

Malawi

## National Compensation Tribunal (Miscellaneous Provisions) Act Chapter 3:06

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# Malawi

## National Compensation Tribunal (Miscellaneous Provisions) Act

### Chapter 3:06

Commenced on 17 May 1995

*[This is the version of this document at 31 December 2014.]*

*[Note: This version of the Act was revised and consolidated in the Fifth Revised Edition of the Laws of Malawi (L.R.O. 1/2018), by the Solicitor General and Secretary for Justice under the authority of the Revision of the Laws Act.]*

*[8 of 1995; 6 of 1996]*

**An Act to make miscellaneous provisions for the operational procedures of the National Compensation Tribunal and to provide for matters ancillary thereto or connected therewith**

#### 1. Short title

This Act may be cited as the National Compensation Tribunal (Miscellaneous Provisions) Act.

#### 2. Interpretation

In this Act, unless the context otherwise requires—

“**agent**” means a person appointed by a claimant to act on behalf of the claimant;

“**claim**” means an application by, or on behalf of, a claimant or joint claimants addressed to the Tribunal for an award in respect of a loss or injury;

“**claimant**” means a person who suffered loss or injury or a person who has at law inherited an entitlement to claim in respect of a loss or injury, and includes a dependant of a claimant and representative, but does not include an agent;

“**Fund**” means the National Compensation Fund established under section 144 of the Constitution;

“**Public Appointments Committee**” means the Public Appointments Committee of the National Assembly established under section 56(7) of the Constitution;

“**Representatives**” means—

- (a) a person through whom a claim is brought by a person beneficially entitled to claim but lacks legal capacity to act; or
- (b) a person who is authorized to act for another person, including a family unit.

“**Tribunal**” means the National Compensation Tribunal established under Part XIII of the Constitution.

*[6 of 1996]*

#### 3. Rules of Procedures of the Tribunal

The procedures of the Tribunal required under section 140 of the Constitution shall be prescribed by the Chief Justice by rules published in the *Gazette*.

#### 4. Members of the Tribunal

- (1) In addition to the Chairman, there shall be such other members of the Tribunal as the Public Appointments Committee shall, from time to time, appoint on the recommendation of the Chief Justice.
- (2) In recommending persons for appointment under subsection (1), the Chief Justice shall act upon requests made to him in that behalf by the Chairman of the Tribunal.

*[6 of 1996]*

#### 5. Deadlines

- (1) The Tribunal may prescribe such deadlines as may be required for the expeditious determination of claims or categories of claims, but no final deadlines for the registration of claims or categories of claims shall be fixed upon less than twenty-four months' notice.
- (2) The Tribunal shall have the discretion to extend or waive deadlines prescribed under subsection (1) in exceptional circumstances in the interest of justice.

*[6 of 1996]*

#### 6. Forms of reparation

The Tribunal shall endeavour to recommend or award one or more forms of reparation to claimants which are most appropriate in the circumstances of the case and to do so in accordance with its rules of procedure. These forms of reparation shall include—

- (a) formal acknowledgment and apology;
- (b) medical care;
- (c) establishment of memorials;
- (d) job retraining;
- (e) pensions;
- (f) restitution of property;
- (g) bonds, shares and share options;
- (h) monetary compensation by way of a lump sum or instalments; and
- (i) negotiated settlements with the Government or any other party in relation to the claim.

*[6 of 1996]*

#### 7. Oral hearing

Subject to [section 8](#), claims shall be determined on the basis of written submissions unless the Tribunal grants leave to an oral hearing before the member or members of the Tribunal determining the claim.

*[6 of 1996]*

#### 8. Oral testimony

The Tribunal shall ensure that persons shall be provided with an opportunity to present oral testimony at the district centre or at any other place appointed by the Tribunal to officers of the Tribunal authorized to

take evidence, and such opportunity shall be provided on an annual basis or may be provided more often if the Tribunal so determines.

*[6 of 1996]*

## **9. Reasons for decisions**

The Tribunal shall give reasons for its decisions which may be specific to a claim or relate to a category of claims.

*[6 of 1996]*

## **10. Composition of panels**

Claims shall be determined by a single member of the Tribunal subject to the following rules—

- (a) matters of principle shall be decided by all members wherever possible and in any event by not less than two members;
- (b) claims shall not be dismissed, awards revised or requests for oral hearings refused by less than two members;
- (c) claims greater than the amount set out in the Schedule shall be determined by at least two members;
- (d) claims determined by one member may be referred by that member to the Chairman of the Tribunal who may refer the case to two or more other members;
- (e) any member who has an interest in any case before him shall declare that interest and refer the case to the Chairman of the Tribunal for reassignment;
- (f) in determining a case, a panel may refer any outstanding matter relating to quantum to a single member for recommendation upon consultation with the Chairman of the Tribunal, provided that the rules set out in paragraphs (a) to (e) of this section are complied with.

*[6 of 1996]*

## **11. Declaration of suspicion of interest**

- (1) Any claimant who has reason to believe that a member of the Tribunal has an interest in the case or would otherwise be biased shall declare such concern and the reasons therefor in writing to the Chairman of the Tribunal prior to referral of the case to a panel of members for determination.
- (2) Upon receipt of any declaration under subsection (1), the Chairman of the Tribunal shall inquire into the matter and shall reassign the case if the claimant's concerns of bias are not unreasonable whether or not bias exists in fact.

*[6 of 1996]*

## **12. Assessment of loss**

- (1) In determining an award, the Tribunal shall take into account such factors as it deems appropriate, including—
  - (a) the loss or injury suffered by the claimant and in this regard shall also take into account the mental or psychological elements of the loss or injury, but shall not make separate awards for such elements;
  - (b) the interests of third parties affected by its determination;
  - (c) the conduct of the claimant including, but not limited to, his conduct which has contributed to the losses or injuries suffered by other claimants;

- (d) steps taken by the claimant to minimize the loss or injury;
  - (e) receipt or availability of other forms of reparation;
  - (f) such other equitable considerations as the Tribunal deems appropriate.
- (2) In determining an award, the Tribunal shall not include any element in respect of interest or loss of business earnings subsequent to the event giving rise to the loss, and in addition, the Tribunal may exclude such other elements of loss which it deems to hinder the expeditious determination of claims or introduce arbitrary distinctions between claimants.

[6 of 1996]

### 13. Categorization of claims

The Tribunal shall establish expeditious procedures to deal with small claims and shall have discretion to give priority to cases on humanitarian grounds.

[6 of 1996]

### 14. Expert guidance

The Tribunal shall have power to appoint such assessors and experts as may be required to carry out research and provide needed guidance in establishing facts and sound principles for the performance of the functions of the Tribunal.

[6 of 1996]

### 15. Power to amend the Schedule

The Minister may, on the recommendation of the Chief Justice acting on the request of the Chairman of the Tribunal, amend the Schedule by Order published in the *Gazette*.

[6 of 1996]

## Schedule

The amount prescribed for the purposes of section 10(c) shall be K10,000.

[ss. 10(c) and 15(6) of 1996]