

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 325.

Unclaimed Goods.

GENERAL ANNOTATION.

ADMINISTRATION.

As at 13 February 1976 (the date of gazettal of the most comprehensive allocation of responsibilities to Ministers and Departments at about the effective date), the administration of this Chapter was not vested specifically in any Minister. It seems, therefore, that under Constitution, Section 148(2), it came within the political responsibility of the Prime Minister.

The Chapter does not refer to "the Minister", "the Departmental Head" or "the Department".

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 325.

Unclaimed Goods Act.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 325.

Unclaimed Goods Act.

Being an Act to authorize the disposal of goods accepted in the course of business for repair or other treatment but not redelivered, and certain other goods, and for related purposes.

PART I.—PRELIMINARY.

1. Interpretation.

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

“bailee”, in relation to any goods to which this Act applies of a kind referred to in any paragraph of the definition of that expression in this subsection, means the person first-mentioned in that paragraph, and includes any person to whom the rights and liabilities of the bailee in respect of the goods are vested, whether by operation of law or otherwise;

“bailor” means—

(a) in the case of goods referred to in Paragraph (a) of the definition “goods to which this Act applies” in this subsection—the person from whom the goods were accepted; and

(b) in the case of goods referred to in Paragraph (b) or (c) of that definition—the owner; and

(c) in the case of goods referred to in Paragraph (d) of that definition—the person on whose behalf the goods are held by the bailee;

“goods” means any movable property, other than certificates of titles, deeds and other documents;

“goods to which this Act applies” means—

(a) any goods accepted by a person other than the owner, in the course of a business, for repair or other treatment, on condition (express or implied) that they will be delivered—

(i) to the person from whom they were accepted; or

(ii) in accordance with his directions,

when the repair or other treatment has been carried out and on payment to the bailee of the charges and expenses of the bailee; or

(b) any goods delivered or entrusted to, or accepted by, a person other than the owner, on condition (express or implied) that the person shall, or is entitled to, deliver them to the owner, or is entitled to require the owner to remove or accept them—

(i) at the end of a certain or a reasonable or otherwise determinable period; or

(ii) after a certain or determinable event; or

(iii) in certain or determinable circumstances; or

- (c) any goods seized, or taken possession of under any law, by a person other than the owner, when the purposes of the seizure or taking possession, other than such incidental purposes as can properly be met under this Act, are met; or
- (d) any goods held by a person other than the owner on behalf of another person—
 - (i) for an unreasonable period; or
 - (ii) in circumstances in which the first-mentioned person ought to be allowed to relinquish possession of them;

“notice to treat the dispute as determined” means a notice under Section 5(5).

(2) A reference in this Act to the charges and expenses of the bailee in relation to any goods is a reference to—

- (a) the amount agreed between the bailor and the bailee as the charges and expenses to be paid in connexion with the goods; or
- (b) if no amount has been agreed, a reasonable amount for those charges and expenses,

and, where the goods have been sold, the following additional amounts :—

- (c) a reasonable charge for storing the goods during the period beginning with—
 - (i) the date of the giving of the notice that the goods are ready for delivery; or
 - (ii) where there has been a dispute between the bailor and bailee, the date on which the dispute was determined,
 and ending with the date of the sale; and
- (d) any costs of or in connexion with the sale; and
- (e) the cost, (if any) of insuring the goods.

2. Application.

- (1) This Act binds the State.
- (2) This Act does not apply to unclaimed goods for the disposal of which special provision is made by any other Act.

3. Rights of bailee additional.

The powers conferred on a bailee by this Act are in addition to and not in derogation of his powers under any other law.

PART II.—RIGHT OF SALE.

4. Right of bailee to sell repaired goods not redelivered.

(1) Subject to any agreement between the bailor and the bailee and to this Act, where—

- (a) goods to which this Act applies are ready for delivery; and
- (b) the bailor fails—
 - (i) to pay or tender to the bailee any charges or expenses claimed by the bailee in relation to the goods; and

(ii) to take delivery of the goods or, if the conditions of the bailment so provide, to give directions as to their delivery, the bailee is entitled, while the failure continues, to sell the goods.

(2) Subsection (1) does not apply to goods of a kind referred to in Paragraph (a) or (b) of the definition of "goods to which this Act applies" in Section 1(1) if the bailee had written notice, before accepting the goods, that they were comprised in a hire-purchase agreement that contained a provision prohibiting the creation of a lien by the hirer of the goods.

