

# **Papua New Guinea (Staffing Assistance) Act 1973**

**No. 70 of 1973**

## **TABLE OF PROVISIONS**

### **PART I—PRELIMINARY**

#### **Section**

1. Short title
2. Commencement
3. Interpretation

### **PART II—THE AUSTRALIAN STAFFING ASSISTANCE GROUP**

4. Australian Staffing Assistance Group
5. General functions of Minister
6. Persons employed under this Part
7. Terms and conditions of employment under this Part
8. Cessation of employment under certain Ordinances
9. Employment under this Part simultaneous with other employment
10. Application of section 47D of Public Service Act
11. Application of Acts to persons employed under this Part

### **PART III—COMPENSATION ON TERMINATION OF EMPLOYMENT**

12. Definitions
13. Voluntary termination, &c., of employment
14. Termination of employment by Minister
15. Application for termination of employment
16. Tribunals
17. Oath or affirmation of office
18. Procedure of Tribunals
19. Benefits under this Part

### **PART IV—ADMINISTRATION OF FUNDS**

#### ***Division 1—Papua New Guinea Superannuation Board***

20. Constitution of Superannuation Board
21. Membership of Superannuation Board
22. General functions and powers of Superannuation Board

TABLE OF PROVISIONS—*continued*

*Division 2—Contract Officers (Papua New Guinea) Retirement Benefits Board*

Section

23. Constitution of Benefits Board
24. Membership of Benefits Board
25. General functions and powers of Benefits Board

*Division 3—General Provisions Relating to Boards*

26. Deputies of members of Board
27. Termination of appointments
28. Casual vacancies
29. Meetings of Board
30. Delegation by Board
31. Cheques—how signed
32. Accounts to be kept by Board
33. Annual reports by Board

PART V—SUPERANNUATION

34. Papua New Guinea Superannuation Fund
35. Payments by Commonwealth to Superannuation Fund in respect of interest
36. Papua New Guinea Provident Account
37. Reserve Units of Pension Account
38. Regulations for purposes of this Part

PART VI—RETIREMENT BENEFITS

39. Contract Officers' Benefits Fund
40. Regulations for purposes of this Part

PART VII—FINANCIAL PROVISIONS RELATING TO FUNDS

41. Definition
42. Investment
43. Borrowing
44. Moneys not invested
45. Actuarial investigations
46. Audit
47. Taxation

PART VIII—TRANSITIONAL PROVISIONS

48. Contracts
49. Acts, &c., done in relation to Benefits Fund
50. Actuarial investigation into Superannuation Fund
51. Continuation of certain arrangements
52. Officers seconded from Commonwealth Public Service
53. Benefits accrued but not paid before prescribed date

PART IX—MISCELLANEOUS

54. Settlement of disputes under Part V or VI
55. Transfer of insurance policies to Superannuation Board
56. Desertion by pensioner of wife or children
57. Recovery of contributions, &c.
58. Arrangements for re-imbusement of Commonwealth by certain authorities
59. Cessation of application of certain Ordinances
60. No assignment of benefits
61. Attachment of benefits
62. Payments to be from moneys appropriated
63. Administration of this Act
64. Delegation by Minister
65. Regulations

# Papua New Guinea (Staffing Assistance) Act 1973

No. 70 of 1973

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## AN ACT

Relating to the Provision by Australia of Staffing Assistance for Papua New Guinea and Preservation of Rights of certain Persons presently employed in Papua New Guinea.

[Assented to 18 June 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

### PART I—PRELIMINARY

1. This Act may be cited as the *Papua New Guinea (Staffing Assistance) Act 1973*. Short title.
2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.
3. (1) In this Act, unless the contrary intention appears— Interpretation.  
“appropriate Board” means—
  - (a) in relation to the Superannuation Fund—the Superannuation Board; and
  - (b) in relation to the Benefits Fund—the Benefits Board;“Benefits Board” means the Contract Officers (Papua New Guinea) Retirement Benefits Board constituted by section 23;  
“Benefits Fund” means the Contract Officers’ Benefits Fund continued in existence by section 39;

- “ Board ” means the Benefits Board or the Superannuation Board, as the case requires;
- “ Contract Officers Ordinance ” means the *Retirement Benefits (Contract Officers) Ordinance* 1966;
- “ Papua New Guinea Act ” means the *Papua and New Guinea Act* 1949, as amended and in force at the relevant time;
- “ Police Force Ordinance ” means the *Royal Papua and New Guinea Constabulary Ordinance* 1965;
- “ prescribed date ” means the date of commencement of this Act;
- “ Provident Account ” means the Papua New Guinea Provident Account continued in existence by section 36;
- “ Public Service Ordinance ” means the *Public Service (Papua and New Guinea) Ordinance* 1963;
- “ Reserve Units of Pension Account ” means the Reserve Units of Pension Account continued in existence by section 37;
- “ Superannuation Board ” means the Papua New Guinea Superannuation Board continued in existence by section 20;
- “ Superannuation Fund ” means the Papua New Guinea Superannuation Fund continued in existence by section 34;
- “ Superannuation Ordinance ” means the *Superannuation (Papua and New Guinea) Ordinance* 1951.

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

- (a) a reference to an Ordinance is a reference to an Ordinance of Papua New Guinea as amended and in force at the relevant time; and
- (b) where an expression is given a particular meaning, other parts of speech and grammatical forms of the same expression have corresponding meanings.

