

No. 13 of 1984.

Emergency (Requisition Compensation) Act 1984.

Certified on: 22/3/1984.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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SCHEDULE 1 – .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Emergency (Requisition Compensation) Act 1984,

Being an Emergency Act as authorized by Part X of the *Constitution* to make provision for the payment of compensation in respect of items requisitioned under the Emergency (Requisition) Act 1984 during the national emergency to be declared in relation to the volcanic eruption expected in the Rabaul area of the East New Britain Province during 1984, and for related purposes,

MADE by the National Parliament to come into operation on the date of the declaration of the national emergency.

PART 1. – PRELIMINARY.

1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears –

“**aircraft**” means any machine that can derive support in the atmosphere;

“**appellant**” means a person making an appeal to the Tribunal under Section 15;

“**buildings**” includes walls, roads, bridges, tanks, wharves and other marine structures;

“**consumable items**” means items requisitioned and fully used and consumed during the period of requisition and not capable of being returned to the persons from whom they were requisitioned;

“**controller**” means the person appointed as Controller under the Emergency (General Powers) Act 1984;

“**item requisitioned**” means any animal, aircraft, vehicle, ship, machinery, installation, building, land or accommodation, good or thing requisitioned under the Emergency (Requisition) Act 1984’

“period of requisition” means the period of time from the time of requisition of an item requisitioned until –

- (a) its return to the person entitled to it; or
- (b) its total loss or destruction;

“requisition order” means a requisition order under the Emergency (Requisition) Act 1984;

“ship” includes every description of vessel used, or capable of being used, in navigation by water;

“this act” includes the Regulations;

“time of requisition” means the time at which a requisition officer obtained possession of an item requisitioned;

“Tribunal” means the Compensation Appeal Tribunal established under Section 16;

“vehicle” means any description of vehicle on wheels.

(2) Unless the contrary intention appears, the provisions of the *Interpretation Act 1975* apply to this Act.

2. APPLICATION.

This Act applies notwithstanding the provisions of any other law to the contrary.

PART 2. – COMPENSATION.

3. STATE TO PAY COMPENSATION IN RESPECT OF ITEMS REQUISITIONED.

The State shall pay compensation in respect of items requisitioned in accordance with the provisions of this Act.

4. PAYMENT OF HIRE OR RENTAL CHARGE.

(1) Compensation in the form of a hire or rental charge for each day or hour of the period of requisitioned shall be payable in respect of items requisitioned (other than consumable items and accommodation on vehicles, ships or aircraft) –

- (a) in the case of vehicles, ships or aircraft –at the rates sent out in the Schedule; and
- (b) in the case of land and buildings –as determined by the Valuer – General; and
- (c) in all other cases –at prescribed rates.

(2) For the purposes of Subsection (1), “day” means a period of 24 hours or part of such a period calculated from the time of requisition.

(3) Compensation under Subsection (1) shall be payable –

- (a) to the owner of the item requisitioned; or
- (b) where, by virtue of any agreement, the item requisitioned would, but for the requisition, have been –
 - (i) during the whole of the period of requisition in the possession of a person other than the owner –to that person; or
 - (ii) during part only of the period of requisition in the possession of a person other than the owner –on a pro rata basis between the owner and that person.

(4) For the purposes of Subsection (3), “agreement” shall be construed in the widest terms and shall include contract, charter and lease.

5. PAYMENT OF REASONABLE EXPENSES INCURRED BY REASON OF REQUISITION.

(1) Compensation shall be payable where, by reason of the requisition of an item requisitioned, expenses have been incurred by –

- (a) the owner of the item requisitioned –to the owner; and
- (b) a person other than the owner having, by virtue of any agreement, but for the requisition, right to possession of the item requisitioned during the period of requisition or any part of it –to that person,

to the extent deemed reasonable by the Controller.

(2) For the purposes of Subsection (1), “agreement” shall be construed in the widest terms and shall include contract, charter and lease.

6. COMPENSATION FOR DAMAGE INCURRED DURING PERIOD OF REQUIRED .

(1) Compensation shall be payable for any damage caused to an item requisitioned during the period of requisitioned to the extent of making good the damage as certified by an assessor under Section 8(2)(a)

(2) Compensation under Subsection (1) shall be payable to the owner of the item requisitioned.

7. COMPENSATION FOR TOTAL LOSS OR DESTRUCTION OF ITEM REQUISITIONED.

(1) Compensation shall be payable for the total loss or destruction of an item requisitioned to the extent of the value of the item requisitioned immediately prior to the time of requisition as certified by an assessor under Section 8(2)(b).

(2) Compensation under Subsection (1) shall be payable to the owner of the item requisitioned.

(3) For the purposes of Subsection (1), an item requisitioned is deemed to be totally lost or destroyed where a certificate to that effect has been issued under Section 8(2)(b).

