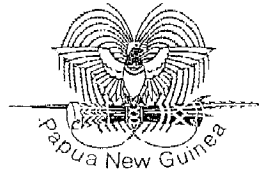


No. 18 of 2015.

*Migration (Amendment) Act 2015.*

Certified on: 04 NOV 2015



No. of 2015.

*Migration (Amendment) Act 2015.*

**ARRANGEMENT OF SECTIONS.**

1. Compliance with constitutional requirements (Amendment of Section 1).
2. Interpretation (Amendment of Section 2).
3. Prevention of unlawful presence (Amendment of Section 10).
4. Power to detain and remove persons from country (Amendment of Section 13).
5. Repeal and replacement of Section 15B.
6. Direction to reside in relocation centre (Amendment of Section 15C).
7. Repeal and replacement of Section 15D.
8. New Sections 15E and 15F.

**“15E. POWERS OF SEARCH IN IMMIGRATION DETENTION AND IN RELOCATION CENTRE.**

**15F. REASONABLE USE OF FORCE AND PROTECTION OF OFFICERS.”**



No. of 2015.

AN ACT

entitled

*Migration (Amendment) Act 2015,*

Being an Act to amend the *Migration Act* (Chapter 16),

Enacted by the National Parliament.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS (AMENDMENT OF SECTION 1).

Section 1 of the Principal Act is amended in Subsection (1) -

- (a) by deleting the comma after "*Constitution*" in Paragraph (c); and
- (b) by inserting "; and" after Paragraph (c); and
- (c) by inserting the following new paragraph after Paragraph (c):

"(d) protection from unjust deprivation of property conferred by Section 53(1) of the *Constitution*."

5. INTERPRETATION (AMENDMENT OF SECTION 2).

Section 2 of the Principal Act is amended -

- (a) in the definition of "Administrator" by inserting immediately after the words "relocation centre" the following words:

"or place of immigration detention"; and

- (b) by repealing the definition of "authorised person" and replacing it with the following new definition:

"authorised person" when used in a provision of this Act, means a person,  
 who is not an officer, who is authorised by the  
 Minister or the Chief  
 Migration Officer in writing for the purposes  
 of that provision;" and

- (c) by adding immediately after the definition of "Administrator" the following new definition:

"authorised officer" when used in a provision of this Act, means the  
 Chief Migration Officer or an officer  
 authorised in writing by the  
 • Minister for the purposes of that provision"; and

- (d) by adding immediately after the definition of "authorised person" the following new definition:

"Chief Migration Officer" is as defined by Section 2 of the *Immigration and  
 Citizenship Service Act 2010*"; and

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- (e) by adding immediately after the definition of “holder” the following new definitions:
- ““Immigration and Citizenship Service Authority” means the Authority established by Section 3 of the *Immigration and Citizenship Service Authority Act 2010*;
  - “immigration detention” means the administrative detention of a foreign national who is reasonably suspected of being in the country unlawfully but it is not arrest as defined in the *Arrest Act* (Chapter 339);” and
- (f) in the definition of “officer” by repealing Paragraphs (a) and (b) and replacing them with the following new paragraphs:
- “(a) Chief Migration Officer; or
  - (b) an employee of the Immigration and Citizenship Service Authority; or”; and
- (g) by adding immediately after the definition of “person in charge” the following new definition:
- ““place of immigration detention” means any established correctional facility or police lockup, or any other place designated as such by the Minister or an authorised officer;”; and
- (h) by adding immediately after the definition of “removal order” the following new definition:
- ““rub-down search” means a search of a person conducted by quickly running the hands over the person’s outer garments, and includes requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat and surrendering these items as well as any items carried by or carried in the pockets of the person for the purposes of search;”.

### **3. PREVENTION OF UNLAWFUL PRESENCE (AMENDMENT OF SECTION 10).**

Section 10 of the Principal Act is amended by repealing Subsection (2) and replacing it with the following new subsections:

“(2) Where an authorised officer reasonably suspects that a person is a non-citizen who is in the country unlawfully, the authorised officer may detain or direct an officer or authorised person to detain the person for such time as is necessary in order to effect their removal or departure from the country.

