

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 30.

*Claims By and Against the State.*

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was vested in the Minister for Justice.

Accordingly, unless some other intention is clearly indicated, by note or in the text, as at that date references in or in relation to this Chapter to—

“the Minister”—should be read as references to the Minister for Justice;

“the Departmental Head”—should be read as references to the Secretary for Justice<sup>1</sup>;

“the Department”—should be read as references to the Department of Justice<sup>2</sup>.

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<sup>1</sup> Previously the Secretary for Law.  
<sup>2</sup> Previously the Department of Law.



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CHAPTER NO. 30.

*Claims By and Against the State Act.*

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 30.

*Claims By and Against the State Act.*

Being an Act to provide for claims by and against the State, and for other purposes.

**1. Interpretation.**

In this Act, unless the contrary intention appears "suit" includes any action or original proceeding between parties in any court of competent jurisdiction.

**2. Suits against State.**

A person making a claim against the State in contract or in tort may bring a suit against the State, in respect of the claim, in any court in which such a suit may be brought as between other persons.

**3. Suits by State.**

Suits on behalf of the State may be brought in the name of the State—

- (a) by the Principal Legal Adviser; or
- (b) in respect of a suit brought in a District Court, by—
  - (i) the Principal Legal Adviser; or
  - (ii) a person appointed for the purpose by the Minister.

**4. Service of process where State is a party.**

Where the State is a party to a suit, all process in the suit required to be served on it shall be served—

- (a) on the Principal Legal Adviser; or
- (b) in respect of a suit brought in a District Court, on—
  - (i) the Principal Legal Adviser; or
  - (ii) a person appointed by the Minister to receive service.

**5. Rights of parties.**

In a suit to which the State is a party—

- (a) the rights of parties, as nearly as possible, are the same; and
- (b) judgement may be given and costs awarded,

as in a suit between other persons.

**6. No execution against State.**

(1) In any suit, execution or attachment, or process in the nature of execution or attachment, may not be issued against the property or revenue of the State.

(2) Where a judgement is given against the State, the registrar, clerk or other proper officer of the court by which the judgement is given shall issue a certificate in Form 1 to the party in whose favour the judgement is given.

**7. Satisfaction of judgement by Secretary for Finance.**

On receipt of the certificate of a judgement against the State, the Secretary for Finance shall satisfy the judgement out of moneys legally available.

**8. Execution by State.**

Where in any suit a judgement is given in favour of the State against any person, the State may enforce the judgement against him by such execution, attachment or other process as could be had in a suit between other persons.

**9. Recovery of certain fines.**

(1) Where a fine is imposed on a person otherwise than by a judgement or conviction of a court or magistrate and the fine is not immediately paid, the Judge or a magistrate of the court by which, or the magistrate by whom, the fine is imposed, shall—

(a) certify under his hand, in Form 2—

(i) that the fine has not been paid; and

(ii) the name and place of abode or business of the person on whom the fine is imposed; and

(iii) the cause and amount of the fine; and

(b) deliver the certificate or send it by post to the Principal Legal Adviser.

(2) On receipt of the certificate under Subsection (1), the Principal Legal Adviser shall cause a final judgement to be signed in the National Court for the amount of the fine and K2.00 for costs.

(3) A judgement under Subsection (2) may be—

(a) in Form 3; and

(b) enforced in the same manner as any other judgement of the National Court.

**10. Debts due by recognizance.**

(1) Where a person has entered into a recognizance to the State and the recognizance is forfeited, the Judge or a magistrate of the court before which, or the magistrate before whom, it is forfeited may cause the recognizance to be estreated, and the Judge or magistrate shall—

(a) certify under his hand, in Form 4, that the forfeiture has taken place; and

(b) cause the recognizance and certificate to be delivered or sent by post to the Principal Legal Adviser.

(2) On receipt of the recognizance and certificate under Subsection (1), the Principal Legal Adviser shall cause a final judgement to be signed in the National Court for the amount of the recognizance and K2.00 for costs.

(3) A judgement under Subsection (2) may be—

(a) in Form 5; and

(b) enforced in the same manner as any other judgement of the National Court.

**11. Judgements on fines, etc., may be vacated by Court or Judge.**

(1) Where a final judgement is signed under Section 9 or 10, whether execution has been issued on the judgement or not, the National Court or a Judge may order satisfaction to be entered on the judgement.

