission on his part.

(5) Where an order is made under Subsection (3), the court may by warrant authorize all or any members of the Police Force to take possession of any thing the subject of the order and to deliver it to an officer of the Defence Force or otherwise as the court thinks proper.

(6) A member of the Police Force having a warrant under Subsection (5) may, during the daytime—

- (a) enter any building, premises or place where any thing the subject of the warrant is or is supposed to be; and
- (b) break open any part of the building, premises or place, or any chest, receptacle or thing in or on it; and
- (c) seize and take possession of the thing and deliver it in accordance with the warrant.

(7) In a charge of an offence against Subsection (2), the article concerned may be alleged to be Defence Force property.

61. Obstruction of members of Defence Force, etc.

A person who, without reasonable excuse (proof of which is on him), obstructs or interferes with any part of the Defence Force or any member of the Defence Force in the execution of its or his duty, or causes a member to render himself unfit or unavailable for duty, is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months, or both.

PART XI. – MISCELLANEOUS.

62. Defence Force manoeuvres.

(1) For the purposes of training the Defence Force or any part of it, the Minister may, by order, authorize the carrying out of military exercise or movements (in this section called “**manoeuvres**”) in such parts of the country and during such period as are specified in the order.

(2) Notice of any manoeuvres shall be given in such manner as seems to the Minister to be sufficient to give adequate warning to persons affected or likely to be affected.

(3) The Defence Force or any part of the Defence Force may—

- (a) carry out manoeuvres in a part of the country specified in an order under Subsection (1); and
- (b) stop or control traffic of any kind; and
- (c) do any other thing necessary in the interests of public safety.

(4) Where any person suffers loss by reason of any manoeuvres, he is entitled to such compensation as is agreed on between him and the Minister, or in default of agreement as is settled by arbitration under the *Arbitration Act 1951*.

63. Annual reports.

At least once in each period of 12 months, the Minister shall give to the Speaker, for presentation to the Parliament, a report on national defence and related matters, and on the control, maintenance and discipline of the Defence Force.

64. Attachment of members to civilian authorities.

A member of the Defence Force may be attached to any Department or instrumentality of the Government, or to any other body, organization or person, in such manner and on such conditions as are prescribed.

65. Personal effects.

Where a member of the Defence Force or another person subject to the Code of Military Discipline—

- (a) dies or is missing; or
- (b) in the case of a member of the Defence Force, deserts,

his personal and household effects may be taken and dealt with as prescribed with a view to its being disposed of, in accordance with law, to or for the benefit of the persons entitled to it by law.

66. Apprenticeships, courses of training, etc.

The Minister may—

- (a) provide or arrange for—
 - (i) apprenticeships; and
 - (ii) other courses of training and education, for members of the Defence Force; and
- (b) with the agreement of the Minister or other authority responsible for providing similar courses for other persons, declare, by notice in the National Gazette, the equivalence of those apprenticeships or courses.

67. Political activities, etc.

(1) A member of the Defence Force serving in the Regular Force—

- (a) is not eligible to be a member of, or subject to Section 68 to be a candidate for election to, the Parliament, a Provincial Government or a Local-level Government Council or Authority; and
- (b) is not eligible to hold any office prescribed by the regulations for the purposes of this paragraph; and
- (c) shall not take an active part in the affairs of a political organization, whether by speaking in public or distributing literature in furtherance of the purposes of the organization or otherwise.

(2) A member of the Defence Force serving in the Reserve Force who uses his military rank or wears uniform—

- (a) when taking part in any activity of a political nature; or
- (b) as a member of, or a candidate for election to, the Parliament, a Provincial Government or a Local-level Government Council or Authority; or
- (c) as the holder of an office prescribed by the regulations for the purposes of Subsection (1)(b),

is guilty of an offence.

Penalty: A fine not exceeding K100.00.

(3) No member of the Parliament, and no holder of an office prescribed by the regulations for the purposes of this subsection, who is a member in the Reserve Force is liable to perform, or may perform, any duty as a member of that Force.

68. Election to the Parliament.

(1) Where a member of the Defence Force serving in the Regular Force—

- (a) applies to the Defence Council to be transferred to the Reserve Force; and
- (b) satisfies the Council that he intends, if he is transferred, to become a candidate for election to the Parliament at an election specified by him in the application,

the Defence Council may transfer him to the Reserve Force.

