

No. 5 of 2004.

*Informal Sector Development and Control Act 2004.*

Certified on : 14.05.04



**INDEPENDENT STATE OF PAPUA NEW GUINEA**

**No of 2004.**

***Informal Sector Development and Control Act 2004.***

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INDEPENDENT STATE OF PAPUA NEW GUINEA

No of 2004.

AN ACT

entitled

*Informal Sector Development and Control Act 2004,*

Being an Act –

- (a) to provide the facilities and encourage the development of informal businesses in urban and rural areas; and
- (b) to regulate and control the development of informal businesses for the protection of public health and safety,

and related purposes,

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 I. – PRELIMINARY.**

**1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.**

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.C. (*qualified rights*) of the *Constitution*, namely:-

- (a) the right to freedom from arbitrary search and entry conferred by Section 44 (*freedom from arbitrary search and entry*) of the *Constitution*; and
- (b) the right to freedom of expression conferred by Section 46 (*freedom of expression*) of the *Constitution*; and
- (c) the right to privacy conferred by Section 49 (*right to privacy*) of the *Constitution*; and
- (d) the right to freedom of movement conferred by Section 52 (*right to freedom of movement*) of the *Constitution*,

is a law that is made for the purpose of complying with Section 38 of the *Constitution*, taking account of the National Goals and Directive Principles and Basic Social Obligations for the purpose of giving effect to the public interest in public safety, public order, public welfare, public health and the development of under-privileged or less advanced groups to the extent that the law is reasonably justifiable in a democratic society having proper respect or regard for the dignity of mankind.

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(2) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this law relates to a matter of national interest.

### 2. INTERPRETATION.

In this Act, unless the contrary intention appears –

“Administering Authority” means –

- (a) in the National Capital District – the National Capital District Commission; and
- (b) in an area outside the National Capital District for which there is a Local-level Government – that Local-level Government; and
- (c) in an area outside the National Capital District for which there is no Local-level Government – the Provincial Government of the province in which the area is situated;

“informal business” means, subject to Section 3(3), a business carried on by citizens comprising no more than five persons, and which is characterized by the following:-

- (a) it is a very small-scale unit –
  - (i) producing goods; or
  - (ii) distributing goods; or
  - (iii) producing and distributing goods; or
  - (iv) selling goods; or
  - (v) providing services; or
- (b) it operates with no or very little capital; or
- (c) it utilizes low levels of skills or technology; or
- (d) it does not engage in activities which constitute an offence under –
  - (i) the *Criminal Code* (Chapter 262); or
  - (ii) the *Summary Offences Act* (Chapter 264); or
  - (iii) the *Gaming Act* (Chapter 270); or
  - (iv) the *Gaming Machine Act* 1993; or
  - (v) the *Liquor Licensing Act* (Chapter 312); or
  - (vi) the *Distillation Act* (Chapter 305); or
  - (vii) the *Bookmakers Act* (Chapter 265); or
  - (viii) the *Excise (Beer) Act* (Chapter 106); or
  - (ix) the *Inflammable Liquid Act* (Chapter 311); or
  - (x) any provincial law relating to the sale of alcohol; or
- (e) it operates at a low level of productivity, and includes a mobile trader, but does not include a business which -
  - (i) provides professional services; or
  - (ii) acts as an agent of a business which is not an informal business; or
  - (iii) is liable to pay tax under the law;

“inspector” means an inspector referred to in Section 4;

“minimum standards” means the minimum standards provided for in Part IV;

“mobile trader” means a mobile trader in accordance with Section 9;

“operator” means a person who operates an informal business;

“premises” includes –

- (a) any dwelling house, office, warehouse, store or shop; and

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- (b) any building or structure; and
- (c) any factory, garage, workshop or hangar; and
- (d) any pavilion, tent or caravan; and
- (e) any enclosed yard, garden or area; and
- (f) any aircraft; and
- (g) any vehicle; and
- (h) any vessel,

and any part of such premises;

“purpose of this Act” means the purposes of this Act as stated in the long title;

“this Act” includes the Regulations;

“vehicle” means any description of vehicle on wheels other than a vehicle used on a railway or tramway.

