



# Marshall Islands Consolidated Legislation

You are here: [PacII](#) >> [Databases](#) >> [Marshall Islands Consolidated Legislation](#) >> [Marshall Islands Nuclear Claims Tribunal Act 1987 \[42 MIRC Ch 1\]](#)

[Database Search](#) | [Name Search](#) | [Noteup](#) | [Download](#) | [Help](#)

---

## Marshall Islands Nuclear Claims Tribunal Act 1987 [42 MIRC Ch 1]

42 MIRC Ch 1

### MARSHALL ISLANDS REVISED CODE 2004

#### TITLE 42 – NUCLEAR CLAIMS

#### CHAPTER 1.

#### NUCLEAR CLAIMS TRIBUNAL

#### ARRANGEMENT OF SECTIONS

#### Section

§101. Short title.

§102. Interpretation.

§103. Tribunal established.

§104. Purpose of the Tribunal.

§105. Duties and responsibilities.

§106. Powers.

§107. Compliance with Section 177 Agreement.

§108. Reserved.

§109. Use of annual proceeds.

§110. Composition of the Tribunal and rules.

§111. Special Tribunal.

§112. Operation of the Local Distribution Authorities.

§113. Administration of Funds.

§114. Officers.

§115. Office of Finance.

§116. Office of Mediation.

§117. Office of Public Advocate.

§118. Office of Defender of the Fund.

§119. Administrative staff.

§120. Exemption from the Public Service.

§121. Salaries of officers and employees.

§122. General procedures.

§123. Claims seeking compensation for loss or damage to person or property as a result of the Nuclear

## Program

§124. Claims challenging the fairness and equity of proposed Or active distribution scheme

§125. Claims challenging the administration of a Distribution scheme.

§126. Claims challenging a Local Distribution Authority's Determination that an individual is not a recipient.

§127. Claims challenging a Local Distributing Authority's assignment of future proceeds. §128. Enforcement of an Agreement between the Government And a LGC for the Implementation of Section 177

§129. Claims challenging the Government of the Marshall Islands

§130. Mediation process.

§131. Binding arbitration

§132. Advisory assistance to Local Distribution Authorities

§133. Costs and Fees

**Schedule**

-----

An Act to provide for the establishment and operation of the Marshall Islands Nuclear Claims Tribunal and for related purposes.

Commencement: October 9, 1987

Source: P.L. 1987-24

P.L. 1988-19

P.L. 1989-57

P.L. 1990-101

P.L. 1991-133

P.L. 1991-136

P.L. 1993-56

P.L. 1993-65

P.L. 1994-78

P.L. 1994-87

P.L. 1995-141

P.L. 1997-58

P.L. 1998-72

P.L. 2003-89

§101. **Short title.** This Chapter may be cited as the [Marshall Islands Nuclear Claims Tribunal Act 1987](#). [P.L. 1987-24, §1.]

**§102. Interpretation.**

For purposes of this Chapter:

- (a) 'Article II, Section 1 Funds' means those funds provided for health and radiological surveillance under Article II, Section 1 of the Section 177 Agreement;
- (b) 'Case' means either an individual claim or a class action;
- (c) 'Chairman' means the Chairman of the Tribunal;
- (d) 'Claims Fund' means the fund established by the Tribunal to control proceeds provided pursuant to Article II, Section 6(c) of the Section 177 Agreement;
- (e) 'distribution scheme' means a formal set of criteria and conditions governing the

payment of funds provided pursuant to the Section 177 Agreement or this Chapter;

(f) 'Government' means the Government of the Marshall Islands;

(g) 'Local Distribution Authority' or 'LDA' means the local government councils for Bikini /Kili, Enewetak/Ujelang, Rongelap and Utrik, respectively designated pursuant to Article 111, Section 1 of the Section 177 Agreement with the responsibility for receiving, distributing, investing, or otherwise expending funds provided pursuant to the Section 177 Agreement or this Chapter, and any additional organization established by the Nuclear Claims Tribunal pursuant to Article III, Section 2 of the Section 177 Agreement and this Chapter;

(h) 'member' means a member of the Tribunal including the Chairman;

(i) 'Operating Fund' means the fund established by the Tribunal to control proceeds provided pursuant to Article II, Section 6(b) of the Section 177 Agreement for the operation of the Tribunal and all its offices, and to control proceeds provided pursuant to Article IV, Section 2 of the Section 177 Agreement for the expenses of Tribunal proceedings including the operation of the Office of the Public Advocate, as set forth in Section 117 of this Chapter, and the Office of the Defender of the Fund, as set forth in Section 118 of this Chapter;

(j) 'Nuclear Testing Program' means the United States Nuclear Testing Program conducted in the Northern Marshall Islands between June 30, 1946, and August 18, 1958;

(k) 'private legal counsel' means a private attorney, trial assistant or other individual who offers legal services for a fee;

(l) 'recipients' means all individuals who have been designated by one or more LDA's pursuant to the Section 177 Agreement or this Chapter, as opposed to other individuals not receiving distributions;

(m) 'Section 177 Agreement' means the Agreement between the Government of the United States and the Government of the Marshall Islands for Implementation of Section 177 of the Compact of Free Association;

(n) 'Tribunal' means the Marshall Islands Nuclear Claims Tribunal established by this Chapter;

(o) 'Tribunal officers' or 'Tribunal employees' shall mean the officers and employees appointed or employed pursuant to this Chapter;

(p) 'United States' means the Government of the United States of America. **[P.L. 1987-24, §2, paragraph (a) was added to clarify the phrase 'Article II Section I Funds', amended by P.L. 1989-57, §3(1) adding new Paragraph (b) and renumbering all subsequent Paragraphs; amended by P.L. 1990-101, §2(1) repealing Paragraph (g) and enacting a new Paragraph (g); amended by P.L. 1993-56, §3(1) and (2).]**

### §103. Tribunal established.

(1) The Marshall Islands Nuclear Claims Tribunal is by this Act established.

(2) The prohibitions imposed on individuals under Title 1, Section 107 (a) of the Compact of Free

Association Act of 1985 of the United States of America shall apply to the members of the Tribunal, the Special Tribunal and the officers and employees of the Tribunal. **[P.L 1987-24, §3.]**

#### **§104. Purpose of the Tribunal.**

The Tribunal is established to satisfy the requirement in Article IV, Section 1 (a) of the Section 177 Agreement that the Government establish a claims tribunal to render final determination upon:

- (a) claims past, present, and future of the Government, the citizens and nationals of the Republic for loss or damage to person or property which are based on, arise out of, or are in any way related to the Nuclear Testing Program;
- (b) disputes arising from distributions under Articles II and III of the Section 177 Agreement; and
- (c) any funds that are provided under Section 177 of the Compact of Free Association shall remain available in perpetuity for the full payment of claims. **[P.L. 1987-24, §4, amended by P.L. 1988-19, §6 adding new Paragraph (c).]**

#### **§105. Duties and responsibilities.**

In order that it may accomplish the purpose set forth in Section 104 of this Chapter, the Tribunal shall perform and carry out the following duties and responsibilities:

- (a) decide claims by and disburse compensation to the Government and citizens and nationals of the Republic under Section 123 of this Chapter for existing and prospective loss or damage to person or property which are based on, arise out of or are in any way related to the Nuclear Testing Program including, but not limited to the duty and responsibility to:
  - (i) decide claims by owners of lands used or conveyed by the United States in its program to relocate those made homeless by the Nuclear Testing Program; and
  - (ii) establish and fund an LDA, where necessary and appropriate;
- (b) decide claims brought under Section 124 of this Chapter challenging the fairness and equity of the distribution scheme established by an LDA;
- (c) decide claims brought under Section 125 of this Chapter challenging an LDA's administration of a distribution scheme;
- (d) decide claims brought under Section 126 of this Chapter challenging a determination by an LDA that an individual is not a recipient;
- (e) decide claims brought under Section 127 of this Chapter challenging an LDA's proposal for the assignment of the right to receive funds;
- (f) decide claims brought under Section 128 of this Chapter for a breach of an implementation agreement between the Government and a Local Government Council;
- (g) decide claims brought under Section 129 of this Chapter charging abuse of discretion with respect to administration of the funds provided to the Government under Article II, Section 1 of the Section 177 Agreement;

(h) establish the Operating Fund;

(i) establish the Claims Fund;

(j) authorize and direct payment of all reasonable costs incurred by the Government in the implementation, administration, and defense of the Section 177 Agreement and with respect to claims brought under this Chapter; provided, however, that in any matter determined pursuant to Section 130 or 131 of this Chapter, the Government shall be reimbursed for expenses only to the extent that a non-Government party would be reimbursed;

(k) submit all records and reports received from the LDA's to the Defender of the Fund for review; and

(l) decide all other claims brought by the Government and citizens and nationals of the Republic seeking compensation for loss or damage to person or property which are based on, arise out of or are in any way related to the Nuclear Testing Program, or disputes arising from distribution under Articles II and III of the Section 177 Agreement.