8. ASSESSMENT OF DAMAGE OR TOTAL LOSS OR DESTRUCTION.

(1) For the purpose of assessing –

(a) the cost of making good damage to an item requisitioned; or

(b) whether damage to an item requisitioned renders the item totally lost or destroyed,

the Controller shall appoint persons having specialized knowledge of items requisitioned to be assessors.

(2) An assessor shall, after inspection of the damage to an item requisitioned, grant a certificate –

(a) as to the cost of making good the damage; or

(b) to the effect that the item requisitioned has been totally lost or destroyed and as to the value of the item immediately prior to requisition.

9. WHERE COMPENSATION PAID FOR TOTAL LOSS, ETC., STATE TO OBTAIN OWNERSHIP.

Where compensation is paid under Section 7 for the total loss or destruction of an item requisitioned, and that item is a vehicle, ship or aircraft, the ownership of whatever remains of that item passes to the State.

10. COMPENSATION FOR REASONABLE EXPENSES INCURRED PENDING REPLACEMENT.

(1) Where –

- (a) compensation has been paid under Section 7 for the total loss or destruction of an item requisitioned; and
- (b) at the time of claiming compensation the owner notifies the Controller of his intention to replace the item with a similar item; and
- (c) there is a subsequent delay in replacement due to circumstances beyond the owner's control,

further compensation for expenses incurred as a result of the delay in replacement shall be payable to the owner to an extent deemed reasonable by the Controller.

(2) The onus of establishing that the delay in replacement referred to in Subsection (1)(a) was beyond the owner's control, rests on the owner.

11. COMPENSATION WHERE ITEM REQUISITIONED IS ACCOMMODATION ON VEHICLE, ETC.

(1) Where an item requisitioned is accommodation on a vehicle, ship or aircraft, compensation shall be payable –

- (a) to the owner of the vehicle, ship or aircraft; or
- (b) where, by virtue of any agreement, the vehicle, ship or aircraft was, during the period of requisition of the accommodation, in the possession of person other than the owner –to that person,

to the extent of the amount which might reasonably be expected to be payable for the use of that accommodation for the period of requisition.

(2) For the purposes of Subsection (1), "agreement" shall be construed in its widest sense and shall include contract, charter and lease.

12. COMPENSATION WHERE ITEMS REQUISITIONED ARE CONSUMABLE ITEMS.

(1) Where an item requisitioned –

- (a) is a consumable item; and
- (b) has during the period of requisition been consumed in whole or in part,

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compensation shall be payable to the owner of the item for that part of the item incapable of being returned to him to the extent of –

- (c) where the owner had produced the item with a view to the sale thereof – the price which he might reasonably have expected to receive on a sale;
or
- (d) where the owner had bought the item with a view to the sale thereof – the price which he might reasonably have expected to receive on a sale;
or
- (e) in all other cases – the price paid by the owner for the item.

(2) For the purposes of Subsection (1) any inflation of price caused by the national emergency shall not be taken into account in assessing the prices referred to.

PART 3. – CLAIMS FOR COMPENSATION.

13. CLAIMS FOR COMPENSATION.

(1) Compensation payable under this Act may be claimed by any person who considers he is entitled to compensation under this Act.

(2) A claim under Subsection (1) shall –

- (a) be made on the prescribed form; and
- (b) contained the prescribed particulars; and
- (c) be lodged as directed by the Controller; and
- (d) be lodged within 28 days of the end of the period of requisition of the item in respect of which the claim is made.

(3) The Controller may, where he considers it justified in the circumstances, extend the period specified in Subsection (2)(d) either generally, or in respect of a particular claim or claims.

14. DUTIES OF CONTROLLER ON RECEIPT OF CLAIM.

On receipt of a claim for compensation under Section 13 the Controller shall –

- (a) cause investigation of the claim to be made as soon as is possible; and
- (b) where he considers it necessary, require the person making the claim to lodge any documentation or give further particulars relating to the claim; and
- (c) make a decision as to the amount of compensation (if any) payable; and
- (d) notify the person making the claim of his decision under Paragraph (c); and
- (e) arrange for payment of the amount of compensation, if any, as soon as possible.

15. PERSON AGGRIEVED BY DECISION OF CONTROLLER MAY APPEAL.

(1) A person who considers he is entitled to compensation under this Act who is aggrieved by a decision of the Controller under Section 14(c) may appeal to the Tribunal.

(2) An appeal under Subsection (1) shall be made as prescribed.

PART 4. – COMPENSATION APPEAL TRIBUNAL.

16. COMPENSATION APPEAL TRIBUNAL.

(1) There is established a Compensation Appeal Tribunal for the purpose of hearing appeals under Section 15.

(2) The Tribunal shall consist of –

- (a) a Judge, who shall be Chairman, nominated by the Chief Justice; and
- (b) two persons appointed by the Head of State, acting on advice, at least one of whom shall not be a public officer.