(2) If the member—

- (a) fails to nominate; or
- (b) withdraws his nomination; or
- (c) fails to be elected,

the Defence Council may transfer him back to the Regular Force in the rank equivalent to the rank that he held immediately before his transfer to the Reserve Force.

(3) Where a member of the Defence Force is transferred back to the Regular Force under Subsection (2), the period of his transfer to the Reserve Force shall be deemed to be a period of leave without pay from the Regular Force.

69. Liability for tolls, etc.

(1) Subject to Subsection (2), no toll or due, whether under a law or otherwise, in respect of the use of any wharf, landing place, aerodrome, bridge, road, right of way, natural or artificial waterway or other means of passage is payable, and such a toll or due shall not be demanded or taken, in respect of—

- (a) any member of the Defence Force on duty, or any person in the custody of a member; or
- (b) a vehicle, vessel, aircraft or animal conveying or used by a member of the Defence Force only, for conveying a person in the custody of a member; or
- (c) the movement of any property of, or in the possession or under the control of, the Defence Force.

(2) Subsection (1) does not prevent the payment of such tolls and dues, in such

circumstances and on such conditions as are approved by the Minister.

70. Requisitioning.

(1) The owner or person in possession or control of any vehicle, vessel, aircraft, aircraft material, animal or goods required for military purposes shall, when required by a prescribed member of the Defence Force, make it available for such purposes.

(2) Compensation is payable in the prescribed manner by the State for any loss sustained by a person by reason of the exercise of the powers conferred by Subsection (1).

(3) For the purposes of the effective exercise of the powers conferred by Subsection (1), the regulations may make provision in respect of the registration of the nature, description and situation of all or any vehicles, vessels, aircraft, aircraft material, animals or goods.

71. Protection of members of the Defence Force, etc.

(1) A member of the Defence Force or other person is not liable for any thing done or omitted to be done, or purporting to be done or omitted to be done, under or for the purposes of this Act unless he acted or omitted to act maliciously or without reasonable and probable cause.

(2) Subsection (1) does not derogate any protection under any other provision of this Act or any other law.

72. Regulations.

(1) 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, and in respect of—

- (a) the operations, organization, training, discipline, efficiency and good management of the Defence Force; and
- (b) the welfare of members of the Defence Force and other persons subject to the Code of Military Discipline, and of their dependants.

(2) The regulations may make provision in respect of persons (other than persons referred to in Subsection (1)) employed in connection with the Defence Force or national defence.

(3) In particular, the regulations may prescribe matters providing for and in respect of—

- (a) the enlistment, appointment, promotion and discharge of members of the Defence Force; and
- (b) the fixing of the rates of pay of members of the Defence Force who are paid for their services; and
- (c) the deduction from the pay of any member of the Defence Force of such reasonable sums as the Minister thinks proper for the support of any person who in the opinion of the Minister is wholly or partly dependent on, or has a claim for maintenance against, the member, and the payment of such sums to or for the benefit of any such person; and
- (d) the suspension, variation or cancellation by the prescribed authority of any

- allotment of pay made by a member of the Defence Force; and
- (e) the leave of absence and furlough of members of the Defence Force; and
 - (f) the insurance of their lives by married members of the Regular Force for the benefit of their wives and families; and
 - (g) the furnishing of means of conveyance and transport in time of war or of a state of emergency declared under any law; and
 - (h) the regulation of the quartering or billeting of members of the Defence Force in time of war or of a state of emergency declared under any law; and
 - (i) the regulation, control or prohibition of the construction or use of buildings, erections or installations, the use of apparatus, machines, vehicles, vessels and aircraft, and the removal in whole or in part of buildings, erections, installations, apparatus, trees or other natural obstacles, within prescribed areas, being areas in which such regulation, control, prohibition or removal is necessary for the defence of Papua New Guinea; and
 - (j) the establishment and conduct of canteens; and
 - (k) the management and disposal of the funds and property of units of the Defence Force, including the funds and property of messes; and
 - (l) the regulation of arms practices; and
 - (m) the preservation of public safety in or at any military operation or practice; and
 - (n) the post mortem examination and disposal of the bodies of members of the Defence Force who die while on service; and
 - (o) prisoners of war; and
 - (p) the administration of oaths and affirmations to, the taking of affidavits and statutory declarations of, and the attestation of the execution of documents by, members of the Defence Force, and persons accompanying any part of the Defence Force, when serving outside the country, including any such members or persons who are prisoners of war or interned in a place outside the country; and
 - (q) the execution and revocation of powers of attorney by persons under 21 years of age who are members of the Defence Force, and the validity and effect of powers of attorney executed by such persons; and
 - (r) penalties of fines not exceeding K400.00 or imprisonment for terms not exceeding six months, or both, and default penalties of fines not exceeding K40.00.

