



Independent State of Papua New Guinea

GENERAL ORDER NO. 21

INDUSTRIAL RELATIONS IN THE PUBLIC SERVICE

Being a General Order, to effect the policies of the National Executive Council on the arrangements and procedures available for the proper conduct of industrial relations in the Public Service in ensuring harmonious relationships between the Public Service Employee Unions and Associations.

Made under the:-

Public Services (Management) Act 1995 (as amended)

I, **John M Kali OBE**, Departmental Head of the Department of Personnel Management, by virtue of the powers conferred by Section 70 of the *Public Services (Management) Act 1995*, and all other powers me enabling, hereby issue General Order No 21, as part of the Fourth Edition of General Orders effective on and from 1st January 2012 and to remain in force until further notice.

JOHN M KALI OBE
Secretary

GENERAL ORDER NO. 21

INDUSTRIAL RELATIONS IN THE PUBLIC SERVICE

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GENERAL ORDER NO. 21**INDUSTRIAL RELATIONS IN THE PUBLIC SERVICE****GENERAL POLICY OBJECTIVES**

- 21.1. The *Public Services (Management) Act* is created under the National Constitution for the purpose of establishing the National Public Service and the public employment functions thereunder. By virtue of the Ministerial Functions determined by the Prime Minister, the Minister for Public Service is responsible for all aspects of Public Employment Policy, which essentially, covers the role of the State as an employer.
- 21.2. An essential component of the State's role as employer is maintenance of harmonious industrial relations within the Public Service in the interest of the State and in the public interest, through constructive management of industrial relationships with public sector unions. Section 24 of the *Public Services (Management) Act* places that responsibility with the Secretary, Department of Personnel Management.
- 21.3. Government policy on industrial relations requires that regular dialogue is to be maintained with the major unions in the public sector, and they are to be consulted regularly on major changes at the National level which will affect their members.
- 21.4. Relationships with public sector unions are to be conducted in the public interest and within public policy under relevant industrial relations legislation and within industrial agreements, in an open and transparent manner, subject at the appropriate time to public scrutiny through the registration process under the *Industrial Relations Act* or the *Public Services Conciliation & Arbitration Act*.
- 21.5. Government policy requires that a fair and equitable system of industrial relations is promoted which will make a significant contribution to the efficiency of the Public Service and thereby to the prosperity of the Nation.
- 21.6. In furtherance of General Order 21.5 and the requirements of the **National Constitution**, industrial relations policy prohibits discrimination in employment on the grounds of union membership, race, social origin, colour, gender, marital status, religion, or political opinion, and promotes employment on the basis of merit alone.

POLICY CONSTRAINTS ON MAKING INDUSTRIAL AGREEMENTS

- 21.7. Industrial agreements shall be made only in respect to industrial matters as defined by the *Industrial Organisations Act*, excepting where such industrial matters are subject to legislation and are prescribed by public policy, the Secretary shall consult the Public Employees Association (PEA) on any changes considered to legislation and policy.
- 21.8. No industrial agreement of any kind, whether by way of verbal or written understandings and commitments on behalf of the State, shall be made by the Secretary, Department of Personnel Management which cannot be submitted to public scrutiny, through the registration process of the industrial relations legislation.

- 21.9 No industrial agreement of any kind shall be made by the Secretary, Department of Personnel Management without a full assessment of cost and flow on implications, and without ensuring adequate budgetary provisions have been made, as required by the *Salaries & Conditions Monitoring Committee Act*.
- 21.10 No industrial agreement shall be made which does not comply with legislative requirements in place from time to time, and which would undermine the common law rights of the State as employer, or compromise managerial prerogatives of the National Executive Council in the conduct of its business.
- 21.11 All industrial agreements which change terms and conditions of employment and which have financial implications shall be subject to Government pay and industrial relations policy constraints and approval by the National Executive Council.
- 21.12 In the event of a dispute arising during negotiations and a resort by the union to industrial action of any kind, including, withdrawal of labour, stop work meetings, overtime bans, shift work bans, refusal to perform work functions, etc, negotiations shall be ceased by the Department until normal restoration of work.
- 21.13 The Parties have agreed in a Memorandum of Understanding for the maintenance of harmonious Industrial Relations that the parties will utilize their best endeavors to maintain normal working and follow the rule of law.