#### PART II—THE AUSTRALIAN STAFFING ASSISTANCE GROUP

**Australian Staffing Assistance Group.**

4. (1) The persons for the time being employed under this Part constitute the Australian Staffing Assistance Group.

(2) The purpose of the Australian Staffing Assistance Group is to make personnel available for the performance of services for the Government of Papua New Guinea and the authorities of Papua New Guinea.

**General functions of Minister.**

5. The Minister may—

- (a) make arrangements with the Government of Papua New Guinea or an authority of Papua New Guinea for and in relation to the performance of services for that Government or authority by persons employed under this Part;
- (b) do such things as are necessary to carry out any such arrangement; and

- (c) perform such duties, and exercise such powers, in relation to the Australian Staffing Assistance Group as are imposed or conferred upon him by or under this Act.

6. (1) The following persons are employed under this Part:—

Persons  
employed  
under this  
Part.

- (a) persons who were, immediately before the prescribed date, overseas officers within the meaning of the Public Service Ordinance;
- (b) persons who were, immediately before that date, by virtue of section 4B of the Superannuation Ordinance, deemed to be employees within the meaning of section 4 of that Ordinance;
- (c) persons who were, immediately before that date, overseas members within the meaning of the Police Force Ordinance; and
- (d) persons who were, immediately before that date—
- (i) officers of the Papua New Guinea Electricity Commission; and
- (ii) contributing to the Papua New Guinea Superannuation Fund or the Papua New Guinea Provident Account.

(2) In addition to the persons referred to in sub-section (1), the Minister may engage in employment under this Part persons who are on transfer or secondment from the Public Service of the Commonwealth or of a State or from the staff of a public authority constituted under an Act or a State Act.

7. (1) Subject to this Act, the regulations may make provision for and in relation to the terms and conditions of employment under this Part.

Terms and  
conditions of  
employment  
under this  
Part.

(2) The salaries and allowances payable in respect of employment under this Part shall be as determined by the Minister, but, in determining salaries, he shall have regard to the value of the services performed.

(3) Subject to this Act, until full provision is made under sub-section (1), the terms and conditions of employment under this Part are, *mutatis mutandis*—

- (a) in relation to a person referred to in paragraph 6 (1) (a) or (b)—the terms and conditions of service that were, immediately before the prescribed date, applicable in relation to him under the Public Service Ordinance, and any contract under section 30 of the Papua New Guinea Act entered into by him, as modified by regulations under this Act; and
- (b) in relation to a person referred to in paragraph 6 (1) (c)—the terms and conditions of service that were, immediately before that date, applicable in relation to him under the Police Force Ordinance, and any contract under section 29 of that Ordinance entered into by him, as modified by regulations under this Act.

(4) Subject to this Act, the terms and conditions of employment under this Part of a person referred to in paragraph 6 (1) (d) are, so long as he continues to perform services for the Papua New Guinea Electricity Commission, the terms and conditions of service that were, immediately before the prescribed date, applicable in relation to him, as varied by the Minister after consultation with the Commission.

(5) A reference in this section to an Ordinance includes a reference to the regulations and determinations made under that Ordinance, but does not include a reference to those provisions of an Ordinance that relate to promotions.

Cessation of employment under certain Ordinances.

8. On and after the prescribed date—

- (a) a person referred to in paragraph 6 (1) (a) or (b) ceases to be an officer or employee, as the case may be, under the Public Service Ordinance;
- (b) a person referred to in paragraph 6 (1) (c) ceases to be a member within the meaning of the Police Force Ordinance; and
- (c) a person referred to in paragraph 6 (1) (d) ceases to be an officer under the *Papua and New Guinea Electricity Commission Ordinance 1961*.

Employment under this Part simultaneous with other employment.

9. Except as otherwise provided by this Act or the regulations, nothing in this Act prevents a person from being employed under this Part at the same time as he is the holder of an office, or otherwise employed, under an Act, a State Act or an Ordinance (including an Ordinance of the Australian Capital Territory or of the Northern Territory of Australia).

Application of section 47D of Public Service Act.

10. Section 47D of the *Public Service Act 1922–1973* applies in relation to employment under this Part as if, in that section—

- (a) a reference to the appropriate authority of a Territory were a reference to the Minister;
- (b) a reference to an office in the Territorial Service were a reference to employment under this Part; and
- (c) a reference to an officer of the Territorial Service were a reference to a person employed under this Part.

Application of Acts to persons employed under this Part.

11. (1) The *Public Service Act 1922–1973*, the *Superannuation Act 1922–1971* and the *Commonwealth Employees' Furlough Act 1943–1968* do not apply in relation to a person employed under this Part, other than a person who is an officer on transfer within the meaning of section 47D of the first-mentioned Act.

(2) The *Public Service Arbitration Act 1920–1972* applies in relation to employment under this Part as if it were employment in the Public Service of the Commonwealth and, for the purposes of the application of that Act, persons employed under this Part shall be deemed to be employees in an industry within the meaning of the *Conciliation and Arbitration Act 1904–1972*.

## PART III—COMPENSATION ON TERMINATION OF EMPLOYMENT

**12. In this Part—****Definitions.**

“ application ” means an application made under section 15;

“ employment ” means employment under Part II;

“ Tribunal ” means a Tribunal appointed under section 16.

