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CHAPTER 123

LAND REFORM

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Act 6 of 1981
Act 32 of 1985
Act 6 of 1992
Act 35 of 2000
Act 31 of 2013
Act 11 of 2014
Act 1 of 2017
Act 1 of 2020

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LAND REFORM

To make interim provision for the implementation of Chapter 12 of the Constitution.

PART 1 – INTERPRETATION

1. Interpretation

In this Act unless the context otherwise requires –

"alienator" means a legal or natural person or persons who immediately prior to the Day of Independence and whether or not their rights were registered in the Registry of Land Titles provided for in the Anglo/French Protocol of 1914 –

(a) had freehold or perpetual ownership of land whether alone or jointly with another person or persons; or

(b) had a right to a share in land by inheritance through will or operation of law where no formal transfer of that land had taken place; or

(c) had a life interest in land; or

(d) had a right to land or a share in land at the end of a life interest; or

(e) had a beneficial interest in land:

Provided that –

(i) (a) where there is more than one alienator in respect of a piece of land they shall be included in the expression "the alienator" for the purposes of the provisions of this Act;

(b) one alienator may represent himself and the other alienator or alienators by agreement among them for the purposes of this Act;

(c) the Minister may appoint an alienator to represent his co-alienator or alienators for the purposes of this Act;

(ii) a person shall not be an alienator of land unless –

(a) there is a person in physical occupation of it being an alienator or a licensee, tenant or lessee of an alienator; and

(b) the land and improvements thereon have in the opinion of the Minister been up to the Day of Independence maintained in reasonably good repair and condition; and, where applicable,

(c) rates or taxes due in respect of the land are not in arrears for 6 months or more on the Day of Independence;

(iii) a person shall be an alienator within the meaning of this definition if the Minister is satisfied that he has been unable to satisfy any of the conditions in paragraph (ii) because of the deliberate act or omission of another person or persons;

(iv) a person shall be an alienator within the meaning of this definition if he has been substituted for an alienator with the consent of the Minister in accordance with section 8(2)(a);

“Committee” means the Land Management Planning Committee;

“consensus” means that the members of the nakamal as a whole, or all the custom owners, agree or consent;

““Council of Ministers” means the Council of Ministers established under Article 40(1) of the Constitution;

“custom land” means land owned or occupied, or land in which an interest is held, by one or more persons in accordance with the rules of custom;

“Custom Land Management Act” means the Custom Land Management Act No. 33 of 2013;

“custom owners” means any lineage, family, clan, tribe or other group who are regarded by the rules of custom, following the custom of the area in which the land is situated, as the perpetual owners of that land and, in those custom areas where an individual person is regarded by custom as able to own custom land, such individual person;

“custom group" means a person or persons who claim custom ownership of disputed land;

“Director” means the Director of the Department of Lands;

"disputed land" means land the ownership of which is claimed by more than one custom group;

"encumbrance" includes a mortgage, a lease, licence to use land for payment, a right of way or any customary or other rights over land not being rights of ownership of that land;

“Environmental Protection and Conservation Act” means the Environmental Protection and Conservation Act [CAP 283];

“Government” has the same meaning as set out in the Interpretation Act [CAP 132];

"land" includes improvements thereon or affixed thereto and land under water including land extending to the seaside of any offshore reef but no further;

“Land Ombudsman” means the Land Ombudsman appointed under this Act;

“land dispute” means a dispute between two or more indigenous citizens or groups about the ownership of custom land;

“Minister” means the Minister responsible for Lands;

“National Coordinator” means the National Coordinator of Land Dispute Management appointed under the Custom Land Management Act;

“representatives of the custom owners” means all representatives appointed by the custom owners (who must be 18 years of age or over), to sign a lease or other document to indicate the consent of the custom owners.;

"state land" means all land in Vanuatu which on the 1st day of January 1980 was owned in freehold or perpetual ownership by the British Government, the French Government, the Condominium or a Municipality.

PART 2 – ENCUMBRANCES

2. Encumbrances

Subject to section 22 land shall be held subject to encumbrances created before or after the coming into operation of this Act.

PART 3 – ALIENATED LAND

3. Entitlement of alienator to remain on land

Every alienator shall be entitled to remain on land occupied by him on the Day of Independence until such time as either he enters into a lease of the land or a part thereof with the custom owners of the land or receives payment for improvements to or on that land:

Provided that where such land is undeveloped land, an alienator, without prejudice to his right to enter into a lease of that land, shall not be entitled to remain on such land.

4. Referrals to Supreme Court on identify of alienator

(1) In any case where there is doubt as to who is an alienator in respect of land or to what proportion of a valuation of improvements an alienator is entitled, the matter shall be referred to the Supreme Court for decision either by an alienator, the custom owners or the Minister.

(2) A decision of the Supreme Court under subsection (1) shall be final and shall not be the subject of an appeal to the Court of Appeal.

(3) The Chief Justice may make rules of procedure for the purposes of this section.

5. Applications to Island Court where identity of custom owners in dispute

(1) In any case where there is doubt as to who are the custom owners of land occupied by an alienator one of the custom groups who claim the land may apply to an Island Court established in accordance with section 1 of the Island Courts Act [Cap. 167] to decide on the ownership of the land.

(2) Where no claim has been made to custom ownership of land or the custom groups who dispute ownership have not made an application to the Court in accordance with subsection (1) the Minister may make such application in respect of such land.

PART 4 – NEGOTIATIONS AND AGREEMENTS RELATING TO CUSTOM LAND

6. Issuing of certificate of registered negotiator

(1) A person must not enter into negotiations with any custom owners concerning land unless that person applies to the Chairperson of the Committee and receives a certificate from the Minister certifying that person as a registered negotiator.

(2) The Minister may only issue a negotiator's certificate under subsection (1) on the recommendation of the Committee.

(3) A negotiator's certificate issued by the Minister must:

(a) name the individual or group or other entity who are the registered negotiators; and

(b) be in the prescribed form; and

(c) describe the boundaries of the land in which the approval to negotiate relates, by sketch map; and

(d) specify:

(i) any conditions imposed under subsection 6I(2); and

(ii) the procedures which must be followed by the approved negotiator in the conduct of negotiations; and

(e) be served by the Chairperson of the Committee on:

(i) the approved negotiator; and

(ii) the custom owners in the manner suggested by them; and

(iii) the National Coordinator.

(4) A negotiation is void and of no legal effect if it is carried out in breach of the procedures set out in subsections (2) and (3).

6A. Application for a negotiator's certificate

(1) A person who intends to commence negotiations with custom owners must apply in the prescribed form for a negotiator's certificate to the Chairperson of the Committee. The application must be accompanied with the prescribed application fee.

(2) If the Committee determines that the project is a commercial development the Committee, in consultation with the National Coordinator, may levy an additional fee to cover all reasonable costs associated with the consultation process.

(3) An applicant for a negotiator's certificate must provide 2 copies of the application to the Chairperson of the Committee. The application must be in Bislama and is to contain the following information:

(a) the name of the individual or group or other entity applying for the negotiator's certificate; and

(b) a detailed description of the land to which the approval to negotiate relates, including a sketch map showing the boundaries of the land, the size of the proposed leased area and the location of the area; and

(c) a general description of the type of proposed development including information on:

(i) how the custom owners will participate in the project (including any joint venture or other arrangements);

(ii) what (if any), benefits will accrue to custom owners (including any employment or benefit sharing opportunities that will be available as a result of the development);

(iii) how the proposed development will be funded, including an estimation of the expenditure associated with any capital investment of the proposed development;

(iv) what evidence is available to prove that the applicant has a good commercial reputation;

(v) what other development approvals or permissions have been obtained or may be required.

(4) A person must not survey an area of land unless that person has a negotiator's certificate.

(5) The Chairperson must as soon as possible, upon receipt of an application made in accordance with subsection (3), submit the application to the Committee for its consideration.

