

INDEPENDENT STATE OF PAPUA NEW GUINEA.

CHAPTER NO. 268.

Vagrancy.

GENERAL ANNOTATION.

ADMINISTRATION.

The administration of this Chapter was vested in the Minister for Justice 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.

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CHAPTER NO. 268.

Vagrancy Act.

ARRANGEMENT OF SECTIONS.

1. Interpretation—
 - "Court"
 - "district"
 - "exclusion order"
 - "home"
 - "policeman"
 - "prohibited area"
 - "town".
2. Powers of police.
3. Exclusion orders.
4. Application for variation of order.
5. Offences.
6. Special provisions relating to non-citizens.

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Vagrancy Act.

Being an Act to regulate or restrict a right or freedom referred to in Subdivision III.3.C of the Constitution namely the right to freedom of movement conferred by Section 52 of the Constitution for the purpose of giving effect to the public interest in public order and public welfare taking into account the National Goals and Directive Principles and the Basic Social Obligations and in particular the following Directive Principles and Social Obligations :—

- (a) integral human development; and
- (b) traditional villages and communities to remain as viable units in Papua New Guinea society; and
- (c) each person to work according to his talents in socially useful employment; and
- (d) each person to respect the rights and freedoms of others,

made in accordance with Section 38 (*general qualifications on qualified rights*) of the Constitution.

1. Interpretation.

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

“Court” means any court other than a village court;

“district” means an administrative area so called;

“exclusion order” means an order under Section 3;

“home”, in relation to a person, means—

- (a) the place (if any) where he has resided continuously during the period of five years next preceding the laying of any information against him; or
- (b) an area of customary land on which he may, by custom, build or occupy a house or garden, whether in his own right or in right of his wife or some other relation; or
- (c) an area of customary land owned by a linguistic or cultural group with which he or his wife has customary affiliations involving usage rights in land; or
- (d) an area of land leased for a term of not less than 12 months or held in freehold by him or his wife under a law in force in the country; or
- (e) while he is under the control, by custom or otherwise of another person—any residence of that person; or
- (f) in a particular case where the provisions of Paragraph (a), (b), (c), (d) or (e) are inapplicable—any other place with which he or his wife has connexions such that it should, in the opinion of the Court, be reasonably regarded as his home;

“policeman” means a member of the Police Force;

“prohibited area”, in relation to a person the subject of an exclusion order, means the town, province or district specified in that order as the town, province or

district that the person shall leave or remain out of in accordance with the order; "town" includes city.

- (2) For the purposes of this Act, a person believes a thing on reasonable grounds if—
- (a) he personally has that belief; and
 - (b) there are reasonable grounds for that belief.

2. Powers of police.

- (1) Where a policeman believes on reasonable grounds that a person in a town—
- (a) has no lawful means of support; or
 - (b) does not have sufficient lawful means of support,

he may—

- (c) apply to a Court for the issue of a summons directing that person to appear before the Court at the time specified in the summons; or
- (d) where he considers that it would not be practicable to apply for a summons under Paragraph (c)—arrest the person and take him to the nearest police station,

in order that the person may be dealt with under Section 3.

(2) Where a person has been arrested under Subsection (1) and taken to a police station, the officer-in-charge of the police station shall take the person or cause him to be taken before a Court without delay.

3. Exclusion orders.

(1) Where a person appears or is brought before a Court, and that person fails to satisfy the Court that he has—

- (a) lawful means of support; or
- (b) sufficient lawful means of support,

the Court may make an order against that person.

(2) Subject to Subsection (3), an order under Subsection (1) may require the person named in the order to—

- (a) leave the town in which he was found or the province or district in which that town is located; and
- (b) remain out of the town, province or district, as the case may be, for such period not exceeding six months as is specified in the order.

(3) Before making an order under Subsection (2), the Court shall satisfy itself that—

- (a) the person does not have a home in the town, province or district from which it is proposed to exclude him; or
- (b) that the person has a home in another town, province or district.