(4) In addition, and without limiting the generality of the preceding provisions of this section, the regulations may prohibit or restrict access by any person to any defence area, and may make provision for the control and security of any defence area, including provisions—

- (a) authorizing the member of the Defence Force or other person in charge of a defence area, or a member of the Defence Force or other person authorized by him, to search, and to detain for the purposes of search, any person in, entering or leaving, or apparently about to enter or leave, a defence area, both as to his person and as to any vehicle, vessel, aircraft, receptacle, package or goods in his

possession or under his control; and

- (b) authorizing any such member or person in charge to seize from a person so searched any thing that he has reasonable grounds for believing has been used, or is being used, in the commission of an offence (whether against a law of Papua New Guinea or, if the defence area is situated outside the country, against a law of the place where it is situated), and providing for—
 - (i) the sale or disposal of the thing on the conviction of any such offence of the person from whom the thing was seized; or
 - (ii) if the person is not proceeded against or is not convicted of such an offence, its return to him; and
 - (c) authorizing any such member or person in charge to arrest and detain any person in, entering or leaving, or apparently about to enter or leave, a defence area, where the person is found committing, or is suspected on reasonable grounds of having committed, an offence (whether against a law of Papua New Guinea or, if the defence area is situated outside the country, against a law of the place where it is situated), for the purposes of—
 - (i) delivering him to a member of the Police Force for the purpose of arrest by him; or
 - (ii) if the area is situated outside the country, delivering him to a member of the police of the civil power of the place where the area is situated, so that, where appropriate, he may be arrested under the law of that place; or
 - (iii) if the person apprehended or detained is a member of a force of another country that is co-operating with the Defence Force or a part of the Defence Force (whether that first-mentioned force is in Papua New Guinea or elsewhere), delivering him to the service authorities of that force; and
 - (d) authorizing any such member or person in charge to require any person in, entering or leaving, or apparently about to enter or leave, a defence area to identify himself and give an explanation of his presence; and
 - (e) providing for members of the Police Force to exercise all or any of the powers referred to in Paragraph (a), (b), (c) or (d); and
 - (f) requiring any member of the Defence Force or other person authorized, in accordance with Paragraph (a), by or under the regulations made for the purposes of that paragraph to produce the prescribed form of authority when exercising, under the regulations made for the purposes of this subsection, any power referred to in Paragraph (a), (b), (c) or (d).
- (5) The regulations may make provision for or in respect of the certification or proof of the death—
- (a) of a member of the Defence Force who died, or is presumed to have died, while on service; and
 - (b) of a person, not being a member of the Defence Force, who died, or is presumed to have died, while in the hands of an enemy or in other

circumstances that make proof of death difficult, being circumstances arising out of any war or warlike operation.

(6) For the purposes of Subsection (3)(o), (p) and (q) and Subsection (5)–

- (a) a member of the Defence Force shall be deemed to be on service while he is a prisoner of war or interned in a place outside the country; and
- (b) a person, not being a member of the Defence Force, who accompanies a part of the Defence Force shall be deemed to be a member of, and on service with, part of the Defence Force.

(7) The regulations take effect notwithstanding anything in any provision not applying specifically to the Defence Force of any other law, not being a Constitutional Law.

SCHEDULE 1 – Code of Military Discipline.

Sec. 1.

Sch. 1.C1. Interpretation.

