

No. 1 of 1958.

Transactions with Natives Act 1958.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Transactions with Natives Act 1958,

An Act to regulate certain transactions which affect Natives.

Note Parts of this Act may have been *impliedly* repealed by later Acts, in particular the *Employment Act 1978* (Now Chapter 373 of the Revised Laws).

1. **SHORT TITLE.**

This Act may be cited as the *Transactions with Natives Act 1958*.

2. **COMMENCEMENT.**

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3. **REPEAL.**

The Acts specified in Schedule 1 of this Act are repealed.

4. **DEFINITIONS.**

In this Act, unless the contrary intention appears—

“**authorized officer**” means a District Officer or an officer appointed in writing by the Director to be an authorized officer for the purposes of this Act;

“**contract**” means any contract to which a native is a party;

“**job contract**” means a contract for the performance of a piece of work by a native or natives, other than a contract which creates the relationship of master and servant between the parties or two or more of them;

“**the Director**” means the Director of Native Affairs;

“the Regulations” means the Regulations made under this Act;

“this Act” includes the Regulations.

5. INSPECTION.

(1) For the purposes of Parts XI (other than Section 134), XII and XIII (other than Sections 150, 152, 155 and 156) of the *Native Employment Act* 1958, a job contract shall be deemed to be an agreement under that Act and a native who has contracted to do the work the subject of the contract to be an employee and the other party an employer within the meaning of that Act.

(2) For the purposes of Part V, Section 67 and Division 2 of Part VIII of the *Native Employment Act* 1958 employment under a job contract shall be deemed to be employment as a casual worker under than Act.

6. CERTAIN CONTRACTS TO BE UNENFORCEABLE AS AGAINST NATIVES UNLESS CERTAIN REQUIREMENTS FULFILLED.

(1) Subject to this section, a contract is unenforceable as against any party thereto, unless the contract is in writing and contains the full names and residences of every party thereto and what is to be done under the contract by each of those persons and, in the case of a job contract or a contract to which the Minister declares, by notice in the [National] Gazette, that the provisions of this subsection apply, unless the contract is approved by an authorized officer.

(2) The provisions of the last preceding subsection do not apply to—

(a) a job contract—

- (i) which is to be performed within one month from the making thereof;
- (ii) which is to be performed on not more than two days in each week and within one year from the making thereof; or
- (iii) the total consideration for which passing to the native parties who have contracted to do the work the subject of the contract does not exceed K100.00;

(b) a contract other than a job contract the consideration for which passing to or from a native or natives does not exceed K100.00; or

(c) a contract to which the Minister, by notice in the [National] Gazette, declares that the provisions of that subsection do not apply.

(3) A District Administrator or District Officer may, by notice in writing, exempt a person from the provisions of Subsection (1) of this section in relations to job contracts, and thereupon that subsection does not apply to a job contract entered into by that person.

(4) An exemption under that last preceding subsection may be made subject to such conditions and limitations or may apply to such job contract or class of classes of job contracts or to job contracts with such native or natives or such class or classes of

natives as to the District Administrator or District Officer making the exemption seems fit.

(5) The exercise of the powers of an authorized officer shall be subject to any directions given by the Director, but is otherwise in the discretion of the authorized officer.

7¹. **[REPEALED.]**

8. **IF ACTION BROUGHT ON SUCH CONTRACT COURT MAY DECIDE CASE ON MERITS.**

²If an action is brought upon a contract by a party to the contract against another party to the contract, the Court which hears the action may, whether the contract has been completely executed by all parties thereto or not, ignore the terms of the contract and give such a verdict as the Court considers equitable.

9. **COURT MAY MAKE ORDERS CONCERNING JOB CONTRACT.**

Where it appears to the National Court, a District Court that in the interests of the welfare of a native party to a job contract the contract should be terminated or varied in any way, or that the contract or the manner of its performance is in any way unjust, inequitable or unconscionable against a native party, the Court may, whether or not the contract has been completely executed by all the parties thereto or not, make such order as to termination or variation and as to the rights of the parties to the contract as it considers equitable.

10. **POWER OF INSPECTION, ETC.**

(1) For the purposes of this Act, an authorized officer, Inspector under the *Native Employment Act* 1958, Medical Officer, Medical Assistant authorized in writing by the Director of Public Health or officer authorized in writing by the Director may, subject to the next succeeding subsection, at all reasonable times and with or without notice to any person—

- (a) enter upon or into and inspect any premises, land, place, building, mine, vehicle, vessel or aircraft used or kept for use or believed or suspected to be used or kept for use by job contract worker;
- (b) examine a person who is or is believed or suspected to be a job contract worker;
- (c) question any person in regard to any matter which in his opinion affects or may affect the employment, safety, health or welfare of a job contract worker; and

¹ Section 7 repealed by Act No. 32 of 1963, s4.

² Section 8 repealed and replaced by Act No. 32 of 1963, Section 5.

(d) require any person to produce any document in his possession or control in any way relating to a job contract worker, and take a copy of or extract from any such document.

(2) A mine shall not be entered or inspected under the last preceding subsection by a person other than a qualified inspector of mines or mining engineer except in the presence of a qualified inspector of mines or mining engineer.

(3) A person shall not hinder or obstruct a person in the exercise of his powers or the performance of his functions under this section, or refuse or fail to answer a question or produce a document required under this section.

Penalty: K200.00.

11. RESTRICTION ON CERTAIN TRANSACTIONS.

(1) The Minister may, by notice in the [National] Gazette prohibit either absolutely or subject to such conditions as are specified in the notice—

- (a) the giving to a native of goods or commodities in lieu of payment or tender in money for services rendered or to be rendered or goods or commodities supplied by the native;
- (b) the payment or giving to a native of money, goods or commodities in advance for goods or commodities to be supplied by the native; or
- (c) the selling or giving to a native of goods or commodities on credit.

(2) A notice under the last preceding subsection may be in general terms or may be limited to particular persons or to natives from or in any village, area or town specified in the notice.

(3) A person shall not contravene or fail to comply with the provisions of a notice under this section.

Penalty: K100.00 or imprisonment for three months.

12. EXEMPTION OF CERTAIN NATIVES.

(1) Upon the application of a native the Director may, by notice in writing, exempt him from the operation of any or all of the provisions of this Act upon such terms and conditions as he may think fit.

(2) A person having dealings with a native exempted under the last preceding subsection shall be deemed to have notice of the terms and conditions of the exemption.

13. REGULATIONS.

The Head of State acting on advice may make Regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act and in particular for prescribing—

- (a) the records to be kept and the returns to be made by parties to contracts; and
- (b) the imposition of penalties not exceeding K100.00 for contraventions of or failures to comply with the provisions of the Regulations.

APPENDIX 1 – SOURCE OF TRANSACTIONS WITH NATIVES ACT.

Sec 3.

PART A – ORIGINAL LEGISLATION.

Transactions with Natives Act 1958 (No. 1 of 1959)

PART B – AMENDING LEGISLATION.

Transactions with Natives Act 1963 (No. 32 of 1963)

(No. 93 of 1973)

(No. 103 of 1973)

Transactions with Natives Regulations 1960.

(No. 22 of 1960)

[Omitted.]

Office of Legislative Counsel, PNG