(6) In considering an application for a negotiator's certificate, the Committee must take into consideration the following matters:

(a) any planning implications related to the development, such as road access, sufficient water supply, sewerage and waste disposal; and

(b) any environmental implications likely to result from the development (including any Environmental Impact Assessments as required under the Environmental Protection and Conservation Act) and all approvals that will be sought in connection with such implications; and

(c) any possible access issues, including what access custom owners and members of the public will have to roads, foreshores, gardens, beaches, sea, rivers, lakes, cultural sites and places of historical interest after the lease is registered.

(7) The Committee must consider the application and if it is satisfied, having regard to the matters set out in subsections (3) and (6) and any other relevant matter, that the

application for negotiator's certificate should be approved, refer the application to the National Coordinator of Land Dispute Management to complete a custom owners identification in accordance with section 6B.

(8) If the Committee is not satisfied that the application should be approved, the Committee may either:

(a) request additional information from the applicant; or

(b) refuse the application and must state the reason for refusing the application.

(9) The refusal of an application by the Committee is final however the applicant may re-apply for a negotiator's certificate in relation to the same area of land.

(10) The Committee must give the applicant, written notice of its decision within 10 days after making the decision.

6B. Identification of custom owners or disputing groups

(1) Upon receiving an application to approve a negotiator's certificate being referred under section 6A, the National Coordinator must determine if the custom owners are already identified by a recorded interest in land in accordance with the Custom Land Management Act.

(2) If the custom owners are not identified by a recorded interest in land under the Custom Land Management Act, the National Coordinator is to:

(a) arrange for a notice to be given of the intention to identify the custom owners of the land which is the subject of the application, in the following manner:

(i) on at least 3 occasions in 1 month, a notice in English, French and Bislama:

(A) is to be broadcasted on the radio at the time of the announcement of service messages; and

(B) is to be published as part of a table produced by the Director of Lands in the newspaper which includes with it a short description of the area of location, size of land and nearby localities, for all applications for a negotiator's certificate for the month; and

(ii) direct the responsible custom land officer to make arrangements to place the notice at the Local Government Council headquarters, the nearest Area Council headquarters, the nearest Sub-Area Council headquarters (if applicable) and at any village or villages located near the land for at least 1 month; and

(iii) direct the responsible custom land officer to make arrangements to place the notice on the land to which the approval to negotiate relates for at least 1 month requiring all persons having an interest in the land to notify the custom land officer; and

(iv) if there is a determination of custom owners, the National Coordinator must also ensure that the custom owners listed in the determination are also notified; and

(b) when the notification period has lapsed, allocate a custom land officer to facilitate the identification of the custom owners in accordance with the provisions of the Custom Land Management Act.

(3) The notice referred to in subparagraph (2)(a) (i) must identify the land in a manner that will be understood by the people of that island and require all persons having an

interest in the land to notify the custom land officer who is responsible for that area or the office of the National Coordinator.

(4) The signage associated with the notice in subparagraph (2)(a)(iii) must:

(a) be in large black font on a white background; and

(b) be placed facing the nearest public road or pathway; and

(c) measure at least 2 meters long and 1 meter wide; and

(d) include all details associated with the application for a negotiator's certificate.

(5) If:

(a) there is no dispute as to ownership of the land - the custom land officer must proceed in accordance with Part 3 of the Custom Land Management Act; or

(b) there is a dispute as to ownership of the land - the custom land officer must apply Part 4, 5 or 6 of the Custom Land Management Act.

(6) The custom land officer is required to attend meetings in accordance with the process outlined in section 6C and furnish a full report to the National Coordinator.

6C. Consultation with the custom owners

(1) If:

(a) there is no dispute as to ownership of a land, membership of the custom owner group is to be determined by the recorded interest in land; or

(b) there is a dispute as to ownership of land, a meeting with each of the disputing parties or custom owner groups must be convened after the notification period in section 6B has lapsed.

(2) At the first consultation meeting with the custom owner group or each custom owner group that is a party to a dispute, the custom land officer must:

(a) provide the custom owners with 4 copies of the application for the negotiator's certificate. Four different custom owners, including where possible one woman, must sign the prescribed form to show that they have received copies of the application for the negotiator's certificate; and

(b) address the meeting of the custom owners in person and in Bislama or in the local vernacular language where possible, and read aloud all details included in the application for the negotiator's certificate in accordance with subsection 6A(3).

(3) If the announcement by the custom land officer under paragraph (2) (b) is made in Bislama, the custom land officer must arrange for a person who does not have any conflict of interest in relation to the application, to translate the announcement into the local vernacular.

(4) At the conclusion of the first meeting the custom land officer must ask the custom owners if they intend to consider the application for a negotiator's certificate, in which case a further meeting will be scheduled within 28 days from the date on which the first meeting ended.

(5) The custom owners may seek legal or any other advice at any time during this consultation process and may seek to have any representatives in attendance at any meeting with the custom land officer.

(6) An applicant for a negotiator's certificate, or their representative, must not be present at any of the meetings conducted by the custom land officer with the custom owners.

(7) To avoid doubt, negotiations between an applicant for a negotiator's certificate and the custom owners cannot commence until the application for a negotiator's certificate is granted.

(8) If the custom owners having considered the details included in the negotiator's certificate, do not consent to any further negotiations over the lease, their decision is final. The decision may not be set aside or varied by the Committee or the Minister. However applicants can re-apply for a negotiator's certificate over the same area of land.

6D. Custom owners' consultation report

(1) The custom land officer is responsible to prepare a custom owners' consultation report which must state:

(a) the date and time of any meetings of custom owners and the names of all people in attendance at the meetings; and

(b) the location of the meetings; and

(c) the decision recorded as the outcome of the meetings; and

(d) information on whether the custom owners gave their free prior informed consent to the lease negotiations;

(2) If custom owners have given their consent, the report must state:

(a) how and by whom negotiations are to be conducted on behalf of the custom owners;

(b) who is to be regarded as the contact person for all materials to be delivered to the custom owner group;

(c) any preferred meeting arrangements being suggested by the custom owners.

6E. Report of the custom land officer

The National Coordinator, upon receiving a report from the relevant custom land officer, must:

(a) if there is no dispute as to ownership of the land, or the dispute has been resolved- present to the Committee:

(i) a copy of the recorded interest in land of the custom owners identified as owning the land with the name of each member of the group; and

(ii) a written custom owners' consultation report that states whether the custom owners gave their free, prior and informed consent to negotiate a lease arrangement over their land with the applicant in accordance with the process set out in section 6C.

(b) if there is a dispute as to ownership of the land or the land is the subject of a nakamal or custom area land tribunal proceeding or other legal proceeding – direct the custom land officer to:

(i) contact each of the disputing groups and hold meetings in accordance with the process set out in section 6C; and

(ii) record the names of all members of each custom owner group and the name of each individual in attendance at the meeting; and

(iii) furnish a full report to the Committee from each of the custom owner groups that states whether the custom owners gave their free, prior and informed consent to negotiate a lease arrangement over their land with the applicant in accordance with the process set out in section 6C.

6F. Consent for issuing of a negotiator's certificate

(1) If consent is required from a custom owner group, all members or representatives of the group identified in the recorded interest in the land must agree by consensus to the application for a negotiator's certificate being approved by the Minister. The recorded interest in land must be attached to the custom land officer's report.

(2) If there is a dispute as to ownership of the land or the land is the subject of a nakamal or custom area land tribunal proceedings or legal proceeding and a recorded interest in land has not been completed or is the subject of an appeal, the custom owner's consultation report must state, with respect to each of the parties of the dispute, whether the potential custom owners of the land agree by consensus to negotiate a lease arrangement over their land with the applicant.

(3) Membership of the custom owner group must be determined according to the rules of custom and by customary processes and is to include all indigenous citizens (men, women and children) who hold ownership or use rights over land in accordance with the rules of custom.

(4) At a meeting referred to in this section, each of the parties to the dispute must record in writing the details of the membership of the custom owner group or groups, including which families, groups or individuals are recognised as having interests in the land, and what interests in the land such families, groups or individuals have.

(5) The details provided under subsection (4) by each of the parties to the dispute must be read to the custom owners by the custom land officer and the group must agree by consensus that this is the true and correct membership of the custom owner group.

