

Chapter 16.

Migration Act 1978.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 16.

Migration Act 1978.

ARRANGEMENT OF SECTIONS.

1. Compliance with Constitutional requirements.
2. Interpretation.
 - “Administrator”
 - “authorized person”
 - “child”
 - “conveyance”
 - “dependant”
 - “entry”
 - “entry permit”
 - “holder”
 - “member of the crew”
 - “officer”
 - “passenger”
 - “passport”
 - “person in charge”
 - “precincts of the port”
 - “proclaimed port”
 - “refugee”
 - “relocation centre”
 - “repealed Act”
 - “removal order”
 - “this Act”
 - “vessel”
3. Prohibition on entry without entry permit.
4. Issue of entry permit.
5. Conditions of entry.
6. Cancellation of entry permit and Committee of Review.
7. Unlawful presence in country.
8. Power to refuse entry.

9. Duties of persons arriving in country.
10. Prevention of unlawful presence.
11. Power to interrogate.
12. Removal orders.
13. Power to detain and remove persons from country.
14. Liability for expenses.
15. Duties of persons in charge of conveyances.
- 15A. Minister may determine non-citizen to be refugee.
- 15B. Relocation centres.
- 15C. Direction to reside in relocation centre.
- 15D. Control and management of relocation centres.
16. Offences.
17. Evidence.
18. Burden of proof.
19. No appeal against decision of Minister, etc.
20. Exemptions.
21. Repatriation.
22. Minister to report to the Parliament.
23. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Migration Act 1978,

Being an Act to repeal and re-enact the law relating to entry into the country.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1)¹ ²This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C (*qualified rights*) of the *Constitution*, namely—

- (a) the freedom from arbitrary search and entry conferred by Section 44 of the *Constitution*; and
- (b) the right to privacy conferred by Section 49 of the *Constitution*; and
- (c) the right to liberty of the person conferred by Section 42 of the *Constitution*,

is a law that is made for the purpose of giving effect to the public interest in public order and public welfare.

(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this law relates to a matter of national interest.

2. INTERPRETATION.

In this Act, unless the contrary intention appears—

³“**Administrator**” means the Administrator of a relocation centre appointed under Section 15D;

¹ Section 1(1) amended by *Migration Amendment) Act 1989* (No. 10 of 1989), s2.

² Section 1(1) amended by *Migration Amendment) Act 1989* (No. 10 of 1989), s2.

³ Section 2 (definition of “Administrator”) inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s3(a).

“authorized person” means the person authorized by the Minister or Departmental Head to exercise a power or discharge a duty or function under this Act;

“child” includes a step child and lawfully adopted child;

“conveyance” means a vessel, aircraft and any other conveyance capable of being used to convey persons;

“dependant” means, in relation to a person, the spouse of that person, not living apart from that person under a decree of court or a deed of separation, and an unmarried child of that person under the age of 16 years;

“entry” means—

- (a) in the case of a person arriving in the country by sea or air at a proclaimed port—leaving the precincts of that port; and
- (b) in the case of any other arrival in the country—entry into the country by land, sea or air,

but does not include an entry—

- (c) made for the purposes of complying with this Act; or
- (d) expressly or impliedly sanctioned by an officer for the purposes of an enquiry or detention under this Act;

“entry permit” means an entry permit issued under Section 4—

- (a) which has not expired, been cancelled or become invalid; and
- (b) which was not obtained or issued in consequence of fraud or misrepresentation or the concealment or non-disclosure, whether intentional or inadvertent, of a material fact or circumstance;

“holder” means, in relation to an entry permit, a person permitted by that entry permit to enter the country;

“member of the crew” means a person employed in the working of a conveyance;

“officer” means—

- (a) the Departmental Head; or
- (b) an officer employed in the Migration and Citizenship Division of the Department; or
- (c) an officer for the purposes of the *Customs Act 1951*; or
- (d) a District Officer; or
- (e) a commissioned officer of the Police Force; or
- (f) a person authorized by the Minister to perform consular duties on behalf of the State outside the country;

“passenger” means a person carried in a conveyance, other than a member of the crew;

“passport” includes a document of identity issued from official sources, whether inside or outside the country, and having the characteristics of a passport;