(3) The term of office, and terms and conditions of service of any person appointed under Subsection (2)(b) who is not a public officer shall be as determined by the Head of State, acting on advice.

17. POWERS OF TRIBUNAL.

(1) For the purposes of the exercise of its function, the Tribunal has full powers –

- (a) to summon witnesses, by instrument under the hand of the Chairman; and
- (b) to take evidence on oath or affirmations and administer oaths and affirmations for the purpose; and
- (c) by instrument under the hand of the Chairman, require a person to produce a document, book or paper in his possession or control; and
- (d) to appoint a person with expert knowledge to report on any matter material to an appeal; and
- (e) to award and assess, or order the assessment of, such sums by way of costs as the Tribunal in its discretion thinks just, and in particular to award costs to an unsuccessful appellant where such an award seems to the Tribunal to be justified on the merits of the appeal.

(2) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him) –

- (a) to attend before the Tribunal at the time and place appointed in the summons or requirement; or
- (b) to be sworn or make an affidavit; or
- (c) to answer any question put to him by a member of the Tribunal; or
- (d) to produce the document, book or paper,

is guilty of an offence.

Penalty: A fine not exceeding K500.00.

18. PROCEDURES.

Subject to this Act, the procedures of the hearings before the Tribunal shall be informal, with due regard to natural justice, and shall be as determined by the Tribunal.

19. DECISIONS OF THE TRIBUNAL.

(1) The decisions of the Tribunal shall be in the writing and shall contain the reasons for the decision.

(2) The Chairman shall cause a copy of each decision to be sent to –

(a) the appellant; and

(b) the Controller; and

(c) the Emergency Committee appointed under the Emergency Committees Act (Chapter 33A).

20. CONTROLLER TO ABIDE BY DECISION.

The Controller is bound by the decisions of the Tribunal and where, in the terms of a decision under Section 19, compensation or a balance of compensation is to be paid to an appellant, the Controller shall arrange for the payment of the compensation, or of the balance of compensation, to the appellant as soon as possible.

PART 5. – MISCELLANEOUS.

21. INDEMNIFICATION OF CLAIMS.

The State hereby indemnifies the owner of any item requisitioned against any claim made during the period of requisition against that item, its driver, pilot or person otherwise in control, or working on or in, or a passenger on or in, or for the time being on or in that item.

22. NO ACCOUNT TO BE TAKEN OF INFLATION OF PRICES DUE TO NATIONAL EMERGENCY.

In the assessing the amount of compensation payable under this Act no account shall be taken of any inflation of prices caused by the national emergency.

23. NO INTEREST PAYABLE.

No interest shall be payable on compensation under this Act.

24. REGULATIONS.

The 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.

SCHEDULE 1 – .

Section 5

1. Vehicles

TYPE	HIRING RATE
1. PMV (6-15 seater)	K10/day
2. PMV or buses (15-25 seater)	K15/day
3. PMV or buses (26-over)	K20/day
4. 3 ton flat top-tipped truck	K10/day
5. 5 ton flat top-tipped truck	K10/day
6. 5-10 ton flat top-tipper truck	K10-K15/day
7. Over 10 ton trucks	K20/day
8. Private utilities (less than 1500cc)	K10/day
9. Private utilities (over 1500cc)	K10/day
10. Tractor/ trailer combination	–

2. Ships

TYPE	CREW	HIRING RATE
1. 3 coastal shipping barges	12 persons	K1250/day
2. 1 coastal shipping barges	12 persons	K1250/day
3. 2 coastal shipping barges	12 persons	K1250/day
4. 2 Burns Philp barges	12 persons	K1250/day
5. M.V. Trahere	(–)	K1250/day

3. Aircraft

TYPE	CREW	HOURLY RATE
1. F28	2 pilots & 2 crew	K3,000/hr
2. F27	2 pilots & 2 crew	K1,500/hr
3. Dash 7	2 pilots & 2 crew	K1,350/hr
4. Cessna Citation Jet	2 pilots & 1 crew	K1,200/hr
5. Bandeirante	2 pilots	K800/hr
6. Beech Baron	1 pilot	K400/hr
7. Cessna 402	1 pilot	K450/hr
8. Helicopter (4- 6 seater)	1 pilot	K400/hr
TYPE	CREW	HOURLY RATE
1. F28	2 pilots & 2 crew	K3,000/hr
2. F27	2 pilots & 2 crew	K1,500/hr

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TYPE	CREW	HOURLY RATE
3. Dash 7	2 pilots & 2 crew	K1,350/hr
4. Cessna Citation Jet	2 pilots & 1 crew	K1,200/hr
5. Bandeirante	2 pilots	K800/hr
6. Beech Baron	1 pilot	K400/hr
7. Cessna 402	1 pilot	K450/hr
8. Helicopter (4- 6 seater)	1 pilot	K400/hr