In this Code, unless the contrary intention appears–

“breach of service discipline” means an act or omission that is declared by Section C4 to be a breach of service discipline;

“charge” means a formal accusation in writing in the prescribed form that a person has committed a breach of service discipline;

“criminal offence” means an offence against the law of Papua New Guinea other than an act or omission that is merely a breach of service discipline;

“the Defence Act” means the Act to which this Code is a Schedule;

“disciplinary officer” means, in descending order of seniority–

- (a) the Commander of the Defence Force; or
- (b) a senior disciplinary officer; or
- (c) a junior disciplinary officer;

“disciplinary proceedings” means the hearing and decision, under this Code, of a charge of a breach of service discipline, and includes an appeal against any such decision;

“junior disciplinary officer” means an officer–

- (a) declared by the regulations or the Defence Council Orders; or
- (b) appointed by the Commander of the Defence Force or a senior disciplinary officer,

to be a junior disciplinary officer in relation to a part of the Defence Force;

“senior disciplinary officer” means an officer–

- (a) declared by the regulations or the Defence Council Orders; or
- (b) appointed by the Commander of the Defence Force,

to be a senior disciplinary officer in relation to a part of the Defence Force.

Sch. 1.C2.Application of Code to the Commander of the Defence Force.

This Code does not apply to the Commander of the Defence Force.

Sch. 1.C3.Persons subject to the Code of Military Discipline.

(1) Subject to Subsection (3), the following persons are subject to this Code:–

- (a) all members of the Defence Force serving in the Regular Force–at all times;
- (b) all members of the Defence Force serving in the Reserve Force who are–
 - (i) on duty; or
 - (ii) in uniform; or
 - (iii) in custody; or
 - (iv) undergoing a sentence of imprisonment or detention under the *Defence Act*;
- (c) all members in units or elements of a force attached to units of the Defence Force under Section 16 of the *Defence Act*;
- (d) subject to Section 26(3) of the *Defence Act*, all members of a force to which Section 26 of that Act applies while they are attached to the Defence Force;
- (e) all other persons who are attached to or serving with the Defence Force or a part of the Defence Force on the condition that they are subject to this Code;
- (f) all other prescribed persons who accompany the Defence Force or a part of the Defence Force overseas or on operational service.

(2) For the purposes of Subsection (1), a member of the Defence Force serving in the Reserve Force shall be deemed to be on duty–

- (a) from the time appointed for him to attend at a place for any military service that he is required to render under the *Defence Act* until he is duly released from that service; and
- (b) while acting or purporting to act in or with intended reference to his capacity as a member of the Defence Force serving in the Reserve Force.

(3) Subject to Subsection (4), a person who has ceased to be a person to whom Subsection (1) applies may be treated, in relation to any offence against the *Defence Act* committed before he ceased to be such a person, as if he had not ceased to be such a person.

(4) Notwithstanding the *Defence Act* or this Code, the regulations or the Defence Council Orders may–

- (a) exempt from all or any provisions of this Code all or any persons specified in Subsection (5); or
- (b) modify any such provision in relation to any such person; or
- (c) make special provision in relation to any such person.

(5) The persons to whom Subsection (4) applies are–

- (a) chaplains; and

- (b) recruits; and
- (c) officer cadets; and
- (d) apprentices; and
- (e) members of the Defence Force under 18 years of age; and
- (f) persons referred to in Subsection (1)(d), (e) or (f).

Sch. 1.C4.Definition of breaches of service discipline.

(1) A person subject to this Code who commits an act or omission that is—

- (a) prejudicial to good order and military discipline; or
- (b) unbecoming a member of the Defence Force,

is guilty of a breach of service discipline within the meaning of this Code.

(2) Without prejudice to the generality of Subsection (1), the following are breaches of service discipline:—

- (a) to strike another member of the Defence Force, or to use, or threaten by words, actions or otherwise to use, violence to another member of the Defence Force;
- (b) to illtreat in any way a member of the Defence Force of inferior rank, or a subordinate;
- (c) to offer, in the course of duty, inhumane or degrading treatment to another person;
- (d) to cause or engage in a disturbance, or to behave in a disorderly manner;
- (e) to behave in an insubordinate manner;
- (f) to misconduct oneself or fail to do one's duty while on sentry duty or on watch;
- (g) to disobey a lawful order;
- (h) subject to Section C5 to be drunk or under the influence of drugs;
- (i) to be inefficient due to causes within one's own control;
- (j) to be absent without leave;
- (k) to avoid duty;
- (l) to make a false statement concerning any service matter;
- (m) without authority to take or damage property belonging to another member of the Defence Force or another person subject to this Code;
- (n) to resist service arrest;
- (o) to escape from service custody;
- (p) to fail to comply with the Defence Council Orders;
- (q) to hinder or obstruct any person in the exercise of his powers or the performance of his functions or duties under the *Defence Act* or this Code, or any civilian authority in the exercise of his powers or the performance of his functions or duties.