6G. Appointing representatives for custom owners

(1) If the custom owners or each of the disputing groups consent to the issuing of a negotiator's certificate by the Minister, the custom owners or each of the disputing groups must also decide, during a meeting with the custom land officer, which persons should be recognised on any negotiator's certificate, potential lease instrument or other legal document relating to dealings in the land, as the representatives of the custom owners or each of the disputing groups.

(2) If the number of custom owners or members of the disputing group:

(a) is less than 15 -the names of all the members should be stated in the negotiator's certificate and any subsequent lease instrument; or

(b) is more than 15 -at least 15 names must be stated on the negotiator's certificate and any subsequent lease instrument as representatives of the custom owners or disputing groups.

(3) In addition to subsection (1), if appropriate, the names of some women and young people should also be included on the negotiator's certificate and any subsequent lease instrument.

6H. Variation of the names of representatives

(1) All representatives of the custom owner group are appointed by the custom owners and must not act without the consent of the custom owners.

(2) Custom owners may at any time meet and pass a resolution by consensus to vary their representatives. All members of the custom owner group or all members listed as descendants if original members have died must be present at a meeting to vary the representatives of the custom owners.

(3) The custom owner group must inform a custom land officer of the date and time of a meeting of the custom owner group to vary the names of their representatives.

(4) The custom land officer must attend the meeting referred to in subsection (3) and record in writing, the resolution to vary the representatives of the custom owners. The

resolution must be signed by all the custom owners and by the custom land officer as a witness to the signature of the custom owners.

(5) Any variation made to the names of the representatives of the custom owner group must be filed with the office of the National Coordinator.

6I. Process of approving the issuing of a negotiator's certificate

(1) The Committee must consider the report provided to it by the National Coordinator under paragraph 6E(a) and may approve the application to issue a negotiator's certificate if it is satisfied that the custom owners of the land have been satisfactorily identified and have consented, or in the case of disputing groups, each of the disputing groups have consented, to negotiate with the applicant.

(2) The approval of an application to negotiate may be given subject to such conditions as the Committee considers fit to impose, which, without limiting such conditions, must include conditions as to the following matters:

(a) execution of the negotiation certificate by the custom owners and their representatives as set out in subsection 6G(1) or the Minister of Lands with the consent of the custom owners and acting on behalf of the disputing groups ; and

(b) a period, not exceeding 12 months, within which an agreement to lease land is to be completed; and

(c) how and by whom negotiations for a lease are to be conducted; and

(d) any preferred meeting arrangements, as suggested by custom owners; and

(e) that the approved negotiator cannot make any direct payments to individuals or the custom owner group, before the completion of the lease.

(3) To avoid doubt, paragraph 2(e) does not prohibit the approved negotiator from paying for the reasonable costs of convening meetings and associated transport costs.

(4) An approval by the Committee for the issuing of a negotiator's certificate by the Minister does not bind the Committee or the Minister to approve any subsequent lease or issue any other form of approval required by, or under, any law.

(5) The refusal by the Committee of an application for a negotiator's certificate under this section is final with respect to that application.

(6) The Committee must give the applicant, the National Coordinator and where relevant the custom owners notice of its decision within 10 days after making the decision

6J. Negotiation process and consent

(1) Upon the issuing of a negotiator's certificate under section 6, the approved negotiator may begin negotiations about the terms of the lease with the custom owners recognising that the names listed on the approval to negotiate are representatives of the custom owners and that all listed custom owners must consent to a lease.

(2) Upon completing a survey of the land to which the approval to negotiate relates, the approved negotiator must ensure that a valuation of the land is done by a registered land valuer under the Land Valuers Registration Act [CAP 289] and must disclose to the custom owners the contents of the valuation report.

(3) Once negotiations are complete and the terms of a draft lease document have been finalised, the applicant must inform the National Coordinator that such terms have been agreed and request the National Coordinator to take steps to confirm the agreement of the custom owners.

(4) If there is no dispute as to ownership of the land, the National Coordinator is to direct the custom land officer to conduct a meeting or meetings with the custom owners and

any affected groups to confirm that the custom owners agree by consensus to the lease arrangements as set out in the lease documents and all other documents provided to the custom land officer by the negotiator.

(5) In approving the lease documents to be registered, it must be evident that:

(a) all of the custom owners who have been identified as a group by a recorded interest in land, as owning the land must consent to have the lease registered as shown by the consensus of the group to lease the land; and

(b) the custom owners understand the nature and purpose of the agreement and, as a group, consent to it; and

(c) any other community or group of indigenous citizens that may be affected by the agreement has had an adequate opportunity to express its views to the custom owner group; and

(d) the agreement of the custom owners to the proposed lease instrument will be evident by the signing of the lease instrument by representatives of the custom owners.

(6) If there is a dispute as to ownership of the land the National Coordinator is to direct the custom land officer to conduct a meeting or meetings with all parties to the dispute to confirm that the custom owners of each of the parties to the dispute consent to the lease arrangements as set out in the lease documents, and all other documents, as provided to the custom land officer by the negotiator.

(7) In approving the lease documents to be registered, it must be evident that:

(a) all of the custom owners of each of the parties to the dispute identified under section 6B agree by consensus to the lease being registered as shown by the signing of the proposed lease instrument by the representatives of the custom owners; and

(b) the custom owners of each of the parties to the dispute understand the nature and purpose of the agreement and, as a group, consent to it; and

(c) any other community or group of indigenous citizens that may be affected by the agreement has had an adequate opportunity to express its views to the custom owners.

(8) For the purposes of subsection (4), paragraphs (5)(c) and (7)(c):

"affected groups" must include, but are not limited to all women and young people living in the area concerned , any indigenous citizens who are not custom owners and any community in whose locality the land is situated.

(9) The National Coordinator must within 10 days, upon completion of the consultations held under subsection (4), present:

(a) a written report to the Chairperson of the Committee as to whether the custom owners, or potential custom owners, have consented to register the lease arrangement over their land with the negotiator; and

(b) the proposed lease instrument to the Chairperson with signatures of the representatives of the custom owners. In the case of a dispute this will require the signatures of the representatives of the custom owners from each of the disputing parties.

(10) In addition to subsection (9), the report must contain the:

(a) date and time of any meetings of the custom owners; and

(b) names of all persons who attended the meeting; and

(c) location of the meeting; and

(d) decision recorded as the outcome of the meeting.

(11) If a meeting has been held by the custom owners with other affected groups affected stated in subsection (4), paragraph (5)(c) and 7(c), the National Coordinator must present a report to the Chairperson of the Committee setting out the:

(a) date and time of the meeting; and

(b) names of all people in attendance at the meeting; and

(c) location of the meeting; and

(d) decision recorded as the outcome of the meeting.

6K. Notification of intention to register lease instrument

(1) If the Chairperson of the Committee receives a report from the National Coordinator under subsection 6J(9) that confirms that the custom owners have agreed to the lease instrument, the Chairperson must:

(a) arrange for the notice of intention to register such lease to be given in the following manner:

(i) on at least 3 occasions in 1 month, a notice in English, French and Bislama is to be:

(A) broadcasted on the radio at the time of the announcement of service messages; and

(B) published as part of a table produced by the Director of Lands in the newspaper which includes a description of the area of location, size of land and nearby localities for all lease registration applications for the month; and

(ii) direct the responsible custom land officer to make arrangements to place the notice at the Provincial Government Council Headquarters, the nearest Area Council Headquarters, the nearest Sub-Area Council Headquarters (if applicable) and at any village or villages located near the land for at least 1 month; and

(iii) direct the responsible custom land officer to make arrangements to place the notice on the land to which the proposed lease relates for at least 1 month.

(2) The notices referred to in paragraph (1)(a) must identify the land in a manner that will be understood by the people of that island and require any person, who considers that the process to obtain consent has not been properly observed, to lodge a complaint with the Land Ombudsman in accordance with section 6N.

(3) The signage associated with this notice must:

(a) be in large black font on a white background; and

(b) placed facing the nearest public road or pathway; and

(c) measure at least 2 meters long and 1 meter wide; and

(d) include all details associated with the lease registration application.

