

No. 52 of 1996.

Claims By and Against the State Act 1996.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 52 of 1996.

Claims By and Against the State Act 1996.

ARRANGEMENT OF SECTIONS.

1. Interpretation.
2. Suits against the State.
- 2A. Claim against the state not enforceable in certain circumstances.
 - “Authority to Pre-commit Expenditure”
 - “Integrated Local Purchase Order and Claim (ILPOC)”
3. Suit against the Head of State.
4. Suits by the State.
5. Notice of claims against the State.
6. No fees payable by State.
7. Service of process where State is payable.
8. Leave for judicial review.
9. Filing of defence by this State.
10. Security for costs.
11. Rights of parties.
12. Judgements against the State.
13. No execution against the State.
14. Satisfaction of Judgement against the State.
15. Execution by State.
16. Recovery of certain fines.
17. Debts due by recognizance.
18. Judgements on fines, etc, may be vacated by Court or Judge.
19. Form process.
20. Repeal.
21. Prior and pending claims.

SCHEDULE 1

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Claims By and Against the State Act 1996,

Being an Act to provide for claims by and against the State, and to repeal the *Claims By and Against the State* (Chapter 30), and for related 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 THE STATE.

(1) 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.

(2) The provisions of this Act apply to applications for the enforcement against the State of a right or freedom under Section 57 (*Enforcement of guaranteed rights and freedoms*) of the *Constitution* and for damages for infringement of a right or freedom under Section 58 (*Compensation*) of the *Constitution*.

2A. CLAIM AGAINST THE STATE NOT ENFORCEABLE IN CERTAIN CIRCUMSTANCES.

¹(1) In this section –

“**Authority to Pre-commit Expenditure**” an Authority to Pre-commit Expenditure issued under Section 47B of the *Public Finances (Management) Act 1995*;

“**Integrated Local Purchase Order and Claim (ILPOC)**” means Finance Form 4A – Integrated Local Purchase Order and Claim issued in

¹ Section 2A Inserted by No. 47 of 2002, s. 1.

accordance with the Finance Instructions under the *Public Finances (Management) Act 1995*.

(2) A claim for the price arising from the sale of property or stores or for the supply of goods or services to the State shall not be enforceable, through the courts or otherwise, unless the seller of the property or stores or the supplier of the goods or services produces –

- (a) a properly authorized Integrated Local Purchase Order and Claim (ILPOC); or
- (b) an Authority to Pre-commit Expenditure,

relating to the property or stores or goods or services, the subject of the claim, to the full amount of the claim.

(3) The provisions of this section apply to an alleged sale of property or stores or to an alleged supply of goods or services after 1 March 2003.

3. SUIT AGAINST THE HEAD OF STATE.

A person making a claim against the Head of State, or Governor-General, acting on advice, shall, in the proceedings, make such claim against the Attorney-General who shall be the nominal defendant on behalf of the Head of State and Governor-General.

4. SUITS BY THE STATE.

Suits on behalf of the State, including relator proceedings, may be brought in the name of the State–

- (a) by the Attorney-General; and
- (b) in respect of a suit brought in a District Court, by–
 - (i) the Attorney-General; or
 - (ii) a person appointed for the purpose by the Minister.

5. NOTICE OF CLAIMS AGAINST THE STATE.

(1) No action to enforce any claim against the State lies against the State unless notice in writing of intention to make a claim is given in accordance with this section by the claimant to–

- (a) the Departmental Head of the Department responsible for justice matters; or
- (b) the Solicitor-General.

(2) A notice under this section shall be given–

- (a) within a period of six months after the occurrence out of which the claim arose; or

- (b) where the claim is for breach of a contract, within a period of six months after the claimant became aware of the alleged breach; or
- (c) within such further period as—
 - (i) the Principal Legal Adviser; or
 - (ii) the court before which the action is instituted,

on sufficient cause being shown, allows.

(3) A notice under Subsection (1) shall be given by—

- (a) personal service on an officer referred to in Subsection (1); or
- (b) leaving the document at the office of the officer with the person apparently occupying the position of personal secretary to that officer between the hours of 7.45 a.m. and 12 noon, or 1.00 p.m. and 4.06 p.m., or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act 1953*.

6. NO FEES PAYABLE BY STATE.

No fees shall be payable by the State for any filing, issuing, sealing or otherwise dealing with any document.

7. SERVICE OF PROCESS WHERE STATE IS PAYABLE.

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

- (a) the Departmental Head of the Department responsible for justice matters; or
- (b) the Solicitor-General.

(2) Service under this section shall be effected by—

- (a) personal service on the officer referred to in Subsection (1); or
- (b) leaving the document at the office of the officer referred to in Subsection (1) with the person apparently occupying the position of personal secretary to that officer between the hours of 7.45 a.m. and 12 noon, or 1.00 p.m. and 4.06 p.m., or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act 1953*.

8. LEAVE FOR JUDICIAL REVIEW.

Notwithstanding anything in any other law, a court hearing an application for leave to apply for judicial review in a matter in which the State is a defendant shall not grant leave unless the State has been afforded an opportunity to be heard.

9. FILING OF DEFENCE BY THIS STATE.

Notwithstanding anything in any other law, in any proceedings for a claim against the State, the time within which the State shall be required to file a defence or appear in response to a summons on complaint (as the case may be) shall be—

- (a) in a claim commenced by writ in the National Court—
 - (i) where the statement of claim is endorsed on the writ—before the expiry of 60 days after the date of expiry of the time limited for it to give notice of intention to defend; or
 - (ii) where the statement of claim is not endorsed on the writ—before the expiry of 60 days from the date of service of the statement of claim; or
- (b) where a cross-claim is made against the State—before the expiry of 30 days from the date of service of the cross-claim; or
- (c) in an application under Section 57 of the *Constitution*—before the expiry of 90 days from the date of service of the application; or
- (d) in a claim made in the District Court—before the expiry of 90 days from the date of service of the summons,

or such further time as the court before which the action is instituted, upon sufficient cause being shown, allows.