**13. (1) An eligible person may—****Voluntary termination, &c., of employment.**

(a) at any time on or after the first operative date and before the second operative date, elect—

(i) to engage in employment on contract; or

(ii) to terminate his employment; or

(b) at any time on or after the second operative date, elect to terminate his employment.

(2) An election under sub-section (1) shall be made in the prescribed form and manner, and after giving the prescribed notice, and shall be irrevocable.

(3) Where a person has made an election under this section, the Minister shall terminate his employment or offer to engage him in employment on contract, as the case may be.

**(4) In this section—**

“ eligible person ” means a person referred to in paragraph 38 (1) (a) but does not include any such person after—

(a) in the case of a male—he attains the age of sixty years;

(b) in the case of a female—she attains the age of fifty-five years; or

(c) in either case—the person makes an election under this section or the employment of the person is terminated under section 14,

whichever is the earlier;

“ first operative date ” means the prescribed date or 31st December, 1973, whichever is the earlier;

“ second operative date ” means the date on which Papua New Guinea becomes an independent sovereign state or 30th June, 1975, whichever is the earlier.

**14. (1) The Minister may, after giving the prescribed notice, terminate the employment of a person if he is satisfied that, by reason of—**

**Termination of employment by Minister.**

(a) a change, or proposed change, in the constitution of Papua New Guinea;

(b) the development of Papua New Guinea towards becoming an independent sovereign state; or

(c) the policy of the Government of Papua New Guinea and the authorities of Papua New Guinea to employ persons born in Papua New Guinea in preference to other persons, the services of the person are no longer required.

(2) Where a Tribunal has recommended the termination of the employment of a person, the Minister may, in his discretion, terminate the person's employment.

**Application for termination of employment.**

**15.** (1) A person employed under Part II may, at any time, apply for the termination of his employment on the grounds that there is good cause for his employment to be terminated.

(2) An application shall be made in the prescribed form and manner.

(3) An application shall be heard by a Tribunal.

(4) After hearing an application, the Tribunal may, if it is satisfied that there is good cause for the employment of the applicant to be terminated, recommend to the Minister that the employment of the applicant be terminated.

**Tribunals.**

**16.** (1) For the purposes of this Part, the Minister may appoint a Tribunal or Tribunals.

(2) The membership of a Tribunal shall be as prescribed.

**Oath or affirmation of office.**

**17.** Before proceeding to discharge the duties of his office, a member of a Tribunal shall take an oath, or make an affirmation, in the form and manner prescribed.

**Procedure of Tribunals.**

**18.** (1) In the hearing of an application by a Tribunal—

(a) the procedure of the Tribunal is, subject to this Act and the regulations, within the discretion of the Tribunal;

(b) the Tribunal is not bound to act in a formal manner and is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks just;

(c) the Tribunal may, of its own motion or at the request of the applicant, make such inquiries as it thinks desirable; and

(d) the Tribunal shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms.

(2) The hearing of an application shall be in private.

(3) At the hearing of an application, the applicant may—

(a) appear personally or be represented by any person, other than counsel, solicitor or paid agent;

(b) make such oral or written submissions as he desires; and

(c) tender certificates, documentary evidence and statutory declarations.



(4) A Tribunal may determine the place, date and time for the hearing of an application and may adjourn the hearing of an application.

19. (1) Where a person has made an election under section 13 or the employment of a person has been terminated under section 14, the person is entitled to the prescribed benefits. Benefits under this Part.

(2) Regulations under sub-section (1) shall be made with a view to giving effect to such recommendations of the Simpson Report as have been accepted by the Commonwealth and the Government of Papua New Guinea, but nothing in this sub-section prevents the regulations from providing for greater benefits than those recommended in that Report.

(3) The regulations may make different provision in relation to elections made, and employment terminated, under different provisions of this Part.

(4) In this section, "the Simpson Report" means the report relating to employment security for overseas officers of the Public Service of Papua New Guinea made by Mr. A. M. Simpson, C.M.G., to the Minister for External Territories and the Chief Minister of Papua New Guinea and dated 23rd October, 1972.

#### PART IV—ADMINISTRATION OF FUNDS

##### *Division 1—Papua New Guinea Superannuation Board*

20. (1) The Papua New Guinea Superannuation Board that was, immediately before the prescribed date, in existence by virtue of the Superannuation Ordinance is preserved and continues in existence as a body corporate under and subject to the provisions of this Act, so that its identity is not affected. Constitution of Superannuation Board.

(2) The Board—

- (a) shall have a common seal;
- (b) may acquire, hold and dispose of real or personal property; and
- (c) may sue and be sued in its corporate name.

(3) The common seal of the Board shall be kept in such custody as the Board directs and shall not be used except as authorised by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

21. (1) The Superannuation Board shall consist of the following members:— Membership of Superannuation Board.

- (a) an officer of the Public Service of the Commonwealth appointed by the Minister;

- (b) the Commonwealth Actuary; and
- (c) a contributor to the Superannuation Fund elected by the contributors to that Fund in the manner specified by the Minister by notice published in the *Gazette*.

(2) Subject to sections 27 and 28, a member of the Board, other than the Commonwealth Actuary, holds office for a term not exceeding five years, but is eligible for re-appointment or re-election, as the case may be.