### **PART II. – ADMINISTRATION.**

#### **3. FUNCTIONS AND POWERS OF ADMINISTERING AUTHORITY.**

(1) An Administering Authority -

(a) may, after consultation with –

- (i) relevant ward committees; and
- (ii) the Police Force; and
- (iii) relevant Government agencies responsible for public health, physical planning and building,

declare, in either general or specific terms, areas on which informal businesses may be conducted; and

- (b) shall ensure that there is compliance with this Act; and
- (c) shall monitor regularly the informal businesses being operated in the area for which it is responsible; and
- (d) shall carry out awareness and basic training in relation to food handling, sanitation and other matters relevant to the proper operation of informal businesses, including the provisions of this Act, at no cost to the operators; and
- (e) where necessary, shall review a decision of an inspector, if requested to do so, by an operator.

(2) An Administering Authority -

(a) may include in a declaration of an area under Subsection (1)(a)-

- (i) restrictions on the kind of informal business which may be operated in the area; and
- (ii) conditions which apply to the operation of an informal business in the area,

but not so as to increase the minimum standards or to defeat the purposes of this Act; and

- (b) shall give public notification of a declaration under Subsection (1)(a) or in such manner as it considers most effective.

(3) The Administering Authority may make laws, not inconsistent with this Act, for the implementation of this Act.

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(4) The Administering Authority may, in any case in which there is doubt as to whether a business is an informal business within the meaning of this Act, determine whether or not that business is an informal business for the purposes of this Act.

(5) Before making a determination under Subsection (4), the Administering Authority shall, in such manner as are prescribed -

- (a) notify the operator concerned, in writing of the proposed determination and the reasons for the proposed determination; and
- (b) allow the operator opportunity to respond within 14 days from the date of notification.

(6) An operator aggrieved by the decision of the Administering Authority under Subsections (4) and (5) may appeal to the District Court.

#### **4. INSPECTORS.**

(1) The following are inspectors for the purposes of this Act: -

- (a) a food inspector appointed under Section 8(1)(a) of the *Food Sanitation Act 1991*; or
- (c) an Inspector of Health appointed under Section 8 of the *Public Health Act* (Chapter 226).

(2) An Administering Authority may, by notice in the National Gazette, appoint a person, other than a member of the Police Force, to be an inspector for the purposes of this Act.

(3) An Administering Authority shall issue to every inspector appointed under Subsection (2), a written certificate of his appointment, and the inspector shall carry with him, and exhibit where necessary, such certificate while carrying out his duties as inspector.

#### **5. POWERS OF INSPECTORS GENERALLY.**

(1) An inspector may, at any reasonable time -

- (a) enter any premises on which he believes that an informal business is operated; and
- (b) inspect the informal business including goods offered for sale or used in connection with the informal business; and
- (c) subject to Subsection (2), where the informal business is not being operated in accordance with this Act -
  - (i) order that its operation cease until it can be operated in accordance with this Act; and
  - (ii) specify in the order that, if the operator is aggrieved by the decision of the inspector, the operator may apply to the Administering Authority to review the decision of the inspector.

(2) Subject to Subsection (3), before making an order under Subsection (1)(c), the inspector shall -

- (a) notify the operator in writing of the proposed order and the reasons for the proposed order; and
- (b) allow the operator to remedy any non-compliance of this Act within 14 days from the date of notification.

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(3) Subsection (2) does not apply where the operation or continued immediate operation of the informal business will in the opinion of the inspector, cause or likely to cause, danger to public health or public safety.

(4) Where, as a result of inspection under this section and Section 6, the inspector believes that an informal business fails to meet the requirements of this Act, the inspector may order the operator of the informal business to attend training conducted by the Administering Authority.

#### **6. POWERS OF INSPECTOR IN RESPECT OF FOOD, ETC.,**

(1) In this section "food" or "food additive" includes food or a food additive –

- (a) packed, bottled or tinned for sale; or
- (b) sold or offered for sale; or
- (c) made up or included in, or prepared or cooked for, a meal to be consumed in –
  - (i) a shop; or
  - (ii) premises in respect of which a licence is in force relating to the sale of alcoholic liquor; or
  - (iii) any other place.