(m) establish tables and scales providing awards for full compensation for specified injuries and loss of or damage to property with a fair and equitable distribution of payments among claimants. Said tables and scales shall not become effective until approved by the Cabinet and shall be developed and applied in a manner consistent with and subject to the laws of the Marshall Islands, including the other provisions of the Chapter. **[P.L. 1987-24, §5; amended by P.L. 1988-19, §2, adding paragraph (m); P.L. 1989-57, §2, substituting new Paragraph (m); amended by P.L. 1993-56, §3(3) and 3(4) with those amendments being repealed by P.L. 1994-87]**

#### **§106. Powers.**

(1) The powers hereby vested in the Tribunal by the Nitijela shall be those powers necessary to effectuate the duties and responsibilities set forth in Section 105 of this Chapter, consistent with the laws and Constitution of the Marshall Islands, this Chapter, and the Section 177 Agreement.

(2) In the exercise of their jurisdiction the Tribunal, and the Special Tribunal established by Section 111 of this Chapter, shall be independent of the legislative and executive powers of the Government.

(3) Pursuant to Article VI, Section 2(1) of the Constitution, all final determinations and all orders granting, dissolving, or denying an injunction issued by the Tribunal or by the Special Tribunal, if a request for review by the Tribunal under Section 131(q) is denied or is not acted upon within thirty (30) days, shall, at the discretion of the Supreme Court and subject to such conditions as to security for costs or otherwise as the Supreme Court thinks fit, be appealable to the Supreme Court within thirty (30) days from the date of the final determination or the order of the Tribunal or within thirty (30) days from the date that review by the Tribunal of the final determination or the order of the Special Tribunal is denied or is not acted upon for thirty (30) days. Pursuant to Article VI, Section 3(1) of the Constitution, final determinations and orders by the Tribunal or Special Tribunal shall not be subject to review by the High Court.

(4) The powers of the Tribunal shall include, but shall not be limited to:

(a) issuing orders and other processes, making rules, and promulgating procedural regulations, including issuing orders for the attendance of witnesses with or without documents, issuing orders for the disposal of exhibits, and punishing contempt in the manner prescribed for the Traditional Rights Court in Part VIII of the [Judiciary Act 1983](#);

- (b) providing funds for the operation of the Special Tribunal;
- (c) with the approval of the Cabinet, establishing and providing funds for the operation of the following offices;
  - (i) Office of Finance, as set forth in Section 115 of this Chapter;
  - (ii) Office of Mediation, as set forth in Section 116 of this Chapter;
  - (iii) Office of Public Advocate, as set forth in Section 117 of this Chapter; and
  - (iv) Office of Defender of the Fund, as set forth in Section 118 of this Chapter;
- (d) establishing and authorizing distributions from the Operating Fund for the efficient administration of this Chapter;
- (e) establishing and authorizing payments out of the Claims Fund for monetary awards under Section 123 of this Chapter and payments to the Government under Section 115(2)(a)(ii) of this Chapter;
- (f) issuing orders requiring the Defender of the Fund to investigate the administration and distribution or proposed distribution of funds referred to in this Chapter;
- (g) issuing orders suspending any or all distributions by an LDA;
- (h) placing in receivership an LDA designated pursuant to Article III, Section 1 of the Section 177 Agreement, or dissolving, placing into receivership, or replacing an LDA established pursuant to Article III, Section 2 of the Section 177 Agreement;
- (i) establishing and funding Local Distribution Authorities as appropriate and necessary to carry out the intent of this Chapter;
- (j) and delegating authority to officers and employees. **[P.L. 1987-24, § 6; amended by P.L. 1988-19, § 3, deleting original Subsection (3) and renumbering original Subsection (4) as present Subsection (3), P.L. 1989-5 7 § 4(1), adding new Subsection (3) and renumbering following Subsection; amended by P.L. 1990-101, §2(2), repealing Paragraphs 4(g) and 4(h) and enacting new Paragraphs 4(g) and 4(h)]**

#### **§107. Compliance with Section 177 Agreement.**

It is the express intent of the Nitijela that this Chapter be interpreted so as to comply with the requirements for the establishment of a claims tribunal as set forth in the Section 177 Agreement. **[P.L. 1987-24, §7.]**

#### **§108. Reserved.**

#### **§109. Use of Annual Proceeds.**

(1) The four local distribution authorities designated pursuant to Article III, Section 1 of the Section 177 Agreement shall determine the appropriate use of annual proceeds received pursuant to Article II of the Section 177 Agreement, provided any such determination is consistent with the Section 177

## Agreement.

(2) The use of annual proceeds received by an LDA pursuant to the Section 177 Agreement shall be deemed consistent with the Section 177 Agreement where said funds are used to ensure: compensation of individuals for loss or damage to property and person as a result of the nuclear testing program, supplemental feeding programs, rehabilitation of contaminated lands, resettlement, education, or similar activities addressing the special needs and unique circumstances of the community represented by the local distribution authority. [P.L. 1990-101, §2(3).]

### **§110. Composition of the Tribunal and rules.**

- (1) The power of the Tribunal shall be vested in the Tribunal as a whole which shall consist of three (3) members composed of a Chairman and two (2) other members, each of which shall be appointed by the Cabinet upon recommendation of the Judicial Service Commission and subject to the approval, signified by resolution, of the Nitijela; provided that an appointee may, pending such approval, discharge the duties of his office until twenty-one (21) days after the commencement of the next ensuing constitutional regular session of the Nitijela.
- (2) The Chairman shall have administrative supervision of the Tribunal and its officers and employees, and shall, after consultation with the Financial Officer, prepare and submit, together with any necessary and appropriate supporting justification, an annual or supplemental budget to the Tribunal for approval. In the event of his temporary disability or disqualification under Subsection (13) or temporary absence from the Republic, the Chairman shall designate one other Member to act on his behalf during his disability, disqualification or absence.
- (3) If the Tribunal is unable to render a decision due to either the temporary disability or disqualification under Subsection (13) of this Section of one or more members, then the Cabinet shall appoint temporary members consistent with the qualifications set forth in Subsection (4) of this Section below, to enable the Tribunal to carry out its duties. In the event of a vacancy in the Tribunal other than a temporary disability or disqualification, the Chief Justice of the High Court at the request of the Chairman of the Tribunal may designate a justice of the High Court to serve pro tem as a member of the Tribunal, other than as Chairman of the Tribunal. The designation under this subsection shall not be deemed to be an appointment to fill a vacancy under Subsection (7).
- (4) All three (3) Members of the Tribunal shall be persons qualified by education, experience, and character to discharge the duties and responsibilities set forth in Section 105 of this Chapter.
- (5) The members of the Tribunal shall serve for a term of three (3) years, without limitation on re-appointment for successive terms.
- (6) Any appointment to fill a vacancy which may occur on the Tribunal shall trigger the start of a new term and shall be made in the same manner as was the appointment of the person whose seat is vacant.
- (7) Members of the Tribunal may be removed from office only by the Cabinet and only on the grounds of a clear failure or inability faithfully to discharge the duties of such office or for the commission of treason, bribery, or other high crimes or abuses inconsistent with the authority of office.
- (8) Members of the Tribunal shall receive compensation for the performance of official Tribunal business as follows:
- (a) the Chairman shall receive an annual salary of \$43,000;
  - (b) each other member shall receive an annual salary of \$38,000;

(c) the annual salaries established under Paragraphs (a) and (b) of this Subsection shall not be changed during any one term; and

(d) the Chairman and other members shall be provided housing for the duration of their terms and shall receive such other benefits which are normally accorded to the contract employees of the Government.

(9) The Tribunal shall be convened at the discretion of the Chairman or as otherwise required by this Chapter.

