

No. 26 of 1991.

Criminal Law (Compensation) Act 1991.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Criminal Law (Compensation) Act 1991,

Being an Act to provide for the making of compensation orders in criminal cases, and for related purposes.

1. INTERPRETATION.

In this Act, unless the contrary intention appears—

“**Chief Probation Officer**” means the person appointed as such under the *Probation Act 1979*, or his delegate for the purposes of this Act;

“**compensation order**” means an order for compensation made under Section 5;

“**court**” means the National Court or a District Court;

“**means assessment report**” means a report under Section 4;

“**offender**” means a person convicted of an offence;

“**relative**” means father, mother, brother or sister.

2. COMPENSATION AS PUNISHMENT.

(1) Notwithstanding that payment of compensation is not specified as a punishment for an offence, a court may, in addition to any other punishments imposed, order an offender to pay compensation in accordance with this Act.

(2) When a court is considering the punishment or punishments to be imposed for an offence, it shall also consider whether in the circumstances of the case, compensation should be ordered.

3. FACTORS TO BE CONSIDERED IN MAKING COMPENSATION ORDERS.

(1) Where a court is deciding whether to make an order of compensation under Section 2, or is deciding upon the compensation to be ordered under Section 5, it shall take into account the following factors:—

- (a) the nature and seriousness of the offence;
- (b) the degree and nature of any personal injury or damage to property suffered by any person as a result of the commission of the offence;
- (c) any factors regarding the commission of the offence or the offender's attitude which may be considered in mitigation or aggravation of the punishment;
- (d) any relevant custom regarding compensation, including but not limited to—
 - (i) any custom regarding the nature, the amount, the method of payment and the appropriate person or persons to be paid the compensation; and
 - (ii) any custom which relates the amount of compensation to the age or life expectancy of the person suffering injury or loss;
- (e) the information provided in the means assessment report, including any recommendations made by the Chief Probation Officer in the means assessment report;
- (f) any other relevant matter.

(2) In considering a matter under this section, a court is not bound to apply the technical rules of evidence but may act on such information as is available to it.

4. MEANS ASSESSMENT REPORT.

(1) Where a court considers that an order for compensation should be made, it shall—

- (a) request the Chief Probation Officer to furnish to the court a means assessment report in respect of the offender; and
- (b) order the offender to report to the Chief Probation Officer in order to determine the person's means and financial circumstances.

(2) Upon receiving a request under Subsection (1), the Chief Probation Officer shall—

- (a) interview the offender and his immediate relatives and report to the court on the means and financial circumstances of the offender; or
- (b) advise the court that it is not practicable for him to furnish the report.

(3) A means assessment report may include a recommendation by the Chief Probation Officer as to the amount, nature and method of payment of the

compensation to be ordered and any other matters in relation to the order which he considers relevant.

(4) Where the Chief Probation Officer advises the court that it is not practicable for him to furnish a means assessment report, the court may proceed under this Act without one.

5. COMPENSATION ORDERS.

(1) Upon receipt of the means assessment report or the Chief Probation Officer's advice under Section 4(2), the court may, after taking into account the factors specified in Section 3–

- (a) order the offender to pay, within such period and in such manner as the court determines, compensation to a person or group of persons specified in the order; and
- (b) direct the Chief Probation Officer to supervise compliance with the compensation order.

(2) Subject to Subsection (3), compensation may be ordered in the form of cash, goods, services or any other kind or method of compensation which the court considers appropriate.

(3) No compensation ordered under this Act–

- (a) shall include the use or payment of alcohol; and
- (b) whether in the form of cash, goods, services or any other kind or method of compensation shall exceed in value K5,000.00,

and the value of any form of compensation other than cash shall be as determined by the court.

6. TERMS OF COMPENSATION ORDERS.

¹(1) A compensation order shall–

- (a) specify the nature and amount of the compensation to be paid; and
- (b) specify a default penalty in accordance with Schedule 1; and
- (c) specify the person or group of persons to whom the compensation is to be paid; and
- (d) specify the date by which and the manner in which the compensation is to be paid.

(2) A person who, without reasonable excuse (proof of which is on him) contravenes or fails to comply with a term of a compensation order, is guilty of an offence.

¹ Section 6 repealed and replaced by *Criminal Law (Compensation) (Amendment) Act 1992* (No. 4 of 1992).

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

(3) If, on information, it appears to a court that person has committed a breach of or has failed to comply with a term of a compensation order, the court may—

- (a) issue a summons requiring the person to appear before it; or
- (b) where the information is on oath—issue a warrant for his arrest.

7. ADDITIONAL CONDITIONS.

(1) A compensation order shall contain a condition that the offender shall report to the Chief Probation Officer at or within a specified time or times.

(2) A person who, without reasonable excuse (proof of which is on him), contravenes or fails to comply with the reporting condition of a compensation order, is guilty of an offence.

Penalty: A fine not exceeding K400.00 or imprisonment for a term not exceeding six months.

(3) If, on information, it appears to a court that a person has committed a breach of or has failed to comply with, the reporting condition of a compensation order, the court may—

- (a) issue a summons requiring the person to appear before it; or
- (b) where the information is on oath—issue a warrant for his arrest.

8. VARIATION, ETC., OF COMPENSATION ORDERS.

(1) A court may, on application by the Chief Probation Officer, discharge or vary the terms of a compensation order.

(2) Subject to Subsection (3), the Chief Probation Officer may apply to a court for suspension or variation of a compensation order on the grounds of a change in the financial circumstances of the offender against whom the compensation order was made.

(3) An application under Subsection (2) shall be made to a court exercising the same jurisdiction as the court that made the compensation order.

(4) On the hearing of an application under this section, the court, having regard to the information before it in relation to the offender, may—

- (a) vary any terms of the compensation order; or
- (b) impose any additional terms on the compensation order; or
- (c) discharge the compensation order.

9. SAVING OF OTHER ACTS.

Nothing in this Act operates to affect the provisions of any other Act in relation to compensation.

10. REGULATIONS.

The Head of State, acting on advice, may make regulations not inconsistent with this Act prescribing all matters that by this Act are permitted or required to be prescribed or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

SCHEDULE 1 – DEFAULT PENALTIES.

Sec. 6.

1. Where compensation is in the form of cash, the default penalty shall be as shown in the following table:–

Value of compensation	Default term of imprisonment
Not exceeding K500.00	1 month
Exceeding K500.00 but not exceeding K1,000.00	2 months
Exceeding K1,000.00 but not exceeding K3,000.00	3 months
Exceeding K3,000.00	6 months

2. Where compensation comprises or includes goods other than cash, the default penalty shall be in the discretion of the court, but in any case shall not exceed six months.

Office of Legislative Counsel, PNG