(3) The member appointed under paragraph (1) (a) shall be the Chairman of the Board and, in his absence, the Commonwealth Actuary, shall act as Chairman.

(4) A person, other than the Commonwealth Actuary, holding office as a member of the Papua New Guinea Superannuation Board under the Superannuation Ordinance immediately before the prescribed date shall be deemed to be a member of the Board as if, on the day on which he was appointed or elected to that office, he had been appointed or elected to the corresponding office under this section.

**General functions and powers of Superannuation Board.**

22. (1) The functions of the Superannuation Board are to control and administer the Superannuation Fund in accordance with this Act.

(2) The Board has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions.

*Division 2—Contract Officers (Papua New Guinea)  
Retirement Benefits Board*

**Constitution of Benefits Board.**

23. (1) There is hereby established a Board, to be known as the Contract Officers (Papua New Guinea) Retirement Benefits Board.

(2) The Board—

- (a) is a body corporate;
- (b) shall have a common seal;
- (c) may acquire, hold and dispose of real and personal property; and
- (d) may sue and be sued in its corporate name.

(3) The common seal of the Board shall be kept in such custody as the Board directs and shall not be used except as authorized by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

**Membership of Benefits Board.**

24. (1) The Benefits Board shall consist of the following members:—

- (a) an officer of the Public Service of the Commonwealth appointed by the Minister;
- (b) the Commonwealth Actuary; and
- (c) a contributor to the Benefits Fund appointed by the Minister.

(2) Subject to sections 27 and 28, a member of the Board, other than the Commonwealth Actuary, holds office for a term not exceeding five years, but is eligible for reappointment.

(3) The member appointed under paragraph (1) (a) shall be the Chairman of the Board and, in his absence, the Commonwealth Actuary shall act as Chairman.

25. (1) The functions of the Benefits Board are to control and administer the Benefits Fund in accordance with this Act.

General functions and powers of Benefits Board.

(2) The Board has power to do all things necessary or convenient to be done for or in connexion with the performance of its functions.

### *Division 3—General Provisions Relating to Boards*

26. (1) The Minister may appoint a person to be the deputy of a member of a Board.

Deputies of members of Board.

(2) The deputy of the member representing contributors shall be a contributor to the relevant Fund.

(3) The deputy of a member is entitled, in the event of the absence of the member from a meeting, to attend that meeting and, when so attending, shall be deemed to be a member, but shall not act as Chairman.

27. The Minister may, at any time, declare the office of a member of a Board (other than the Commonwealth Actuary) or of a deputy of a member to be vacant if he is of the opinion that it is necessary or desirable to do so.

Termination of appointments.

28. (1) Where a member of a Board dies or otherwise vacates his office, the Minister may appoint a person to fill the vacancy.

Casual vacancies.

(2) Subject to sub-section (4), an appointment under sub-section (1) shall be for the remainder of the term of the vacated office.

(3) A person appointed under sub-section (1) to fill a vacancy in the office of the member representing contributors shall be a contributor to the relevant Fund elected in accordance with paragraph 21 (1) (c) or appointed in accordance with paragraph 24 (1) (c), as the case may be.

(4) In the case of the Superannuation Board, where there is a vacancy to which sub-section (3) applies, the Minister may, pending the holding of an election, appoint a contributor to hold the vacant office temporarily, and a member so appointed shall hold office until the election of a member in accordance with that sub-section, or until the expiration of twelve months after the occurrence of the vacancy, whichever first occurs.

29. (1) Notice of a meeting of a Board shall be given by the Chairman personally or by post to the other members.

Meetings of Board.

(2) Two members of a Board constitute a quorum at a meeting of the Board.

(3) At a meeting of a Board, the Chairman has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(4) In this section, “ member ” includes a deputy of a member.

**Delegation  
by Board.**

30. (1) A Board may, by writing under its common seal, delegate to a person, either generally or otherwise as provided by the instrument of delegation, all or any of its powers and functions under this Act (except this power of delegation).

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Board.

**Cheques—  
how signed.**

31. Cheques drawn on a bank account of a Board shall be signed as prescribed.

**Accounts to  
be kept by  
Board.**

32. A Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and of the Superannuation Fund or the Benefits Fund, as the case may be, and shall do all things necessary to ensure that all payments out of the Fund are correctly made and properly authorized and that adequate control is maintained over the assets of the Fund and the assets of, or in the custody of, the Board and over the incurring of liabilities by the Board.

**Annual  
reports by  
Board.**

33. (1) A Board shall, as soon as practicable after the end of each financial year, submit to the Minister a report of its operations during that year, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before submitting financial statements under the last preceding sub-section, the Board shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Board during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause the report and financial statements of the Board, together with the report of the Auditor-General, to be laid, as soon as practicable after their receipt by the Minister, before each House of the Parliament.

(4) The first report and financial statements of a Board under this section shall be submitted to the Minister as soon as practicable after 30th June next following the commencement of this Act, and shall relate to the operations of the Board during the period that commenced on the commencement of this Act and ended on that date.

#### PART V—SUPERANNUATION

34. (1) The Papua New Guinea Superannuation Fund that was, immediately before the prescribed date, in existence by virtue of the Superannuation Ordinance is preserved and continues in existence under and subject to the provisions of this Act, so that its identity is not affected.

