

No. 13 of 2002.

***Essential Services Act 2002.***

Certified on: 10/5/2002.

INDEPENDENT STATE OF PAPUA NEW GUINEA.

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**INDEPENDENT STATE OF PAPUA NEW GUINEA.**

AN ACT

entitled

***Essential Services Act 2002,***

Being an Act to protect the community’s interest in the supply of essential services during an

emergency.

MADE by the National Parliament to come into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister.

### **1. Compliance with constitutional requirements.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision 111.3.C (qualified rights) of the Constitution, namely –

- (a) the right to liberty of the person conferred by Section 42 of the *Constitution*; and
- (b) the right to freedom from arbitrary search or person or property and entry of premises, conferred by Section 44 of the *Constitution*; and
- (c) the right to freedom of expression and publication conferred by Section 46 of the *Constitution*; and
- (d) the right to peacefully assemble and associate and to form or belong to, or not belong to, political parties, industrial organisations and other associations conferred by Section 47 of the *Constitution*; and
- (e) the right to freedom of choice of employment in any calling for which person has the qualifications (if any) lawfully required conferred by Section 48 of the *Constitution*; and
- (f) the right of reasonable access to official documents conferred by Section 51 of the *Constitution*; and
- (g) the right to move freely throughout the country, to reside in any part of the country and to enter and leave country conferred by Section 52 of the *Constitution*,

is a law that is made (pursuant to Section 38 of the *Constitution* –

- (h) taking account of the National Goals and Directive Principles (including in particular, the goal that Papua New Guinea should, among basically self reliant and to achieve development primarily through the use of Papua New Guinea forms of economic organisation) and the Basic Social Obligations (including, in particular, the obligations to protect Papua New Guinea and to safeguard the national wealth, resources and environment in the interests not only of the present generation but also of future generations), for the purpose of giving effect to the public interest in public safety, public order, public welfare, and the development of underprivileged or less advanced groups or areas; and
- (i) in order to protect the exercise of the rights and freedom of others; and
- (j) to make provision for cases where the exercise of one such right may conflict with the exercise of another.

(2) This Act, to the extent that it creates or otherwise gives rise to rights, privileges, obligations and duties that are not the same as between citizens, is intended to be a law for the special benefit, welfare, protection and advancement of members of underprivileged and less advanced groups and residents of less advanced areas for the purposes of Section 55 of the *Constitution*.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is declared that this Act relates to a matter of national interest and it is further declared that this Act deals with a matter of urgent national importance and it is in the national interest that this Act be made without delay.

(4) Insofar as this Act involves a compulsory taking of possession of property or a compulsory acquisition of an interest in or right over property within the meaning of Section 53 of the *Constitution* –

- (a) the purposes and reasons for each such taking and acquisition are declared and described to be –
- (i) to ensure the health or safety or welfare of the people of Papua New Guinea; and
  - (ii) to maintain and restore peace and good order in Papua New Guinea,  
and each of those purposes and reasons is hereby also declared to be described as –
  - (iii) a public purpose; and
  - (iv) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,  
for the purposes of Section 53 of the *Constitution* and for the purposes of any other relevant law; and
- (b) for the purposes of Section 53(2) of the *Constitution*, just compensation will be made on just terms for the compulsory taking of possession of property, in accordance with the terms set out in Section 8 and shall constitute compensation procured (and accordingly made) by, and made on behalf of, the State in connection with each such taking and acquisition.

## 2. Interpretation.

In this Act, unless the contrary intention appears –

“**Appeals Panel**” means the Appeal Panel constitute under Section 42 of the Independent Consumer and Competition Commission Act 2002;

“**Commission**” means the Independent Consumer and Competition Commission established under the Independent Consumer and Competition Act 2002;

“**essential service**” means any of the following services which is provided to the public (whether by a public or private undertaking): –

- (a) electricity;
- (b) water;
- (c) sewerage;
- (d) postal services;
- (e) civil aviation services;
- (f) radio and television services;

- (g) health services;
- (h) transport services;
- (i) telecommunications;
- (j) access to ports and harbours;
- (k) any other prescribed service;

**“International Arbitrator”** means a member of the Panel of Experts who satisfies the requirements set out in Section 41(3) of Independent Consumer and Competition Commission Act 2002;

**“period of emergency”** means the time during which any proclamation of emergency made under this Act in relation to any essential service is in force;

**“proclaimed essential service”** means an essential service declared by proclaimed under this Act to be an essential service in respect of which a period of emergency applies.

