

Facts you should know:

- Under Section 57 and 58 of the Constitution, it is possible to take out an action against the State if certain person(s) consider that certain guaranteed Constitutional rights have been breached.
- An action against the State is exactly the same as an action between two other parties or two persons whom where one has a claim against the other.
- The State is a full legal person against whom actions can be taken and may initiate proceedings against the other parties.
- Under Section 58 of the Constitution, the National and Supreme Courts are given the authority to award damages (including exemplary damages) for the breach of Constitutional Rights).
- Under Section 5 of the Claims By and Against the State Act 1996 a party wishing to sue the State, must give written notice within six months of the occurrence of the incident giving rise to the claim.
- Your written notice must be served on the Attorney General or the Solicitor General.
- If delayed you can request the Attorney General to give you an extension of time.
- An extension of time may be given by the Principle Legal Officer, or failing that upon application to the National Court which would hear the substantive matter.

Office of the Public Solicitor



Office of the Public Solicitor

Initial legal requirements in making a claim against the State



For further information contact the Office of the Public Solicitor, P.O. BOX 5812, BOROKO, NCD. Ph. 325 8866 and our other provincial offices.

Please note any further legal advice is subject to approval by the Public Solicitor.



Providing access to justice for impecunious persons in Papua New Guinea

LEGISLATION THAT PROVIDES FOR THE LEGAL REQUIREMENTS

- The Claims By and Against the State Act 1996

WHAT DOES THE LAW SAY?

The law says:

- A person who wants to sue the State must give letter giving notice of intention to claim against the State within six months of the occurrence of the incident giving rise to the claim.
- The letter is to be addressed to the Attorney General or Solicitor General. For example if X gets assaulted or hit by the Police on 1st January 2008, X has six months from the date he was assaulted to give notice against the State. This means X must give notice by the 30th June 2008.
- If the person does not commence action against the State within six months she/he must then:
 - (a) Write to the Principal Legal Officer of the Office of the Attorney-General and ask for an extension of time.

Make sure that the letter gives reasons for the delay in giving notice to the State within the six month time limitation and copies of any relevant documents should also be attached.
 - (b) If that fails, then you have the option to apply to the National Court to get an extension.

WHAT IS REQUIRED WHEN MAKING AN APPLICATION TO THE COURT FOR AN EXTENSION OF TIME TO MAKE A CLAIM AGAINST THE STATE?

Documents to be filed at the National Court?

1. Originating Summons
2. Notice of Motion
3. Affidavit In Support

1. ORIGINATING SUMMONS

Contents of the Originating summons:

The Originating Summons must plead the Orders that you seek.

For example:

The Plaintiff claims:

1. Extension of time to lodge a Notice of intention to make a claim against the State pursuant to Section 5(2)(c)(ii) of the **Claims By And Against the State Act 1996**.
2. Any other Orders the Court deems fit.

2. NOTICE OF MOTION

The notice of motion should contain the same orders that you seek or are asking for in the Originating Summons (OS).

For example:

The Plaintiff will on the _____ day of _____ 2008, at Waigani National Court move the Court for Orders that:

1. Extension of time to lodge a Notice of intention to make a claim against the State pursuant to Section 5(2)(c)(ii) of the **Claims By And Against the State Act 1996**.
2. Any other Orders that this Honorable Court deems fit.

3. AFFIDAVIT IN SUPPORT

The Affidavit should contain:

- the reasons for your delay in giving notice to the State in making your claim.
- It should contain evidence of any medical evidence of the injuries sustained or damages suffered as a result of the actions of the State institution.

For example:

The reason for not giving notice may be because

- i. No Legal Access

X lives in the village away from town. His house is burnt down by the police and he is assaulted because of claims that he is a sorcerer. X does not know anything about the law and does not speak or write English. It takes him almost 2 years after the incident that he finds legal aid and comes to know of his rights.

X then puts this into affidavit form to ask for an extension of time.

- medical report of injuries received
- property lost in the fire, ie clothes, pots, bags etc
- For any reason for your delay the plaintiff must show sufficient cause in order to obtain an extension to make a claim against the State.

Note: The above documentation is not in the required format and should not be used without proper legal advice.