

VOLCANIC AND SEISMIC DISTURBANCES REGULATIONS, 1951.⁽¹⁾

Regulations.

No. 23 of 1951.

Citation.

1. These Regulations may be cited as the *Volcanic and Seismic Disturbances Regulations, 1951.*⁽¹⁾

Definitions.

2. In these Regulations, unless the contrary intention appears—
- “Agriculture” includes viticulture, horticulture, pasturage, apiculture, poultry farming, dairy farming, and other operations connected with the cultivation of the soil, the gathering in of crops or the rearing of live stock;
- “claimant” means, where more than one claim has been lodged in respect of any damage, the person first lodging a claim, and includes a person in whose favour the Treasurer and Director of Finance has made an assessment of compensation without the lodging of a claim;
- “fixed property” means any building or works situated on, over, or under any land, the property in which would ordinarily pass under a contract for the sale of the land, and includes any plant and machinery which is integral with the structure of any building or works the property in which would ordinarily pass under a contract for the sale of the land, and any fencing, but does not include any crop, tree or vine;
- “growing crop” means a crop of any of those vegetable productions of the soil which are produced by the labour of the cultivator, and includes the crop of any fruit of a kind used for human consumption (but not the trees or vines on which any such fruit is borne), and each part of a crop shall, for the purposes of these regulations, be deemed to continue to be part of a growing crop, notwithstanding that it has been harvested, until—
- (a) the grower ceases to be the owner or parts with the possession thereof;
 - (b) the grower notifies the Treasurer, in writing, that he desires that it be no longer deemed to be part of a growing crop; or
 - (c) the expiration of a period of twenty-one days after harvesting,
- whichever first happens;

(1) Particulars of these Regulations are as follows :—

Ordinance under which made.	Date on which made by Administrator in Council.	Date on which published in Papua and N.G. Govt. Gaz.	Date on which took effect and came into operation.
<i>Volcanic and Seismic Disturbances Ordinance 1951</i>	26.10.1951	15.11.1951	2.11.1951 (Papua and N.G. Govt. Gaz. of 15.11.1951)

“growing tree” means a tree or vine capable of bearing fruit of a kind used for human consumption or of producing rubber or kapok;

“plant” means any plant, machinery, tools, shop equipment, office furniture and other industrial, trade, business or professional equipment, but does not include any fixed property, growing crop, growing tree, live stock or agricultural fencing.

“private chattels”, in relation to any person, means any goods—

(a) owned by that person;

(b) which are in the possession of that person and for which he would be liable in damages to some other person if the goods were lost or damaged as a result of the actions of the Administrator or an Officer in pursuance of the provisions of the said Ordinance; or

(c) owned by or in the possession of a member of that person's household ordinarily resident with him or by a domestic servant of that person ordinarily resident with him, and includes vehicles, animals, boats, vessels and aircraft,

but does not include any fixed property, plant, stock, growing crop, growing tree or live stock.

“the Ordinance” means the *Volcanic and Seismic Disturbances Ordinance 1951*.⁽²⁾

“the Treasurer” means the Treasurer and Director of Finance of the Administration of the Territory of Papua and New Guinea.

3. Any person who—

(a) is or was the owner of property in respect of which compensation may be payable;

(b) has or had any right, title or interest (whether at law or in equity) in property in respect of which compensation may be payable;

(c) is the legal personal representative of any person to whom paragraphs (a) or (b) of this regulation applies;

(d) by virtue of the operation of the laws relating to succession, lunacy, bankruptcy or the dissolution or winding up of companies or co-operative societies has a claim of right under any person to whom paragraphs (a) or (b) of this regulation applies;

may within three months from the date on which the action of the Administrator or of an Officer authorized by the Administrator under the provisions of the Ordinance giving rise to his claim or in the case of a claim arising from a period of possession or use of land or personal property by the Administrator or an Officer authorized by the Administrator under the provisions of the said Ordinance within three months from the date of termination of the possession or use serve on the Treasurer a written claim for payment of compensation.

(2) Printed in this Volume on p. 1220.

PART A : VOLCANIC AND SEISMIC DISTURBANCES—

Claims.

4. Service of a claim referred to in the preceding regulations may be effected by delivering same to the Treasurer personally or sending same by registered post.

Claimant.

5. The first person to lodge a claim in respect of any property shall be deemed to be the claimant in respect thereof.

Compensation.

6.—(1.) Compensation payable apart from compensation payable by way of rental or for the provision of accommodation shall be the amount (if any) which in the opinion of the Treasurer—

- (a) in the case of fixed property—would be the reasonable and proper cost of restoring that fixed property to substantially the form and condition, fair wear and tear excepted, in which it existed immediately prior to the entry upon, taking possession of, or using thereof under the provisions of the Ordinance;
- (b) in the case of plant—would be the reasonable and proper cost of restoring that plant to substantially the form and condition, fair wear and tear excepted, in which it existed at the time of its being taken over or used under the provisions of the Ordinance;
- (c) in the case of private chattels, growing crops, growing trees, or live stock—would be the monetary equivalent of the amount of damage occasioned to that property ascertained by reference to the value of that property at the time of its being taken over or used under the provisions of the Ordinance, fair wear and tear excepted, in the case of private chattels;
- (d) in the case of land on which no buildings were erected at the time of its being entered upon, taken possession of or used—would be the reasonable and proper cost of restoring the land to the condition in which it was at the time of its being taken over, entered into possession of or used, apart from any compensation for growing crops or growing trees:

Provided that, where the cost of restoring property assessed in accordance with the provisions of this regulation is equal to or greater than the total value of the property, the property whether real or personal shall be deemed to be a total loss, and the compensation shall be the value of the property as at the date it was taken over, entered into possession of or used.