5. Pre-conditions to exercise of right of sale.

(1) A bailee is not entitled, by virtue of Section 4, to sell any goods to which the Act applies unless—

- (a) subject to Subsection (2), in respect of goods specified in Paragraph (a) of the definition of "goods to which this Act applies" in Section 1(1) there is at all the premises used by the bailee for accepting, in the course of business, goods of the class to which the goods belong (whether or not the goods are accepted at the premises), at the time of the acceptance by the bailee, a notice conspicuously displayed in the part of the premises used, indicating that—
 - (i) the acceptance by the bailee of goods of that class in the course of business is subject to this Act; and
 - (ii) this Act confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than nine months from the date on which the goods are ready for delivery; and
- (b) after the goods are ready for delivery, the bailee gives to the bailor and to every other person whom he knows has, or claims, an interest in the goods a written notice, in accordance with Subsection (8), that the goods are ready for delivery; and
- (c) after the expiration of the period of nine months beginning with the date of giving notice that the goods are ready for delivery, and not less than 14 days before the sale of the goods, the bailee—
 - (i) gives to the bailor and to every other person whom he knows has, or claims, an interest in the goods, a written notice in accordance with Subsection (8), of his intention to sell the goods; and
 - (ii) causes written notice of his intention to do so to be inserted in a newspaper published in, and circulating not less frequently than once a week throughout, the country and in the area in which the premises where the goods were accepted by him from the bailor are situated.

(2) Subsection 1(a) does not apply to any goods accepted before 20 April 1967 (being the date of commencement of the pre-Independence *Unclaimed Goods Act 1966*).

(3) The bailee is not entitled to sell any goods to which this Act applies—

- (a) in a lot in which goods not accepted by him from the bailor are included; or
- (b) otherwise than by public auction.

(4) Where before the giving of the notice of the bailee's intention to sell the goods a dispute arises between the bailor and the bailee by reason of the bailor's refusal—

- (a) to pay any sum that the bailee claims to be due to him by way of his charges and expenses in relation to the goods; or

(b) to take delivery of the goods or give directions for their delivery, on the ground that—

- (c) the charges and expenses are excessive; or
- (d) the bailor is not satisfied that any repair or other treatment of the goods has been properly carried out,

the bailee's right to sell the goods is suspended until the dispute is determined.

(5) Without prejudice to any other mode of determining a dispute, a dispute specified in Subsection (4) shall be treated for the purposes of this Act as having been determined if the bailee, after the dispute has arisen, gives to the bailor a written notice—

- (a) stating that unless, within the period of one month beginning with the date of the giving of the notice, the bailor objects, the dispute will be treated for the purposes of this Act as having been determined; and
- (b) in other respects complying with the requirements of Subsection (8),

and within that period the bailor does not object to the notice.

(6) Where a dispute is to be treated under Subsection (5) as having been determined, it shall be treated as if it had been determined on the date of the giving of the notice under that subsection.

(7) Where a dispute in relation to any goods to which this Act applies is determined (whether by virtue of Subsection (5) or otherwise), Subsection (1) has effect in relation to those goods as if—

- (a) Subsection (1)(b) were omitted; and
- (b) for the reference in Subsection (1)(c) to the date of the giving of the notice that the goods are ready for delivery, there were substituted a reference to the date on which the dispute is determined.

(8) A notice required or authorized by this section to be given by the bailee to the bailor shall contain—

- (a) a sufficient description of the goods to which the notice relates; and
- (b) a statement of the sum that the bailee claims to be due to him by way of his charges and expenses in relation to the goods; and
- (c) in the case of a notice that goods are ready for delivery or a notice to treat the dispute as determined, a statement that if the bailor fails, within the period of nine months beginning with the date of the giving of the notice—
 - (i) to pay the sum and to take delivery of the goods; or
 - (ii) to give directions as to their delivery,they are liable to be sold in accordance with this Act; and
- (d) in the case of a notice of the bailee's intention to sell the goods, a statement—
 - (i) of the date of the giving of the notice that the goods are ready for delivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined; and
 - (ii) that if the bailor fails, within the period of 14 days beginning with the date of the giving of the notice of the bailee's intention to sell the goods—

(A) to pay the sum due and to take delivery of the goods; or

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(B) to give directions for their delivery,
they are liable to be sold in accordance with this Act.

6. Proceeds of sale, etc.

(1) Where any goods are sold under this Act—

- (a) any amount by which the gross proceeds of the sale exceed the charges and expenses of the bailee in relation to the goods is recoverable by the bailor from the bailee; and
- (b) any amount by which the charges and expenses exceed the gross proceeds of the sale is recoverable by the bailee from the bailor.

(2) Where goods are sold under this Act, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars :—

- (a) a sufficient description of the goods; and
- (b) the method, date and place of sale; and
- (c) the name and principal place of business of the auctioneer; and
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges and expenses of the bailee in relation to the goods, and the transaction to which each item relates.

(3) The bailee shall keep the record referred to in Subsection (2), together with a copy of the notice of his intention to sell the goods, for the period of six years beginning with the date on which the record is prepared.

