

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 358.

Land Settlement Schemes (Prevention of Disruption).

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Lands at the date of its preparation for inclusion.

The present administration may be ascertained by reference to the most recent Determination of Titles and Responsibilities of Ministers made under Section 148(1) of The Constitution.

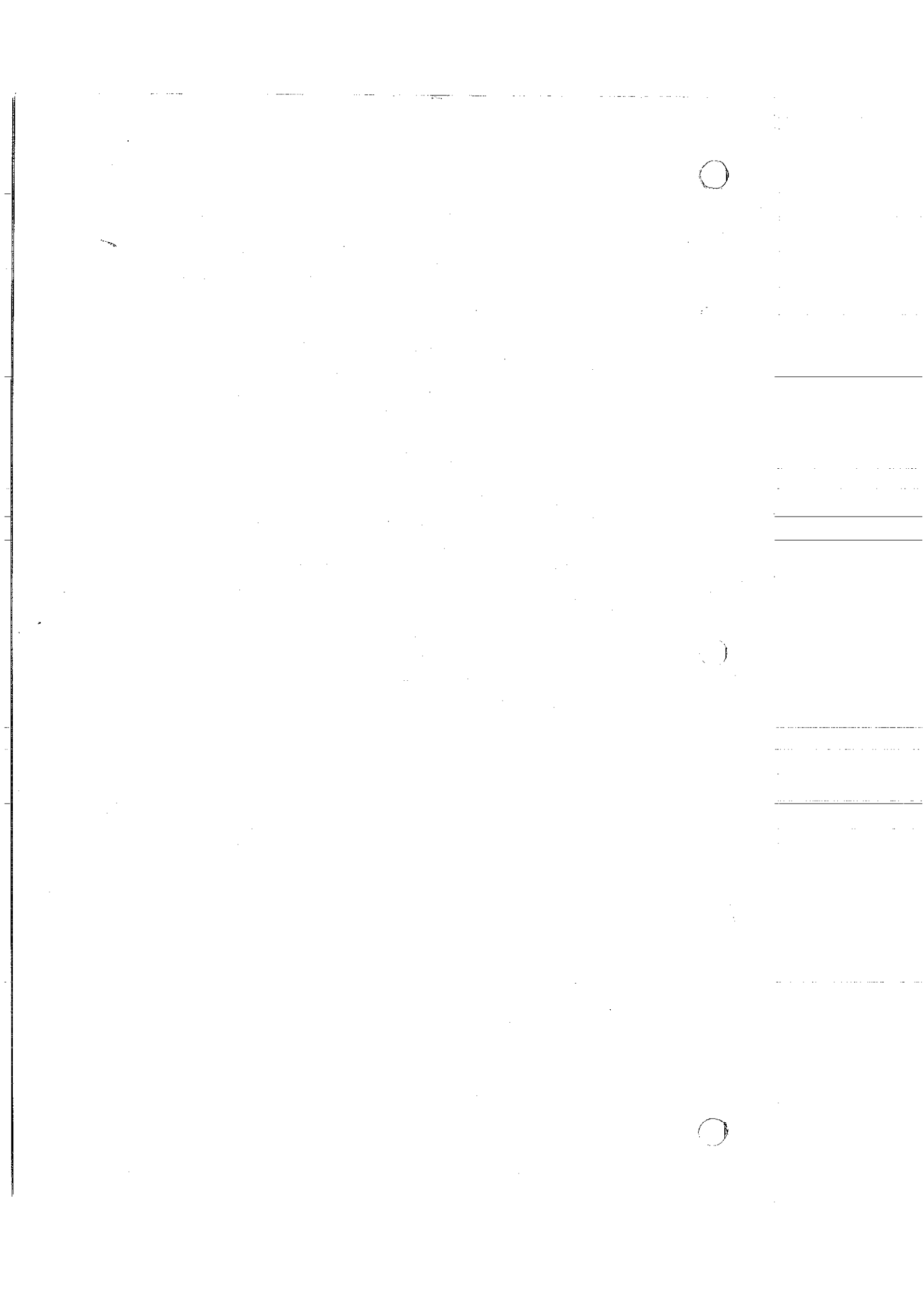
References in and in relation to this Chapter to—

“the Departmental Head” — should be read as references to the Secretary for Lands and Surveys;

“the Department” — should be read as references to the Department of Lands and Surveys.

