

No. 37 of 1984.

Industrial Development (Wages Subsidy) Act 1984.

Certified on: 6/12/1984.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 37 of 1984.

Industrial Development (Wages Subsidy) Act 1984.

ARRANGEMENT OF SECTIONS.

PART 1 – PRELIMINARY.

1. Interpretation.
 - “Certificate”
 - “Commission”
 - “import quota without parity pricing”
 - “Interim Certificate”
 - “minimum wage”
 - “new business”
 - “new manufactured product”
 - “New Product Manufacturing Certificate”
 - “permanently employed”
 - “Review Tribunal”
 - “subsidy period”
 - “tariff protection”
 - “this Act”
2. Administration.
3. Delegation.
4. Declaration of New Manufactured Products.
5. Application for Certificate.
6. Grant of Certificate.
7. Objection Against Disallowance of Application.
8. New Business to Manufacture Only New Manufactured Product.
9. Records, etc.
10. Cancellation of Certificate.
11. Objections Against Cancellation of Certificate.

PART 2 – OBJECTIONS AND APPEALS.

12. Review Tribunal.
13. Reference to the Review Tribunal.

PART 3 – SUBSIDY PAYMENT.

14. Subsidy Period.
15. Calculation of Subsidy.
16. Claim for Subsidy.
17. Payment of Subsidy.
18. Refund of Subsidy Payments.
19. Penalty for Late Payment.

PART 4 – MISCELLANEOUS.

20. Verification of Statements.
21. Secrecy.
22. Circumstances in which Certificate Lapses.
23. Regulations.

INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Industrial Development (Wages Subsidy) Act 1984,

Being an Act providing for incentives to new businesses and for other purposes, to be incorporated and read as one with the *Income Tax Act 1959*,

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.

PART 1. – PRELIMINARY.

1. INTERPRETATION.

In this Act, unless the contrary intention appears –

“**Certificate**” means a New Product Manufacturing Certificate;

¹“**Commission**” means the Independent Consumer and Competition Commission established under the Independent Consumer and Competition Commission Act 2002.

²“**import quota without parity pricing**” occurs where a company manufactures a product for which an import quota exists and for which there does not exist any written agreement between the company and the State tying the domestic price to the price of actual or potential imports, or in the case of price controlled product where the maximum domestic price as set by the Commission is not tied to the price of actual or potential imports;

“**Interim Certificate**” means an Interim Certificate issued under Section 7(2);

¹ Section 1 Amended by No. 6 of 2002.

² Section 1 Amended by No. 6 of 2002.

“minimum wage” means the minimum wage set by the Minimum Wages Board under the *Industrial Relations Act 1962* and –

- (a) in urban areas shall be the minimum wage payable to general labourers over 19 years of age in that location; and
- (b) in rural areas should be the minimum rural wage;

“new business” means a business in relation to which a Certificate or an Interim Certificate is in force, or, for the purposes of Section 18, has been in force;

“new manufactured product” means a product declared to be a new manufactured product under Section 4;

“New Product Manufacturing Certificate” means a Certificate in force under Section 6;

“permanently employed” means continual employment within the particular new business for a period not less than one calendar month within the period of three months immediately preceding the claim for subsidy;

“Review Tribunal” means a person appointed by the Minister under Section 12;

“subsidy period” in relation to a new business means the period of time referred to in Section 14 that is applicable to the new business;

“tariff protection” occurs where the tariff on the finished product exceeds by 15% or more the weighted average of the tariff on the component parts;

“this Act” includes Regulations.

2. ADMINISTRATION.

The Chief Collector has the general administration of this Act and may exercise such powers and functions as are conferred on him or as are prescribed and shall include –

- (a) the determination and publication of the list of new products provided for under Section 4; and
- (b) the issue of Certificates under Section 6.

3. DELEGATION.

The Chief Collect may, by writing under his hand, delegate all or any of his powers and functions under this Act except this power of delegation.

³ Section 1 Amended by No. 6 of 2002.

4. DECLARATION OF NEW MANUFACTURED PRODUCTS.

(1) The Chief Collector may, by notice in the National Gazette, declare a product to be a new manufactured product, for the purposes of issuing a Certificate under Section 6.

(2) A declaration under Subsection (1) may be made by reference to a list of categorized products or industries.

5. APPLICATION FOR CERTIFICATE.

(1) A company which intends to produce a new manufactured product which is not subject to –

- (a) quota protection without import parity pricing; or
- (b) tariff protection,

may apply to the Chief Collector for the issue of a New Product Manufacturing Certificate.

(2) An application for a Certificate shall –

- (a) be in the prescribed form; and
- (b) contain the prescribed particulars and such other information as the Chief Collector in any particular case requires.