(4) At any reasonable time during the period referred to in Subsection (3), the bailee shall, if so requested by or on behalf of the bailor, produce the record, and the copy of the notice, for inspection by—

- (a) the bailor; or
- (b) any person nominated by the bailor for the purpose; or
- (c) any person having or claiming an interest in the goods.

(5) A person who—

- (a) fails to comply with Subsection (2), (3) or (4); or
- (b) produces for the purposes of any of those subsections a document that is, to his knowledge, false in a material particular,

is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months, or both.

7. Disposal of proceeds after deduction of bailee's charges.

(1) In this section—

“accountable officer” means a person who has, under the *Public Finances (Control and Audit) Act*, the responsibility for receiving public moneys;

“savings bank” means a bank within the meaning of the *Banks and Financial Institutions Act* that is a savings bank.

(2) Where, after any goods have been sold under this Act and the bailee has deducted his charges and expenses in connexion with them, there remains a surplus of moneys in the

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hands of the bailee, the bailee shall, within 14 days after the sale, pay the surplus into a savings bank to the credit of an account to be opened by him for that purpose.

(3) Any such moneys that have not been paid by the bailee to the bailor or to the previous owner of the goods (as the case may be) within 12 months after being credited under Subsection (1) shall, within 14 days after the expiration of that period, be paid by the bailee, together with any interest on it, to an accountable officer to be placed to the credit of the Unclaimed Moneys Fund under the *Unclaimed Moneys Act*.

PART III.—EFFECT OF SALE.

8. Buyer of goods sold under this Act to acquire a good title.

(1) The buyer of any goods sold by a bailee in the exercise or purported exercise of his powers under this Act acquires a good title to the goods if he buys them in good faith and without notice—

- (a) of any defect or want of title in the bailor; and
- (b) of any failure by the bailee to comply with any of the provisions of this Act.

(2) In any proceedings by or against the bailee in respect of any goods sold under this Act, the burden of proof that the provisions of this Act relating to the sale of the goods have been complied with is on him.

9. Rights of actual owner of goods sold under this Act.

Where the bailor of any goods is not the owner and the goods are sold by the bailee in the exercise or purported exercise of his powers under this Act without written notice by the bailee to the owner, the owner is not entitled to the return of the goods but has the same rights in respect of the proceeds of the sale of the goods as he would have had in respect of the goods if the property had not passed to the buyer by virtue of this Act.

PART IV.—SPECIAL PROVISIONS IN CERTAIN CASES.

10. Special provisions applicable to sales of motor cars.

(1) Where the bailee of any motor vehicle within the meaning of the *Motor Traffic Act* intends to sell the vehicle under this Act, he shall, not less than one month before the intended sale, give the Commissioner of Police written notice of his intention to do so, together with particulars of—

- (a) the make, model, type, colour, registration number, chassis number (where applicable), body number (where applicable) and engine number of the motor vehicle; and
- (b) how and when it came into his possession.

(2) On receipt of notice and particulars under Subsection (1), the Commissioner of Police shall—

- (a) cause a search to be made of the records in his custody; and
- (b) forward to the bailee a certificate, whether or not the motor vehicle referred to is recorded as stolen.

(3) A bailee of a motor vehicle who sells the vehicle under this Act without having first obtained from the Commissioner of Police a certificate under Subsection (2)(b) is guilty of an offence.

Penalty: A fine not exceeding K200.00 or imprisonment for a term not exceeding three months, or both.

(4) In any proceedings arising out of the sale of a motor vehicle under this Act, a certificate purporting to be signed by the Commissioner of Police to the effect that any motor vehicle was or was not, at any time stated in the certificate, recorded as being stolen, is prima facie evidence of the facts stated in the certificate.

PART V.—MISCELLANEOUS.

11. Service of notice.

A notice required or authorized by this Act to be given by a bailee may be given—

- (a) by posting it to or delivering it personally to the person to whom it is to be given; or
- (b) by leaving it at that person's last known or usual place of abode or business with some other person apparently an inmate of or employed at that place and apparently not less than 16 years of age; or
- (c) in any other manner approved in any particular case by a Magistrate Grade III. or IV.

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Unclaimed Goods.

APPENDIX.

SOURCE OF THE UNCLAIMED GOODS ACT.

Part A.—Previous Legislation.

Unclaimed Goods Act 1966 (No. 74 of 1966).

Part B.—Cross References.

| Section, etc., in Revised Edition. | Previous Reference ¹ . | Section, etc., in Revised Edition. | Previous Reference ¹ . |
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| 1 | 5 | 7 | 11 |
| 2 | 4 | 8 | 12 |
| 3 | 7 | 9 | 13 |
| 4 | 8 | 10 | 14 |
| 5 | 9 | 11 | 6 |
| 6 | 10 | | |

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