- (2) An order under this section shall not be made—
  - (a) except on a rule nisi or summons calling on the Principal Legal Adviser to show cause; or
  - (b) unless it is proved by affidavit, to the satisfaction of the National Court or Judge, that—
    - (i) the judgement has been satisfied; or
    - (ii) according to equity and good conscience and the real merits of the case the person against whom the judgement has been signed ought not to be required to satisfy the judgement.

12. Form of process.

A document (other than an indictment) made or issued to initiate or further any legal proceedings by or against the State may be made or issued by or against the State under the description "The State" or "Papua New Guinea" or "The Independent State of Papua New Guinea".

SCHEDULE.

PAPUA NEW GUINEA.

Claims By and Against the State Act.

Sec. 6.

Form 1.

CERTIFICATE OF JUDGEMENT.

A.B. v. The Independent State of Papua New Guinea.

I certify that A.B., of \_\_\_\_\_, on \_\_\_\_\_ 19\_\_\_\_, did obtain a judgement of the \_\_\_\_\_ (name of court) in his favour, and that by such judgement the sum of K \_\_\_\_\_ was awarded to him.

Dated \_\_\_\_\_ 19\_\_\_\_.

Registrar (or Clerk).  
(Name of Court.)

PAPUA NEW GUINEA.

Claims By and Against the State Act.

Sec. 9(1).

Form 2.

CERTIFICATE OF FINE.

I certify that at the \_\_\_\_\_, held at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, C.D. of \_\_\_\_\_ (place of abode or business and occupation) was fined the sum of K \_\_\_\_\_ for (cause of fine).

Dated \_\_\_\_\_ 19\_\_\_\_.

Judge (or Magistrate).

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PAPUA NEW GUINEA.

*Claims By and Against the State Act.*

Sec. 9(3).

Form 3.

FINAL JUDGEMENT.

In the National Court of Justice of Papua New Guinea.

On the application of A.B., the Principal Legal Adviser to the National Executive.

WHEREAS at the \_\_\_\_\_ held at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, before C.D., a fine of K \_\_\_\_\_ was imposed on E.F. for (*state cause of fine*) as appears by the certificate of C.D. now filed in this Court:

It is adjudged that the Independent State of Papua New Guinea recover against E.F. the sum of K \_\_\_\_\_ and K2.00 for costs, making the sum of K \_\_\_\_\_

PAPUA NEW GUINEA.

*Claims By and Against the State Act.*

Sec. 10(1).

Form 4.

CERTIFICATE OF FORFEITURE OF RECOGNIZANCE.

I certify that at the \_\_\_\_\_, held at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, the recognizances annexed were forfeited and were then and there caused to be estreated.

Dated \_\_\_\_\_ 19\_\_\_\_.

Judge (*or as the case may be*).

PAPUA NEW GUINEA.

*Claims By and Against the State Act.*

Sec. 10(3).

Form 5.

JUDGEMENT OF FORFEITURE OF RECOGNIZANCE.

In the National Court of Justice of Papua New Guinea.

On the application of A.B., the Principal Legal Adviser to the National Executive.

WHEREAS at the \_\_\_\_\_ held at \_\_\_\_\_ on \_\_\_\_\_ 19\_\_\_\_, before C.D., the recognizance of E.F. by which he acknowledged to owe the State the sum of K \_\_\_\_\_ was forfeited and estreated as appears by the recognizance and the certificate of C.D. now filed in this Court.

It is adjudged that the Independent State of Papua New Guinea recover against E.F. the sum of K \_\_\_\_\_ and K2.00 for costs, making the sum of K \_\_\_\_\_



INDEPENDENT STATE OF PAPUA NEW GUINEA.

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*Claims By and Against the State.*

APPENDIX.

SOURCE OF THE CLAIMS BY AND AGAINST THE STATE ACT.

Part A.—Previous Legislation.

1. *Claims by and against the Administration Act* 1951 (No. 11 of 1951).
2. *Legal Process by and against the State Act* 1975 (No. 119 of 1975).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference <sup>1</sup> .
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2	5
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5	8
6	9
7	10
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11	14
12	Legal Process, 2
Schedule—	Second Schedule—
Form 1	Form 1
Form 2	Form 2
Form 3	Form 3
Form 4	Form 4
Form 5	Form 5

<sup>1</sup> Unless otherwise indicated, references are to the *Claims by and against the Administration Act* 1951 set out in Part A. References "Legal Process" are references to the *Legal Process by and against the State Act* 1975 set out in Part A.