“person in charge” means—

- (a) in relation to a vessel—the master or person (except a pilot) having for the time being control or charge; and
- (b) in relation to an aircraft—the pilot; and
- (c) in the case of any other conveyance—the person having for the time being control or charge;

“precincts of the port” means that part of the port at which customs and immigration formalities are conducted;

“proclaimed port” means—

- (a) an aerodrome or a port within the meaning of the *Customs Act 1951*; or
- (b) any place proclaimed by the Minister by notice in the National Gazette to be a proclaimed port;

⁴**“refugee”** means a non-citizen—

- (a) permitted to remain in Papua New Guinea pending his settlement elsewhere; or
- (b) determined by the Minister to be a refugee;

⁵**“relocation centre”** means a place declared to be a relocation centre under Section 15B;

“repealed Act” means the Act specified in Schedule 1;

“removal order” means an order made under Section 12(1);

“this Act” includes the regulations;

“vessel” includes a ship or boat or other description of craft used in navigation.

3. PROHIBITION ON ENTRY WITHOUT ENTRY PERMIT.

⁶No person, other than a citizen, shall enter the country unless—

- (a) he is the holder of an entry permit; or

⁴ Section 2 (definition of “refugee”) inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s3(b).

⁵ Section 2 (definition of “relocation centre”) inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s3(b).

⁶ Section 3 repealed and replaced by *Migration (Amendment) Act 1996* (No. 15 of 1996), s1.

- (b) he is a person, or a member of a class or description of persons, exempted by the Minister under Section 20 from the requirement to hold an entry permit.

4. ISSUE OF ENTRY PERMIT.

(1) A person seeking an entry permit shall apply for it in the prescribed manner.

(2) An officer or authorized person, on receipt of an application made under Subsection (1), may issue an entry permit.

(3) An entry permit may be issued to a person before he has entered the country or after he has entered the country.

5. CONDITIONS OF ENTRY.

An officer or authorized person may—

- (a) issue an entry permit subject to conditions; and
- (b) during the currency of an entry permit—
 - (i) make it subject to conditions; and
 - (ii) vary or cancel conditions to which it is subject.

6. CANCELLATION OF ENTRY PERMIT AND COMMITTEE OF REVIEW.

(1) The Minister may cancel an entry permit by written notice under his hand served on the holder of the permit personally or by registered post.

(2) Subject to Subsection (8), where a notice served under Subsection (1) relates to an entry permit issued for a period of more than six months, the person on whom the notice was served may, within seven days of the receipt of the notice, by written application to the Minister, request that the cancellation of the entry permit be reviewed by a Committee of Review.

(3) On the receipt of an application made under Subsection (2), the Minister shall inform the Prime Minister of the application and the Prime Minister shall, as soon as practicable, appoint a Committee of Review, consisting of three Ministers, to consider the application.

(4) On the appointment of a Committee of Review under Subsection (3), the Minister shall submit to the Committee the application and all information relevant to the applicant, his entry and stay in the country, and the reasons for the cancellation of his entry permit.

(5) After considering the application and information submitted to it under Subsection (4), and after making any inquiries or investigations it considers necessary, the Committee of Review shall confirm the cancellation of the entry permit or recommend that its cancellation be revoked.

(6) A Committee of Review may recommend that the revocation of a cancellation of an entry permit be subject to conditions.

(7) A Committee of Review shall report its recommendations to the Minister who shall take all such action as may be necessary to implement those recommendations.

(8) Where the Minister in a notice served under Subsection (1) states that the cancellation of the entry permit is for a breach of a condition imposed following a recommendation made in accordance with Subsection (6), the person on whom the notice is served shall have no right to apply to have the cancellation reviewed under Subsection (2).

7. UNLAWFUL PRESENCE IN COUNTRY.

(1) Subject to Subsection (2), the presence of a person, other than a citizen, in the country, is unlawful if—

- (a) he is not the holder of an entry permit; or
- (b) he evaded an officer for the purposes of entering the country.

(2) The presence of a person in the country is not unlawful if he is leaving the country in accordance with Section 9(3).