(2) An inspector may, at any reasonable time, inspect a premises where the inspector believes food, a food additive, apparatus or package is prepared or kept for use in informal business.

- (3) For the purposes of an inspection under Subsection (2), an inspector may –
- (a) inspect sanitary conditions of premises and business installations and vehicles, and
  - (b) examine food, a food additive, apparatus or a package; and
  - (c) remove for analysis or examination, portions or samples of any article; and
  - (d) seize or condemn any article that is or appears to him to be –
    - (i) dangerous; or
    - (ii) injurious to health; or
    - (iii) unwholesome; or
    - (iv) unfit for consumption or use; or
    - (v) otherwise not in conformity with the minimum standards.

(4) On the complaint of an inspector, in relation to an article seized or condemned under Subsection (3)(d), a District Court may –

- (a) summon before it, the owner of the article or the person in whose possession the article was found; and
- (b) call on him to show cause why the article should not be forfeited and destroyed.

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(5) If the owner or person referred to in Subsection (4) -

- (a) appears; or
- (b) fails to appear after being summoned,

the Court may -

- (c) after inquiry into the matter; and
- (d) if satisfied, on such evidence as seems to it sufficient, that the article is used or is intended to be sold or used, as food or a food additive, apparatus or a package and did not comply with the minimum standards,

declare the article to be forfeited and destroyed, but otherwise the article shall be restored without delay to the owner or person in whose possession it was found.

(6) When exercising his powers under this Part, an inspector shall -

- (a) if he intends to remove an article under Subsection (3)(c), issue to the owner or to the person in whose possession the article was found, a collection certificate in the prescribed form; and
- (b) if he intends to seize or condemn an article under Subsection (3)(d), issue to the owner or to the person in whose possession the article was found, a receipt or condemnation certificate in the prescribed form.

### **7. OBSTRUCTION, ETC., OF INSPECTOR.**

A person who -

- (a) obstructs an inspector in the exercise of his powers under Section 5 or 6; or
- (b) knowingly misleads or deceives an inspector; or
- (c) refuses or neglects to comply with any order, direction or requirement of an inspector,

is guilty of an offence.

Penalty:           A fine not exceeding K50.00

## **PART III. - ESTABLISHMENT, ETC., OF INFORMAL BUSINESSES.**

### **8. ESTABLISHMENT, ETC., OF INFORMAL BUSINESS.**

(1) Subject to this section, a citizen may establish and operate an informal business in any area declared under Section 3 (1)(a) or in any area not declared under Section 3(1)(a).

(2) Subject to this Act, an informal business under Subsection (1) may only be operated -

- (a) where it is not hazardous to health and safety; and
- (b) where it will not cause unreasonable obstruction to motor traffic or pedestrians; and
- (c) where it will not cause environmental harm (as that term is defined in Section 2 of the *Environment Act 2000*); and
- (d) where it will not cause substantial annoyance to neighbours or

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persons within the vicinity of the place at which the informal business is operated; and

- (e) in conformity with minimum standards prescribed –
  - (i) by or under this Act; or
  - (ii) in addition to those referred to in Subparagraph (i) but otherwise consistent with the provision of this Act, by or under a law made, subject to Subsection (3) –
    - (A) in respect of the National Capital District – in accordance with the *National Capital District Commission Act 2001*; or
    - (B) in respect an area outside the National Capital District – in accordance with the *Organic Law on Provincial Governments and Local-level Governments*.

(3) A law made under Subsection (2)(e)(ii)(A) or (B) may prescribe additional minimum standards in respect of a particular area, time or circumstance but not so as to add generally to the minimum standards prescribed in Part IV.

#### **9. MOBILE TRADER.**

(1) For the purposes of this Act, the operator of an informal business is a mobile trader where –

- (a) he operates the business from a vehicle; or
- (b) he operates as a peddler.