6L. Appointment of the Land Ombudsman

(1) The Land Ombudsman is to be appointed by the Judicial Services Commission for a period of 5 years and is eligible for reappointment.

(2) A person is disqualified for appointment as Land Ombudsman if he or she:

(a) is a member of Parliament, the Malvatumauri Council of Chiefs or a Provincial Government Council; or

(b) holds any public office; or

(c) exercises a position of responsibility within a political party.

(3) The Land Ombudsman must be a person who:

(a) has knowledge, understanding and appreciation of the culture, traditions and values of indigenous citizens; and

(b) has an understanding of land laws in Vanuatu; and

(c) is of high integrity and competence; and

(d) has an appropriate academic qualification and suitable experience in the public or private sector; and

(e) is politically independent; and

(f) is capable of discharging his or her duties without fear or favour; and

(g) has not been convicted and sentenced on a criminal charge (not being a road traffic offence); and

(h) is of high standing in the community.

(4) The Land Ombudsman is a leader for the purposes of the Leadership Code Act [CAP 240] and Chapter 10 of the Constitution of the Republic of Vanuatu.

6M. Termination of the appointment of the Land Ombudsman

(1) The Judicial Services Commission may terminate the appointment of the Land Ombudsman if the Ombudsman is:

(a) declared bankrupt; or

(b) convicted and sentenced on a criminal charge (not being a road traffic offence); or

(c) incapacitated from performing his or her duties because of illness or an accident, as certified by two medical practitioners; or

(d) convicted of an offence under the Leadership Code Act [CAP 240].

(2) The Land Ombudsman must be given a reasonable opportunity to respond to any allegations being made against him or her before the Judicial Services Commission decides whether or not to terminate his or her appointment.

6N. Lodging complaints with the Land Ombudsman

A custom owner, or any other indigenous citizen who is not satisfied that the proper process has been followed in obtaining the consent of the custom owners for the registration of a new lease, or a subdivision or change of lease type for an existing lease, has the right within 1 month from notification of intent to register or seek Ministerial consent under section 6K to lodge a complaint either orally or in writing with the Land Ombudsman on the following grounds:

(a) that the meeting of the custom owners was not properly constituted; or

(b) that the custom owners do not consent to the lease being registered or to the subdivision or the change of lease type; or

(c) that the custom owners did not understand the nature and purpose of the agreement; or

(d) that some other community or group of indigenous citizens that may be affected by the agreement has not had an adequate opportunity to express its views to the custom owners; or

(e) that the custom owners were not notified in accordance with the procedures in sections 6B and 6K.

6O. Functions of the Land Ombudsman

(1) The function of the Land Ombudsman is to investigate any complaint made to him or her provided that it complies with the grounds listed in section 6N.

(2) Upon receipt of a complaint the Land Ombudsman must within 21 days, or as soon as practicable:

(a) review all reports, lease documents and all other available materials; and

(b) discuss all reports, as is necessary, with the National Coordinator or the relevant custom land officer; and

(c) investigate, as is necessary, the substance of the complaint.

(3) The Land Ombudsman must notify the Director of Lands:

(a) to place a caution on the lease instrument, where one exists, in accordance with section 95 of the Land Leases Act [CAP 163] until such time as the investigation of the Land Ombudsman is completed; or

(b) that any applications for registration of a lease instrument must not be progressed until such time as the investigation of the Land Ombudsman is complete.

(4) Upon completion of this review the Land Ombudsman must submit a report to the Chairperson of the Committee, the National Coordinator and the Director of Lands, into the complaint, and must make a recommendation as to whether the lease should be registered.

(5) If upon completion of his or her review into a complaint made by a custom owner or small proportion of the custom owners, the Land Ombudsman concludes that the complaint is vexatious or without basis and that the view of the overwhelming majority of custom owners is that the application should proceed, the Land Ombudsman may then make a recommendation that the lease should be registered.

(6) If the Chairman of the Committee, the National Coordinator or the Director of Lands fails to act on a reasonable or practical recommendation made by the Land Ombudsman this will allow the interested party to apply for a Judicial Review.

6P. Powers of the Land Ombudsman

The Land Ombudsman has power to do all things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

6Q. Investigative powers of the Land Ombudsman

(1) The Land Ombudsman must, if possible, by an informal request to any person, obtain evidence and information for the purposes of investigating a complaint.

(2) In addition to subsection (1), the Land Ombudsman may request evidence or information from the National Coordinator, the Director of Lands or any officer employed under the supervision of the National Coordinator or the Director of Lands. The National Coordinator or the Director must ensure that the evidence or information requested is provided to the Land Ombudsman within 14 days from the day on which the request is received.

(3) Failure to comply in a timely manner with any reasonable request made by the Land Ombudsman under subsection (2), could result in the Director of Lands or an officer of the Department of Lands who is deemed responsible being prosecuted in accordance with paragraph (7)(b).

(4) The Land Ombudsman may issue a notice in writing in the prescribed form to any person who is either:

(a) required to appear before the Land Ombudsman for examination to give evidence at a hearing; or

(b) required to provide any information or documentary evidence to the Land Ombudsman which is needed for an investigation.

(5) If a person is required to appear before the Land Ombudsman to give evidence in accordance with paragraph (4)(a), he or she may request that:

(a) the hearing be recorded; and

(b) the person's legal representative or another person be present at the hearing.

(6) If a hearing has been recorded, any person who has given evidence at a hearing may request a copy of the recording from the Land Ombudsman.

(7) A person commits an offence if the person who having been served with a notice under subsection (4) or having been requested by the Land Ombudsman under subsections (1) or (2) to give evidence or information for purposes of an investigation:

(a) fails or refuses to appear before the Land Ombudsman; or

(b) fails or refuses to provide any information or documents to the Land Ombudsman.

6R. Immunity

(1) No action in civil or criminal proceedings is to be brought against the Land Ombudsman or an employee of the Land Ombudsman in respect of anything done or omitted to be done by him or her in good faith in the execution or purported executions of his or her functions and powers under this Act.

(2) Subsection (1) does not apply if the Land Ombudsman or the employee acted, in bad faith in executing his or her functions or powers under this Act or in dereliction of his or her functions under this Act.

6S. Offences against the Land Ombudsman

(1) A person commits an offence if the person:

(a) improperly influences, hinders or obstructs, or attempts to improperly influence, hinder or obstruct, the Land Ombudsman in the exercise of his or her powers or the performance of his or her functions under this Act; or

(b) gives false or misleading evidence in any hearing being conducted by the Land Ombudsman.

(2) A person who commits an offence under paragraph (1)(a) or (b) is liable on conviction to a fine not exceeding VT 10,000,000 or a term of imprisonment of not more than 6 months or both.

(3) The prosecution of an offence under this section must not occur without a written direction of the Land Ombudsman.

6T. Decision as to registration of lease instrument

(1) If:

(a) the period of the notice of intention to register a lease or a subdivision or change of lease type has lapsed and no complaint is lodged with the Land Ombudsman; or

(b) the Chairperson of the Committee receives a report of the Land Ombudsman,

the Chairperson must within 10 days, or as soon as practicable, convene a meeting of the Committee to consider whether to recommend for approval registration of the lease instrument which has been negotiated by the approved negotiator.

(2) The Committee must recommend to the Minister to approve the registration of a lease if it is satisfied that:

(a) the processes specified under this Act have been complied with; and

(b) the lease takes account of any registered custom sites, as determined by the Vanuatu National Cultural Council; and

(c) the lease complies with any planning requirements under any other Acts; and

(d) an approval for foreshore development has been obtained where necessary, under the Foreshore Development Act [CAP 90]; and

(e) where necessary, an Environmental Impact Assessment as required under the Environmental Protection and Conservation Act has been completed; and

(f) a fair and equitable valuation of the custom land has been completed by a registered land valuer under the Land Valuers Registration Act [CAP 289]; and

(g) all terms and conditions of the lease meet the legal requirements as assessed by the Chairperson of the Committee.