(3) A person detained under Subsection (2) must be released from detention if an authorised officer has reasonable cause to believe that the person is -

- (a) a Papua New Guinea Citizen; or
- (b) a person granted an entry permit; or
- (c) a person ordered to be released, subject to any conditions by the Minister or an authorised officer; or
- (d) a person granted a relevant exemption by the Minister pursuant to Section 20.

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(4) Where a person has entered or remained in the country in contravention of this Act, an officer may -

- (a) return that person to the conveyance in which he arrived in the country and keep him there until his departure from the country; or
- (b) obtain a removal order in respect of that person; or
- (c) arrest that person and keep him in custody pending his prosecution under this Act.”.

**4. POWER TO DETAIN AND REMOVE PERSONS FROM COUNTRY (AMENDMENT OF SECTION 13).**

Section 13 of the Principal Act is amended -

- (a) by repealing Subsection (1) and replacing it with the following:

“(1) The Minister or an authorised officer may order that a person against whom a removal order has been made be detained until arrangements can be made for his removal from the country.”; and

- (b) in Subsection (2) by inserting immediately after the words “be placed on board a suitable conveyance by an officer”, the following words:

“or authorised person”; and

- (c) by repealing Subsection (5) and replacing it with the following:

“(5) Subject to Section 14, the cost of the passage, accommodation and maintenance provided in accordance with Subsection (4) shall be paid by the person removed and the Minister or an authorised officer may apply money or property of the person removed in payment of the whole or part of that cost, or if the Minister or an authorised officer thinks fit, the whole or part of the cost shall be borne by the State.”.

**5. REPEAL AND REPLACEMENT OF SECTION 15B.**

The Principal Act is amended by repealing Section 15B and replacing it with the following:

**“15B. RELOCATION CENTRES AND PLACES OF IMMIGRATION DETENTION.**

(1) The Minister may, by notice in the National Gazette, declare a place to be -

- (a) a relocation centre for the accommodation of a refugee or a non-citizen who claims to be a refugee; or
- (b) a permanent place of immigration detention.

(2) The Minister or an authorised officer may, by instrument, declare a place to be a temporary place of immigration detention.”.

**6. DIRECTION TO RESIDE IN RELOCATION CENTRE (AMENDMENT OF SECTION 15C).**

Section 15C of the Principal Act is amended -

- (a) in Subsection (2) by inserting immediately after the words “is sufficient authority for” the following words and symbols:

“an officer, police officer or authorised person”; and

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- (b) in Subsection (3) by deleting the words “A police officer” and replacing them with the following words:

“An officer, police officer or authorised person”.

**7. REPEAL AND REPLACEMENT OF SECTION 15D.**

Section 15D of the Principal Act is repealed and replaced with the following new section:

**“15D. CONTROL AND MANAGEMENT OF RELOCATION CENTRES AND PLACES OF IMMIGRATION DETENTION.**

- (1) The Minister may appoint an officer to be the Administrator of a relocation centre or place of immigration detention.
- (2) The Administrator shall have -
- (a) the control and management of a relocation centre or place of immigration detention; and
  - (b) the services of officers for the purpose of managing a relocation centre or place of immigration detention.
- (3) For purposes of safety and good order, an Administrator, authorised officer or authorised person may give lawful directions to persons at a relocation centre under a direction under Section 15C(1) or to persons at a place of immigration detention.
- (4) A person who has been given such directions under Subsection (3) has an obligation under this Act to comply with those directions.”.

**8. NEW SECTIONS 15E AND 15F.**

The Principal Act is amended by adding immediately after Section 15D the following new sections:

**“15E. POWERS OF SEARCH IN IMMIGRATION DETENTION AND IN RELOCATION CENTRE.**

- (1) An Administrator or authorised officer may at any time direct an officer, police officer or authorised person -
- (a) to search any part of a relocation centre or place of immigration detention; or
  - (b) to perform a rub-down search of:
    - (i) a detainee or person relocated under Section 15C; or
    - (ii) a visitor to the relocation centre or place of immigration detention (except a Judge of the Supreme Court or the National Court or a Magistrate); or
    - (iii) an officer; or
    - (iv) any other person in or entering the relocation centre or place of immigration detention; or
  - (c) to search and examine anything in the relocation centre or place of immigration detention.