### **3. Proclamation of emergency.**

(1) Where at any time it appears to the Head of State, acting on advice, that any essential service is or is likely to be significantly interrupted, dislocated or materially diminished by –

- (a) a natural disaster, public emergency or shortage of any goods or services; or
- (b) any unlawful action taken or likely to be taken or that has been threatened to be taken by any person or body of persons,

and as a consequence –

- (c) the health or safety or welfare of the public or any section of the public; or
- (d) the maintenance or restoration of peace and good order in Papua New Guinea,

is prejudiced or threatened or is likely to be prejudiced or threatened, the Head of State may by proclamation published in the National Gazette (in this Act referred to as a “proclamation of emergency”) declare that a period of emergency exists in relation to that essential service.

(2) A proclamation made under Subsection (1) in relation to any essential service may be limited as to time, place and circumstance.

(3) A proclamation made under Subsection (1) may not be in force for more than one month (without prejudice to the issue of another proclamation of emergency before, at or after the end of that period).

(4) A proclamation made under Subsection (1) may be revoked –

- (a) by a proclamation of the Head of State, acting on advice, published in the National Gazette; or
- (b) by a resolution passed by Parliament.

(5) If –

- (a) at the time of publication in the National Gazette of any proclamation of emergency Parliament is not sitting; and
- (b) a petition signed by not less than 20 members of the Parliament objecting to

such proclamation and requesting that Parliament should be summoned is addressed to the speaker,

Parliament shall be summoned to meet as soon as is practicable to deal with the proclamation of emergency.

#### **4. Power of Minister during period of emergency.**

(1) Subject to Subsection (4), the Minister may provide, operate or control, regulate or direct the provision or operation of any proclaimed essential service during a period of emergency.

(2) The Minister may employ such persons in such numbers and upon such terms as appear to him to be necessary for the carrying into effect of the powers referred to in Subsection (1).

(3) Without limiting the generality of Subsection (1) but subject to Subsection (4) the Minister may –

- (a) direct that proclaimed essential services as are specific shall be maintained and the terms and conditions upon which they shall operate; and
- (b) direct persons and bodies to operate and maintain proclaimed essential services to the extent and upon the terms specified in the direction; and
- (c) direct the times and places and the terms and conditions upon which and the manner in which and the persons or classes of persons to whom proclaimed essential services may or may not be supplied or acquired; and
- (d) prohibit the operation or use of proclaimed essential services except, if so specified in the prohibition, with the consent of the Minister; and
- (e) requisition the use of property of any kind which is used or may be used for or in connection with the operation or maintenance of any proclaimed essential service; and
- (f) provide for or control, by direction, prohibition or requisition, the operation, use, disposal, distribution, storage, repair, upkeep and maintenance of any property or commodity used or which may be used for or in connection with any proclaimed essential service; and
- (g) provide, by direction, prohibition or requisition, for any matter or thing incidental to the carrying into effect of the powers referred to in this section.

(4) The Head of State, acting on advice, may specify in the proclamation of a state of emergency under Section 3(1) restrictions or limitations on the Minister's exercise of the powers conferred under this section.

#### **5. Compliance with directions, etc., of minister.**

(1) A body to which or a person to whom any direction, prohibition or requisition is addressed or directed under this Act shall comply with such direction, prohibition or requisition unless prohibited from doing so by another Act.

(2) A direction, prohibition or requisition may be addressed or directed to bodies and persons generally or particularly, in writing or verbally, by publication or advertisement or by

any other means or in any other means or in any other manner which appear or appears to the Minister to be practicable, appropriate or expedient in the circumstances.