(2) Where a mobile trader operates from a vehicle, the mobile trader shall comply with the following conditions : –

- (a) the vehicle shall be licensed and insured as a commercial vehicle;
- (b) the name and address of the mobile trader shall be conspicuously displayed on the vehicle;
- (c) the words “MOBILE TRADER” shall be conspicuously displayed on the vehicle;
- (d) where the mobile trader is selling food, the words “FOOD VAN” shall be conspicuously displayed on the vehicle;
- (e) where the mobile trader is selling food, the vehicle shall contain a receptacle for refuse in accordance with Local-level Government requirements;
- (f) the mobile trader shall not operate in any site where the operation would cause a traffic hazard or obstruction to the free flow of traffic;
- (g) after operating in any particular site, the mobile trader shall ensure that the area extending to 20m from the vehicle is cleaned and is free from refuse resulting from the operation;
- (h) subject to Subsection (3), the vehicle shall not operate in one site between the hours of 8.00 am and 6.00 pm for any period exceeding two hours unless the Administering Authority has authorized otherwise.

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(3) For the purposes of Subsection (2)(h), a vehicle is deemed to have operated on one site for a period of two hours, where it has not, within a period of two hours, been moved at least 125m in a straight line from that site.

(4) A peddler shall not operate in any site where his activity would create a traffic hazard or obstruction to traffic.

(5) A mobile trader who fails to comply with Subsection (2)(h) is guilty of an offence.

Penalty: A fine not exceeding K200.00.

(6) Where a mobile trader has been convicted of an offence under Subsection (5), the Administering Authority may prevent the mobile trader from operating until the Administering Authority is satisfied that the offence shall not be repeated.

(7) A peddler who fails to comply with Subsection (4) is guilty of an offence.

Penalty: A fine not exceeding K50.00.

#### **PART IV. – MINIMUM STANDARDS AND CONDITIONS.**

##### **10. MINIMUM STANDARDS FOR SALE OF FOOD.**

(1) The minimum standards which apply to an informal business offering food for sale are as follows:-

- (a) the food –
  - (i) shall be wholesome, sound and safe for human consumption; and
  - (ii) shall be prepared, cooked and sold in clean and sanitary conditions and the premises free from contamination from pests, dusts and other contaminants; and
  - (iii) shall not be transported together with live animals; and
- (b) food or food additives shall not be sold beyond the date of expiry for such food or food additives; and
- (c) a person suffering from an infectious or contagious skin disease or any other infectious disorder shall not be allowed to prepare, handle or sell food.

(2) A person who fails to comply with Subsection (1) is guilty of an offence.

Penalty: A fine not exceeding K50.00.

##### **11. MINIMUM STANDARDS FOR SALE OF COOKED FOOD, ICE BLOCKS AND DRINKS.**

(1) In addition to the standards prescribed by Section 10, the following minimum standards apply to the sale of cooked food, ice-blocks or food for immediate consumption:-

- (a) apparatus to prepare and sell food shall be clean and shall have a secure lid or be covered; and

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- (b) clean utensils for serving shall be used and food shall not be handled directly by hands; and
- (c) where non-disposable utensils are used, the utensils shall be cleaned after every use and the operator shall provide –
  - (i) water for washing hands and utensils; and
  - (ii) clean washing apparatus; and
  - (iii) a clean dry tea towel; and
- (d) a rubbish bin with secure lid or rubbish bags shall be provided; and
- (e) all cooked food not sold within a reasonable time (being a time to be determined by an inspector taking account of Public Health requirements) shall be destroyed; and
- (f) ice blocks and other drinks shall be made from water of drinking water quality.

(2) A person who fails to comply with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K50.00.

**12. MINIMUM STANDARDS FOR SALE OF FROZEN FISH AND MEAT.**

(1) In addition to the standards prescribed by Sections 10 and 11, the following minimum standards apply to the sale of frozen fish and meat:-

- (a) meat of an animal suffering from, or appearing to be or suspected of suffering from, a prescribed disease shall not be sold or offered for sale;
- (b) frozen meat for sale shall only come from -
  - (i) a slaughterhouse licensed under the *Slaughtering Act* (Chapter 238); or
  - (ii) a supermarket; and
- (c) frozen meat or fish for sale shall be kept in -
  - (i) a cooler filled with ice; or
  - (ii) a refrigerator or freezer.

(2) A person who fails to comply with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K50.00.