8. POWER TO REFUSE ENTRY.

(1) Notwithstanding the possession of an entry permit, a person other than a citizen may, on arrival at the country or on reporting to an officer in accordance with Section 9(1), be refused entry if—

- (a) he is unable to satisfy an officer that he has the means to support himself, and any accompanying dependant during his proposed stay in the country; or
- (b) he is, in the opinion of an officer, suffering—
 - (i) from a mental illness; or
 - (ii) from a disease which would make his presence in the country a danger to the community; or
- (c) he refuses to submit to a medical examination after being required to do so under Subsection (2); or
- (d) he is not in possession of a valid passport.

(2) An officer may, for the purposes of forming an opinion under Subsection (1)(b), require a person seeking to enter the country to submit himself to a medical examination by a medical practitioner, or detain him for that purpose.

9. DUTIES OF PERSONS ARRIVING IN COUNTRY.

(1) A person arriving at a proclaimed port from another country and seeking to enter the country shall appear before an officer.

(2) A person appearing before an officer in accordance with Subsection (1) shall give to that officer any information the officer may require.

(3) A person refused permission to enter the country after appearing before an officer in accordance with Subsection (1)–

(a) if he arrived by vessel and is still aboard the vessel–shall not disembark; or

(b) if he arrived by vessel and disembarked for the purpose of appearing before the officer–

(i) shall return to the vessel; or

(ii) if the vessel has sailed–

(A) shall not depart from the precincts of the port except to a place approved by an officer; and

(B) shall leave the country by the first available means in accordance with any instructions given by an officer.

(4) A person refused permission to enter the country after appearing before an officer in accordance with Subsection (1)–

(a) if he arrived by aircraft–shall return to the aircraft; or

(b) if he arrived by aircraft and the aircraft has departed or there is not room on it for him–

(i) shall not depart from the precincts of the port except to a place approved by an officer; and

(ii) shall leave the country by the first available means in accordance with any instructions given by an officer.

10. PREVENTION OF UNLAWFUL PRESENCE.

(1) An officer shall prevent a person from entering or remaining in the country in contravention of this Act.

(2) Where a person has entered or remained in the country in contravention of this Act, an officer shall–

(a) return that person to the conveyance in which he arrived in the country and keep him there until its departure from the country; or

(b) obtain a removal order in respect of that person; or

(c) arrest that person and keep him in custody pending his prosecution under this Act.

11. POWER TO INTERROGATE.

(1) An officer may interrogate a person whose presence in the country he reasonably believes to be unlawful.

(2) A person interrogated by an officer acting in accordance with Subsection (1) shall—

- (a) fully and truthfully answer all questions put to him which tend, directly or indirectly, to establish his identity, nationality or occupation; and
- (b) disclose and produce to the officer all documents in his possession or under his control relating to those matters.

(3) All answers given or documents produced in accordance with Subsection (2) shall be admissible in evidence in proceedings under this Act against the person making or producing them.

12. REMOVAL ORDERS.

(1) The Minister may order the removal from the country of—

- (a) a person whose presence in the country is unlawful; and
- (b) at the further discretion of the Minister—any dependants of such a person.

(2) A removal order shall—

- (a) be served on the person to be removed; and
- (b) state a period from the date of service within which the person or dependants to be removed shall be removed or shall remove himself or themselves from the country.

(3) The Minister may vary or revoke a removal order.

13. POWER TO DETAIN AND REMOVE PERSONS FROM COUNTRY.

(1) The Minister may order that a person against whom a removal order has been made be detained in custody until arrangements can be made for his removal from the country.

(2) A person against whom a removal order has been made may—

- (a) if he has not removed himself from the country within the period stated in the order; or
- (b) if he is being detained in accordance with an order made under Subsection (1),

be placed on board a suitable conveyance by an officer, and may be detained in that conveyance until it leaves the country.

(3) A person against whom a removal order has been made may be removed to any country which is under an obligation to receive him or to any country to which he consents to be removed if the government of that country agrees to receive him.

(4) A person in charge of a conveyance going to a country to which a person is to be removed shall receive that person on board and on proper payment being made convey him to that country and give him accommodation and maintenance during the passage.

(5) Subject to Section 14, the cost of the passage, accommodation and maintenance provided in accordance with Subsection (4) shall be paid by the person removed and the Minister may apply money or property of the person removed in payment of the whole or part of that cost, or if the Minister thinks fit, the whole or part of the cost shall be borne by the State.