INDUSTRIAL RELATIONS ROLE OF THE DEPARTMENT OF PERSONNEL MANAGEMENT

- 21.14. Section 24 of the *Public Services (Management) Act* provides that the Secretary, Department of Personnel Management shall determine the terms and conditions of employment of officers of the Public Service. In other words, the Department of Personnel Management is the agency which represents the State as an employer.
- 21.15 Section 24 of the *Public Services (Management) Act* provides that the Secretary, Department of Personnel Management has responsibility for the conduct of industrial relations with all public sector industrial organizations.
- 21.16 Responsibility for public sector industrial relations complements the Secretary's role as Chairman of the Salaries & Conditions Monitoring Committee (SCMC), under the Act of the same name, whereby the SCMC has responsibility for advising the National Executive Council on public sector pay policy.
- 21.17 By virtue of the *Industrial Organisations Act*, apart from those terms and conditions which are determined by statute, all other terms and conditions of employment under these General Orders are subject to negotiation by public sector unions, and approval on behalf of the Government by the Secretary, Department of Personnel Management.

- 21.18 The SCMC ensures that consistency is maintained in the terms and conditions of all public authorities, including the Public Service, by ensuring that industrial agreements on pay and conditions comply with Government pay policy and affordability of the public purse at all times.
- 21.19 Government pay policy and industrial relations policy require that the Secretary, Department of Personnel Management shall be the sole respondent to all claims for improvements to pay and conditions in the Public Service, received from public sector unions. The Secretary, Department of Personnel Management is thereby the chief negotiator on behalf of the Government in determining the terms and conditions of the National Public Service.
- 21.20 The Secretary, Department of Personnel Management shall ensure that harmonious industrial relations are maintained in the Public Service, by resolving industrial disputes in the public sector, in consultation with the Secretary, Department of Labour & Employment on IR policy and legislation, and with the SCMC on pay policy.

2012 MEMORANDUM OF UNDERSTANDING TO MAINTAIN HARMONIOUS INDUSTRIAL RELATIONS

- 21.21 The Government's framework for handling industrial relations in the Public Service is contained within a Memorandum of Understanding (MOU) on Industrial Relations, made between the Department of Personnel Management and the Public Employees Association. The Agreement was first approved by the National Executive Council in September 1993, and subsequently in a revised and updated format in January 2000, and the latest version is dated 1st January 2012.
- 21.22 Until such time that the 2012 MOU is amended by mutual agreement between the Secretary, Department of Personnel Management and the PEA, industrial relations policy of the National Government, of Provincial Governments, and Local-level Governments for the regulation of affairs with recognized public sector unions, shall be governed by the 2012 MOU, and this General Order.
- 21.23. The 2012 MOU provides that the Public Employees Association (PEA), is recognized as the principal bargaining agent for the determination of the terms and conditions, including Public Service salary scales. The MOU recommends that all other unions representing technical and professional classes of officers should affiliate with the PEA for the purpose of negotiating those aspects of their members terms and conditions which are unique to their occupations.
- 21.24 The 2012 MOU outlines the agreed procedures for negotiation, consultation and avoidance and resolution of disputes, together with Government policy statements on negotiable and non-negotiable matters. The range of understandings and undertakings covered by the 2012 MOU is as follows:
- Union recognition and PEA as Principal Bargaining Agent
 - Union membership and rights to belong or not to belong to a union of choice
 - PEA access to Public Service Induction Programs
 - Maintenance of efficiency in the Public Service and management right to manage

- Undertakings on consultation and consultative mechanisms and procedures
- Undertakings on negotiation and negotiable matters and procedures
- Grievance procedures and avoidance and resolution of disputes
- Government pay policy
- Review of terms & conditions of employment
- Work value, job evaluation policy, classification and salary grades
- Conduct and behavior of officers
- Redundancy and retrenchment and managerial prerogatives
- Maintenance of discipline and managerial prerogatives
- Recruitment and selection on merit and managerial prerogatives
- Training and localization policy and managerial prerogatives
- Management of change and information technology
- Privatisation, Corporatisation and Enterprise Agreements
- Home ownership schemes
- Social and Recreational facilities
- Other matters of mutual interest

21.25 Under the auspices of the 2012 MOU, the Department of Personnel Management and the PEA have negotiated two major industrial agreements which are current in the Public Service, covering Salary Fixation and Redundancy and Retrenchment, which together with the 2012 MOU are subject to periodic review and renegotiation at three yearly intervals.

RESOLUTION OF GRIEVANCES AND AVOIDANCE OF DISPUTES

21.26 The 2012 MOU provides that grievances of officers must be resolved at the lowest possible managerial level. Departmental Heads with advice and assistance from industrial relations officers of the Department of Personnel Management shall as far as possible within established procedures and approved policy, resolve staff grievances and deal with representatives of the PEA at the Branch level.

21.27 Departmental Heads are not empowered by the Act to negotiate with the PEA or other unions for improvements or changes to terms and conditions of employment, such negotiations being the sole preserve and prerogative of the Secretary, Department of Personnel Management.