(3) A person subject to this Code who—

- (a) has encouraged or helped another person to commit a breach of service discipline; or
- (b) tries to conceal a breach of service discipline; or
- (c) is otherwise an accessory to the commission of a breach of service discipline; or
- (d) attempts to commit a breach of service discipline,

is liable to be treated as if he had committed the breach.

Sch. 1.C5.Drunkenness.

(1) Section C4(2)(h) applies only where the person concerned—

- (a) is on duty; or
- (b) having been warned for duty, becomes drunk or under the influence of drugs and is drunk or under the influence of drugs when he reports, or should have reported, for duty in accordance with the warning; or
- (c) is drunk on board a Defence Force vessel or aircraft.

(2) For the purposes of Section C4(2)(h), a person shall be taken to be drunk or under the influence of drugs if, and only if, by reason of being under the influence of intoxicating liquor or a drug (whether alone or in combination with other circumstances), his faculties are so impaired that—

- (a) it would be imprudent to entrust him, or to allow him to continue, with the discharge of his duties; or
- (b) he is unfit for the discharge of his duties; or
- (c) he behaves in a disorderly manner or in any manner likely to bring discredit on the Defence Force.

Sch. 1.C6.Offences connected with requisitioning.

A person subject to this Code who—

- (a) makes a requirement purportedly under Section 70 of the *Defence Act*, knowing that the thing concerned is not required for military purposes; or
- (b) does not release as speedily as practicable any thing that has been made available in compliance with a requirement under that section,

is guilty of a breach of service discipline.

Sch. 1.C7.Punishments for breaches of service discipline.

(1) Subject to this section and to Section C8, all or any of the following punishments, which are listed in descending order of severity, may be imposed by a disciplinary officer on a person subject to this Code, being a member of the Defence Force or a person specified in Section C3(1)(c) or (d) who the disciplinary officer is satisfied has committed a breach of service discipline:—

- (a) subject to Subsection (3), dismissal with previous detention in accordance with

Paragraph (d);

- (b) subject to Subsection (3), dismissal without detention;
- (c) subject to Subsections (3) and (4), reduction in rank, with or without detention;
- (d) subject to Subsection (5), detention for a period not exceeding 84 days;
- (e) forfeiture of service for the purposes of promotion;
- (f) confinement to barracks for a period not exceeding 21 days;
- (g) a fine not exceeding 14 days' pay;
- (h) stoppage of not more than 21 days' local leave;
- (i) extra duties as prescribed;
- (j) reprimand.

(2) The Commander of the Defence Force may impose on a person subject to this Code, not being a person to whom Subsection (1) applies, who he is satisfied has committed a breach of service discipline—

- (a) detention for a period not exceeding 84 days; or
- (b) a fine not exceeding K100.00.

(3) The punishment of—

- (a) dismissal under Subsection (1)(a) or (b); or
- (b) reduction in rank under Subsection (1)(c) within prescribed limits; or
- (c) forfeiture of service under Subsection (1)(e); or
- (d) detention for a period exceeding 14 days,

shall not take effect until it is confirmed by the Commander of the Defence Force.

(4) An officer shall not be reduced to a rank below commissioned rank.

(5) An officer, a Chief Warrant Officer or a Warrant Officer shall not be sentenced to detention except in conjunction with a sentence of dismissal.

(6) A non-commissioned officer (other than a Chief Warrant Officer or Warrant Officer) shall not be sentenced to detention except in conjunction with a sentence of dismissal or reduction in rank.

(7) A sentence of detention shall be served in such place and under such conditions as are prescribed.

(8) Where the breach involves damage to property, the disciplinary officer may order that part or all of any fine imposed be paid to the owner of the property by way of compensation.

Sch. 1.C8. Jurisdiction of disciplinary officers.

(1) The Commander of the Defence Force—

- (a) has jurisdiction over all breaches of service discipline; and
- (b) may impose any punishment provided for by Section C7 for such a breach.