## **6. Delegation of powers and functions by minister.**

(1) The Minister may, in relation to any matter or class of matters or in relation to any part of Papua New Guinea, by writing under his hand, delegate all or any of his powers and functions under this Act (except this power of delegation) so that the delegated powers or functions may be exercised by the delegate with respect to the matters or class of matters or part of Papua New Guinea specified in the instrument of delegation.

(2) A delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Minister.

## **7. Application and operation of directors, etc.**

(1) A direction prohibition or requisition under this Act –

- (a) may be made so as to apply to or have operation throughout the whole or any part of Papua New Guinea; and
- (b) subject to this Act, may be made so as to operate for any period or periods or for any time or times or for any occasion or occasions specified therein but not beyond the period of the emergency as declared ; and
- (c) may be of general operation or of specially limited operation according to time, place, circumstances, conditions or restrictions; and
- (d) may be revoked by the Minister or by a resolution passed by Parliament; and
- (e) will have effect as if enacted in this Act.

(2) The expiry or revocation of any direction, prohibition or requisition under this Act shall not be deemed to have affected the previous operation thereof or the validity of any action taken thereunder or any penalty or punishment incurred in respect of any contravention of or failure to comply therewith or any proceeding or remedy in respect of any such penalty or punishment.

## **8. Compensation.**

(1) A person or body of persons who or which, as the direct result of compliance with any direction, prohibition or requisition addressed or directed under this Act to him suffers loss as a result of the requisitioning of that person's property or incurs an expense, is entitled to be compensated under this Act for the amount of those expenses and losses.

(2) Any claim for compensation under Subsection (1) shall be –

- (a) made in writing to the Minister; and
- (b) made within 12 months of the end of the period of emergency concerned,

and claims may be made under this subsection any number of times.

(3) If the Minister and the claimant are unable to agree on the amount of compensation within two months of a claim for compensation being made, then either the Minister or the claimant may, within a further two months, apply to the Commission to determine the amount of compensation payable, and the Commission shall make a determination on the application

within two months of receipt of the application.

(4) An application may be made to the Appeals Panels by either the Minister or the claimant for review of a decision of the Commission as to the amount of compensation payable to the claimant made under this section, such application for review shall –

- (a) be in writing; and
- (b) set out the decision to which the application relates; and
- (c) set out in detail the grounds on which the applicant seeks review of the decision; and
- (d) be accompanied by any information the applicant considers should be taken into account by the Appeals Panel on the review; and
- (e) be lodged with the Appeals Panel within ten days after notice of the Commission's decision is given or such longer period as the Appeals Panel may allow.

(5) The Appeals Panel may stay the operation of a decision to which the application relates.

(6) A review shall be decided within four weeks of the application being lodged with the Appeals Panel.

(7) After considering the application, the Appeals Panel may confirm the decision or return the matter to the Commission with such directions as the Appeal Panel considers appropriate.

(8) The Appeals Panel shall give the applicant written notice of the decision and the reasons for the decision on the review.

(9) Where a regulatory contract applies to the claimant, the Appeals Panel shall consist of an International Arbitrator (unless the regulatory contract applying to the claimant concerned at the time of the decision provides that the Appeals Panel need not consist of an International Arbitrator).

(10) The State shall pay the claimant the amount of the compensation agreed or determined (if any) under this section within two months of the amount being so agreed or determined.

(11) Any sums required to be paid or provided for the purposes of this section shall be paid out of the Consolidated Revenue Fund (which is hereby to the necessary extent appropriated accordingly).

## **9. Offences and penalty.**

(1) A person or body, who or which contravenes or fails to comply with any direction, prohibition or requisition under this Act, is guilty of offence against this Act.

(2) A person or body who or which aids, abets, incites, counsels or procures or is any way directly or indirectly knowingly concerned in the commission of any offence against this Act, shall be deemed to have committed that offence.

(3) A person or body who or which is guilty of an offence against this Act shall be liable to a penalty –

- (a) not more than K500,000.00 in the case of a body corporate; or
- (b) not more than K100,000.00 and imprisonment of not more than 6 months in the case of a natural person.

**10. Regulations.**

The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing 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 prescribing penalties or fines not exceeding K5,000.00 for offences against the regulations.

Office of Legislative Counsel, PNG