14. LIABILITY FOR EXPENSES.

(1) Where a person—

(a) enters the country in contravention of this Act; or

(b) is refused entry to the country under the provisions of this Act,

the person in charge, the owner, and his agent, of the conveyance in which that person came to the country shall be jointly and severally liable to pay to the State the expenses incurred by the State in connection with the care, maintenance and accommodation of that person and his passage from the country.

(2) The Minister may direct that the whole or a part of the expenses referred to in Subsection (1) shall be borne by the State.

15. DUTIES OF PERSONS IN CHARGE OF CONVEYANCES.

A person in charge of a conveyance arriving in the country from another country shall—

(a) in the case of a ship or aircraft arriving at a proclaimed port—prevent disembarkation from the conveyance until disembarkation has been authorized by an officer; and

(b) inform an officer if he knows or has reasonable cause to believe, that in respect of a person on board, that person's presence in the country would be unlawful, and prevent that person from disembarking unless permitted by an officer; and

(c) prevent, with such reasonable force as may be necessary, the disembarkation of—

(i) a person who has been given into his custody under Section 13(4);
or

(ii) a person in respect of whom a removal order is in force; or

- (iii) a person whose presence in the country would to his knowledge be unlawful.

15A. MINISTER MAY DETERMINE NON-CITIZEN TO BE REFUGEE.

⁷The Minister may determine a non-citizen to be a refugee for the purposes of this Act.

15B. RELOCATION CENTRES.

⁸The Minister may, by notice in the National Gazette, declare a place to be a relocation centre for the accommodation of a refugee or a non-citizen who claims to be a refugee.

15C. DIRECTION TO RESIDE IN RELOCATION CENTRE.

⁹(1) The Minister may, by instrument in writing, direct a refugee or class of refugees or non-citizen claiming to be a refugee to reside in a relocation centre.

(2) A direction under Subsection (1) is sufficient authority for a police officer to detain and take into custody the refugee or class of refugees or non-citizen claiming to be a refugee specified in the order for the purpose of taking that refugee or class of refugees or non-citizen claiming to be a refugee to a relocation centre and keeping that refugee or class of refugees or non-citizen claiming to be a refugee in that relocation centre.

(3) A police officer acting under a direction under Subsection (1) may use such force as is reasonably necessary for the purpose of taking a person to a relocation centre.

15D. CONTROL AND MANAGEMENT OF RELOCATION CENTRES.

¹⁰(1) The Minister may appoint an officer to be the Administrator of a relocation centre.

(2) The Administrator shall have—

- (a) the control and management of a relocation centre; and
- (b) the services of officers for the purpose of managing a relocation centre.

16. OFFENCES.

(1) A person who—

- (a) enters or remains in the country in contravention of this Act; or

⁷ Section 15A inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s4.

⁸ Section 15B inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s5.

⁹ Section 15C inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s6.

¹⁰ Section 15D inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s7.

- (b) aids or abets or incites a person to enter or remain in the country in contravention of this Act; or
- (c) harbours a person whom he knows or has reasonable grounds for believing is acting or has acted in contravention of this Act; or
- (d) disobeys or disregards an obligation imposed on him under or by virtue of this Act; or
- (e) makes or causes to be made a false return, false statement, false representation, or wilfully withholds any relevant fact or information in connection with an obligation imposed on him under or by virtue of this Act; or
- (f) resists or obstructs, actively or passively, an authorized person, officer or other person exercising a duty under this Act; or
- (g) wilfully and without lawful excuse hinders or obstructs the removal of a person from the country in accordance with this Act; or
- (h) gives, sells or lends a passport, or entry permit to another person in order that it may be used in contravention of this or any other Act; or
- (i) uses for any purpose a passport or entry permit issued to another person; or
- (j) makes or causes to be made a false declaration for the purpose of obtaining an entry permit for himself or any other person; or
- (k) without lawful authority has in his possession or uses a forged, unlawfully altered, or irregular passport or entry permit or a passport or entry permit in which an endorsement has been forged or unlawfully altered; or
- (l)¹¹ hinders or obstructs a police officer acting in pursuance of a direction under Section 15C(1),

is guilty of an offence.

