

REPUBLIC OF VANUATU

BILL FOR THE LAND ACQUISITION (AMENDMENT) ACT NO. OF 2017

Explanatory Note

This Bill amends the Land Acquisition Act [CAP 215].

Item 1 changes the title of the Act from 'Land Acquisition Act' to 'Compulsory Land Acquisition Act'.

Item 2 provides that any reference in any other Act or Statutory instrument to the Land Acquisition Act is to be taken as a reference to the Compulsory Land Acquisition Act.

Item 3 repeals the definition of "public purpose" in section 1 and substitutes it with a new definition of 'public purpose'.

Item 4 repeals sections 2 and 3. This repeal intends to minimise the length of time and the procedures involved in acquiring land for public purposes.

Item 5 amends section 4 by inserting new subsections 4(2A) and (2B). The new subsection (2A) requires the acquiring officer to broadcast a notice of intended acquisition on the radio. This is because many people in some rural areas where the Government intends to acquire land will not be able to have access to any written notice. The new subsection (2B) states that if a person intends to make an objection to an intended acquisition, the objection must only relate to whether or not the acquisition is genuinely for a public purpose or because if the custom owner object because it is their only available custom land. This means that an objection on any other grounds may not be made to the acquiring officer at this stage of the acquiring process.

Item 6 repeals paragraph 5(1)(b) and replaces it with a new paragraph which provides that if a notice for an intended acquisition has been issued or exhibited by the acquiring officer, a person must not carry out or resume works on any construction activity, mining, quarrying or any other activity that might have an effect on the value of the land.

Item 7 repeals subsection 5(4) and replaces it with a new subsection which increases the penalty for an offence under section 5 from VT100,000 to VT10 million for individuals and VT50 million for a body corporate.

Item 8 inserts new sections 5A, 5B, and 5C. Section 5A gives power to the acquiring officer to issue a stop work notice if it appears to the officer that a person has continued to carry out certain activities on the land (which is intended to be acquired) that would

affect its value. A stop work notice is valid for a period of 12 months, beginning on the date on which it is issued. This section also authorises the acquiring officer to seize any machinery or thing in which the officer believes is being used to commit an offence under the Act. Section 5B provides for the storage and disposal of any machines or things seized by an acquiring officer under section 5A. Section 5C provides for the powers of the Court to order the forfeiture of any machinery or thing seized, to the State.

Item 9 amends subsection 9(1) by removing the Valuer-General from the compensation determination process. This now means that only the acquiring officer will be tasked with the responsibility of determining the amount of compensation required to be paid to the land owners.

Item 10 repeal subsection 9(1C) and substitutes it with a new 9(1C) which restricts or confines the matters which may be determined by the acquiring officer when determining compensation to only the matters listed in paragraphs 9(1)(a) to (h). In other words this amendment intends to prevent the acquiring officer from considering any other factors outside of paragraphs 9(1)(a) to (h) when determining the amount of compensation to be paid to land owners.

Item 11 inserts a new section 11 which provides for instances where a custom or any person interested in the land or easement agree with the determination made by the acquiring officer under section 9. This section further provides that if the custom owners agree with the acquiring officer, the acquiring officer may, subject to section 13, commence compensation payment procedures.

Item 12 repeals section 12 and replaces it with new sections 12, 12A, 12B, 12C, 12D and 12E. Section 12 provides that any custom owner who is not satisfied with a determination of the acquiring officer under section 9 may appeal to the Valuer-General. An appeal made under this section must be made within 30 days after the determination by the acquiring officer is made. An appeal must also only relate to the matters prescribed in paragraphs 9(1)(a) to (h). This section also allows any person who is dissatisfied with a decision of the Valuer-General to appeal to the Supreme Court. Section 12A sets out the procedures of an appeal to the Valuer-General. Section 12B provides for the hearings held at an appeal and the calling of evidence and the examination of witnesses. Section 12C provides that the Valuer-General may dismiss or allow an appeal and states that any person not satisfied with the decision of the Valuer-General may appeal to the Supreme Court. Section 12D provides for the powers of the Valuer-General to award costs and section 12E makes it an offence for any person who provides a misleading or deceiving statement at an appeal.

Item 13 amends section 13 by replacing the 30 day period to 14 days. This amendment now requires that within 14 days of the final determination of compensation, the acquiring officer must notify the land owners who will be compensated and the amount of compensation they will be entitled to. The purpose of this amendment is to minimise the time it takes to notify land owners.