TABLE OF CONTENTS.

	<i>Page.</i>
<i>Land Settlement Schemes (Prevention of Disruption) Act</i>	3
Regulations	—
Appendix—	
1. Source of Act.	



INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 358.

Land Settlement Schemes (Prevention of Disruption) Act.

ARRANGEMENT OF SECTIONS.

1. Interpretation—
 - "declared scheme"
 - "disruptive conduct"
 - "Government land"
 - "land in a declared scheme"
 - "leaseholder".
2. Schemes to which this Act applies.
3. Disruptive conduct.
4. Compulsory acquisition of State lease.
5. Factors.
6. Determination of annual net profit.
7. Order to send people back.
8. Compliance with Constitutional requirements.







INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 358.

Land Settlement Schemes (Prevention of Disruption) Act.

Being an Act to ensure that disruptive conduct on the part of an individual leaseholder does not endanger a land settlement scheme of which his lease forms part.

1. Interpretation.

In this Act, and unless the contrary intention appears—

“declared scheme” means a re-settlement or development scheme in relation to which a declaration under Section 2 is in force;

“disruptive conduct” means conduct of a kind referred to in Section 3(1);

“Government land” means—

(a) Government land as defined in the *Land Act*; or

(b) land the subject of a State lease;

“land in a declared scheme” means any land the subject of a declaration under Section 2;

“leaseholder” means a lessee of a State lease of land in a declared scheme.

2. Schemes to which this Act applies.

(1) Subject to Subsections (2) and (3), the Head of State, acting on advice, may, by notice in the National Gazette, declare—

(a) any area of Government land over which State leases have been or are to be granted or made available for the purpose of the development of the land as, or as part of, a planned scheme of settlement or development; and

(b) any other Government land used or to be used in connexion with the scheme, to be land in a declared scheme for the purposes of this Act.

(2) A declaration shall not be made under Subsection (1) unless the National Executive Council, after consultation by the Minister as prescribed by Subsection (3), is of opinion that the nature of the scheme and the likely relationship between the leaseholders are such that disruptive conduct could endanger the success of the scheme or social relations between the leaseholders.

(3) For the purposes of Subsection (2), the Minister shall consult with—

(a) any Local Government Council in whose area the land, or any part of the land, in the scheme is situated; and

(b) where State leases, or applications for State leases, of land in the scheme have already been granted or are under actual consideration—

(i) any leaseholders' or settlers' association (or any similar body) formed in relation to land in the scheme; or

(ii) the leaseholders of land in the scheme generally,

and, if he thinks it useful to do so, with the Land Board; and

Ch. No. 358: *Land Settlement Schemes (Prevention of Disruption)*

(c) such other interested or concerned persons as he thinks proper to consult, in such manner and to such extent as (subject to Section 255 (*consultation*) of the Constitution) he thinks proper and calculated to give a reasonably clear idea of the likely attitudes of and relationships between leaseholders (including future leaseholders).

3. Disruptive conduct.

(1) Disruptive conduct for the purposes of this Act consists of—

- (a) the commission of acts of a criminal nature (or in special circumstances a single such act); or
- (b) other reprehensible conduct,

on or about the land in a declared scheme or otherwise (and in particular such conduct affecting a leaseholder or a person for whose conduct a leaseholder would, under Subsection (2)(b), be responsible), such that, or in such circumstances that, it is likely—

- (c) to have adverse effects on the scheme; or
- (d) to create or increase tensions or disturbances between leaseholders or groups of leaseholders,

or has already done so.

(2) For the purposes of this Act, a leaseholder is responsible for any disruptive conduct—

- (a) that he has committed or allowed to be committed; or
- (b) subject to Subsection (3)—that has been committed by a member of his family or by a person who is employed by him or who is residing on the land of which he is the leaseholder.