(2) A senior disciplinary officer—

- (a) has jurisdiction over all breaches of service discipline by members of the Defence Force who are junior in rank; and
- (b) subject to Section C7, may impose any punishment provided for by Section C7 (1) for such a breach, except that—
 - (i) he may not impose on an officer a punishment of—
 - (A) dismissal under Section C7(1)(a) or (b); or
 - (B) reduction in rank under Section C7(1)(c); or
 - (C) forfeiture of service under Section C7(1)(e); and
 - (ii) he may not impose a sentence of detention under Section C7(1)(d) exceeding 42 days.

(3) A junior disciplinary officer—

- (a) has jurisdiction over breaches of service discipline by any member of the Defence Force who is junior in rank, except in cases referred to in—
 - (i) Section C4(2)(a) (striking, etc., member); or
 - (ii) Section C4(2)(b) (illtreatment); or
 - (iii) Section C4(2)(f) (misconduct, etc., on sentry duty or on watch); or
 - (iv) Section C4(2)(l) (false statements, etc.); or
 - (v) Section C4(2)(m) (unauthorized taking or damaging of property); or
 - (vi) Section C4(2)(n) (resisting service arrest); or
 - (vii) Section C4(2)(o) (escaping from service custody); or
 - (viii) Section C4(2)(q) (obstruction, etc.),

or in the case of any breach of a kind that is prescribed for the purpose of this paragraph; and
- (b) may impose only the following punishments provided for by Section C7 for such a breach:—
 - (i) detention under Section C7(1)(d), for a period not exceeding 14 days;
 - (ii) confinement to barracks under Section C7(1)(f), for a period not exceeding seven days;
 - (iii) a fine under Section C7(1)(g), not exceeding four days' pay;
 - (iv) stoppage of not more than seven days' local leave under Section C7(1)(h);
 - (v) extra duties under Section C7(1)(i), for a period not exceeding 14 days;
 - (vi) reprimand under Section C7(1)(j).

(4) Notwithstanding the preceding provisions of this section, a disciplinary officer who investigates a charge of a breach of service discipline over which he has no jurisdiction may recommend to a disciplinary officer who has jurisdiction that the charge be not proceeded with,

and the last-mentioned disciplinary officer may dismiss the charge.

Sch. 1.C9.Procedures, etc., of disciplinary officers.

(1) Subject to this section, the procedures to be followed by disciplinary officers in disciplinary proceedings are as prescribed.

(2) Disciplinary proceedings are not judicial proceedings.

(3) Subject to the *Defence Act* and to this Code, a disciplinary officer is not bound by any technical rules of law or evidence, but may inform himself on any matter in such manner as he thinks proper.

(4) As far as operational requirements allow disciplinary proceedings must be conducted in such a manner as to give the person charged a full and fair opportunity of presenting his defence or explanation (if any), and for that purpose and to that extent—

- (a) the disciplinary officer dealing with a charge should not proceed with that charge where in his opinion it is in the interests of justice that the charge should be dealt with by another disciplinary officer; and
- (b) a person charged is entitled—
 - (i) to have the charge reduced into writing; and
 - (ii) to have a copy of the charge before the proceedings commence; and
 - (iii) to have the charge explained to him by the disciplinary officer at or before the commencement of the proceedings; and
 - (iv) to examine and cross-examine witnesses called against him and persons whose statements are used against him; and
 - (v) to call and examine witnesses on his behalf; and
 - (vi) to be represented by a person subject to this Code (not being a member of the Defence Force who is the superior officer of the disciplinary officer conducting the proceedings) of his own choice.

(5) A disciplinary officer conducting any disciplinary proceedings may examine persons on oath or affirmation.

(6) A disciplinary officer conducting any disciplinary proceedings shall keep in the prescribed manner a record of—

- (a) the charge; and
- (b) the defence or explanation (if any) of the person charged; and
- (c) the decision; and
- (d) the reasons for the decision,

and a note of the evidence given, and such other records as are prescribed.

(7) If at any stage of any disciplinary proceedings before he has imposed a punishment the disciplinary officer thinks that—

- (a) the breach of service discipline warrants or may warrant a punishment more severe than he has power to impose; or

- (b) he should disqualify himself in accordance with Subsection (4)(a); or
- (c) it is for any other reason—
 - (i) inappropriate that he should deal with the charge; or
 - (ii) appropriate that another disciplinary officer should deal with the charge,

he may—

- (d) if he is the Commander of the Defence Force—transfer the matter as prescribed to a delegate of the Commander under Section 11 of the *Defence Act*; or
- (e) in any other case—refer the matter, as prescribed, for hearing to another disciplinary officer having jurisdiction.