6. GRANT OF CERTIFICATE.

(1) Subject to this Section and Section 7, the Chief Collector shall consider an application under Section 5 within 21 days of receiving the application, and issue to the applicant either –

- (a) a Certificate in the prescribed form; or
- (b) a formal notice refusing the application.

(2) The Chief Collector shall notify in the National Gazette the granting of a Certificate.

(3) A Certificate may be made subject to such conditions as the Chief Collector thinks proper.

(4) A Certificate shall not be issued –

- (a) otherwise than to a corporation incorporated under the *Companies Act 1997*; and
- (b) unless the Chief Collector is satisfied that the applicant manufactures or intends to manufacture a new manufactured product.

(5) A Certificate is effective with effect from the first day of the month preceding the lodging by the new business of the first claim for subsidy.

7. OBJECTION AGAINST DISALLOWANCE OF APPLICATION.

(1) A person who is in receipt of a formal notice disallowing his application may, within 30 days, lodge with the Chief Collector an objection to the disallowance of his application together with a fee of K20.00.

(2) On receipt of an objection under Subsection (1), where the objection is accompanied by a fee of K20.00, the Chief Collector shall –

- (a) forward the objection to the Review Tribunal; and
- (b) issue to the applicant an Interim Certificate which shall remain in force until such time as the objection has been finalized.

(3) The Review Tribunal shall deal with an objection forwarded to it under Subsection (2) in the manner provided in Section 13.

8. NEW BUSINESS TO MANUFACTURE ONLY NEW MANUFACTURED PRODUCT.

During its incentive period a new business shall not carry on any industry other than the manufacture of any new manufactured product in respect of which it holds a Certificate, except with the prior consent of the Chief Collector, who may impose such terms and conditions as he thinks proper.

9. RECORDS, ETC.

A new business shall keep such books and records and shall, from time to time, furnish such information and accounts to such persons and authorities as are prescribed, or as the Chief Collector in any particular case directs.

10. CANCELLATION OF CERTIFICATE.

(1) Where –

- (a) application is made by or on behalf of a new business for the cancellation of its Certificate; or
- (b) the conditions of the Certificate are not complied with; or
- (c) the Certificate was obtained wholly or partly by virtue of a false or misleading statement; or
- (d) a provision of this Act is contravened in relation to the new business; or
- (e) the new business ceases to be a corporation,

the Chief Collector may, after giving the new business a reasonable opportunity to make any written representations that it may desire to make, cancel the Certificate.

(2) Where a Certificate is cancelled on the ground provided by Subsection (1)(c), the Chief Collector may direct that the cancellation shall have effect as though the Certificate had not been issued in the first instance.

11. OBJECTIONS AGAINST CANCELLATION OF CERTIFICATE.

(1) A person aggrieved by an act or decision of the Chief Collector under Section 10 may, within 30 days, lodge with the Chief Collector an objection in writing against the cancellation, stating fully and in detail the grounds on which he relies together with a fee of K20.00 and request the Chief Collector either –

- (a) to refer the decision to the Review Tribunal; or
- (b) to treat his objection as an appeal and to forward it to the National Court.

(2) An objection lodged under this Section shall be referred by the Chief Collector to the Review Tribunal or the National Court in accordance with the request made under Subsection (1).

- (3) Upon reference to the Review Tribunal or an appeal to the National Court –
- (a) the person who made the objection is limited to the grounds stated in his objection; and
 - (b) the burden of proving that the Certificate should not have been cancelled lies on that person.

PART 2. – OBJECTIONS AND APPEALS.**12. REVIEW TRIBUNAL.**

⁴The Review Tribunal for the purposes of this Act shall be the Review Tribunal appointed for income tax reviews pursuant to Section 240 of the *Income Tax Act 1959*.

13. REFERENCE TO THE REVIEW TRIBUNAL.

(1) For the purposes of determining an objection lodged under Section 7 or 11, the Review Tribunal has, subject to this section, all the powers and functions of the Chief Collector in the granting of a Certificate and the decision of the Review Tribunal upon an objection, shall for all purposes (except for the purpose of objection) be deemed to be the decision of the Chief Collector.

(2) On receipt of an objection under Section 7 or 11, the Review Tribunal shall, subject to this section, make such inquiry in relation to it as the Review Tribunal thinks necessary or desirable.

(3) A submission made or required to be made to the Tribunal shall be made –

- (a) by statutory declaration; or
- (b) orally on oath or affirmation

(4) Section 37 of the *Interpretation Act 1975*(Chapter 2) applies to and in relation to proceedings before the Review Tribunal as if the Review Tribunal were a person authorized by law to hear and determine a matter and a person making a submission to the Review Tribunal was the witness legally called.

(5) Upon a reference to the Review Tribunal, it shall give a decision in writing and may –

- (a) in respect of an objection under Section 7 either –
 - (i) issue a Certificate effective from the date on which the Interim Certificate was issued; or
 - (ii) confirm the Chief Collector’s formal notice of disallowance; or
- (b) in respect of an objection under Section 11 either –
 - (i) set aside the Chief Collector’s decision to cancel the certificate; or
 - (ii) confirm the cancellation under Section 10.