(4) For the purposes of Subsection (3)—

- (a) the relevant facts shall be ascertained as at the date of making the order; and
- (b) a temporary absence not exceeding two years shall not affect continuity of residence.

(5) An order under this section may be made subject to conditions including a condition that the person shall comply with the order to leave the prohibited area within

such time as is specified in the order unless before the expiration of that time he obtains lawful employment in the area.

4. Application for variation of order.

(1) A person who is subject to an exclusion order may apply to a Court for a variation of the order on any or all of the following grounds:—

- (a) that he requires medical or hospital treatment; or
- (b) that a member of his family is suffering illness or other hardship that requires his presence; or
- (c) that he has business of an urgent nature that requires his presence; or
- (d) that he has received an offer of employment; or
- (e) that for any other reason the terms of the order should be varied.

(2) Where an application for a variation of an order is made under Subsection (1), the Court shall consider the matter, and, if it considers that the order should be varied, it shall refer the matter to the Court that made the original order together with its recommendations and the reasons for its recommendations.

(3) The Court to which the matter is referred under Subsection (2) shall consider the recommendations as soon as practicable after the referral and, where it considers that the order should be varied, it shall vary the order accordingly, and it may impose conditions on that variation.

(4) Where, prior to varying an order under Subsection (3) the Court considers it necessary to do so, it may direct that the person making the application be brought before it for examination.

(5) In relation to any matter under this section Courts shall endeavour to communicate to one another by the fastest practical means including radio and telephone.

5. Offences.

(1) Subject to Subsection (2), a person who fails or refuses to—

- (a) obey a summons issued under Section 2 (1) (c); or
- (b) obey an exclusion order; or
- (c) comply with any condition of an exclusion order; or
- (d) comply with a direction under Section 4 (4),

is guilty of an offence.

Penalty: Imprisonment for a term not exceeding six months.

(2) It is a defence to a charge of an offence against Subsection (1) (b) or (c) if the defendant proves that at the relevant time his failure to—

- (a) obey an exclusion order; or
- (b) comply with a condition of an exclusion order,

was caused by the fact that—

- (c) he required urgent medical or hospital treatment and for that reason he was unable to obey or comply with the order or condition; or
- (d) he was complying with a direction under Section (4) (4); or

(e) he, having been served with legal process requiring his attendance before a Court or tribunal in the area to which an exclusion order relates, was in the area for the purpose of his attendance.

(3) It is a defence to a charge of an offence against Subsection (1) (d) if the defendant proves that at the relevant time his failure to comply with a direction under Section 4 (4) was caused by the fact that—

(a) he required urgent medical or hospital treatment and for that reason he was unable to obey or comply with the direction; or

(b) he, having been served with legal process requiring his attendance before a Court or tribunal in the area to which an exclusion order relates, was in the area for the purpose of his attendance; or

(c) he has withdrawn his application for a variation of the order and has notified the Court accordingly.

6. Special provisions relating to non-citizens.

(1) Where a Court, in respect of a person who is not a citizen, is satisfied as to the matters specified in Section 3 (1) (a) or (b) it may, instead of making an order under Subsection (1) of that section—

(a) commit the person to custody; or

(b) order that the person be released on his own recognizance, with or without sureties, to appear before the Court at a date and time specified in the order,

and refer the matter to the Minister responsible for migration matters.

(2) Where a person is committed to custody under Subsection (1), that person shall, where no action has been taken by the Minister responsible for migration matters, be brought before the Court again within 14 days after his committal.

(3) Where a person—

(a) is brought before a Court under Subsection (2); or

(b) appears before a Court in accordance with the terms of the recognizance on which he was released,

the Court shall review the matter and may—

(c) make an order under Section 3 (1); or

(d) commit the person to custody for a period not exceeding 14 days; or

(e) order that the person be released on his own recognizance, with or without sureties, to appear before it on a date and time specified in the order.

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APPENDIX.

SOURCE OF THE VAGRANCY ACT.

Part A.—Previous Legislation.

Vagrancy Act 1977 (No.16 of 1977).

Part B—Cross References.

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

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