Sch. 1.C10.Review and appeal.

(1) Except as provided in this section, no appeal lies to a court against a decision in any disciplinary proceedings.

(2) In disciplinary proceedings against a member of the Defence Force who is on operational service, no writ or order of, or of the nature of, a prerogative writ shall be made in respect of the proceedings, but if any such proceedings are improperly or wrongly conducted or decided the National Court, in accordance with the Rules of Court of the Supreme Court, may order the State to pay such amount as the Court thinks proper to any aggrieved person by way of compensation.

(3) Where a fine exceeding two days' pay or a punishment that is more severe than confinement to barracks is imposed, otherwise than by the Commander of the Defence Force, on a member of the Defence Force in any disciplinary proceedings (other than proceedings under this section), the member may appeal, as prescribed, to a disciplinary officer next senior to the disciplinary officer who made the decision.

(4) An appeal lies, as prescribed, to the National Court constituted by the Defence Force Judge—

- (a) in any case where the Commander of the Defence Force imposes or confirms a penalty of dismissal or reduction in rank; and
- (b) in any case where a punishment of detention in excess of 42 days is imposed.

(5) Section C9 applies to and in relation to an appeal under Subsection (3) or (4).

(6) On an appeal under Subsection (3) or (4), the appellate authority may—

- (a) dismiss the appeal in whole or in part; or
- (b) allow the appeal in whole or in part; or
- (c) substitute for the decision any decision (including a decision as to punishment) that it could have given had the proceedings been taken before it in the first instance.

(7) For the purposes of Subsection (6)(c), the National Court has the same jurisdiction as the Commander of the Defence Force under Section C8.

(8) The Commander of the Defence Force may, of his own motion or at the request of any person affected by the decision, review a decision in any disciplinary proceedings (other

than proceedings under Subsection (4)), and if he thinks it proper to do so may–

- (a) disallow any finding of guilt; or
- (b) impose any punishment less than that imposed by the decision; or
- (c) order a further investigation into the matter of the decision,

and may make any other order that he thinks necessary to do justice in the matter, and for the purposes of a review or a further investigation may suspend the carrying out, or the continuance, of any punishment imposed.

Sch. 1.C11.Stay of proceedings.

Where an appeal lies under Section C10(3) or (4), or where a person affected by a decision in any disciplinary proceedings requests a review under Section C10(8) of the decision, further proceedings are stayed until–

- (a) the appeal or review has been completed; or
- (b) where an appeal lies under Section C10(3) or (4), either–
 - (i) the time for appeal has expired without an appeal having been lodged; or
 - (ii) the person concerned has stated, as prescribed, that he does not intend to appeal,

whichever last occurs.

Sch. 1.C12.Reference of matter for trial as civil offence.

If in the course of any disciplinary proceedings the disciplinary officer forms the opinion that a member of the Defence Force is or may be guilty of a criminal offence, he shall advise the appropriate authority of his opinion and of the reasons for it, but except in the case of a possible offence against Section 59 of the *Defence Act* he shall not interrupt the proceedings.

Sch. 1.C13.Evidence of civil conviction.

A conviction of a criminal offence or an offence against the law of any place in which an accused person is or was at any relevant time serving may be treated, for the purpose of any disciplinary proceedings, as conclusive evidence of the facts found by the court or tribunal that convicted him.

Sch. 1.C14.Arrest without warrant.

- (1) A person subject to this Code who–
 - (a) has committed; or
 - (b) is found committing; or
 - (c) is suspected of being about to commit; or
 - (d) is suspected of committing, or has been charged with,

a breach of service discipline may be arrested and detained without warrant in accordance with this section, and for that purpose a person authorized under this section to arrest or detain a

person may use such force as is reasonably necessary.