⁴ Section 12 Substituted by No. 32 of 2003, s. 1.

PART 3. – SUBSIDY PAYMENT.

14. SUBSIDY PERIOD.

The subsidy offered to a new business extends from the date on which the Certificate is first issued or first becomes effective, whichever is the later date, and ends on the fifth anniversary of that date.

15. CALCULATION OF SUBSIDY.

(1) The new business is eligible to apply for a monthly subsidy payment calculated as follows: –

$$a \times b \times c$$

where –

a = the number of citizens permanently employed by the new business; and

b = the minimum wage; and

c = the applicable percentage provided for in Subsection (3).

(2) The minimum wage applicable is that applicable to the location in which the employment is exercised.

(3) The percentage of minimum wage payable as a monthly subsidy throughout the subsidy period shall be as follows: –

First year of subsidy period	40%
Second year of subsidy period	30%
Third year of subsidy period	20%
Fourth year of subsidy period	15%
Fifth year of subsidy period	10%

16. CLAIM FOR SUBSIDY.

A new business qualifying for the payment of a subsidy calculated in terms of Section 15 shall –

- (a) prepare a statement containing –
 - (i) the name of each employee in respect of which the amount of the subsidy is being claimed; and
 - (ii) the location at which each employee was employed; and
 - (iii) the date on which each new permanent employee commenced; an

- (b) not later than the seventh day of the month following the month in respect of which the subsidy is being claimed furnish to the Chief Collector the statement required under Paragraph (a) together with –
- (i) a statement of the total number of employees; and
 - (ii) a statement of the total salary or wages paid in the preceding month; and
 - (iii) a statement of the total salary or wages tax deductions made from employees' salaries or wages in the preceding month; and
 - (iv) payment of the total amount of deductions made in the preceding month,

as required by Section 299G of the *Income Tax Act 1959*.

17. PAYMENT OF SUBSIDY.

Where the Chief Collector receives from a new business a claim for subsidy in respect of the salary or wages paid in the preceding month, the Chief Collector shall assess the amount of the subsidy and pay the new business that amount out of the Consolidated Revenue Fund, which is appropriated accordingly.

18. REFUND OF SUBSIDY PAYMENTS.

(1) Notwithstanding this Act, where a Certificate is cancelled the new business shall refund to the Chief Collector –

- (a) where the Certificate was cancelled under Section 10(1)(a), (b), (d) or (e) – the total amount of the subsidy received after the date of the application, non-compliance, contravention or cessation, as the case may be, giving rise to the cancellation; or
- (b) where the Certificate was cancelled under Section 10(1)(c) – the total amount of the subsidy received.

(2) Where an Interim Certificate issued under Section 7 expires as the result of a decision of the Review Tribunal under Section 13(5)(a)(ii), the objecting new business shall refund to the Chief Collector the total amount of the subsidy received.

(3) A refund payable under this section is a debt due to the State and may be recovered in a court by proceedings commenced in the name of the Chief Collector.

19. PENALTY FOR LATE PAYMENT.

(1) Where an amount becomes due under Section 18 the due date for repayment of the subsidy is deemed to be the fourteenth day following the day on which the Certificate or Interim Certificate was cancelled and interest is due and payable at the rate of 20% per annum on that amount.

(2) The Chief Collector may, in any case, for reasons that he thinks sufficient, remit the interest or any part of that interest.

PART 4. – MISCELLANEOUS.

20. VERIFICATION OF STATEMENTS.

All applications, statements, representations or information made or furnished to the Chief Collector under or for the purposes of this Act shall, if the Chief Collector so requires, be verified by statutory declaration in such form as the Chief Collector requires or as is prescribed.

21. SECRECY.

A person who acts or has acted under this Act and who, otherwise than in the performance of his duty under this Act, makes a record of, or divulges to any person, other than a person to whom he is authorized by law to divulge it, any information acquired by him in the course of his duty under this Act, is guilty of an offence.

Penalty: A fine not exceeding K200.00

22. CIRCUMSTANCES IN WHICH CERTIFICATE LAPSES.

Where, in respect of a new manufactured product –

- (a) more than one Certificate is issued; and
- (b) a claim for subsidy under this Act is made in respect of one or more of the Certificates,

a Certificate, in respect of which no claim is made within a period of two years from the date of the first claim under Paragraph (b), shall lapse, unless the Chief Collector is satisfied that reasonable progress towards production has been made.

23. REGULATIONS.

The Head of state, acting on advice, may make regulations, not inconsistent with this Act, prescribing all 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 K40.00 for offences against the regulations.

Office of Legislative Counsel, PNG