Papua New  
Guinea  
Super-  
annuation  
Fund.

(2) There shall be paid into the Fund—

- (a) contributions to the Fund made by persons under this Part and interest on arrears of such contributions;
- (b) payments to the Fund made by the Commonwealth under this Part; and
- (c) income derived from investments of the Fund.

35. (1) Where, in relation to a financial year, the amount ascertained in accordance with the formula—

$$1.015 a$$

is less than the amount ascertained in accordance with the formula—

$$.015 (b + c)$$

the Commonwealth shall pay to the Superannuation Fund an amount equal to the difference between those amounts.

Payments by  
Common-  
wealth to  
Super-  
annuation  
Fund in  
respect of  
interest.

(2) For the purpose of making calculations, in relation to a financial year, in accordance with the formulae contained in sub-section (1)—

- a means the total amount of interest, dividends and rents credited to the Fund during that financial year, together with any profit derived from the realization or appreciation of assets, less the amount of any interest charges and the amount of any depreciation or loss on realization of assets;
- b means the amount of the Fund at the beginning of that financial year; and
- c means the amount of the Fund at the end of that financial year.

(3) If an investigation made under section 45 discloses a surplus of assets over liabilities of the Fund, the amount of the surplus shall be set off against the amount or amounts otherwise payable by the Commonwealth to the Fund under sub-section (1).

36. (1) The Papua New Guinea Provident Account that was, immediately before the prescribed date, in existence by virtue of the Superannuation Ordinance is preserved and continues in existence under and subject to the provisions of this Act, so that its identity is not affected.

Papua New  
Guinea  
Provident  
Account.

- (2) The Account forms part of the Superannuation Fund.
- (3) There shall be paid into the Account—
  - (a) contributions to the Account made by persons under this Part and interest on arrears of such contributions; and
  - (b) payments to the Account made by the Commonwealth under this Part.

**Reserve  
Units of  
Pension  
Account.**

37. (1) The Reserve Units of Pension Account that was, immediately before the prescribed date, in existence by virtue of the Superannuation Ordinance is preserved and continues in existence under and subject to the provisions of this Act, so that its identify is not affected.

(2) The Account forms part of the Superannuation Fund.

(3) There shall be paid into the Account contributions to the Account made by persons under this Part for or in respect of reserve units of pension and interest on arrears of such contributions.

**Regulations  
for purposes  
of this Part.**

38. (1) The regulations may make provision for and in relation to—

- (a) contributions to be paid to the Fund by persons who, immediately before the prescribed date, were required or permitted to contribute to the Papua New Guinea Superannuation Fund or the Papua New Guinea Provident Account under the Superannuation Ordinance;
- (b) payments to be made out of the Fund to and in relation to—
  - (i) persons referred to in paragraph (a); and
  - (ii) persons who, immediately before the prescribed date, were entitled to pension in accordance with the Superannuation Ordinance;
- (c) payments to be made to the Fund by the Commonwealth; and
- (d) matters incidental to or connected with matters referred to in paragraphs (a), (b) and (c).

(2) Until full provision is made under sub-section (1)—

- (a) contributions shall be paid to the Fund by persons referred to in paragraph (1) (a);
- (b) payments shall be made out of the Fund to and in relation to persons referred to in paragraph (1) (b); and
- (c) payments shall be made to the Fund by the Commonwealth,

in accordance with the existing law.

(3) For the purposes of sub-section (2), the existing law has effect, *mutatis mutandis*, in relation to any time after the commencement of this Act as if, in that law—

- (a) a reference to the Administration were a reference to the Commonwealth;

- (b) a reference to an employee were a reference to a person referred to in paragraph (1) (a);
- (c) a reference to a contributor were a reference to a contributor to the Fund under this Part;
- (d) a reference to salary—
  - (i) in relation to a person employed under Part II, being a person referred to in paragraph (1) (a)—were a reference to the sum of the maximum amount of the annual salary payable in respect of the position held by him and Five hundred dollars; or
  - (ii) in relation to any other person—were a reference to the relevant payment referred to in paragraph (b) of the definition of “ salary ” in sub-section 4 (1) of the Superannuation Ordinance,
 but did not include a reference, in either case, to an allowance fee, bonus or payment referred to in paragraph (c), (d), (e) or (f) of that definition; and
- (e) a reference to the Commonwealth Department of Labour and National Service were a reference to the Department of Labour.

(4) In this section—

“ existing law ” means—

- (a) the Superannuation Ordinance (except Parts II and III and sections 4B, 4C, 36, 45A, 53, 62, 63, 71B, 71C, 76, 77, 80, 82, 82C, 82D, 82E, 83, 84A, 85, 86, 87E and 89);
- (b) Part III of the *Superannuation (Papua and New Guinea) Ordinance* (No. 3) 1963;
- (c) the *Superannuation (Pensions Increases) Ordinance* 1967;
- (d) the *Superannuation (Pensions Increases) Ordinance* 1971;
- (e) the Superannuation Regulations 1970 (except regulation 5);
- (f) the Superannuation Salaries Regulations 1972; and
- (g) any instruments and determinations made, and notices and certificates given, under any of those Ordinances or Regulations,

as amended and in force immediately before the prescribed date, with or without modifications made by regulations under this Act; and

“ the Fund ” means the Superannuation Fund, and includes the Provident Account and the Reserve Units of Pension Account.