(3) Subsection (2)(b) does not apply if the leaseholder has taken all reasonable action to dissociate himself from the conduct and, to the best of his lawful ability, to mitigate its adverse effects on the scheme and to prevent its recurrence.

(4) Subject to Subsections (5) and (6), a District Court, on application by or on behalf of the Minister or a leaseholder, may declare—

- (a) that any conduct is disruptive conduct within the meaning of Subsection (1); and
- (b) that a leaseholder is responsible, within the meaning of Subsection (2), for the conduct.

(5) Before making a declaration under Subsection (4), the District Court shall consider any views expressed by or on behalf of—

- (a) other leaseholders of land in the declared scheme in question; and
- (b) any Local Government Council in whose area the land, or any part of the land, in the scheme is situated; and
- (c) any leaseholders' or settlers' association (or any similar body) formed in relation to land in the scheme; and
- (d) any other interested or concerned persons whose views the Court thinks proper to be considered.

(6) If a District Court dealing with an application under Subsection (4) is satisfied that the conduct in question has been atoned for to the satisfaction of the leaseholders generally so that the consequences referred to in Subsection (1) are not likely to occur, it may refuse to make a declaration under Subsection (4).

(7) Subsection (6) does not prevent the conduct concerned being taken into account with other conduct or circumstances, in and for the purposes of any later application under Subsection (4), as disruptive conduct for the purposes of this Act.

4. Compulsory acquisition of State lease.

Where a District Court has made a declaration under Section 3(4) that a conduct is disruptive and that a leaseholder is responsible, the Minister shall acquire by compulsory process any State lease of land held by the leaseholder so held responsible for the disruptive conduct after paying to the leaseholder, by way of compensation for the land, an amount in accordance with Subsection (2).

(2) The State shall pay to a leaseholder whose land is acquired by compulsory process under Subsection (1), by way of compensation for the land—

- (a) in the case of undeveloped land—the prescribed amount; and
- (b) in the case of land that has been developed or partly developed or partly developed for the purposes other than the return of income—the product of the value of the improvements, as determined by the Valuer-General and the prescribed factor for the land; and
- (c) in the case of land that has been developed or partly developed for the purpose of returning an income—
 - (i) if, at the date of acquisition, the land has been in production for not less than three financial years—the product of the average annual net profit received in relation to the land over the three financial years immediately preceding the date of acquisition, as determined by the Valuer-General, and the prescribed factor for the land; or
 - (ii) if, at the date of acquisition, the land has been in production for more than one financial year but less than three financial years—the product of the average annual net profit that would have been received in relation to the land over the period of three financial years immediately preceding the date of acquisition if the land had been in production for the full period, as determined by the Valuer-General, and the prescribed factor for the land; or
 - (iii) if, at the date of acquisition, the land has been in production for more than one financial year but has incurred an average annual net loss for the period that it has been in production, or for the period of three financial years immediately preceding the date of acquisition, whichever is the lesser period—an amount fixed by the Minister after receiving a report from the Valuer-General in respect of the land; or
 - (iv) if, at the date of acquisition, the land has been in production for less than one financial year or is not yet in production—the product of the value of the improvements on the land, as determined by the Valuer-General, and the prescribed factor for the land.

(3) The Valuer-General—

- (a) in determining the average annual net profit for the purposes of Subsection (2)(c)(i) and (ii); and
- (b) in giving a report for the purpose of Subsection (2)(c)(iii); and
- (c) in determining the value of improvements for the purposes of Subsection (2)(b) and (c)(iv),

shall have regard to—

- (d) the accepted principles of valuation in practice; and
- (e) the current value of any improvements on the land.

(Replaced by No. 52 of 1983.)

5. Factors.

The Head of State, acting on advice given after receiving a report from the Valuer-General, may, by regulation, fix factors for the purposes of the determination of compensation under Section 4, in relation to—

- (a) each class of land in the country; or
- (b) each class of land in different parts of the country; or
- (c) the use to which each class of land in the country or in different parts of the country is being put; or
- (d) a particular parcel or particular parcels of land.