Penalty: ¹²A fine not exceeding K5,000.00 or imprisonment for a term not exceeding six months.

(2) An officer may order a person in charge of a conveyance who is charged with an offence under this Act not to remove his conveyance from the country until the charge has been heard or determined and the fine (if any) has been paid.

17. EVIDENCE.

A copy of a removal order purporting to be signed by the Minister shall be prima facie evidence of its contents.

¹¹ Section 16(1)(l) inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s8.

¹² Section 16(1): Penalty clause amended by *Migration (Amendment) Act 1996* (No. 15 of 1996), s2.

18. BURDEN OF PROOF.

In proceedings under this Act the burden of proof shall lie, where the question in issue is—

- (a) whether a person is or is not a citizen—on the person contending that the person is a citizen; and
- (b) whether there is or is not an entry permit in force in respect of a person—on the person contending the existence of the entry permit; and
- (c) whether or not an exemption from a provision of this Act is applicable—on the person contending the applicability of the exemption; and
- (d) whether a person is or is not in possession of a passport—on the person contending the possession.

19. NO APPEAL AGAINST DECISION OF MINISTER, ETC.

(1) Without limiting the generality of Subsection (2), the expression “**review or challenge**” in that subsection includes—

- (a) a writ of certiorari, prohibition or mandamus or other form of prerogative writ, or other writ, order or process in the nature of such a writ; or
- (b) proceedings by way of appeal or for a writ, order or process referred to in Paragraph (a) (including proceedings for an order nisi or to show cause why relief should not be granted).

(2) An act, proposed act or decision of the Minister relating to the grant or cancellation of an entry permit or to the removal of a person from the country, or any decision of a Committee of Review under Section 6, is not open to review or challenge in any court on any ground.

20. EXEMPTIONS.

The Minister may, by instrument under his hand, exempt—

- (a) a person or a class or description of persons; or
- (b) a conveyance or class or description of conveyance,

either absolutely or conditionally, from all or any of the provisions of this Act.

21. REPATRIATION.

If the Minister is satisfied that a person, other than a citizen—

- (a) is destitute, infirm or mentally incapable; and
- (b) is unable to pay the cost of his passage and of the passage of any dependant to the country of his birth or citizenship or to a country, the government of which is prepared to receive him and any dependant; and
- (c) is willing to be repatriated,

he may authorize the repatriation of the person and any dependant at the expense of the State, subject to any conditions he thinks fit to impose.

22. MINISTER TO REPORT TO THE PARLIAMENT.

The Minister shall, at least once in every period of six months, give to the Parliament a report stating—

- (a) the number of entry permits cancelled by him during the period to which the report relates and brief details of the reasons for the cancellation; and
- (b) the number of persons removed from the country during the period to which the report relates and brief details of the reasons for the removals; and
- (c) the number of persons repatriated by him during the period to which the report relates and brief details of the reasons for the repatriations.

23. REGULATIONS.

¹³The Head of State, acting on advice, may make regulations not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular for the purposes of prescribing—

- (a) the forms to be used for the purposes of this Act; and
- (b) the deposit or security to be made or given in respect of a person seeking to enter or remain in the country; and
- (c) the returns which the person in charge, the owner or his agent, of a conveyance entering or leaving the country from or for another country shall give in respect of the members of the crew and passengers on board that conveyance; and
- (ca) fees for services performed under this Act by authorized persons, whether those services are performed within or outside Papua New Guinea, and making provision for exemption from the payment of such fees; and
- (d)¹⁴ penalties of fines not exceeding K5,000.00 or imprisonment for a term not exceeding six months for offences against the regulations; and
- (e)¹⁵ rules and procedures for the proper management and operation of relocation centres; and
- (f)¹⁶ authority to an Administrator to issue written instructions concerning procedures in a relocation centre.

¹³ Section 23 amended by No. 15 of 1982.

¹⁴ Section 23(d) amended by *Migration (Amendment) Act 1996* (No. 15 of 1996), s3.

¹⁵ Section 23(e) inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s9.

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¹⁶ Section 23(f) inserted by *Migration (Amendment) Act 1989* (No. 10 of 1989), s9.