#### PART VI—RETIREMENT BENEFITS

39. (1) The Contract Officers' Benefits Fund that was, immediately before the prescribed date, in existence by virtue of the Contract Officers Ordinance is preserved and continues in existence under and subject to the provisions of this Act, so that its identity is not affected.

Contract  
Officers'  
Benefits  
Fund.

Regulations  
for purposes  
of this Part.

- (2) There shall be paid into the Fund—
- (a) contributions to the Fund made by persons under this Part and interest on arrears of such contributions;
  - (b) payments to the Fund made by the Commonwealth under this Part; and
  - (c) income derived from investments of the Fund.

40. (1) The regulations may make provisions for and in relation to—
- (a) contributions to be paid to the Benefits Fund by persons who, immediately before the prescribed date, were contributors within the meaning of the Contract Officers Ordinance;
  - (b) payments to be made out of the Benefits Fund to and in relation to those persons;
  - (c) payments to be made to the Benefits Fund by the Commonwealth; and
  - (d) matters incidental to or connected with matters referred to in paragraphs (a), (b) and (c).
- (2) Until full provision is made under sub-section (1)—
- (a) contributions shall be paid to the Benefits Fund by persons referred to in paragraph (1) (a);
  - (b) payments shall be made out of the Benefits Fund to and in relation to those persons; and
  - (c) payments shall be made to the Benefits Fund by the Commonwealth,

in accordance with the existing law.

(3) For the purposes of sub-section (2), the existing law has effect, *mutatis mutandis*, in relation to any time after the commencement of this Act, as if, in that law—

- (a) a reference to the Administration were a reference to the Commonwealth;
- (b) a reference to the Administrator were a reference to the Benefits Board;
- (c) a reference to a contract officer were a reference to a person referred to in paragraph (1) (a);
- (d) a reference to service were a reference to service under Part II;
- (e) a reference to annual salary, in relation to a contributor, were a reference to the sum of his annual salary and overseas allowance, but did not include a reference to an allowance in respect of duties which he is called upon to perform temporarily or a bonus or overtime payment; and
- (f) a reference to a pensioner under the *Superannuation (Papua and New Guinea) Ordinance 1951–1965* were a reference to a pensioner under Part V.



(4) In this section, “existing law” means—

- (a) the Contract Officers Ordinance (except Parts II and III and sections 4A, 4B, 25A, 30, 33 (2), 33A, 34, 37, 39 and 40); and
- (b) any instruments and determinations made, and notices and certificates given, under that Ordinance,

as amended and in force immediately before the prescribed date, with or without modifications made by regulations under this Act.

#### PART VII—FINANCIAL PROVISIONS RELATING TO FUNDS

**41.** In this Part, “Fund” means the Superannuation Fund (including the Provident Account and the Reserve Units of Pension Account) or the Benefits Fund. Definition.

**42.** (1) The moneys of a Fund shall, so far as is practicable, be invested by the appropriate Board. Investment.

(2) Subject to sub-section (3), the moneys of a Fund may be invested—

- (a) in any securities issued or guaranteed by the Commonwealth, a State, Papua New Guinea or a Territory;
- (b) in any manner for the time being allowed by a law of the Commonwealth, of a State, of Papua New Guinea or of a Territory relating to the investment of trust funds; or
- (c) in any other manner approved by the Treasurer.

(3) Except with the approval of the Treasurer, the appropriate Board shall not invest any moneys of a Fund at a rate of interest of less than three per centum per annum.

**43.** The appropriate Board may borrow for a Fund, and the Treasurer may lend to that Fund, on the security of moneys of that Fund invested in securities issued by the Commonwealth, moneys not exceeding in the aggregate two-thirds of the amount of moneys so invested. Borrowing.

**44.** Moneys of a Fund that are not invested by the appropriate Board may be lodged at call or on fixed deposit, or partly at call and partly on fixed deposit, with— Moneys not invested.

- (a) the Treasurer;
- (b) the Reserve Bank of Australia, the Commonwealth Savings Bank of Australia or any other prescribed Bank; or
- (c) a corporation for the time being declared, under a Commonwealth or State law relating to companies, to be an authorized dealer in the short-term money market.

**45.** (1) An investigation as to the state and sufficiency of a Fund shall be made by the Commonwealth Actuary as at— Actuarial investigations.

- (a) 30th June, 1976; and
- (b) the expiration of each successive period of three years thereafter.

(2) For the purposes of such an investigation, the rate of interest assumed to be earned by the assets of the Fund shall be not less than three per centum per annum.

(3) The Commonwealth Actuary shall report to the appropriate Board the result of his investigation, and shall state whether any reduction or increase is necessary in the rates of contribution payable to the Fund or in the proportion payable by the Commonwealth in respect of any pension and, where the Fund is found to be more than sufficient to provide for the benefits which are a charge upon the Fund, he shall also state what additional benefits could, in his opinion, be provided out of the surplus.

**Audit.**

46. (1) The Auditor-General shall inspect and audit the accounts and records kept under section 32 and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or an officer authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of a Board relating directly or indirectly to the receipt or payment of moneys by the Board or to the acquisition, receipt, custody or disposal of assets by the Board.

(5) The Auditor-General or an officer authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or an officer authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized officer considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars.