(10) All members of the Tribunal must vote on all rules and regulations. A rule or regulation shall become effective upon receiving the affirmative vote of the Chairman and at least one other member. The Tribunal shall publish and make available to the public in printed form all rules and regulations promulgated. The promulgation of rules and regulations under this Chapter shall be subject to the Administrative Procedure Act 1979, as amended.

(11) Unless otherwise specified in this Chapter, the Chairman and at least one other member of the Tribunal must vote on all decisions. The decision of the Tribunal shall be that agreed upon by a majority of its voting members.

(12) No member of the Tribunal shall take part in deciding a claim or any other action of the Tribunal for which he has a conflict or the appearance of a conflict of interest.

(13) The Chairman shall, on behalf of the Tribunal, report to the Nitijela annually at the beginning of each regular session as to the functioning of and expenditures by the Tribunal. Such reports shall be made available to the public in printed form.

(14) The Tribunal may, with the approval of the Cabinet, employ such aides and procure such facilities and equipment as are reasonably required to carry out its duties. **[P.L. 198 7-24, §10; amended by P.L. 1988-19, §4 making changes to Subsection (5), amended by P.L. 1990 101, §2(4) repealing Subsection 10(1) and enacting new Subsection 10(1); P.L. 1991-43, §2(1); P.L. 1993-65, §2(1-3).] [P.L. 2003-89 amended sub(3) and repealed sub(5), subsequent subsections re-numbered to reflect omission of sub(5)]**

### **§111. Special Tribunal.**

(1) There is hereby established a Special Tribunal which shall initially handle all claims brought under this Chapter and, if appropriate, decide such claims except those claims commenced under Sections 124, 128 and 129 of this Chapter, and shall carry out other duties and responsibilities set forth in this Chapter.

(2) One member shall sit as the sole member of a Special Tribunal. The Chairman shall sit permanently and may appoint one or more members to sit as Special Tribunals as required.

(3) The Special Tribunal shall enjoy all of the powers of the Tribunal, except when expressly limited by this Chapter.

(4) In determining time and place to meet, the Special Tribunal shall consider the convenience of the claimants as well as its duties and responsibilities.

(5) As authorized by the Tribunal and with the approval of the Cabinet, the Special tribunal may employ such aides and procure such facilities and equipment as are reasonably required to carry out its duties. **[P.L. 1987-24, §11.]**



## §112. Operation of the Local Distribution Authorities.

The Tribunal shall promulgate regulations requiring each LDA to:

- (a) establish and reduce to writing a distribution scheme; and
  - (i) file a copy of this writing with the Clerk employed under Section 119 of this Chapter; and
  - (ii) publish a copy of this writing in a manner reasonably expected to reach all recipients affected by the distribution scheme;
  
- (b) reduce to writing all material details of any proposals to alter an existing distribution scheme at least seventy-five (75) days prior to the date that the first distribution is to be made under the proposed scheme; and
  - (i) file a copy of this writing with the Clerk; and
  - (ii) publish a copy of this writing in a manner reasonably expected to reach all recipients affected by the proposed scheme;
  
- (c) reduce to writing and file with the Clerk quarterly reports within sixty (60) days after each quarterly payment and annual reports within one hundred twenty (120) days after each anniversary of the Section 177 Agreement. The reports for such periods shall contain:
  - (i) a report of all distributions and expenditures; and
  - (ii) a report of all decisions, formal or informal, relating to distributions or the refusal thereof; and
  
- (d) reduce to writing all proposed assignments of future proceeds, file a copy of the document with the Clerk, and give public notice at least seventy-five (75) days prior to consummation of the proposed assignment. **[P.L. 1987-24, §12.]**

## §113. Administration of Funds.

Funds provided under Article II, Section 6(b) and (c), and Article IV, Section 2 of the Section 177 Agreement shall be administered, expended, and accounted for by the Financial Officer appointed under Section 115 of this Chapter, in accordance with the provisions set forth in Section 115. **[P.L. 1987-24, §13.]**

## §114. Officers.

- (1) All officers appointed under this Chapter shall be persons qualified by education, experience, and character to carry out their duties and responsibilities.
- (2) All officers appointed under this Chapter shall remain in residence in the Republic for the duration of their terms of office.
- (3) Subject to the approval of the Cabinet, all Tribunal officers shall be appointed by the Tribunal for two (2) year terms according to the following procedures:

- (a) the Chairman shall nominate a person to serve as an officer;
- (b) the person so nominated shall appear before the Tribunal, present evidence of his qualifications and submit to questioning;
- (c) the Tribunal may require the nominee to appear on more than one occasion; and
- (d) within one week of the nominee's final appearance, the Tribunal shall convene in private to vote on the appointment. An appointment shall require the affirmative vote of the Chairman and at least one other member.

(4) Vacancies and new positions shall be filled in the manner set forth in Subsection (3) above, except that:

- (a) the Chairman may make temporary appointments as administration of this Chapter requires; and
- (b) the Chairman shall convene the Tribunal within three (3) months after invoking Paragraph (a), above, to make a permanent appointment.

(5) Should there arise a conflict or an appearance of a conflict of interest that renders any officer unable to carry out the duties of his office, or should there arise the need for one or more independent officers, the Chairman shall make appointments as set forth in Section 114(6) of this Chapter.

(6) The Chairman may make appointment for a single term no greater than three (3) months, as administration of this Chapter requires; provided, however, that no particular office shall be filled by appointment under this Subsection for more than five (5) months in any twelve (12) month period.

(7) Subject to the approval of the Cabinet, all officers appointed under this Chapter may be removed only for good cause by either:

- (a) the Chairman acting alone, or
- (b) the affirmative vote of at least two (2) members of the Tribunal.

The officer so removed shall be notified of his removal and the ground for his removal in writing. [P.L. 1987-24, §14.]

### **§115. Office of Finance.**

(1) There shall be appointed one Financial Officer who shall in accordance with generally accepted accounting principles, maintain the fiscal integrity of the Operating Fund. The Financial Officer shall:

- (a) in accordance with an annual budget approved by the Tribunal, disburse payments from the Operating Fund and ensure that all payments are in furtherance of Tribunal purposes;
- (b) regularly inform the Chairman as to the status of the Operating Fund; and
- (c) file written quarterly reports with the Chairman setting forth all requests for payments, the status of such requests, and the Operating Fund's balance.

(2) The Financial Officer shall, in accordance with generally accepted accounting principles, maintain

the fiscal integrity of the Claims Fund. The Financial Officer shall:

(a) disburse payments from the Claims Fund for:

(i) awards ordered pursuant to Section 123 of this Chapter; and

(ii) all reasonable costs and expenses incurred by the Government in the implementation, administration, and defense of the Section 177 Agreement and with respect to claims brought under this Chapter; provided, however, that in any matter determined pursuant to Sections 130 and 131 of this Chapter the Government shall be reimbursed for cost and expenses only to the extent that a non-Government party would be reimbursed;

(b) regularly inform the Chairman as to the status of the Claims Fund; and

(c) file quarterly reports with the Chairman setting forth all requests for payments, the status of said requests, and the Claims Fund's balance.

(3) The Financial Officer shall have the fiduciary obligation to invest funds received under this Section in a manner consistent with the nature of their intended use.

(4) As authorized by the Tribunal, the Financial Officer may employ such aides and procure such facilities and equipment as reasonably required to carry out the duties of his office.

(5) All finances and the funds of the Tribunal, Special Tribunal and other offices established under this Chapter shall be subject to audit by the Auditor-General in terms of Article VIII, Section 15 of the Constitution of the Marshall Islands. **[P.L. 1987-24, §15; amended by P.L. 1993-65, §2(4).]**

#### **§116. Office of Mediation.**

(1) There shall be appointed one Mediation Officer familiar with the customary law and traditional practice of the Republic, who shall, at the direction of the Special Tribunal and according to the procedure set forth in Section 130 of this Chapter, endeavor to effect an amicable settlement of claims submitted to mediation under this Chapter.

(2) The Mediation Officer may, with the advice and approval of the Chairman, establish a pool of no more than three (3) assistant mediators, whose duties shall be to accept appointments by the Special Tribunal to mediate claims and assist the Mediation Officer. The assistant mediators shall:

(a) be employees of the Tribunal;

(b) be residents of the Republic; and

(c) receive compensation for the periods which they have accepted active appointment.