**13. MINIMUM STANDARDS FOR SALE OF LIVE ANIMALS.**

(1) The minimum standards for the sale of livestock and live animals are as follows:-

- (a) a live animal offered for sale shall be confined in a suitable cage or, in the case of cattle, be properly tethered;
- (b) animal waste shall be removed;
- (c) a live animal shall not be offered for sale in premises in which food is carried or offered for sale.

(2) A person who fails to comply with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K50.00.

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**14. MINIMUM STANDARDS FOR SALE OF BETELNUT.**

- (1) The minimum standards for the sale of betelnut are as follows:-
- (a) the area where the betelnut is sold shall be kept tidy and clean and free from betelnut skins and other rubbish; and
  - (b) rubbish bins, bags or other receptacle acceptable to an inspector.
- (2) A person who fails to comply with Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K50.00.

**15. MINIMUM STANDARDS FOR SALE OF SECOND-HAND CLOTHING AND SECOND-HAND GOODS.**

- (1) The minimum standards for the sale of second-hand clothing are as follows:-
- (a) second-hand clothing shall be washed before being offered for sale;
  - (b) second-hand clothing offered for sale shall be maintained in a clean condition and shall not be sold or exchanged in an unclean condition;
  - (c) premises, in which second-hand clothing offered or to be offered for sale, is stored, shall be maintained in a clean condition free from vermin;
  - (d) second-hand clothing shall not be stored, sold or offered for sale in premises where food is prepared, manufactured, stored, sold or offered for sale unless the food is contained in sealed containers.
- (2) A person who contravenes Subsection (1), is guilty of an offence.

Penalty: A fine not exceeding K50.00.

**16. MINIMUM STANDARDS FOR THE MANUFACTURE OF GOODS AND PROVISION OF SERVICES.**

(1) Subject to Subsection (2), the manufacture of goods or provision of services by way of light industrial means, may only be carried out in homes or residential areas if specifically permitted by the Administering Authority.

(2) The Administering Authority may permit the activities referred to in Subsection (1), only if, the informal business does not, or would not, cause injury to or affect the amenity of the neighbourhood in terms of noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, grit, oil, water or waste products.

**PART V. – MISCELLANEOUS.**

**17. FEES, ETC.,**

(1) Subject to Subsection (2), a person operating an informal business is not liable, in respect of that business, to –

- (a) obtain any licence or permit or authority required under any Act specified in the Schedule; or
- (b) pay any fee in respect of such licence, permit or authority; or
- (c) pay any fee under this Act.

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(2) A person operating an informal business is liable to pay any fee in respect of the use of a market.

### **18. NON APPLICATION OF CERTAIN ACTS.**

The Acts specified in the Schedule do not apply to and in respect of an informal business except to the extent specified in this Act.

### **19. GENERAL OBLIGATIONS.**

All Departments and agencies of Government shall assist and co-operate with Administering Authorities in order to ensure that the purposes of this Act as stated in the long title are achieved.

### **20. REGULATIONS.**

The Head of State, acting with, and in accordance with, the advice of the National Executive Council, may make regulations, not inconsistent with this Act, Prescribing all matters that are required or permitted to be prescribed, or that are necessary or convenient to prescribed in order to give effect to this Act.

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SCHEDULE.

Sec. 18.

Acts not applicable to informal business.

*Associations Incorporation Act* (Chapter 142)  
*Building Act* (Chapter 301)  
*Business Groups Incorporation Act* (Chapter 144)  
*Industrial Safety, Health and Welfare Act* (Chapter 175)  
*Food Sanitation Act 1991*  
*Land Act 1996*  
*Lands Groups Incorporation Act* (Chapter 174)  
*Packaging Act* (Chapter 285)  
*Physical Planning Act 1989*  
*Second-hand Dealers Act* (Chapter 322)  
*Trading Act* (Chapter 324)  
*Public Health Act* (Chapter 226)

I hereby certify that the above is a fair print of the *Informal Sector Development and Control Act* 2003 which has been made by the National Parliament.

Clerk of the National Parliament.

I hereby certify that the *Informal Sector Development and Control Act* 2003 was made by the National Parliament on 15<sup>th</sup> January 2004, by an absolute majority in accordance with the *Constitution*.

Acting Speaker of the National Parliament.