**Taxation.**

47. The income of a Fund is not subject to tax under a law of a State.

**PART VIII—TRANSITIONAL PROVISIONS**

**Contracts.**

48. A contract referred to in paragraph 7 (3) (a) or (b) continues in force on and after the prescribed date, *mutatis mutandis*, but subject to this Act, as if it were a contract of employment entered into under Part II.

49. (1) Where an order, decision or determination made, notice given, or act or other thing done, by the corporation referred to in section 5 of the Contract Officers Ordinance was in effect immediately before the prescribed date, it continues to have effect on and after that date as if it had been made, given or done by the Benefits Board under this Act.

Acts, &c., done in relation to Benefits Fund.

(2) An investment held immediately before the prescribed date in the name of that corporation, however described, under section 9 of that Ordinance shall, on and after that date, be held in the name of the Benefits Board under this Act, and any instrument or document relating to such an investment has effect accordingly.

(3) A bank account maintained immediately before the prescribed date in the name of that corporation shall, on and after that date, be deemed to be an account in the name of the Benefits Board.

50. An investigation commenced under section 23 of the Superannuation Ordinance before the prescribed date but not completed before that date shall be completed as if it were an investigation required to be made under sub-section 45 (1) of this Act and, upon completion, shall be deemed to have been made under that sub-section.

Actuarial investigation into Superannuation Fund.

51. Where an arrangement entered into under section 87E of the Superannuation Ordinance or section 33A of the Contract Officers Ordinance was in effect immediately before the prescribed date, that arrangement continues to have effect, *mutatis mutandis*, as if it had been entered into under section 58 of this Act.

Continuation of certain arrangements.

52. A person referred to in paragraph 6 (1) (a) who was, immediately before the prescribed date, the holder of an office in the Public Service of Papua New Guinea by virtue of section 47D of the *Public Service Act* 1922–1973 shall be deemed to have been transferred to employment under Part II under that section in lieu of an office in the Territorial Service, and that section applies accordingly.

Officers seconded from Commonwealth Public Service.

53. Where, before the prescribed date, a benefit had accrued under the Superannuation Ordinance or the Contract Officers Ordinance, but was not paid before that date, that benefit shall be paid as if it had accrued under this Act.

Benefits accrued but not paid before prescribed date.

#### PART IX—MISCELLANEOUS

54. (1) A dispute under Part V or VI shall be determined in the first instance by the appropriate Board.

Settlement of disputes under Part V or VI.

(2) A person aggrieved by a decision of the Board on such a dispute may appeal to the High Court constituted by a single justice of the Court, and the Court so constituted may hear and determine the appeal.

(3) A decision of the High Court under this section is final and conclusive.

Transfer of insurance policies to Superannuation Board.

55. (1) An employee whose life is assured may, with the consent of the Superannuation Board, transfer the policy, if the policy is unencumbered, to the Board or to a person approved by the Board and request the Board to continue the payment of the premiums under the policy.

(2) Where a transfer is made under sub-section (1), the Board shall duly pay the premiums and, on the maturity of the policy, shall pay to the employee or to his personal representative, to be administered as part of his estate, any sums received on the policy, less the amounts of the premiums paid by the Board with compound interest on those amounts at the specified rate from the respective dates of payment.

(3) Where an employee desires that his policy be re-transferred to him before it matures or he resigns or retires or his employment is otherwise terminated, the Board may, on receipt of a request for re-transfer, or upon his resignation or retirement or the other termination of his employment, as the case may be, re-transfer the policy to the employee upon payment to the Board of the amounts of the premiums paid by the Board with compound interest on those amounts at the specified rate from the respective dates of payment.

(4) In this section—

“employee” means a person employed under Part II.;

“specified rate” means, in relation to a period, the rate determined by the Board in respect of that period.

Desertion by pensioner of wife or children.

56. (1) Where a pensioner deserts his wife or leaves her without means of support, the wife may, from time to time, apply to a court of summary jurisdiction and, on proof that the wife has been deserted or left without means of support, the court may order the payment to the wife, during such period as it thinks fit, of the whole or part of the pension which otherwise would be payable to the pensioner.

(2) Where a pensioner whose wife is dead or divorced deserts any of his children who are dependent on him, or leaves them without means of support, the guardian of the children, or the Superannuation Board, may, from time to time, apply to a court of summary jurisdiction and, on proof that any child of the pensioner who is dependent on him has been deserted or left without means of support, the court may order the payment to the guardian of the child, during such period as it thinks fit, of the whole or part of the pension which otherwise would be payable to the pensioner.

(3) The Board shall comply with any order made under this section and the amount of the pension payable to the pensioner shall be reduced by the amount payable in pursuance of the order.

(4) In this section, “pension” means a pension payable under this Act.

Recovery of contributions, &c.

57. The appropriate Board may recover any arrears of contributions, and any interest on arrears of contributions, under this Act in a court of competent jurisdiction as a debt.

58. Where benefits have been, are or may become payable under Part V or VI to or in relation to a person who was or is required or permitted to contribute to the Superannuation Fund, the Provident Account or the Benefits Fund and, while being so required or permitted, was or is receiving a salary from an authority of Papua New Guinea, the Minister may enter into an arrangement with that authority providing for the reimbursement of the Commonwealth in respect of payments made by the Commonwealth into the Superannuation Fund, the Provident Account or the Benefits Fund, as the case may be, in respect of those benefits.