(3) As authorized by the Tribunal, the Mediation Officer may employ such aides and procure such facilities and equipment as reasonably necessary to carry out the duties of his office. **[P.L. 1987-24, §16.]**

#### **§117. Office of Public Advocate.**

(1) There shall be appointed one Public Advocate and such Associate Public Advocates as required,

who shall:

- (a) advise and assist all claimants in the filing, preparation, and presentation of claims under this Chapter;
- (b) advise the Special Tribunal in the selection of group representatives when required; and
- (c) upon order of the Tribunal or the Special Tribunal, represent absent and unidentified claimants in claims filed under this Chapter.

(2) The Public Advocate, with the advice and consent of the Chairman and within three (3) months after appointment, shall promulgate forms for filing and answering claims brought under this Chapter, as well as other forms as the need arises.

(3) With respect to claims brought under Section 123 of this Chapter, a Public Advocate shall appear in the area the claims are to be heard in order to assist claimants in the filing, preparation, and presentation of their claims, including class actions. The Public Advocate shall appear at least three (3) weeks prior to the convening of the Tribunal or Special Tribunal. The appearance shall be afforded sufficient publicity, reasonably to ensure notice to the appropriate members of the public.

(4) As authorized by the Tribunal, the Public Advocate may employ such aides and procure such facilities and equipment as reasonably necessary to carry out the duties of his office.

(5) A claimant or class of claimants shall be prohibited from retaining private legal counsel in connection with claims brought under this Chapter. [P.L. 1987-24, §17; amended by P.L. 1993-5 6, §3(5) and (6).]

#### **§118. Office of Defender of the Fund.**

(1) There shall be appointed one Defender of the Fund and such Associate Defenders as required, who shall:

(a) when appropriate, defend claims against the Claims Fund brought under Section 123 of this Chapter through the assertion of one or more of the following defenses:

- (i) the claimant has not suffered the alleged loss or damage to person or property;
- (ii) the claimant's loss or damage is not in any way related to the Nuclear Testing Program, or
- (iii) the claimant has failed to exhaust his remedies before an LDA which has jurisdiction over his claims;
- (iv) the claimant has been unreasonably denied compensation or inadequately compensated by an LDA which has jurisdiction over his claim; and
- (v) any other defense deemed proper by the Defender of the Fund;

(b) review LDA distribution schemes and their administration and, upon order of the Tribunal following notice to the LDA and hearing:

- (i) initiate claims under Section 124 of this Chapter challenging the fairness and equity of a distribution scheme;
- (ii) initiate claims under Section 125 of this Chapter challenging alleged improper administration of a distribution scheme by an LDA; or
- (iii) initiate claims under Section 127 of this Chapter challenging an LDA's assignment or proposed assignment of rights to a future disbursement.

(c) when appropriate, initiate claims under Section 129 of this Chapter challenging the Government's administration of Article II, Section 1 funds under the Section 177 Agreement;

(d) undertake investigations as so ordered by the Tribunal or Special Tribunal, and

(e) move for, argue for, or argue against the creation of class actions, as so required by this Chapter.

(2) As authorized by the Tribunal, the Defender of the Fund may employ such aides and procure such facilities and equipment as reasonably required to carry out the duties of his office. **[P.L. 1987-24, §18; amended by P. L. 1990-101, §2(5), repealing Paragraph (1)(b) and enacting new Paragraph (1)(b).]**

#### **§119. Administrative staff.**

(1) The Tribunal may, with the approval of the Cabinet, employ a Clerk of the Tribunal (hereinafter 'Clerk') and such aides, and procure such facilities and equipment as reasonably required to administer the Tribunal and Special Tribunal.

(2) The Clerk and the Clerk's staff shall, as directed by the Chairman:

- (a) receive documents and forward copies to the responsible officer or Tribunal member;
- (b) keep files on all claims brought under this Chapter and make such files available for public inspection during regular business hours;
- (c) assist the Tribunal and Special Tribunal in all administrative matters;
- (d) assist the Public Advocate in informing claimants and their representatives of the procedures and provisions for making and prosecuting claims under this Chapter;
- (e) maintain an ample supply of forms promulgated by the Public Advocate and distribute these forms as required; and
- (f) perform such other functions as are required by the Tribunal in furtherance of this Chapter.

(3) The Chairman may with the approval of Cabinet, remove from office, without cause, any employee appointed under this section. **[P.L. 1987-24, §19.]**

#### **§120. Exemption from the Public Service.**

Pursuant to Article VII, Section 1(3) of the Constitution of the Marshall Islands, all members, officers, and employees of the Tribunal are exempt from application of Article VII, Section 1 (1) and (2) of the Constitution of the Marshall Islands and shall not be members of the Public Service. [P.L. 1987-24, § 20.]

### **§121. Salaries of officers and employees.**

Each officer and employee shall receive an annual salary established by the Cabinet and commensurate with the duties of office or employment, and shall receive such benefits which are normally accorded to the members of the Public Service. [P.L. 1987-24, §21.]

### **§122. General procedures.**

- (1) All documents submitted to the Tribunal or to the Special Tribunal shall be filed with the Clerk. Within three (3) months after all three (3) members have been appointed, the Tribunal shall promulgate regulations establishing methods of filing and the date upon which a filing shall be deemed effective.
- (2) Each document shall be signed by a representative for the parties or, in the case of parties not represented, by the parties. The signature by a representative or party constitutes a certificate by the signer that he has read the pleading, motion, or other paper; that to the best of the signer's knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in costs. If a pleading, motion, or other paper is signed in violation of this rule, the Tribunal or the Special Tribunal, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction.
- (3) Every document filed with the Clerk shall be served upon all parties or their representatives. Within three (3) months after all three (3) members have been appointed, the Tribunal shall promulgate regulations establishing methods of service.
- (4) All complaints not served within the prescribed time periods shall be dismissed with prejudice, except upon good cause shown.
- (5) Respondents who fail to file answers to complaints within the prescribed time period shall be subject to sanctions at the discretion of the Special Tribunal.
  - (a) Sanctions may include, but are not limited to, fines levied against the respondent and contempt. If the respondent is an LDA, both the LDA and its individual members may be subject to fines, which shall be turned over to the Financial Officer for deposit into the Claims Fund;
  - (b) Appropriate sanctions shall not include default judgments.
- (6) Within three (3) months after all three (3) members have been appointed, the Tribunal shall issue regulations establishing methods of giving public notice. Public notice shall be given in both Marshallese and English.
- (7) Any individual who has a personal interest in a proceeding under this Chapter, which interest is otherwise unrepresented, and who desires to participate as a party, shall file a petition for leave to intervene pursuant to regulations issued by the Tribunal. Timely petitions shall be granted in any case where the interests of the petitioner could be substantially affected by a final order or agreement.
- (8) When the questions of law or fact presented by a claim are of common or general interest to a

group of individuals or when the parties are numerous and it is impractical to involve them all directly in the dispute resolution process, one or more may file for the benefit of all under a class action.

(9) When a claim is filed in the form of a class action:

(a) the Special Tribunal on its own motion or the motion of any party may dismiss the matter and order it tried as joint claims or as individual claims, when appropriate;

(b) the Special Tribunal shall not dismiss a class action if all of the class members are known and served notice, provided the issues common to all claimants in the case clearly predominate over separate issues;

(c) persons who are members of the class shall not be required to file an individual claim while they remain members of the class; provided, however, upon order by the Tribunal, information necessary to resolve the claim shall be provided to the Tribunal by members of the class; and

(d) in the event the Special Tribunal orders that a matter be dismissed as a class and tried as joint or individual claims, the claimants shall be afforded a reasonable time to submit their claims as joint or individual claims, notwithstanding any other provision of this Chapter or regulations promulgated under this Chapter to the contrary.

(10) The Special Tribunal on its own motion or on motion of a party may order persons who have not filed claims to be joined and thereby convert the case into a class action, but it shall not do so unless and until any party who wishes has had a reasonable opportunity to object to such joinder.

(11) Whenever a class action is filed or created by Special Tribunal action:

(a) the Special Tribunal shall give public notice;

(b) the Special Tribunal shall allow the members of the class to designate their representative party or parties, provided upon failure to do so within a reasonable time, the Special Tribunal shall appoint a representative party or parties; and

(c) the Public Advocate shall appear on behalf of any members of the class who are unknown, who cannot be found, or whose interest in the action and financial resources are such as to render representation at their own expense impractical.