10. SECURITY FOR COSTS.

Notwithstanding anything in the National Court Rules, where the State is a party to a suit—

- (a) in which another party is—
 - (i) resident outside the jurisdiction; or
 - (ii) is a company in receivership or liquidation; or
- (b) involving a matter under the *Migration Act 1963*,

or in any other case where it appears likely that costs awarded against another party in favour of the State may not be recovered, the court may, on application, order that the other party pay security for costs into court.

11. 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.

12. JUDGEMENTS AGAINST THE STATE.

(1) No exemplary damages may be awarded against the State unless it appears to the court that, regardless of the nature of the claim, there has been a breach of Constitutional rights so severe or continuous as to warrant an award of exemplary damages.

(2) Notwithstanding anything in the *National Court Rules*, a court giving judgement against the State may not include any order as to time or method of payment for satisfaction of the judgement.

(3) Where in a claim against the State the State is in default within the meaning of the *National Court Rules*, then notwithstanding that a plaintiff's claim for relief is for a liquidated demand, judgement shall not be entered against the State for the sum claimed unless the claim relates to a debt only, and in all other cases judgement shall be entered for damages to be assessed and, where appropriate, for costs.

13. NO EXECUTION AGAINST THE 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.

14. SATISFACTION OF JUDGEMENT AGAINST THE STATE.

(1) The certificate referred to in Section 13(2) shall be served on the Solicitor-General by—

- (a) personal service; or
- (b) leaving the document at the office of the Solicitor-General with the person apparently occupying the position of personal secretary to the Solicitor-General between the hours of 7.45 a.m. and 12 noon p.m. or 1 p.m. and 4.06 p.m., or such other hours as may from time to time be declared by or under the *Public Services (Management) Act 1995* to be the normal public service hours of duty, on any day which is not a Saturday, Sunday or a public holiday declared by or under the *Public Holidays Act 1953*.

(2) The Solicitor-General shall, within 60 days from the date of service upon him of a certificate under Section 13(2), endorse the certificate in Form 1.

(3) Upon receipt of the certificate of a judgement against the State bearing the Solicitor-General's endorsement that judgement may be satisfied, the Departmental

Head responsible for finance matters shall, within a reasonable time, satisfy the judgement out of moneys legally available.

(4) Any payment in satisfaction of judgement may, in the absolute discretion of the Departmental Head responsible for finance matters, be made by instalments, provided the judgement is thereby satisfied within a reasonable time.

(5) No action—

(a) for or in the nature of *mandamus*; or

(b) for contempt of court,

or otherwise lies against the Solicitor-General or the Departmental Head responsible for finance matters in respect of the satisfaction of a judgement under this Act, other than for failure to observe the requirements of Subsection (2), (3) or (4), as the case may be, or unless other exceptional circumstances can be shown to the satisfaction of the court.

15. 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.

16. 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.

17. 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.

18. JUDGEMENTS ON FINES, ETC, MAY BE VACATED BY COURT OR JUDGE.

(1) Where a final, judgement is signed under Section 15 or 16, 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.

19. FORM 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”.

20. REPEAL.

The following Acts are repealed:–

- (a) *Claims by and Against the State* (Chapter 30);
- (b) *Claims by and Against the State (Amendment) Act 1992.*

21. PRIOR AND PENDING CLAIMS.

(1) Where, immediately before the coming into operation of this Act, an action to enforce a claim by or against the State has been commenced under the Acts repealed by Section 20 and has not been finally determined, the proceedings on the action shall be taken up and continued under and in conformity with the provisions of this Act, so far as consistently may be.

(2) Where upon the coming into operation of this Act no action to enforce a claim against the State has been commenced in respect of an occurrence which took place before that coming into operation, notice shall be given in accordance with Section 5(1) within a period of six months after that coming into operation, or within such further period as–

- (a) the Principal Legal Adviser; or
- (b) the court before which the action is instituted,

on sufficient cause being shown, allows.

SCHEDULE 1

PAPUA NEW GUINEA.

Claims By and Against the State Act 1996.

Form 1 – Certificate of judgement.

Sec. 13(2) Form 1

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

I certify that A.B., of , on 20 , 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.

I certify that—

(a) the judgement may be satisfied

OR

(b) the State proposes to take further action in this matter and satisfaction of judgement cannot take place.

Dated ... 20 .

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

PAPUA NEW GUINEA.

Claims By and Against the State Act 1996.

Form 2 – Certificate of fine.

Sec. 16(1) Form 2.

I certify that the ... , held at ... On 20 , C.D.

of ... (*place of abode or business and occupancy*) was fined the sum of K. ... for
(*cause of fine*).

Date ... 20 .

Judge (or Magistrate)

PAPUA NEW GUINEA.

Claims By and Against the State Act 1996.

Form 3 – Final judgement.

Sec. 16(3) Form 3.

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 20..., 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 K.2.00 for costs, making the sum of K. .

PAPUA NEW GUINEA.

Claims By and Against the State Act 1996.

Form 4 – Judgement of forfeited recognition.

Sec. 17(1). Form 4.

I certify that at the ... , held at ... on 20..., the recognition annexed were forfeited and were then and there caused to be estreated.

Date ... 20...

Judge (or as the case may be).

PAPUA NEW GUINEA.

Claims By and Against the State Act 1996.

Form 5 – Judgement of forfeited recognizance.

Sec. 17(3). Form 5.

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 as the ... held at ... on ... 20..., 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...

Office of Legislative Counsel, PNG