(2) The persons who may effect arrests under Subsection (1) are—

- (a) any member of the Defence Force—in the case of a member of equal or lower rank; and
- (b) an officer—in the case of an officer of higher rank who is engaged in a quarrel or disorder; and
- (c) a non-commissioned member of the Defence Force—in the case of another non-commissioned member who is engaged in a quarrel or disorder; and
- (d) in exceptional circumstances or in emergency—any member of the Defence Force; and
- (e) in any case—a prescribed member of the Defence Force.

(3) A power of arrest under this section may be exercised personally or by giving an order for the arrest of the person concerned, and it is the duty of the member to whom the order is given to carry out the order.

Sch. 1.C15.Arrest on warrant.

(1) The Commander of the Defence Force may issue a warrant for the arrest of a person subject to this Code who—

- (a) has committed; or
- (b) is suspected of committing; or
- (c) has been charged with,

a breach of service discipline or a criminal offence, or an offence against a law of any other place in which the member is or has been.

(2) The warrant may be directed to all members of the Defence Force and the Police Force, or any of them.

(3) The person who executes the warrant may use such force as is reasonably necessary.

Sch. 1.C16.Powers of search, etc.

(1) In this section, “**service property**” means any property used by or under the control of the Defence Force, or any property that is on issue to a person subject to this Code in his capacity as such.

(2) This section does not derogate any power of search conferred by or under any other law.

(3) A prescribed member of the Defence Force may exercise in relation to a person subject to this Code any power of search that is conferred by any other law as if a breach of service discipline were a criminal offence.

- (4) Where a person is arrested or committed into custody under this Code, the person—
 - (a) who arrests or orders the arrest; or

- (b) into whose custody the person is committed; or
- (c) who is acting under the orders of such a person,

may search him and any thing in his possession, may remove and detain any such thing and shall deal with it as prescribed.

(5) A member of the Defence Force authorized for the purpose by a senior disciplinary officer may—

- (a) search any place that is or has been—
 - (i) occupied by or under the control of the Defence Force; or
 - (ii) occupied by or under the control of a person subject to this Code; and
- (b) seize and detain, and shall deal with as prescribed, any service property found in or on the place, and any other thing found in or on the place that is suspected of having been unlawfully obtained, or that may furnish evidence of the commission of a breach of service discipline or of a criminal offence.

(6) The powers conferred by Subsection (5) in relation to a place referred to in Subsection (5)(a) may be exercised in relation to any other place by a prescribed member of the Defence Force who is authorized by a warrant issued by a senior disciplinary officer or by the Commander of the Defence Force.

(7) A female shall not be searched under this section otherwise than by another female, unless—

- (a) the need to search her is too urgent to allow the necessary delay; or
- (b) a disciplinary officer certifies in writing that it is impracticable.

Sch. 1.C17.Custody.

(1) A person who has been arrested under Section C14 or C15 may be detained in such place and in such manner as is prescribed, and for that purpose any force may be used that is reasonably necessary.

(2) Where a person who has been arrested under Section C14 or C15 is committed into the custody of a member of the Defence Force for detention—

- (a) the person who commits him into custody shall, as soon as practicable, give to the member into whose custody he is committed a statement in writing of the reasons for the arrest; and
- (b) the member into whose custody he is committed shall, within 24 hours after the committal, forward a copy of the statement to his superior officer, who shall take the prescribed steps to bring the matter to the attention of a disciplinary officer.

(3) Section 50 of the *Defence Act* applies to and in respect of the arrest or detention, and any delay in investigations or failure to either charge or release.

Sch. 1.C18.Investigations.

- (1) Where—

(a) a person has been arrested and detained under Section C14, C15 or C17; or

(b) a charge of a breach of service discipline has been laid against a person,

the allegation or charge against him shall be investigated, without unnecessary delay, in accordance with the regulations and the Defence Council Orders.

(2) If a disciplinary officer having jurisdiction in the matter thinks that—

(a) it is not necessary for the investigation of the charge that the person concerned be held in custody; or

(b) a charge should not be laid; or

(c) a charge laid should not be proceeded with,

he shall so order, and if the person concerned is still in custody he shall be released immediately.

Sch. 1.C19.Custody, etc., of service prisoners.

The regulations or the Defence Council Orders may make provision for the custody, discipline and treatment of persons subject to this Code who—

(a) are subject to or are undergoing a sentence of detention for a breach of service discipline; or

(b) have been sentenced to death or to a period of imprisonment,

including provision for their return to the country or their removal from operational areas.

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