21.28 Departmental Heads shall consult the Secretary, Department of Personnel Management in respect to any claims, serious grievances and threats of industrial action, and attempt to resolve such claims and grievances through dialogue at the local level.

21.29 Department Heads shall adhere to General Orders and maintain terms and conditions of employment within the framework of Government pay policy as communicated by the Secretary, Department of Personnel Management. Departmental Heads are not permitted to make offers to unions, and shall refer all claims to the Secretary, Department of Personnel Management.

- 21.30 The ***Public Services (Management) Act*** makes withdrawal of labour by officers a disciplinary offence, which is designed to protect the public interest. Therefore, by virtue of the Act, officers shall not go on strike.
- 21.31 At all times during an industrial dispute, the Secretary, Department of Personnel Management shall ensure that officers are directed to return to normal working and to cease any industrial action which is in breach of the Act, whereby a failure to comply shall result in disciplinary action being taken by the Departmental Head.
- 21.32 At all times during an industrial dispute, officers shall be required to attend to their normal work functions and under no circumstances, other than to protect life and property, shall Government premises be closed, or officers “locked out”, and officers shall always have the right to attend their normal work.
- 21.33 The 2012 MOU provides that normal working will continue whilst claims are being negotiated, and that all normal procedures under legislation will be exhausted prior to resorting to any form of industrial action. In the event of a break down in negotiations, the parties shall rely upon the mandatory disputes procedure which provides that either party can have an unresolved matter referred to the Chairman for Industrial Conciliation & Arbitration.

PUBLIC SERVICES CONCILIATION AND ARBITRATION ARRANGEMENTS

- 21.34 The ***Public Services Conciliation & Arbitration Act*** provides the machinery for the resolution of disputes which may arise from time to time between the Department of Personnel Management and the PEA or other public sector unions. Proceedings are conducted under the auspices of the Chairman of the Public Service Conciliation & Arbitration Tribunal.
- 21.35 The Office of Chairman has the powers to summon the parties to Compulsory Conference which is the first step in the procedure in the event of a break down in negotiations. The Department of Personnel Management and the union are required then to enter into negotiations under the Chairman’s control.
- 21.36 The Chairman has the power to refer any matters in dispute to an arbitration tribunal, which comprises neutral representatives of employer and employees. In the arbitration process, industrial advocates from the Department of Personnel Management represent individual Departmental Heads and/or the State and ensure that Government’s position is properly formulated and presented in accordance with Government pay and industrial relations policy.
- 21.37 The tribunal having heard the case presented by both parties, shall then determine the matter and the determination or arbitrated award or agreement becomes final and binding at law on all parties, and cannot be challenged thereafter in a Court of Law.

PUBLIC SERVICE REFORM

21.38 At the time of release of this General Order the Public Service is undergoing reform which has and will continue to result in changes in the way that Government does business. The 2012 MOU provides that the Government through the Department of Personnel Management will continue to consult the PEA and other unions on the likely impact of reforms on officers.

21.39 The 2012 MOU and Government policy provides that in the event of a decision to corporatise or to privatize a public authority or parts of the Public Service covered by the Act, then as part of the bidding arrangements and undertakings required of new owners in a sale agreement to transfer ownership:

- officer's terms and conditions of employment will be guaranteed by a new employer for not less than 12 months following change of ownership;
- officer's service and service related entitlements will be guaranteed with the new owner;
- there will be no enforced retrenchment of officers by the new owner for a minimum of 12 months following change of ownership;
- officers who are retrenched by a new owner will be paid their retrenchment benefits provided by current Public Service Agreements; and
- officer's superannuation entitlements will continue unchanged and there will be no pay out of superannuation benefits, unless an officer is retrenched at the change of ownership.

21.40 These arrangements are designed to ensure continuity of employment of officers and continuity of business of essential services in the lead up and in the transition from public sector employment to corporatised or private sector employment.

ENTERPRISE AGREEMENTS TO MAINTAIN STATUS QUO FOLLOWING PRIVATISATION OR CORPORATISATION

21.41 Government industrial relations policy, and the 2012 Memorandum of Understanding requires that the Department of Personnel Management shall negotiate with the PEA and respective unions an Enterprise Agreement to maintain the status quo in respect of the terms and conditions of officers in service at the time of ownership/management change.