(12) When appropriate, the Special Tribunal may:

(a) order the formation of subclasses and treat each subclass as a class; and

(b) issue such other orders as are necessary for the just and efficient conduct of class actions. An order under this Paragraph may be conditional and may be altered or amended upon motion or by the Special Tribunal at any time prior to final resolution of the dispute.

(13) In proceedings before the Tribunal, the Tribunal shall have all the powers of the Special Tribunal as set forth in this Section.

(14) Discovery before or during proceedings under Section 130 or 131 of this Chapter shall be governed by regulations issued by the Tribunal. **[P.L. 198 7-24, §22; P.L. 1989-5 7, §3(2), adding new Paragraphs (e) and (d) to Subsection (9).]**

**§123. Claims seeking compensation for loss or damage to person or property as a result of the Nuclear Testing Program.**

(1) A proceeding under this Section shall be commenced by the filing of a statement of claim on behalf of an individual or class, setting forth the nature of loss or damage to person or property as a result of the Nuclear Testing Program, including, when appropriate, claims by owners of lands used or conveyed by the United States in its program to relocate those made homeless by the Nuclear Testing Program.

(2) Claims may be initiated by citizens or nationals of the Republic, or by the Government, alleging loss or damage to its property.

Whenever a claim is made by an individual under this Section and there are other individuals who have potential claims for loss or damage to the same or other property located on the same atoll, the Defender of the Fund shall be permitted to join all such potential claimants or in the alternative to join them as a class under Section 122(8)-(9), of this Chapter.

Claims may be filed on the forms promulgated by the Public Advocate and available from the Clerk or otherwise shall contain the information required on said form.

(3) The Special Tribunal may allow such amended and supplemental claims as justice requires.

(4) All claims based on personal injury to a claimant must be joined in a single action.

(5) All of a claimant's claims for loss or damage to property must be joined if:

- (a) they arise from a single defined incident; and
- (b) they affect the same property or portion thereof.

(6) A claimant who fails to join all claims of which he has knowledge, or should reasonably have had knowledge, shall be barred thereafter from seeking redress under this Section for any such claims not brought.

(7) During the course of a proceeding, the Special Tribunal may, in its discretion, permit a claimant to add additional claims that otherwise would be barred in future proceedings. Such discretion shall be exercised liberally toward permitting the addition of such claims, and permission shall be denied only when the interests of justice clearly so require.

(8) A claimant who is in doubt as to whether an additional claim is required to be filed may petition the Special Tribunal for a determination of that matter at any time.

(9) Notwithstanding Subsection (4) of this Section, a claimant who is involuntarily joined in an action or involved in a class action, and who is required to file some but not all of his claims in that action, shall not be required to join other unrelated claims.

(10) Upon filing a claim for loss or damage to property, an individual claimant or the representative claimant in a class action must give public notice to inform all parties who may reasonably be expected to contest the claimant's assertion of ownership, both as to the property in question and the nature of ownership.

(11) Should the claimant's assertion of ownership be contested, the Tribunal or the Special Tribunal shall refer the ownership dispute to the High Court for a decision. Final decisions of the judiciary of



the Republic shall be binding upon the decision maker.

All disputes so referred to the High Court shall be given priority over other civil matters by the High Court and by the Supreme Court with respect to any appeal therefrom. Where the ownership is an issue, the High Court may appoint the Special Tribunal as a master with such powers as the High Court deems appropriate.

(12) In determining the proper award of compensation, the Tribunal or the Special Tribunal, whichever is the decision maker, shall, in accordance with Article LV, Section 2 of the Section 177 Agreement, take into account the validity of the claim and such other factors as it may deem appropriate.

The awarding of compensation to individual claimants under this Section, either in full or pro rata over a number of years, shall absolutely bar all LDA's from increasing future distributions to these claimants for the same loss or damage.

(13) In order to facilitate efficient and uniform payments of compensation, the Tribunal shall issue regulations establishing:

- (a) a list of medical conditions which are irrebuttably presumed to be the result of the Nuclear Testing Program;
- (b) the total amount of compensation due an individual upon proof of the existence of a listed medical condition, determined by relevant factors including age; and
- (c) the simplest and least expensive method of adequately proving the existence of a listed medical condition. To aid in determining the list of medical conditions referred to in Paragraph (a), of this Subsection, the Tribunal shall conduct public hearings and solicit the views of the people and the elected leaders of the Republic. The said list of medical conditions referred to in Paragraph (a) of this Subsection, and the total amount of compensation determined under Paragraph (b) of this Subsection, shall not become effective until approval by the Cabinet.

The list shall be reconsidered in light of decisions made pursuant to Subsection (14) of this Section, and other relevant data, at least once per year.

(14) In order to collect compensation for medical conditions not listed, the claimant must prove by a preponderance of the evidence on record that:

- (a) the claimant suffers from the alleged medical condition; and
- (b) the condition was a result of the Nuclear Testing Program. The Tribunal or Special Tribunal shall determine the amount of compensation on a case by case basis considering, among other things, the effects of the medical condition and the age of the claimant.

(15) In order to collect compensation for loss or damage to property, the claimant must prove by a preponderance of the evidence that:

- (a) the property loss or damage results from the Nuclear Testing Program; and
- (b) the claimant possesses the ownership interest in the property as averred in the complaint:

- (i) the absence of claims contesting the averred interest shall be prima facie proof of ownership;
- (ii) disputes as to ownership shall be referred to the High Court pursuant to Subsection (11), above.

The amount of compensation shall be determined on a case by case basis, taking into consideration, among other things the amount of property owned; the nature of the ownership interest; and the extent of the loss or damage.

(16) The Defender of the Fund shall represent the Claims Fund in all claims filed under this Section.

(17) All claims under this Section shall be decided by the Special Tribunal through the decision process set forth in Section 131 of this Chapter, provided the Special Tribunal may at its own discretion refer the matter to the Tribunal upon certification by the Special Tribunal that the claim involves a matter of public importance.

(a) The decision maker may stay the proceeding and order the claimant promptly to seek compensation from an LDA within a specified period of time.

(b) The decision maker shall consider whether and to what extent the claimant or class of claimants suffered loss or damage to person or property related to the Nuclear Testing Program and shall:

- (i) upon determination that the claimant or claimants suffered no loss or damage to person or property related to the Nuclear Testing Program, issue an order denying compensation;
- (ii) upon determination that one or only a small number of claimants suffered loss or damage to person or property, issue an order awarding such claimants full compensation; and
- (iii) upon the determination that a substantial number of the people of an atoll suffered loss or damage to person or property, issue an order:

(A) establishing an LDA, if an existing LDA is not to receive the award; and

(B) providing annual funding to fully compensate the people for loss or damage to person or property.

(c) Notwithstanding Subsection 117(b) of this Section, the decision maker may stay the award of compensation and order an LDA to consider or to reconsider the claimant's rights under its distribution scheme and report its conclusions to the decision maker within a stated period of time.

(d) Decisions rendered under this Section shall be final and binding, and shall not be subject to review except as provided in Paragraph (e) of this Subsection and in Subsection 106(3) and Paragraph 131(q) of this Chapter.

(e) The Public Advocate, the Defender of the Fund or the claimant, upon a good faith

belief that facts or circumstances unknown at the time of decision render the decision unjust, may in a timely manner file a written petition requesting the decision maker to review its decision. In the case of such a petition, the petitioner must give public notice to inform all parties who may reasonably be expected to contest the petition. The decision to grant or deny the petition shall be in the discretion of the decision maker. If the petition is granted and the initial decision altered, the decision maker, except in circumstances such as fraud or misrepresentation, shall not require all or part of the payments received under the initial decision to be repaid or set off against future payments.

(18) For the purposes of Subsections (19) and (20) of this Section only, the words:

(a) 'presumed medical condition' means a medical condition specified under regulations promulgated in accordance with Paragraph (a) of Subsection (13) of this Section; and

(b) 'non-presumed medical condition' means a medical condition not specified in regulations promulgated in accordance with Paragraph (a) of Subsection (13) of this Section.