Item 14 repeals section 14 and inserts a new section 14 which provides for the period by which the payments of compensation may be made to the custom owner and persons interested in the land.

Item 15 inserts 2 new sections 14A and 14B which provides that if a custom land which is to be acquired is in dispute, the payment for compensation must be made to the Custom Owners Trust Account. Section 14B establishes the Custom Owners Trust Account and provides that the account is to be maintained by the Director General of the Ministry of Finance and Economic Management.

Item 16 inserts a new subsection 16(3) which provides that any Order that is made by the Minister for taking possession and occupying a land, must be registered in the Land Leases Register. The purpose of this amendment is so that the Government will be able to keep track of the number of land that it has acquired under this Act.

Item 17 inserts a new section 19A which provides for the service of notices, cheques and other documents. This section provides that these documents may be served personally, or at the persons work address. In cases where a person refuses to be served, this section now provides that the person is deemed to be served if the document is placed in his or her presence or if this is not possible, the chief or pastor of that person may be served with the document.

Minister of Lands and Natural Resources



REPUBLIC OF VANUATU

**BILL FOR THE
LAND ACQUISITION (AMENDMENT)
ACT NO. OF 2017**

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REPUBLIC OF VANUATU

BILL FOR THE LAND ACQUISITION (AMENDMENT) ACT NO. OF 2017

An Act to amend the Land Acquisition Act [CAP 215].

Be it enacted by the President and Parliament as follows-

1 Amendments

The Land Acquisition Act [CAP 215] is amended as set out in the Schedule.

2 Commencement

This Act commences on the day on which it is published in the Gazette.

SCHEDULE

AMENDMENTS OF THE LAND ACQUISITION ACT [CAP 215]

1 Title of the Act

Delete "Land Acquisition Act", substitute "Compulsory Land Acquisition Act"

2 References to Land Acquisition Act [CAP 215]

A reference in any other Act or instrument to the "Land Acquisition Act [CAP 215]" is taken to be a reference to the "Compulsory Land Acquisition Act [CAP 215]".

3 Section 1 ("Definition of public purpose")

Repeal the definition, substitute

" "public purpose" means the utilisation of land necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning, or the utilisation of any property in such manner as to promote the public benefit;"

4 Sections 2 and 3

Repeal the sections.

5 After subsection 4(2)

Insert

"(2A) The acquiring officer is to cause the notice referred to under subsection (1) to be broadcasted by radio.

(2B) An objection made under this section may only be made if:

- (a) the objection relates to whether or not the intended acquisition is for a public purpose; or
- (b) the intended acquisition would deprive the custom owner of a substantial portion of the remaining customary land."

6 Paragraph 5(1)(b)

Repeal the paragraph, substitute

- “(b) carry out or resume any activity including but not limited to building construction, mining, quarrying, or any other activity that would directly or indirectly depreciate or appreciate the value of the land commencing on the date on which the notice is issued or exhibited.”

7 Subsection 5(4)

Repeal the subsection, substitute

- “(4) A person who contravenes this section commits an offence and is liable on conviction:
- (a) if the person is an individual – by a fine not exceeding VT10,000,000; or
 - (b) if the person is a body corporate – by a fine not exceeding VT50,000,000.”

8 After section 5

Insert

“5A. Stop work notice

- (1) If the acquiring officer upon issuing or exhibiting a notice under section 4 is aware that:
- (a) an activity including but not limited to building construction, mining, quarrying; or
 - (b) any other activity that would directly or indirectly depreciate or appreciate the value of the land,
- is being carried out on that particular land which is intended to be acquired under this Act, the officer may issue a stop work notice to the owner of the land.
- (2) A stop work notice is a notice that:
- (a) directs a person to stop any works or activity for a period which must not exceed 12 months; and