(3) In considering whether the registration of the lease should be recommended for consent by the Minister, each agency represented on the Committee must agree that the legal processes of their respective agencies have been completed under this Act or any other Act, and that there is no impediment to the lease being registered.

(4) A recommendation of the Committee to register a lease under this section does not bind the Minister to register any subsequent lease or issue any other form of approval required by or under any other Act.

(5) To avoid doubt, the Minister must not approve the registration of a lease that has not been recommended for approval by the Committee.

(6) If the Committee is satisfied that the lease meets the requirements for registration, the Committee must recommend to the Minister to consent to the lease, and such recommendation must be presented to the Minister within 10 days after the decision of the Committee is made.

(7) If the Minister receives the recommendation under subsection (6), the Minister must not unreasonably withhold his or her consent to approve the registration of the lease.

(8) Upon approving the registration of a lease, the Minister must send the lease to the Director to be registered and notify the negotiator that the lease is to be registered.

(9) If the Committee is not satisfied that the lease should be recommended for registration, it may:

(a) require the negotiator to provide additional information; or

(b) pass a resolution to recommend to the Minister that the lease must not be approved for registration.

(10) The Director must inform a negotiator that a lease has not been approved for registration if the Committee has passed a resolution under paragraph 9(b).

6U. Application for a rural subdivision or change of lease type

(1) A person may apply to the Chairperson of the Committee if he or she intends to create a subdivision or change of lease type in a rural area.

(2) An application under subsection (1) must be in the prescribed form and be accompanied by the prescribed fee.

(3) If the Committee determines that the project is a commercial development, the Committee, in consultation with the National Coordinator, may levy an additional fee to cover all actual and reasonable costs associated with the consultation process.

(4) An applicant under this section must provide the Chairperson of the Committee with at least 2 copies of the application for a rural subdivision or a change of lease type for its consideration.

(5) An application for a rural subdivision or a change of lease type must be in Bislama and is to contain the following information:

(a) the name of the individual or group or other entity applying for ministerial consent for a rural subdivision or a change of lease type; and

(b) a detailed description of the land where the subdivision or new lease activity will take place including a sketch map showing the boundaries of the land to which the application relates; and

(c) a general description of the type of proposed development including information on:

(i) how the custom owners will participate in the project (including any joint venture or other arrangements); and

(ii) what, if any, benefits will accrue to custom owners (including any employment or benefit sharing opportunities that is to be available as a result of the development); and

(iii) how the proposed development will be funded, including an estimation of the expenditure associated with any capital investment of the proposed development; and

(iv) what evidence is available to prove that the applicant has a good commercial reputation; and

(v) what other development approvals or permissions have been obtained or may be required.

(6) In addition to subsection (5), an application for a rural subdivision must detail the size of the proposed area for subdivision, the location of the area, the number of new leases to be created, the size of new leases to be created and any park or communal areas.

(7) A person must not subdivide a land in a rural area unless the Minister grants his or her consent for the subdivision to occur.

(8) A person must not survey land in a rural area unless he or she has first obtained the consent of the custom owners in accordance with the provisions of this Act.

(9) To avoid doubt, no new activity must occur on a lease unless the Minister grants his or her consent on the lease.

(10) The Chairperson, upon receipt of an application made in accordance with subsections (4) and (5), must, within 7 days, or as soon as practicable, submit the application to the Committee for its consideration.

(11) The Committee may recommend an application for approval if agreed to by the custom owners in accordance with the following consent provisions:

(a) for a lease that has been created after the commencement of this Act-all matters are to be referred to the National Coordinator to ensure custom owner identification and consent of custom owners in accordance with the process set out in sections 6B and 6C of this Act. The National Coordinator, upon completion of the consultations under section 6C, must within 10 days table:

(i) a written report to the Chairperson of the Committee as to whether the custom owners, or potential custom owners, have consented to the subdivision or change of lease type over their land with the applicant in accordance with section 6C; and

(ii) the proposed consent to subdivision or change of lease type in an instrument with the signatures of the representatives of the custom owners. In the case of a dispute this will require the signatures of the representatives of the custom owners of each of the disputing groups;

(b) for a lease that has been created before the commencement of this Act - the custom owners are the lessors as described in the registered lease instrument;

(c) for a lease where the Minister is the registered lessor, or where the lease transaction is subject to a dispute- consent must be obtained from the custom owners of each of the disputing groups in accordance with the process detailed in section 6Z.

(12) The applicant must table with the Chairperson of the Committee all documents required under section 11.

6V. Notification of intention to grant Ministerial consent to a rural subdivision or change of lease type

(1) If the Chairperson of the Committee receives the relevant documentation listed in subsections 6U (5) and (6) and is satisfied that the custom owners of the land have consented to the application for a subdivision or a change of lease type, the Chairperson must:

(a) arrange for the notice of intention to consent to subdivision or change of lease type to be given as follows:

(i) at least on 3 occasions in a month, a notice written in English, French and Bislama is to be broadcasted on the national radio; and

(ii) published as part of a table produced by the Director of Lands in the newspaper which includes a description of the area of location, size of land and nearby localities for all applications for a subdivision or change of lease type for the month; and

(iii) require the responsible custom land officer to make arrangements to place the notice referred to under subparagraph (i) and (ii) for not more than 1 month at the relevant Provincial Government Council Headquarter, the nearest Area Council Headquarter, the nearest Sub-Area Council Headquarters (if applicable) and at any village or villages located near the land.

(2) The signage associated with the notice in subparagraph (1)(a)(iii) must:

(a) be in large black font on a white background; and

(b) be placed facing the nearest public road or pathway; and

(c) measure at least 2 meters long and 1 meter wide; and

(d) include all details associated with the application for a rural subdivision or change of lease type.

(3) The notice must identify the land in a manner that will be understood by the people of that island and require any person who considers that the process to obtain consent has not been properly observed to lodge a complaint with the Land Ombudsman in accordance with section 6N.

6W. Decision as to Ministerial consent to a rural subdivision or change of lease type

(1) If the notification period of the intention to consent to a subdivision or change of lease type has lapsed and no complaint is lodged with the Land Ombudsman, or if a report of the Land Ombudsman is received by the Chairperson of the Committee, the Chairperson of the Committee must, within 10 days, or as soon as practicable, convene a meeting of the Committee.

(2) At the meeting, the Committee must consider whether it should recommend for approval, the registration of the subdivision or change of lease type.

(3) The Committee must recommend registration only if it is satisfied that:

(a) all the processes specified for obtaining consent of the custom owners and notification have been complied with under this Act;

(b) there are no potential access issues, including what access custom owners and members of the public have in relation to roads, foreshores, gardens, beaches, sea, rivers, lakes, cultural sites and places of historical interest after the application for subdivision or change of a lease type is registered;

(c) the subdivision or change of lease type takes into account any registered custom sites, as determined by the Vanuatu National Cultural Council;

(d) the subdivision or change of lease type meets with all planning requirements;

(e) any approvals for foreshore developments have been obtained, as required;

(f) any Environmental Impact Assessment as required under the Environmental Protection and Conservation Act has been completed;

(g) a fair and equitable valuation of the custom land has been completed by a registered land valuer under the Land Valuers Registration Act [CAP 289].

(4) In considering whether the registration of the lease should be recommended for approval, a person representing an agency on the Committee must be satisfied that the legal processes of his or her agency have been completed under this Act or any other Act, and that there is no impediment to the lease being registered.

(5) A recommendation of the Committee for approval of a subdivision or change of lease type under this section does not bind the Minister to register any subsequent ministerial consent or issue any other form of approval required by, or under, any law.

(6) The Minister must not consent to a subdivision or change of lease type that has not been approved by the Committee.

(7) If the Committee recommends that ministerial consent should be given to a subdivision or change of lease type, then the Committee must pass a resolution recommending to the Minister that the subdivision or change of lease type be approved, and such recommendation must be forwarded to the Minister within 10 days after the decision of the Committee was made.

(8) If the Minister receives the recommendation, the Minister must not reasonably withhold his or her consent to approve the subdivision or change of lease type.