(19) For any eligible claimant who was present (including in utero) in the Marshall Islands at any time between July 1, 1946 and August 19, 1958, inclusive, or is the biological child of a mother who was physically present (including in utero) in the Marshall Islands at any time after June 30, 1946 and August 19, 1958, a causal relationship between a presumed medical condition and the United States Nuclear Testing program will be presumed and the biological child with the same presumed medical condition as the older claimant will be medically treated equally but compensated 50% of the entitlements, until a causal link between the United States Nuclear Testing Program and the condition can be established to the satisfaction of the Tribunal.

(20) For any claimant who:

(a) has a presumed medical condition, but was not physically present or in utero, or is not the biological child of a mother who was physically present or in utero, in the Marshall Islands at any time after June 30, 1946; or

(b) has a non-presumed medical condition, whether or not such claimant was physically present or in utero, or is the biological child of a mother who was physically present or in utero, in the Marshall Islands at any time after June 30, 1946, and subject to any latency, risk periods or other limitations determined by the Tribunal to be medically appropriate, a causal link between the condition and the United States Testing Program will be presumed in individual cases where the claimant demonstrates by a preponderance of the evidence that a significant statistical relationship exists between the claimant's estimated level and type of exposure to radiation in the Marshall Islands and the subsequent development of the claimed medical condition in human populations.

**2.** [The obviously incorrect reference to the year 1046 in P.L. 1998-72 was corrected by the Commissioner. With the exception of the correction noted in footnote 2, the text in Subsection (19) is exactly as passed in P.L. 1998-72. The apparent logical and English language errors are in the original text.] [P L. 1987-24, §23; amended by P.L. 1988-19, §5. P.L. 1989-57, §4(2), substituting Subsection (1 7)(d); amended by P. L.1990-101,§ 2(6), by deleting the words 'or the Defender of the Fund' and inserting the words ', the Defender of the Fund or the claimant, 'in Subsection (1 7)(e); P.L. 1991133, § 2(2); P.L. 1991-136, §2; P.L. 1994-78, § 2(1); Subsection (19) amended in its entirety by P.L. 1995-141, § 2, P.L. 1997-58, §2, and P.L. 1998-72, §2.]

**§124. Claims challenging the fairness and equity of proposed or active distribution schemes.**

- (1) A proceeding under this Section shall be commenced by the filing of a complaint setting forth the reasons why an active or proposed distribution scheme is unfair or inequitable.
- (2) Claims may be brought by the recipients who are, or will be, directly affected by the challenged distribution scheme.
- (3) Claims may be filed on the forms promulgated by the Public Advocate and available from the Clerk, or shall otherwise contain all of the information required by said forms. In the case of claims challenging a distribution scheme which has previously been declared to be valid under this Section, a claimant must allege new facts or changed circumstances which render the distribution scheme unfair or inequitable.
- (4) A copy of the complaint shall be served on the respondent LDA within ten (10) days after filing the complaint.
- (5) Upon the filing and service of a complaint under this Section, the Defender of the Fund and all recipients who are subject to the challenged scheme shall be notified of this challenge by the method established under Section 122(6) of this Chapter.
- (6) A respondent LDA shall have sixty (60) days after service of the complaint to file an answer. The answer shall contain the following:
  - (a) a statement that the LDA believes its distribution scheme to be fair and equitable, and that it intends to defend the scheme;
  - (b) a statement that the validity of the distribution scheme has been established under this Section within the past five (5) years; or
  - (c) a statement that the LDA admits the scheme to be unfair and inequitable, and that it intends to establish a new distribution scheme.
- (7) Unless and until a dispute is submitted to the Tribunal, all procedural matters shall be determined by the Special Tribunal unless otherwise provided by Tribunal rules and regulations. The Special Tribunal shall have the power, among others, to allow appropriate amendments and supplemental pleadings as justice requires.
- (8) The Special Tribunal shall consolidate all claims challenging the same distribution scheme to such extent and upon such terms as may be proper, including maintenance of the proceeding as a class action in accordance with Section 122(8)-(12) of this Chapter.
- (9) All claims commenced under this Section shall initially be submitted by the Special Tribunal to mediation pursuant to Section 130 of this Chapter.

Notwithstanding the foregoing, the Special Tribunal may stay the proceedings at any time prior to submission of the dispute to mediation to afford the LDA an opportunity to promulgate and publish a new distribution scheme. (The Special Tribunal may reinstate proceedings at any time.)

Upon the promulgation and publication of a proposed new and materially different distribution scheme, the Special Tribunal shall dismiss all claims pending against the LDA challenging the replaced scheme. Distributions under the proposed scheme are controlled by Section 112 of this Chapter.

- (10) Should mediation under Sections 124(9) and 130 of this Chapter terminate without agreement, then the dispute shall be resolved by the Tribunal pursuant to Section 131 of this Chapter. The claimant must prove by a preponderance of the evidence that the distribution scheme is unfair or

inequitable.

(11) The validity of a distribution scheme resulting from a proceeding under Section 130 or 131 of this Chapter shall be final and binding, except when:

(a) the Public Advocate or the Defender of the Fund, upon a good faith belief that facts or circumstances unknown at the time of decision render the distribution scheme unfair or inequitable, petitions the Tribunal to review said scheme; or

(b) claims are filed more than five (5) years after a determination under this Section that the scheme at issue is fair and equitable, which allege and establish new facts or changed circumstances which were not in existence at the time the decision was made and which render such scheme unfair or inequitable.

(12) In the case of a complaint or claim as set forth in this Section, the claimant must give public notice to inform all parties who may reasonably be expected to contest the complaint. The decision to grant or deny the complaint shall be in the discretion of the decision maker. If a complaint or claim is granted and the initial decision altered, the decision maker, except in circumstances such as fraud or misrepresentation, shall not require all or part of the payments received under the initial decision to be repaid or set off against future payments. [P.L. 1987-24, §24.]

#### **§125. Claims challenging the administration of a distribution scheme.**

(1) A proceeding under this Section shall be commenced by the filing of a complaint setting forth the reasons why the administration of a distribution scheme is improper.

(2) Claims may be initiated by a recipient or the Defender of the Fund upon assertion that improper administration has occurred.

(3) Claims may be filed on the form promulgated by the Public Advocate and available from the Clerk, or otherwise shall contain all of the information required by said form.

(4) A copy of the complaint shall be served on respondent LDA within ten (10) days after filing of the complaint.

(5) The respondent LDA shall have sixty (60) days after service of the complaint to file an answer.

(6) Respondent LDA shall state in short and plain terms its defense to each claim asserted and shall admit or deny each averment upon which the adverse party relies.

(7) The Special Tribunal may allow appropriate amendments and supplemental pleadings as justice requires.

(8) The Special Tribunal shall order the consolidation of all claims challenging the administration of the same distribution scheme, to such extent and upon such terms as may be proper, including maintenance of the proceeding as a class action in accordance with Section 122(8)-(12) of this Chapter.

(9) All claims commenced under this Section shall be resolved by the Special Tribunal through the decision process set forth in Section 131 of this Chapter, except as provided for in Subsection 10 of this Section. In a proceeding under Section 131, the claimant must prove by a preponderance of the evidence that the administration of the distribution scheme is improper.

(10) In the interest of justice, the Special Tribunal shall grant motions jointly filed by all parties to the

dispute requesting that the dispute be initially submitted to mediation, which shall proceed as set forth in Section 130 of this Chapter. **[P.L. 1 98 7-24, §25.]**

**§126. Claims challenging a Local Distribution Authority's determination that an individual is not a recipient.**

- (1) A proceeding under this Section shall be commenced by the filing of a complaint setting forth the reasons why an LDA's determination that an individual is not a recipient is erroneous.
- (2) Claims may be initiated by an individual who has been denied recipient status by an LDA.
- (3) Claims may be filed on the form promulgated by the Public Advocate and available from the Clerk, or otherwise shall contain all of the information required on said form.
- (4) A copy of the complaint must be served on respondent LDA within ten (10) days after filing the complaint.
- (5) The respondent LDA shall have sixty (60) days after service of the complaint to file an answer.
- (6) The respondent LDA shall state in short and concise terms its defense to the claim and shall admit or deny each averment upon which the adverse party relies.
- (7) The Special Tribunal may allow appropriate amendments and supplemental pleadings as justice requires.
- (8) The Special Tribunal shall order the consolidation of all claims involving a common question of law or fact to such extent and upon such terms as shall be proper, including maintenance of the proceeding as a class action in accordance with Section 122(8)-(12) of this Chapter.
- (9) In the case where the claim involves an assertion of ownership of property, the claimant must give public notice to inform all parties who may reasonably be expected to contest claimant's assertion of ownership, both as to the property in question and the nature of ownership.
- (10) All claims commenced under this Section shall initially be submitted to mediation, which shall proceed as set forth in Section 130 of this Chapter.
- (11) Should mediation terminate without an agreement, then the dispute shall be resolved by the Special Tribunal through the decision process set forth in Section 131 of this Chapter. The claimant must prove by a preponderance of the evidence that the LDA's determination that the claimant is not a recipient is erroneous.
- (12) All disputes regarding the ownership of property shall be referred by the Special Tribunal to the High Court of the Republic for a decision in accordance with Section 123(11) of this Chapter. **[P.L. 198 7-24, §26.]**