21.42 An Enterprise Agreement shall be constructed in accordance with the following extract from a policy statement of the National Executive Council:

"An Enterprise Agreement shall reflect the status quo on employee rights and interests, which by virtue of the Industrial Relations Act/Public Services Conciliation & Arbitration Act will bind a new employer (or same employer affected by a substantial change of

ownership), in respect to the transferred employees, and shall contain the following components:

- (a) comprehensive statement on substantive terms and conditions, including salaries, allowances and benefits;
- (b) redundancy policy, identifying the levels of service related entitlements; the Government policy standard on retrenchment benefits is to be applied, as reflected in the 2012 Public Service Retrenchment Agreement, noting the application of favourable tax rates under the Rationalisation of the Public Service (Budget Provisions) Act 2012;
- (c) retirement policy, identifying the application of the relevant Superannuation legislation and Fund provisions affecting the preservation of superannuation rights and the transfer of superannuation entitlements to the fund of a new employer, or on change of ownership;
- (d) any understandings which are beneficial to the corporatised/privatised entity which would be of value to a new employer in maintaining the status quo, particularly commitments to maintaining essential services during times of dispute.

21.43 In determining which matters are to be contained in an Enterprise Agreement, the Secretary, Department of Personnel Management shall categorise industrial matters under the following headings:

- matters which are terms and conditions of employment subject to negotiation and consultation;
- matters which are managerial policy subject to consultation and not negotiation;
- matters which are the sole prerogative of Secretary and not subject, to either negotiation or consultation; and
- matters which are subject to a statutory process of determination and not subject to either negotiation or consultation.

21.44 Prior to executing an Enterprise Agreement, the Secretary, Department of Personnel Management shall obtain approval by the Salaries & Conditions Monitoring Committee and the National Executive Council.

21.45 By virtue of the provisions of the ***Industrial Relations Act***, industrial agreements made between the State and registered industrial organizations will remain in force and will bind a new owner to maintain the terms and conditions and the service related benefits of officers who transfer to the new owner.

MANAGEMENT AGREEMENTS TO COMMERCIALISE PUBLIC SERVICE OPERATIONS (AS DETERMINED BY THE NEC)

- 21.46 This General Order covers a situation in which the National Executive Council has determined that a function or operation of the National Public Service shall be managed on a commercial basis by a private sector employer engaged on a commercial contract, including public/private partnership arrangements.
- 21.47 An agreement shall be made between the Secretary, Department of Personnel Management on behalf of the State with the managing organization to regulate management and employment arrangements for the retained officers of the Public Service and such an agreement will be approved by the National Executive Council and will be an integral component of the commercial contract.
- 21.48 The Management Agreement will define the manner in which the managing organization will be required to comply with the *Public Services (Management) Act* and General Orders and the *Public Finances (Management) Act* and Regulations in managing officers of the Public Service.
- 21.49 The Management Agreement will be made in consultation with the PEA and will ensure that the rights and interests of officers are maintained by the managing organization. Changes in officer's working arrangements and officer's terms and conditions which are required for commercial operations will be approved by the Secretary, Department of Personnel Management.
- 21.50 Where so determined by the National Executive Council on advice, the Secretary, Department of Personnel Management will negotiate an appropriate industrial agreement with the PEA and other affected unions in order to implement changed working arrangements and terms and conditions under such a commercial management contract described hereunder.
- 21.51 A Management Agreement described under General Order 21.47 shall reflect the provisions of any necessary industrial agreement made under General Order 21.50.



Independent State of Papua New Guinea

**NATIONAL PUBLIC SERVICE
GENERAL ORDERS**

**RECOMMENDATION TO THE SECRETARY, MR JOHN M KALI OBE, TO
APPROVE GENERAL ORDER NO. 21 OF 1ST JANUARY 2012**

INDUSTRIAL RELATIONS IN THE PUBLIC SERVICE

To: Secretary

Date: 08 March 2012

We, the under-signed, confirm that **General Order No. 21 of 1st January 2012**, hereto attached, has been drafted in accordance with Government policies and the appropriate Sections of *Organic Law* the *Public Services (Management) Act*, and the **Regulations** and reflects:

- (a) all policy changes made by the National Executive Council in the period 1st June 2002 to 31st December 2011;
- (b) all changes to the **Constitution**, the *Organic Law on Provincial & Local Level Governments* and the *Public Services (Management) Act 1995*, to effect implementation of the Provincial and Local Level Government Reforms; and,
- (c) all other changes to the *Public Services (Management) Act 1995*, which have been brought into force since 1st June 2002.

On behalf of the Executive Management Team, we recommend that the Secretary authorise this General Order for publication and distribution to line Departments and Agencies.

EMMA FAITELI
Executive Manager, I&ER

ISIKEL MESULAM
Director, Legal & Investigations

RAVU VERENAGI
Deputy Secretary, Policy

RAVU VAGI
Deputy Secretary, Operations