(2.) The Treasurer shall take into account, in assessing any compensation payable under the Ordinance and these regulations, any amount received by the claimant in respect of any loss for which compensation is claimed under any policy of insurance current in favour of the claimant.

(3.) Notwithstanding anything contained in this regulation, compensation shall not be payable in respect of damage to property, the subject of compensation, for damage caused by acts of God subsequent to the taking possession of, use or acquisition of the property under the provisions of the Ordinance, if the said taking possession, use or acquisition did not contribute to the risk of damage by acts of God by retention of or use of the property in a Volcanic Area.

Volcanic and Seismic Disturbances Regulations 1951—cont.

7. Where the Treasurer admits the claim submitted in accordance with Regulation 3 of these regulations he shall pay the amount claimed to the claimant out of public revenue of the Territory. Payment of claim.

8. Where the Treasurer does not admit a claim put forward in accordance with the provisions of Regulation 3 of these regulations he may either reject the claim entirely or offer the claimant an amount in full settlement of his claim. Settlement.

9. The Treasurer may in any case arrive at his assessment of compensation after negotiation with the claimant, and may settle or compromise any claim for compensation. Negotiation.

10. Where any person has lodged a claim for compensation, the Treasurer, in order to enable him to assess the compensation if any payable, may by notice in writing require the claimant to furnish him with any information relating to property to which his claim refers, or to damage claimed to have occurred to that property, as may be reasonably expected to lie within the claimant's common knowledge, or which with a reasonable inquiry and diligence, he may be expected to be able to ascertain, and the Treasurer shall not be bound to assess compensation until the information is furnished. Supply of information.

Any costs or expenses incurred in furnishing or obtaining any such information shall be borne by the claimant.

11. In the event of a dispute arising between the Treasurer and a claimant it shall be referred to arbitration in accordance with the Arbitration legislation of that part of the Territory in which the action of the Administrator or an Officer authorized by him in accordance with the provisions of the Ordinance which gave rise to the claim was performed. Arbitration.

12. Claims for compensation under the provisions of these regulations shall be based on the value of the land or personal property entered upon taken possession of or used as at the date on which the land or personal property was entered upon taken possession of or used, and in the case of claims for the continuing use of land or fixed property, by way of rental apart from any claim for damage to improvements or growing crops or injury to the surface of the land shall be based on an annual rental of one-twentieth of the value of the land or fixed property and in the case of claims for provision of accommodation shall be based on the cost of provision of the accommodation so provided and one-tenth of the said cost in addition thereto. Basis of claims.

13.—(1.) Any amount of compensation assessed in accordance with the provisions of these regulations, shall upon being so assessed and notified to the claimant become a debt payable by the Administration to the person thereunto lawfully entitled, and after the expiration of three months from the date of the assessment, may be recovered by that person by action in any Court of competent jurisdiction. Treatment of claims due for payment.

(2.) In the event of any action being taken in any Court under the provisions of sub-regulation (1.) of this regulation, and without prejudice to the right of the Treasurer to pay compensation in accordance with any provision of these regulations, a person who in relation to any

PART A : VOLCANIC AND SEISMIC DISTURBANCES—

property is a person specified in regulation 3 of these regulations shall be lawfully entitled to so much (if any) of the compensation assessed and recorded in respect of damage to that property as appears to the Court to be equitable on the basis that the compensation represents, so far as its amount extends, the property which suffered the damage, but having regard to any lawful transactions which have taken place in relation to that property or in relation to that person's right to compensation.

(3.) In any case where a request for arbitration has been lodged under the provisions of these regulations, the compensation payable shall, for the purpose of this regulation be deemed to have been assessed on the date on which the amount determined by arbitration becomes the amount assessed under these regulations, or at the time when the claimant is deemed to have abandoned his request for arbitration, as the case may be.

(4.) Compensation shall be payable at such place within the Territory as the Treasurer determines either generally or in respect of any particular claim or class of claim.

Interim
payment.

14.—(1.) Where a claim has been lodged in accordance with these regulations, but the amount properly payable in respect of that claim has not been assessed, the Treasurer may, if he considers it expedient so to do, pay to the claimant a sum or sums of money by way of advance against the amount of compensation properly payable in respect of the claim.

(2.) In any case where the total amount of any payment or payments by way of advance made in accordance with this regulation in relation to any claim exceeds the amount of compensation assessed in respect of that claim, the person to whom the payment or payments by way of advance was or were made shall within twenty-eight days after service upon him by the Treasurer of notice that the compensation has been assessed pay to the Treasurer the amount of the excess and in default of payment the Treasurer may recover the excess from that person as a debt in any Court of competent jurisdiction.