**§127. Claims challenging a Local Distributing Authority's assignment of future proceeds.**

- (1) A proceeding under this Section shall be commenced by the filing of a complaint setting forth the reasons why the purpose of the particular assignment or proposed assignment is inconsistent with the Section 177 Agreement.
- (2) Claims may be initiated by the Defender of the Fund or a recipient affected by the distribution in question, upon assertion that an improper assignment has taken place or has been proposed.
- (3) Claims may be filed on the form promulgated by the Public Advocate and available from the

Clerk, or otherwise shall contain all of the information required by said form.

(4) A copy of the complaint shall be served on respondent LDA within ten (10) days after filing of the complaint.

(5) The respondent LDA shall have sixty (60) days after service of the complaint to file an answer.

(6) The respondent shall state in short and plain terms its defense to each claim asserted and shall admit or deny each averment upon which the adverse party relies.

(7) The Special Tribunal may allow appropriate amendments and supplemental pleadings as justice requires.

(8) The Special Tribunal shall order the consolidation of all claims challenging the same assignment or proposed assignment, to such extent and upon such terms as may be proper, including maintenance of the proceeding as a class action in accordance with Section 122(8)-(12) of this Chapter.

(9) All claims commenced under this Section shall initially be submitted to mediation, which shall proceed as set forth in Section 130 of this Chapter.

(10) Should mediation terminate without an agreement, then the dispute shall be resolved by the Special Tribunal through the decision process set forth in Section 131 of this Chapter. The claimant must prove by a preponderance of the evidence that the particular assignment or proposed assignment is inconsistent with the Section 177 Agreement. [P.L. 1987-24, §27.]

#### **§128. Enforcement of an Agreement between the Government and a Local Government Council for the Implementation of Section**

(1) A proceeding under this Section shall be commenced by the filing of a complaint setting forth the reasons why the Agreement between the Government and a Local Government Council for the Implementation of Section 177 of the Compact of Free Association (hereinafter 'Implementation Agreement') has been breached.

(2) Claims may be initiated by any party to the Implementation Agreement.

(3) Claims may be filed on the forms promulgated by the Public Advocate and available from the Clerk, or otherwise shall contain all of the information required by said form.

(4) A copy of the complaint shall be served on the respondent within ten (10) days after filing of the complaint.

(5) The respondent shall have sixty (60) days after service of the complaint to file an answer.

(6) The respondent shall state in short and plain terms its defense to each claim asserted and shall admit or deny each averment upon which the adverse party relies.

(7) Unless and until a dispute is submitted to the Tribunal, all procedural matters shall be determined by the Special Tribunal unless otherwise provided by Tribunal rules and regulations. The Special Tribunal shall have the power to permit appropriate amendments and supplemental pleadings as justice requires.

(8) All claims under this Section shall initially be submitted by the Special Tribunal to mediation, which shall proceed as set forth in Section 130 of this Chapter.

(9) Should mediation terminate without an agreement, then the dispute shall be resolved by the

Tribunal through the decision process set forth in Section 131 of this Chapter. The claimant must prove by a preponderance of the evidence that other party has committed a breach of the Implementation Agreement. [P.L. 1987-24, §28.]

**§129. Claims challenging the Government of the Marshall Islands administration of funds provided for health and radiological surveillance.**

- (1) A proceeding under this Section shall be commenced by the filing of a complaint setting forth the reasons why the Government has abused its discretion in the administration of Article II, Section 1 funds, or has otherwise failed to act in accordance with such provisions.
- (2) Claims may be initiated by any citizen or national of the Republic or the Defender of the Fund, upon good faith belief that there has occurred an abuse of discretion.
- (3) Claims may be filed on the form promulgated by the Public Advocate and available from the Clerk, or otherwise shall contain all of the information required by said form.
- (4) A copy of the complaint shall be served on the Attorney-General within ten (10) days after filing of the complaint.
- (5) The Government shall have sixty (60) days after service of the complaint to file an answer.
- (6) The Government shall state in short and plain terms its defense to each claim asserted and shall admit or deny each averment upon which the adverse party relies.
- (7) Unless and until a dispute is submitted to the Tribunal, all procedural matters shall be determined by the Special Tribunal unless otherwise provided by Tribunal rules and regulations. The Special Tribunal shall have the power, among others, to permit appropriate amendments and supplemental pleadings as justice requires.
- (8) The Special Tribunal shall order the consolidation of all claims challenging the administration of Article II, Section 1 funds, to such extent and upon such terms as may be proper, including maintenance of the proceeding as a class action in accordance with Section 122(8)-(12) of this Chapter.
- (9) All claims commenced under this Section shall be resolved by the Tribunal through the decision process set forth in Section 131 of this Chapter, except as in Subsection (10) of this Section. In proceedings under Section 131, the claimant must prove by clear and convincing evidence that the Government has abused its discretion in the administration of Article II, Section 1 funds.
- (10) The Special Tribunal shall grant motions jointly filed by all parties requesting that the dispute be initially submitted to mediation, which shall proceed as set forth in Section 130 of this Chapter. [P.L. 1987-24, §29.]

**§130. Mediation process.**

All disputes submitted to mediation under this Chapter shall be governed by the following provisions:

- (a) Mediation shall proceed at a location determined by agreement of the parties. If the parties fail to agree on location within ten (10) days after the Special Tribunal issues an order submitting the dispute to mediation, the Special Tribunal, giving due consideration to the convenience of the parties, shall assign a location.
- (b) The parties may by agreement select the mediator. If the parties fail to agree within ten (10) days after the Special Tribunal issues an order submitting the dispute to



mediation, the Special Tribunal shall appoint as mediator either the Mediation Officer or a member of the pool of assistant mediators, or, when circumstances so dictate, any other person likely to be successful.

(c) If the Special Tribunal, at the motion of any party or upon its own motion, determines that two or more parties have substantially identical interests, then those parties shall, by agreement, select one person to represent their interests at mediation. If the parties fail to agree within one week after the Special Tribunal's determination, the Special Tribunal shall appoint a representative.

(d) Upon the filing of a timely petition any party may plead for a change in representation or for separate representation. The Special Tribunal will consider arguments and render a final decision which shall protect the constitutional rights of the petitioning claimant. The representative so selected or appointed shall have the power to bind the parties whom he represents.

(e) The Special Tribunal may, at the motion of the mediator, any party or representative, or upon its own initiative, for good cause shown:

(i) order the mediation severed with respect to some or all of the parties or issues, although all severed aspects shall remain part of the same dispute; and

(ii) order that separate mediators be selected or appointed by the method set forth in Paragraph (2) of this Section, except that the one week period shall run from the date of the severance order.

(f) Unless otherwise stipulated to by all of the parties, all information revealed during the course of mediation shall be treated as confidential and absolutely privileged by the mediator.

(g) All meetings held pursuant to this Section shall be held with and under the direction of the mediator, unless otherwise established by regulation.

(h) The mediator shall keep the Special Tribunal fully informed of the course and efficacy of the mediation process and shall, unless otherwise ordered, file written or oral reports at intervals of no more than two (2) weeks.

(i) Upon the Special Tribunal's determination that the dispute is not capable of full and final resolution through mediation, the dispute shall be automatically presented to the Tribunal or the Special Tribunal, as required, for resolution pursuant to Section 131 of this Chapter.

(j) A dispute shall be deemed incapable of resolution through mediation if:

(i) the mediator reports that the mediation has failed;

(ii) a party to the mediation refuses to continue; or

(iii) no agreement is reached within four (4) months after the dispute is submitted to mediation.