Arrangements for re-imbusement of Commonwealth by certain authorities.

59. Except as otherwise provided in this Act, on the prescribed date, the Superannuation Ordinance and the Contract Officers Ordinance cease to apply in relation to a person in relation to whom this Act applies.

Cessation of application of certain Ordinances.

60. Subject to section 61, a benefit under Part V or VI is not capable of being assigned or charged or of passing by operation of law, and any moneys payable out of the Superannuation Fund, the Provident Account, the Reserve Units of Pension Account or the Benefits Fund on the death of a person are not liable to be applied or made available in payment of his debts or liabilities.

No assignment of benefits.

61. (1) Where a judgment given by a court for the payment of a sum of money has not been fully satisfied by the judgment debtor and the judgment debtor is entitled to benefit under Part V, the judgment creditor may serve on the Superannuation Board, in the manner prescribed, a copy of the judgment, certified under the hand of the registrar or other proper officer of the court by which the judgment was given, and a statutory declaration by the judgment creditor stating that the judgment has not been fully satisfied by the judgment debtor and specifying the amount due by the judgment debtor under the judgment.

Attachment of benefits.

(2) Where a copy of a judgment and a statutory declaration are served on the Board in accordance with sub-section (1), the Board shall, as soon as practicable, by notice in writing given to the judgment debtor, inform him of the service of those documents and require him to notify the Board within the period, and in the manner, specified in the notice, whether the amount specified in the declaration is still due under the judgment and, if no amount or a lesser amount is due under the judgment, to furnish to the Board, in the manner specified in the notice, evidence in support of that fact.

(3) A person to whom a notice is given under sub-section (2) shall comply with the requirements contained in the notice.

Penalty: Forty dollars.

(4) If, at the expiration of the period specified in the notice, the Board is satisfied that an amount is due under the judgment, the Board may, in its discretion, deduct from the benefit, and pay to the judgment creditor, such sums as do not exceed that amount.

(5) A deduction shall not be made from—

- (a) an instalment of pension payable in respect of a child; or
- (b) an instalment of any other pension if the deduction will reduce the amount of the instalment payable to less than one-half of the amount that would, but for this section, be payable.

(6) If, after a copy of a judgment given against a beneficiary, being a judgment in respect of which the Board is satisfied that an amount is due, has been served in accordance with sub-section (1), a copy of another judgment given (whether before or after the first-mentioned judgment) against the same beneficiary in favour of the person in whose favour the first-mentioned judgment was given or in favour of another person is served under that sub-section, the Board shall not make a payment in accordance with this section to the judgment creditor under the other judgment in respect of the amount due under that judgment until the amount due under the first-mentioned judgment has been paid.

(7) A payment made to a judgment creditor in accordance with this section shall, as between the Board and the beneficiary, be deemed to be a payment under Part V to the beneficiary.

(8) A judgment creditor who serves a copy of a judgment on the Board under sub-section (1) shall notify the Board, in the manner prescribed, immediately the judgment debt is satisfied.

Penalty: One hundred dollars or imprisonment for three months.

(9) If the amounts paid in accordance with this section to a judgment creditor in respect of a judgment exceed, in the aggregate, the amount due under the judgment, the excess is repayable by the judgment creditor to the judgment debtor and, in default of payment, may be recovered by the judgment debtor from the judgment creditor in a court of competent jurisdiction.

Payments to be from moneys appropriated.

**62.** (1) The cost of the administration of this Act and payments under this Act (other than payments out of the Superannuation Fund, the Provident Account, the Reserve Units of Pension Account or the Benefits Fund) shall be paid out of moneys appropriated from time to time by the Parliament for the purpose.

(2) The moneys received and paid under sub-section (1) and the accounts in connexion with those moneys shall be kept, as part of the Commonwealth Public Account, separately from the moneys and accounts of the Funds and Accounts referred to in that sub-section.

Administration of this Act.

**63.** The staff necessary for the administration of this Act shall be persons employed under the *Public Service Act* 1922–1973.

Delegation by Minister.

**64.** (1) The Minister may, by instrument in writing, delegate to a person, either generally or otherwise as provided by the instrument of delegation, all or any of his powers and functions under this Act (except this power of delegation).

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

**65.** (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or to be provided for by regulation, or that are necessary or convenient to be prescribed for giving effect to this Act, and, in particular— **Regulations.**

(a) for enabling a specified officer of the Public Service of the Commonwealth to delegate his powers and functions under regulations made for the purposes of Part II; and

(b) for prescribing penalties not exceeding a fine of One hundred dollars for offences against the regulations.

(2) The power to make regulations conferred by this Act shall not be taken, by implication, not to include the power to make provision for or in relation to a matter by reason only of the fact that—

(a) provision is made by this Act in relation to that matter or another matter; or

(b) power is expressly conferred by this Act to make provision by regulation for or in relation to another matter.

(3) The power to make regulations conferred by this Act may be exercised—

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of case; and

(b) so as to make, as respects the cases in relation to which it is exercised, the same provision for all those cases or a different provision for different cases or classes of case.

(4) The power conferred by this Act to make modifications by regulation includes the power to omit any matter or add any new matter.

(5) The limitation imposed by sub-section (1) on the penalties that may be prescribed by regulation does not prevent the regulations from requiring a person to make a statutory declaration.