(Added by No. 52 of 1983.)

6. Determination of annual net profit.

(1) The annual net profit received from any land acquired by compulsory process under this Act is the amount by which the gross income received from the land during a financial year exceeds the total outgoing in respect of the land for that year, as determined by the Valuer-General.

(2) In determining the total outgoing in respect of any land for the purposes of Subsection (1), regard shall be had to—

- (a) all amounts paid by way of or for—
 - (i) salaries, wages and rations for staff and employees; and
 - (ii) maintenance of plant, vehicles and equipment; and
 - (iii) purchase of fuel, oil and lubricants; and
 - (iv) purchase of fertilizers, weedicides and insecticides; and
 - (v) insurance payments; and
 - (vi) maintenance of buildings; and
 - (vii) purchase of bags, twine, dye and other minor materials; and
 - (viii) purchase of tools; and
 - (ix) freight; and
 - (x) overheads concerned with office income producing expenditure; and
 - (xi) management, accountancy fees, rents, postage and other minor matters; and
- (b) depreciation of buildings, plant, vehicles and equipment.

(Added by No. 52 of 1983.)

7. Order to send people back.

(1) Where, under Section 4, the Minister acquires by compulsory process any State lease of land held by a leaseholder held responsible for a disruptive conduct, the Minister may apply to the District Court and obtain—

- (a) an order that the leaseholder, his family and any other person for whose conduct he is held responsible, be sent to their original home province or such other place away from the declared scheme as may be determined by the Court; and
- (b) any other order that the Court thinks fit to prevent further disruption to the scheme.

(2) Where the Minister has obtained an order from the District Court under Subsection (1) to send a person home, he may deduct from any moneys payable as compensation to the leaseholder under Subsection 4(2)—

- (a) such amounts as the Minister considers reasonably necessary to meet all or some of the costs of transporting the leaseholder, his family or other person for whose conduct he is held responsible; and
- (b) costs incurred in survey fees or fees incurred in the preparation of agreements and other work or service fees or debts incurred by or on behalf of the leaseholder; and
- (c) any other amount for the repayment of capital or the payment of interest, service charges or any other cost incurred in relation to loans obtained by or on behalf of the leaseholder by the Minister or other person authorized by the leaseholder.

(Added by No. 52 of 1983.)

8. Compliance with Constitutional requirements.

It is declared that this Act, to the extent that it regulates or restricts—

- (a) the freedom of employment conferred by Section 48 of the Constitution; and
- (b) the right to freedom of movement conferred by Section 52 of the Constitution; and
- (c) the right of protection from unjust deprivation of property conferred by Section 53 of the Constitution,

is a law that is necessary for the public purpose of protecting a State lease of land in the scheme and for the purpose of protecting the exercise of rights and freedoms of other persons, and the compulsory acquisition of a State lease of land or the transportation of a person under this Act is, for the purposes of Sections 38 (*general qualifications on qualified rights*) and 53 (*protection from unjust deprivation of property*) of the Constitution, the *Land Act* and all other laws, for a public purpose that is, in the considered opinion of the Parliament, a reason that is reasonably justified in a democratic society that has a proper respect for the rights and dignity of mankind.

(Added by No. 52 of 1983.)







INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 358.

Land Settlement Schemes (Prevention of Disruption).

APPENDIX.

SOURCE OF THE LAND SETTLEMENT SCHEMES (PREVENTION OF
DISRUPTION) ACT.

Part A.—Previous Legislation.

Land Settlement Schemes (Prevention of Disruption) Act 1976 (No. 77 of 1976)
as amended by—

Land Settlement Schemes (Prevention of Disruption) (Amendment) Act 1983 (No. 52 of
1983).

Part B.—Cross References.

Section, etc., in Revised Edition.	Previous Reference. ¹
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8

¹Unless otherwise indicated, references are to the Act set out in Part A.