(k) Notwithstanding Paragraphs (i) and (j) of this Section, the Special Tribunal may,

upon strong indication that mediation will succeed, order that the mediation continue for an additional period of time not to exceed six (6) months after the dispute is first submitted to mediation.

(l) All agreements shall be in writing and shall set forth in sufficient detail all material elements of the agreement. The written agreement shall be signed and dated by the mediator and by all parties or representatives involved in the mediation. Upon satisfaction of this Subsection, the agreement shall become final and binding on all parties. All agreements shall be published by the Tribunal.

(m) Neither the Tribunal nor the Special Tribunal shall have jurisdiction to review any agreement consummated under this Section, except as otherwise provided by Section 124(11) of this Chapter. **[P.L. 1987-24, §30.]**

### **§131. Binding arbitration.**

All disputes governed by this Section shall be decided by the process of binding arbitration under the following provisions:

(a) Disputes shall be decided by the Special Tribunal; provided, however, that disputes under Sections 124, 128, 129 and those certified under Section 123(17) of this Chapter shall be decided by the Tribunal.

(b) After consideration of the convenience of the parties, the decision maker shall serve upon the parties notice of the time and place for a hearing.

(c) Except for good cause shown, no request for postponement of a hearing will be granted. Such request must be received in writing at least two (2) weeks in advance of the time set for the hearing. In case of postponement, the hearing shall be rescheduled for a date as early as circumstances permit.

(d) Any party who, after being duly notified, fails to appear at a hearing shall be deemed to have waived his rights with respect thereto and shall be subject to such orders or determinations as are made by the decision maker. The decision maker may relieve a party of such waiver upon a showing of good cause for the failure to appear.

(e) The decision maker shall have full discretion, subject to rules and regulations promulgated by the Tribunal, to conduct the hearing in such a manner as will enable him to ascertain all of the facts in the dispute.

(f) All representatives and individual parties may appear in person and shall be given the opportunity to testify and present evidence.

(g) All relevant and material evidence, not otherwise privileged, may be presented as follows:

(i) the decision maker shall not be bound by the legal rules of evidence;

(ii) the weight to be given evidence shall be determined by its reliability and probative value;

(iii) the decision maker, at his own initiative or at the request of a party, may compel the production of evidence or the presence of witnesses to give testimony;

(iv) evidence proffered by a party or compelled by the decision maker shall be received in the presence of all parties, unless the parties agree otherwise in writing;

(v) the decision maker shall have the power to require the exclusion of any witness, other than a party, during the testimony of any other witness;

(vi) the decision maker may request the assistance and opinions of outside experts; and

(vii) official notice may be taken of any matter judicially noticed in the Courts of the Republic.

(h) A record of all the proceedings during the hearings must be made.

(i) The decision maker shall inquire of all the parties whether they have any further proof to offer or witnesses to be heard.

(j) Upon receiving negative replies, or if satisfied that the record is complete, the decision maker shall declare the hearing closed and the time and date shall be recorded.

(k) The hearings may be reopened on the decision maker's own initiative or upon application of a party at any time before a decision is rendered.

(l) There shall be no communication, other than the filing of motions, between the parties and the decision maker other than during hearings.

(m) The decision maker shall prepare, file, and publish a decision as soon as practicable after the close of hearing. The decision shall contain the following:

(i) findings of fact, which shall not be subject to review by the Tribunal except to the extent such findings are arbitrary, capricious, an abuse of discretion, not in accordance with the law or otherwise unsupported by the evidence;

(ii) conclusions regarding all issues in dispute and the reasons therefor, which shall be subject to review as set forth in Paragraph (q) of this Section; and

(iii) if appropriate, orders.

(n) With respect to claims under Section 124 of this Chapter, the Tribunal sitting as decision maker shall, in addition to the requirements of Paragraph (m) of this Section:

(i) declare the challenged distribution scheme just and equitable; or

(ii) declare the distribution scheme invalid and:

(A) remand to the LDA for the development of a new scheme, within sixty (60) days, which shall be subject to Tribunal approval; or

(B) promulgate, upon failure of the LDA to develop an acceptable scheme under Clause (A) of this Paragraph, a valid distribution scheme with orders that the distribution scheme be implemented without alteration for a stated period of time.

(o) Upon the filing of a complaint under Sections 124 through 129 of this Chapter, the Special Tribunal may, as justice requires, issue an order to the respondent LDA or the Government that no funds be disbursed until:

- (i) the order is lifted or modified to allow partial disbursement; or
- (ii) the claim is finally resolved.

The order may also direct the LDA or the Government, as appropriate, to place undistributed funds in trust subject to further order.

(p) For failure to follow the orders of the Tribunal, the Tribunal may, as justice requires, place in receivership an LDA designated pursuant to Article III, Section 1 of the Section 177 Agreement, or dissolve, place in receivership or replace any LDA established pursuant to Article III, Section 2 of the Section 177 Agreement.

(q) The Tribunal may, upon the filing of a timely petition for review and provided that the Tribunal finds that the decision involves a matter of public importance, review the Special Tribunal's conclusions and, if appropriate, orders or any part thereof. The Tribunal may render its own decision or remand, in part or in whole, to the Special Tribunal for reconsideration. **[P.L. 1987-24, §31; amended by P.L. 1990-101, § 2(7), repealing Paragraph 31(p) and enacting new Paragraph 31(p); P.L. 1991-133 §2(3).]**

### **§132. Advisory assistance to Local Distributing Authorities.**

On petition by an LDA, the Chairman may, in his discretion, do any of the following:

(a) authorize payment from the Claims Fund of the expenses of an appraiser or appraisers to assist the LDA in determining the value of property alleged to have been lost or damaged as a result of the Nuclear Testing Program; or

(b) assign the Public Advocate to assist persons who have stated their belief that they are entitled to receive distributions from an LDA to gather and present relevant information to the LDA or, in the alternative, authorize payment from the Claims Fund of the expenses of a special representative to provide such assistance. The granting of such a petition shall not be relevant in any proceeding brought under this Chapter. **[P.L. 1987-24, §32.]**

### **§133. Costs and fees.**

The Tribunal may, in its discretion, award costs and expenses to parties or other persons involved in proceedings under this Chapter. **[P.L. 1987-24, §33; amended by P.L. 1993-56, §3(7) and 4(2).]**

## **SCHEDULE**

**Reviser's Notes:**

- (1) The Purpose Clause of P.L. 1993-56 did not directly amend this Chapter. Its included here for ease of reference.
- (2) The Effective Date clause of P.L. 1993-56 may be on continuing application. It is included here for ease of reference.

**Sections Affected by P.L. 1993-56:**

102(k)  
117(1)(a)  
117(5)  
133(1)  
133(2)

**Section 2. Purpose.**

- (1) The Nitijela recognizes that many claimants before the Nuclear Claims Tribunal (the Tribunal) forego the use of the services of the Public Advocate, the Marshall Islands Legal Aid Office and the Public Defender, which services are offered to them at no cost. Instead, such claimants retain private legal counsel (private attorneys, trial assistants or other individuals) to represent them in pursuing their claim. Often times, the reason for this is because such claimants incorrectly believe that, regardless of the merits of their claim, private legal counsel is necessary in order to be successful on matters brought before the Tribunal.
- (2) The Nitijela recognizes that as a result of the high costs associated with retaining private legal counsel in connection with matters brought before the Tribunal, many successful claimants are not enjoying the full benefits to which they are entitled and to which they would have otherwise received had the Public Advocate assisted them in pursuing their claim free of charge.
- (3) The Nitijela also recognizes that probate matters arising out of or related to such claims are routinely brought before the High Court with the assistance of private legal counsel, and that this results in beneficiaries of claimants not enjoying the full benefits to which they are entitled.
- (4) With this Act, the Nitijela hopes to safeguard and protect the rights of (a) all claimants before the Tribunal by prohibiting the use and involvement of private legal counsel in connection therewith, and (b) all beneficiaries of claimants with respect to related probate matters by requiring that all such probate matters be brought before and administered by the Tribunal.

**Section 5. Effective Date.**

This Act shall take effect on the date of certification in accordance with Article IV, Section 21 of the Constitution, provided that any claims (individual or class) filed with the Tribunal prior to the effective date of this Act [October 8, 1993] shall be administered pursuant to and in accordance with the [Marshall Islands Nuclear Claims Tribunal Act 1987](#), as in effect immediately prior to the effective date of this Act.