(9) Upon approving the registration of a subdivision or change of lease type, the Minister must send the subdivision or change of lease type to the Director to be registered and notify the applicant that the subdivision or change of lease type is to be registered.

(10) If the Committee is not satisfied that the subdivision or change of lease type should be registered, it may:

(a) adjourn further consideration of the lease to enable additional information to be provided; or

(b) pass a resolution recommending to the Minister that the subdivision or change of lease type not be approved.

(11) The refusal by the Committee of an application under this section is final however the applicant may re-apply for a subdivision or change of lease type in relation to the same area of land.

(12) The Committee must give written notice of its decision within 10 days from the day of making the decision to the applicant, the relevant custom owners and the National Coordinator.

6X. Ministerial consent to transactions over urban leases

(1) The Minister must, on the advice of the Director, consent to a transfer and mortgage of a lease on an urban land.

(2) The Minister must not unreasonably withhold his or her consent to a transaction over leases specified in subsection (1) on an urban land.

(3) The Minister on the advice of the Committee, must consent to a subdivision or change of lease type over an urban land.

6Y. Ministerial consent to transactions over rural leases where there is no dispute

(1) The Minister must, on the advice of the Director consent to a transfer and mortgage of a lease on a rural land that does not relate to a subdivision or change of lease type and where the customary ownership of the land is not under dispute.

(2) The Minister must not unreasonably withhold his or her consent to a transfer and mortgage of a lease over rural land, where these do not relate to a subdivision or change of lease type and where the customary ownership of the land is not under dispute.

6Z. Consent of the Minister to transactions over rural leases where there is a dispute

(1) If there is a dispute as to ownership of the land or the land is the subject of a customary or legal proceeding where the custom owners have not yet been determined and there is an application to subdivide, extend the lease instrument or change the lease type, the Minister must consult the parties to the dispute before the Minister grants a consent to a transaction of a lease instrument.

(2) For an application for an extension of lease, a lessee must demonstrate the consent of the disputing parties by showing all of the custom owners of each of the disputing groups consent to the instrument being registered as demonstrated by the signing of the representatives of these custom owners on the proposed instrument following the process detailed in sections 6B and 6C.

(3) For an application for a rural subdivision or change of lease type – the Minister confirms that the disputing custom owner groups consent by showing that all the custom owners of each of the disputing groups consent to the subdivision or change of lease type by the signing of these representatives of the custom owner groups on the proposed lease instrument following the process detailed in 6B and 6C.

(4) Evidence that parties to the dispute consent to any rural subdivision or change of lease type under subsection (3), must be shown before a recommendation for approval by the Committee is made followed by a grant of consent by the Minister for such a subdivision or change of lease type.

(5) A custom owner, or an indigenous citizen who is not satisfied that the proper process has been followed in obtaining the consent of the custom owner group for a subdivision or change of lease type for an existing lease, has the right (within 3 months from notification of intent to seek consent of the Minister) to lodge a complaint with the Land Ombudsman in accordance with section 6N.

7. Void agreements

An agreement, lease or any other transaction relating to custom land is void and of no legal effect unless it has been:

(a) approved by the Minister in accordance with the process specified in section 6; and

(b) registered in the Land Records Office.

PART 5 – MANAGEMENT OF LAND

8. Issuing of a Registered Lease

(1) A person may apply to the Director to enter into a registered lease with any custom owner concerning a land.

(2) The Director is to register a lease on a custom land in accordance with subsection (1) if he or she receives an advice of the Committee that the lease can be registered.

(3) A lease that is registered in breach of subsections (1) and (2) is void and of no legal effect.

8A. Establishment of the Land Management Planning Committee

(1) The Land Management Planning Committee is established.

(2) The Committee consists of the following persons:

(a) the Chairperson; and

(b) the Director of Lands, or his or her senior representative; and

(c) the Director of the Department of Environment, or his or senior representative; and

(d) the Director of the Vanuatu National Cultural Council, or his or her senior representative; and

(e) the Director of the Department of Geohazards, or his or her senior representative; and

(f) a Senior Planner from the Physical Planning Unit of the Ministry of Internal Affairs appointed by the Minister of Internal Affairs.

(2A) If the Committee is to consider an application relating to land that is located in a Province or Municipality, the Senior Planner of the relevant Provincial Government Council or Municipal Council, is to be present at that Committee meeting, whenever required to do so.

(3) The Director of the Department of Environment must ensure that the process outlined under this Act meets the requirements of the Department under the Environmental Protection and Conservation Act.

(4) The Director of the Vanuatu National Cultural Council must ensure that that the process outlined under this Act meets all the requirements of the Vanuatu National Cultural Council under the Preservation of Sites and Artifacts Act [CAP 39].

(5) The Director of Lands must ensure that the Committee meets at least 8 times in a year.

(6) The quorum for a meeting of the Committee is 4 members present at the meeting.

8B. Functions of the Committee

The Committee has the following functions:

(a) to consider and submit for approval by the Minister an application for a negotiator's certificate that includes all relevant information in accordance with the provisions of this Act.

(b) to consider and submit for approval by the Minister a lease, subdivision or change of lease type application that includes all relevant information and is deemed to have followed the process, in accordance with the provisions of this Act.

(c) to consider and submit for approval by the Minister a lease on State Land, in accordance with the provisions laid out in Part 6B.

(d) to advise the Minister on such matters relating to land policy, the lease making process and administration of this process as the Minister may from time to time require; and

(e) to perform any other functions conferred on it by this Act or any other Act.

8C. Powers of the Committee

The Committee has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

8D. Chairperson of the Committee

(1) The Minister is to appoint a Chairperson of the Committee after consultation with the Malvatumauri Council of Chiefs.

(2) A person appointed as a Chairperson must:

(a) not be a government officer; and

(b) have legal expertise on law in Vanuatu.

(3) An appointment made under subsection (1) is for a period of 5 years and the person is eligible for reappointment.

(4) The Chairperson must ensure that the process for issuing a negotiator's certificate and the registration of a lease specified under sections 6A to 6H are followed.

(5) In addition to subsection (4), the Chairperson of the Committee must ensure that all terms and conditions of any lease proposed for registration are legitimate.

8E. Decisions and procedures of the Committee

(1) The Committee must pass a resolution for all decisions made in accordance with the process outlined under this Act.

(2) A resolution of the Committee to recommend approval of a negotiator's certificate or of a lease for registration must be made by a unanimous decision of all members present.

(3) A resolution of the Committee is to be recorded and signed by the Chairperson and two other members of the Committee after which the common seal of the Committee is to be affixed.

(4) If a member of the Committee has any pecuniary interest, direct or indirect, in any negotiation, contract, proposed lease or any other matter relating to the business of the Committee, that member must as soon as practicable disclose to the Chairperson the fact and nature of that interest and the Chairperson may excuse the member from attendance at a meeting and the agency that they are representing must appoint another member for the purposes of that meeting.

(5) Subject to this Act, the Committee may make internal rules to regulate its procedures.

(6) A rule made under subsection (5) must be approved by the Minister and made available to the public.

8F. Annual Report

(1) The Committee must produce an annual report to be tabled in Parliament at an extraordinary or ordinary sitting of Parliament.

(2) The report must give details of:

(a) the numbers of negotiator's certificates that have been issued; and

(b) the location where the negotiator's certificate have been issued including the size of the land, and the details of the nature of the proposed lease and development; and

(c) the number of leases the Committee has recommended for approval for registration, including:

(i) the location of these leases; and

(ii) the size of the land; and

(iii) any environmental or other relevant considerations; and

(iv) the premium and rental payments for each lease; and

(v) the type of lease; and

(vi) the kind of development; and

(d) the number of applications for the issuing of a negotiator's certificate that the Committee has refused, and the reasons for such refusal; and

(e) the number of applications for approval for registration the Committee has refused, and the reasons for such refusal; and

(f) the details of the timeframes for approval of the negotiator's certificates and leases; and

(g) the record of the Committee meetings and attendance.

PART 6 – PUBLIC LAND

9. Vesting of state land

(1) On the Day of Independence all state land shall vest in the Government and be public land and be held by it for the benefit of the Republic of Vanuatu.