(2) Where an Administrator or an authorised officer believes on reasonable grounds that the security or good order of the relocation centre or place of immigration detention or a detainee is threatened, they may direct an officer or authorised person -

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- (a) to search and examine anything outside but within 200 metres of the relocation centre or place of immigration detention; and
- (b) require a person outside of but within 200 metres of the relocation centre or place of immigration detention to submit to a rub-down search.

(3) An officer, police officer or authorised person, in conducting a rub-down search under this section, shall ensure that the search is conducted as expeditiously as possible and with regard to the decency and self respect of the person searched.

(4) A rub-down search under this section shall be carried out only by an officer, police officer or authorised person of the same gender as the person being searched.

(5) Where a search takes place under this section, an officer, police officer or authorised person shall complete such records of the search as the Chief Migration Officer determines.

(6) Where a person, other than a detainee or person relocated under Section 15C, refuses to submit to be searched under this section while inside the relocation centre or place of immigration detention, the Administrator or authorised officer may order the person to leave the relocation centre or place of immigration detention immediately.

(7) An Administrator or authorised officer may require that a person taken into immigration detention or directed to a relocation centre is subject to a rub-down search:

- (a) if detained, when they are detained; and
- (b) if directed to a relocation centre, when they are so directed; and
- (c) on admission to a place of immigration detention or relocation centre; and
- (d) prior to departure or transfer from a place of immigration detention or relocation centre.

(8) In carrying out a search, an officer, police officer or authorised person may seize anything found in the relocation centre or place of immigration detention, whether in a person's possession or not, where the officer, police officer or authorised person believes on reasonable grounds that possession of that thing is illegal, or would jeopardise or is likely to jeopardise the security or good order of the relocation centre or place of immigration detention or the safety of persons in the relocation centre or place of immigration detention.

(9) An officer, police officer or authorised person who seizes any item of personal property under this section shall give, the person from whom the item was taken, a receipt and immediately inform the Administrator or authorised officer.

(10) The item seized under Subsection (9) shall be secured on official property.

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(11) An item -  
(a) which has been seized under this section; and  
(b) where possession of the item would not otherwise be unlawful,  
may be returned by an officer or authorised person to the person from whom it was taken once they leave the relocation centre or place of immigration detention.

(12) Where the item -  
(a) cannot be returned; or  
(b) possession would otherwise be unlawful; or  
(c) is unclaimed after a period of 12 months from the date the officer or authorised person attempts to return it,  
it shall become the property of the State and may be disposed of by means of auction or destruction or other means.

(13) Where the property is disposed of by auction, the proceeds shall be retained by the State.

(14) An Administrator or authorised officer may provide written standing orders permitting the continued use of powers under this section by officers or authorised persons where the ongoing security and good order of a relocation centre or place of immigration detention justifies regular search at control points, or spot searches within these locations.

**15F. REASONABLE USE OF FORCE AND PROTECTION OF OFFICERS.**

(1) An officer or authorised person may use reasonable force to exercise powers under this Act pertaining to arrest, detention, removal, search, seizure, and relocation, or to compel a person to comply, enter and search places or items, open containers or access equipment, seize items or otherwise give effect to these powers.


(2) An officer or authorised person may use reasonable force to temporarily restrain a person -  
(a) who has been arrested; or  
(b) who is in immigration detention; or  
(c) who is being removed; or  
(d) who has been directed to reside in a relocation centre; and  
(e) where the safety of the person, the safety of other persons or the good order of the relocation centre or place of immigration detention is believed to be at risk.

(3) The officer or authorised person is not liable for injury or damage caused in reasonably performing such functions authorised under the Act.”




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I hereby certify that the above is a fair print of the *Migration (Amendment) Act 2015* which has been made by the National Parliament.

  
Acting Clerk of the National Parliament.

04 NOV 2015

I hereby certify that the *Migration (Amendment) Act 2015* was made by the National Parliament on 28 May 2015, by an absolute majority as required by the *Constitution*.

  
Acting Speaker of the National Parliament.

04 NOV 2015