(2) The Minister, on the advice of the Council of Ministers, may by Order declare that any land described in the Order ceases to be public land.

(3) In accordance with Article 81 of the Constitution the Minister may, on the advice of the Council of Ministers, by Order vest any public land in indigenous citizens or communities referred to in the Order for such payment by them and on such terms and conditions as may be referred to in the Order.

(4) When an Order is made under subsection (3) it shall provide for payment of compensation to the custom owners by the Government and the amount of such compensation shall be set out in the Order.

PART 6A – COMPENSATION

9A. Application of Part

This Part applies in relation to custom owners of land who had a right to compensation under section 11 of the Land Reform Act [Cap. 123] immediately before the section was repealed by the Land Reform (Amendment) Act No. 6 of 1992.

9B. Government to determine compensation

(1) The Government is to determine the amount of compensation payable to the custom owners of the land.

(2) In determining the amount of compensation, the Government must take into account the market value of the land and any other matters that it considers relevant.

(3) A determination must be in writing and a copy of it must be given to the custom owners of the land.

9C. Market value of land

The market value of land is to be determined by the Government valuer who is to carry out such investigations as are necessary to determine the market value.

9D. Identity of custom owners and payment

(1) A compensation payment must not be made to a person unless the Minister is satisfied that he or she is a custom owner of the land.

(2) A compensation payment may be made to a particular custom owner on behalf of the other custom owners of the land.

(3) A compensation payment is to be made as soon as practicable after the appeal period under section 9E expires.

9E. Appeal rights

Any custom owner of the land who is dissatisfied with the amount of compensation determined by the Government may appeal to the Supreme Court within 30 days after the date on which the determination is made.

PART 6B – STATE LAND

10. Leasing of state land

The Minister must, on the advice of the Committee and upon a resolution of the Council of Ministers, register a lease on a state land.

10A. Application for a lease on state land

(1) A person may apply in the prescribed form accompanied by the prescribed fee to the Chairperson of the Committee for a lease over a state land.

(2) A person making an application pursuant to subsection (1) for public purposes, charitable purposes or for public infrastructure will not be required to pay the prescribed fee.

(3) A person applying for a lease must provide 2 copies of the original application to the Chairperson of the Committee.

(4) Subject to subsection (3), the Chairperson must, as soon as practicable, submit the application to the Committee for its consideration.

10B. Information required for an application for a lease on state land

(1) An application for a lease on state land must have the following information:

(a) names of individual, group or other entity applying for ministerial consent for a lease on state land; and

(b) detailed information of the activity or activities to take place on the land; and

(c) a sketch map or survey plan showing the boundaries of the land; and

(d) information on the proposed development including:

(i) whether the project is for a public purpose or for public infrastructure; and

(ii) how the proposed development will be funded; and

(iii) where the applicant is not a public association or charitable association, evidence must be shown that the creation of the lease will comply with all proper processes in the tendering of public property; and

(iv) what other development approvals or permissions have been obtained or may be required; and

(e) any public consultations that have been undertaken as part of the lease application over state land.

(2) An activity must not take place on the state land that is the subject of the application unless consent is granted by the Minister.

10C. Granting of lease

(1) The Committee is to recommend approval of a lease over state land only if it is satisfied that:

(a) the lease is for charitable purposes, or is required for public infrastructure or is otherwise in the public interest; and

(b) the lease takes into account any registered custom sites, as determined by the Vanuatu National Cultural Council; and

(c) the lease statisfies any planning requirements relating to road access, sufficient water supply, sewerage and waste disposal; and

(d) an approval from the relevant Authority has been obtained for the development; and

(e) an Environmental Impact Assessment or other assessments required by the Environmental Protection and Conservation Act have been completed; and

(f) a fair and equitable valuation of land has been made; and

(g) all proper processes have been followed in the tendering of public property.

(2) The Committee, prior to recommending to the Minister to consent to a lease, each of its members must be satisfied that the legal processes of their respective agency have been completed under this Act or any other Act and that there is no impediment to the lease being registered.

(3) If the Committee is satisfied that an application to lease state land meets the criteria set out in this Part the Committee is to advise the Minister of its decision in writing within 10 days.

(4) The Minister must after receiving a written advice from the Committee, consult the Council of Ministers and seek its approval for the lease.

(5) If the Council approves an application, the Minister is to approve the lease and notify the Director of Lands to register the lease.

(6) For the avoidance of doubt, the Minister must not unreasonably withhold consent to registration of a lease on state land that has been approved by the Council of Ministers.

10D. Refusal of Application

(1) If the Committee is not satisfied that an application to lease state land should be approved, it may:

(a) require additional information to be provided to it by the applicant; or

(b) advice the Minister in writing that the application does not satisfy the requirements in this Act and should not be approved by the Minister.

(2) The Minister is to inform the applicant that the lease has not been approved.

10E. Leases on state land for charitable association

(1) If:

(a) a charitable association makes an application for a lease on state land; or

(b) a charitable association holds an existing lease over a state land,

the association may apply to the Minister for a reduction of the premium and land rent payments.

(2) The charitable association must satisfy the requirements of sections 10A and 10B.

(3) An application made under subsection (1), is to be sent to the Chairperson of the Committee accompanied by evidence that:

(a) the charitable association is a registered charitable association under the Charitable Associations Incorporation Act [CAP 140]; and

(b) the charitable association operates in the interest of the public as evidenced by the delivery of charitable services to a substantial number of people in Vanuatu; and

(c) the charitable association is a non profitable association; and

(d) the activities of the charitable association are based solely in Vanuatu.

(4) If the Committee is satisfied that an application meets the criteria set out in this section, the Committee is to advise the Minister of its decision in writing.

(5) The Minister must within 10 days, after receiving a written advice from the Committee, consult the Council of Ministers for its approval of the application.

(6) If the Council approves an application for an existing lease the Minister is to notify the Director of Lands that an instrument of variation of lease terms have been approved and may be registered.

(7) If the Committee and Council of Ministers approves an application for a new lease the Minister must not unreasonably withhold his or her consent to the approval of registration of a lease over state land.

(8) If the Committee is not satisfied that an application meets the criteria set out in this section it may advice the Minister to refuse the application.

10F. Public Parks

(1) The Minister, on the advice of the Council of Ministers, may by Order declare any state land a public park.

(2) Once declared a public park under subsection (1), the land must not be leased except in accordance with section 10B.

(3) The Minister may also acquire any land for the purpose of making a public park in accordance with the Land Acquisition Act [CAP 215].

(4) Land acquired under subsection (3) may be leased and is subject to the process in section 10B.

10G. World Heritage

(1) The Minister, on the advice of the Council of Ministers, may by Order declare a state land as a World Heritage Site.

(2) Once declared a World Heritage Site under subsection (1), the land must not be leased and must be managed by the custom owners in accordance with the rules of custom.

10H. Public Reserved Area

(1) The Minister, on the advice of the Council of Ministers, may by Order declare the following as public reserves:

(a) a nature reserve;

(b) a special purpose reserve;

(c) an urban open space;

(d) a designated community space;

(e) a cemetery or burial ground;

(f) the protection of a water supply;

(g) a sport and recreation area;

(h) a river.

(2) Land declared under subsection (1), must not be leased except in accordance with section 10B.

(3) The Minister may also acquire any land for the purpose of declaring it a public reserve in accordance with the Land Acquisition Act [CAP 215].

(4) Land acquired under subsection (3) may be registered as a lease pursuant to section 10B.

11. *(Repealed)*

12. *(Repealed)*

13. *(Repealed)*

PART 7 – REGISTERED LEASES

14. Guarantee of registered lessee

(1) When a lease is registered in a register in the Land Records Office the registration of that lease shall be evidence of the validity of the lease and the details thereof.

(2) If a person registered as a lessee is proved in a court not to be the lessee and such person was not registered as a lessee through fault or fraud on his part he will be entitled to receive compensation from the Government for any loss suffered by him as a result of the finding of the Court.

PART 8 – RIGHTS OF ENTRY

15. Right of entry of officials and valuers

Persons bearing the written authority of the Minister shall have a right to enter upon any land occupied by an alienator in order to carry out the functions vested in the Minister by section 8.

PART 9 – LAND CORPORATIONS

16. Establishment of corporate bodies by the Minister

(1) The Minister may by Order establish corporate bodies for the better carrying into effect of the purposes of this Act.

(2) A corporate body established in accordance with subsection (1) may have such of the functions and powers referred to in the Schedule as may be set out in the Order establishing it or an Order amending the Order.

(3) Subject to subsection (4), the Minister may delegate any of his duties or functions under this Act to a corporate body established under this section.

(4) The Minister may not delegate his powers to consent to transactions between custom owners and other persons.

PART 10 – ROADS

17. Public roads

(1) Public roads in existence or under construction on the Day of Independence shall vest on that Day in the Government on behalf of the people.

(2) A Road Administrator may temporarily close a road to enable works to be carried out.

(3) The Road Administrator must notify the relevant Provincial Government Council or Municipal Council of the closure, except in the case of urgent works.

PART 11 – USE OF FORCE AND DAMAGE

18. Prohibition of use of force

(1) No custom owners or members of a custom group whether or not such persons believe they own such land shall enter on land by force or attempt to eject any persons occupying that land by force.

(2) No alienator shall use force against custom owners peaceably entering the land occupied by him.

(3) Any person who contravenes this section shall be liable on conviction to imprisonment for 10 years or a fine of VT 200,000 or to both.

19. Prohibition of damage or destruction of improvements

(1) No person whether an alienator or custom owner and whether or not he believes himself to be the owner of the improvement shall wilfully damage or destroy any improvement on land without the consent in writing of the Minister.

(2) A person who contravenes subsection (1) shall be liable on conviction to imprisonment for 10 years or a fine of VT 200,000 or to both.

PART 11A – AMENDMENTS TO THE ACT

19A. Procedure for consultation on a Bill relating to land

(1) For the purposes of Article 30(2) of the Constitution, the following procedures apply in relation to holding consultations with the Malvatumauri Council of Chiefs on any amendments to this Act:

(a) the Minister or a Member of Parliament sponsoring the Bill is to provide a copy of the Bill and other relevant documents, to the President of the Council and request the President to call a meeting of the Council to discuss the Bill;

(b) the Council is to meet within 1 month, or as soon as practicable, from the date on which the President of the Council receives the Bill;

(c) the Minister or any other person who is required by the Government or the Council may attend the meeting called under paragraph (b), to assist the Council on matters arising out of the Bill or such other matters which the Council requests assistance on in discussing the Bill.

(2) The Council may propose changes to be made to the Bill.

(3) The Council may pass a resolution in support of the amendments and may also pass a resolution with suggested changes to the amendments. The resolutions passed by the Council must be attached to the Bill and be sent to the Minister to table in Parliament for its consideration.

(4) The Speaker of Parliament must ensure that a Bill has gone through the process set out in subsections (1), (2) and (3) before the Bill can be accepted by him or her for tabling in Parliament.

(5) The Government must cover the costs associated with a consultation made under this Part.

PART 12 – REGULATIONS AND OFFENCES

20. Regulations

(1) For the better carrying into effect of this Act the Minister may by Order make regulations not inconsistent with this Act.

(2) Without derogating from the generality of subsection (1) the Minister in such regulations may provide –

(a) for anything that may be prescribed;

(b) for fees payable on registering transactions in the Land Records Office;

(c) for the manner of applying to make entries in registers in the Land Records Office;

(d) for the forms to be used for applications under this Act and the fees payable on such applications;

(e) for the occasions when and the manner of carrying out surveys of land.

21. Offences

(1) Any person who obstructs any person in carrying out his duties or functions under this Act commits an offence.

(2) Any person who commits an offence under this section or contravenes any provision of this Act shall where no other penalty is provided be liable on conviction to a term of imprisonment of 3 years or a fine of VT 60,000 or to both.

22. Saving and transfer of mortgages

(1) Subject to the Constitution and subsections (2) and (3) the rights of mortgagees and other persons who have lent money with land given as security for repayment of the money lent by them shall continue in full force and effect from the Day of Independence.

(2) When an alienator enters into a lease of land with the custom owners or Government in accordance with section 3 or 13 any mortgages entered into by him at any time prior to the lease in respect of that land shall be deemed to have been made in respect of that lease and shall be construed with such adaptations as shall be necessary.

(3) When an alienator receives any payment or enters into an agreement to receive any payment for improvements to or on land in accordance with sections 3 or 13 the payment or agreement shall be charged in order of priority with payment of the amounts due under any mortgages entered into by him at any time prior to the payment or the agreement.

23. Saving of rights of lessees and tenants

The rights and obligations of lessees and tenants subsisting on the Day of Independence shall remain in full force and effect for the full term of their tenancies and leases.

SCHEDULE

(section 16)

CORPORATE BODIES

PART 1 – FUNCTIONS

A corporate body formed under this Act may –

(a) manage land, plantations or residential properties;

(b) act as an agent for the Government or any other body or person;

(c) carry on business as an investment manager;

(d) manage any kind of business enterprise;

(e) engage in any business relating to land including its development for residential, industrial or commercial purposes;

(f) undertake the business of farmers, ranchers, cultivators of timber, sawmillers and timber merchants;

(g) undertake the business of builders or civil engineers;

(h) process any crops grown on land including copra, cocoa and rice.

PART 2 – POWERS

A corporate body formed under this Act shall have power for the purpose of carrying out its functions to –

(a) hold, buy and sell real or personal property including houses for employees of the corporate body;

(b) lease land to or from any person;

(c) sue and be sued in its corporate name;

(d) promote or finance any undertaking;

(e) subject to such specific or general conditions as the Minister may make borrow money by the issue of debentures or in any other manner including overdraft;

(f) lend money and guarantee loans;

(g) establish or participate in any pension schemes for the benefit of its employees and their dependents;

(h) carry out programmes of research;

(i) charge fees;

(j) employ any persons, firms or bodies;

(k) enter into agreements, leases, conveyances or transfer of land on behalf of the Government or any custom owners and a recital in any such agreement, lease, conveyance or transfer that the corporation is acting on behalf of the Government or custom owners as the case may be shall be sufficient to indemnify any other party to such agreement, lease, conveyance or transfer;

(l) invest funds not immediately required for the purposes of its functions in bank deposits and such other investments as may be authorised by the Minister.

(m) such other powers as may be incidental to the above-mentioned powers or necessary to enable the corporate body to carry out its functions.

Table of Amendments (since the Revised Edition 1988)

1 Amended by Acts 31 of 2013, 11 of 2014, 1 of 2020
6-8 Substituted by Act 31 of 2013
6(3)(d) Repealed by Act 11 of 2014
6(3)(e),(f) Re-letter by Act 11 of 2014
6A(6)(b) Amended by Act 11 of 2014
6I(2)(a) Amended by Act 11 of 2014
6N(d) Amended by Act 11 of 2014
6N(e) Inserted by Act 11 of 2014
6T(2)(e) Amended by Act 11 of 2014
6T(7) Amended by Act 11 of 2014
6T(8) Substituted by Act 11 of 2014
6W(3)(f) Amended by Act 11 of 2014
6W(8) Amended by Act 11 of 2014
6W(9) Substituted by Act 11 of 2014
6Z(1) Amended by Act 11 of 2014
6Z(2) Amended by Act 11 of 2014
8A(2)(e)-(f) Substituted by Act 1 of 2017
8A(2)(g) Repealed by Act 1 of 2017
8A(2A) Inserted by Act 1 of 2017
8A(3) Amended by Act 11 of 2014
9 Substituted by Act 6 of 1992
9A - 9E Inserted by Act 35 of 2000
Part 6B Inserted by Act 31 of 2013
10 - 13 Repealed by Act 6 of 1992
10C(1)(e) Amended by Act 11 of 2014
10E(7) Amended by Act 11 of 2014
17(2) Substituted by Act 11 of 2014
Part 11A Inserted by Act 31 of 2013