- (b) prohibits the person from doing any act or engaging in any other activity or undertaking that may result in the depreciation or appreciation of the value of the land for a period not exceeding 12 months.
- (3) For the purposes of enforcing and ensuring compliance with a stop work notice, the acquiring officer may:
- (a) enter the land intended to be acquired; and
 - (b) enter private premises situated on the land which is intended to be acquired after notifying the owner of his or her intention to do so; and
 - (c) seize or take possession of any machinery, equipment or other thing found in the land which is intended to be acquired, that the acquiring officer reasonably believes is used in the commission of an offence against this Act; and
 - (d) monitor, take pictures, photographs or make recordings in any form of the land which is intended to be acquired; and
 - (e) order that any activity or undertaking that the acquiring officer reasonably believes may result in the depreciation or appreciation of the value of the land which is intended to be acquired, to cease; and
 - (f) interview any person; and
 - (g) require from any police officer or any other person, any assistance that is relevant to the investigation or monitoring activity; and
 - (h) exercise any other powers conferred to him or her under this Act or any other Act.
- (4) If an enforcement officer takes possession of a machinery or other item or thing from a land which is intended to be acquired, the owner of the machinery or other item or thing may request the Director to make a decision for the return of the machinery or other item or thing.

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(5) The acquiring officer may request the assistance of police officers for the purposes of enforcing and ensuring compliance with a stop work notice.

(6) A person who contravenes a stop work notice commits an offence punishable on conviction:

(a) if the person is an individual – by a fine not exceeding VT10,000,000; or

(b) if the person is a body corporate – by a fine not exceeding VT50,000,000.

5B. Storing and disposal of matters seized under section 5A

(1) Any machinery, equipment, or other thing seized under paragraph 5A(3)(c):

(a) is to be kept at a place, and in a manner, in accordance with a direction given by the Director; and

(b) may be retained until such time as the Director is satisfied by its owner, or the person from whom it has been seized, that it is not or has not been the subject of any breach of a stop work notice.

(2) If:

(a) it is agreed by the owner of the machinery, equipment, or other thing, that they are in breach of a stop work notice; or

(b) the owner has not satisfied the Director under subsection (2) within 6 months from the date of seizure,

the machinery, equipment, or other thing may be disposed of in a manner directed by the Director.

5C. Forfeiture of seized substances and goods and duties to dispose

(1) If a person is convicted of an offence under subsection 5A(6), the Court may order that any machinery, equipment, or other thing in relation to which the offence was committed, be forfeited to the State.

- (2) Any machinery, equipment, or other thing forfeited under subsection (1) is to be disposed of in a manner determined by the Director.”

9 Subsection 9(1)

Delete “or the Valuer-General under this Act shall take into consideration”, substitute “must only take into consideration the following matters”

10 Subsection 9(1C)

Repeal the subsection, substitute

“(1C) To avoid doubt for the purposes of subsection (1), the acquiring officer must not take into consideration any other matter which is not set out in paragraphs (1)(a) to (h), when determining the amount of compensation to be awarded.”

11 After section 10

Insert

“11. Agreement to determination

- (1) This section applies if the custom owner or person interested in the land or easement which is to be acquired under this Act, agree with the determination of the acquiring officer made under section 9.
- (2) If the custom owner or person interested in the land come up with an agreement according to subsection (1), the acquiring officer must as soon as practicable notify the custom owner or owners of the land or any other person interested in the land, under section 13 and arrange for the payment of compensation under section 14.
- (3) Section 12, 12A, 12B, 12C, 12D, or 12E does not apply if the custom owner or owners of the land or any other person interested in the land come up with an agreement according to subsection (1).”

12 Section 12

Repeal the section, substitute

“12. Appeals

- (1) A custom owner or owners of any land or any other person interested in the land who is not satisfied with the determination of the acquiring officer

under section 9, may within 30 days after the date on which the determination is made, appeal to the Valuer-General against the determination.

- (2) An appeal made under this section must be based only on matters relevant to paragraphs 9(1)(a) to (h) by which the applicant is not satisfied with.
- (3) If a determination is made under section 9 and no appeal is made under this section, the decision of the acquiring officer is final.

12A. Procedure

- (1) The Valuer-General may make rules, not inconsistent with this Act, to regulate the proceedings of the appeal.
- (2) Appeals before the Valuer-General is to commence by the lodging of an application in the prescribed form, together with the prescribed fee with the office of the Valuer-General.
- (3) The Valuer-General must within 14 days of receiving an application under subsection (2) notify the applicant and the acquiring officer on the date, time and place on which the hearing is to take place.
- (4) The Valuer-General may also in the notice issued under subsection (3) require;
 - (a) any person whose evidence is, in the opinion of the Valuer-General likely to be material to the subject matter of the appeal, to attend and give evidence; or
 - (b) any person to produce at the hearing, for examination by the Valuer-General any document or book of accounts in the possession of that person that the Valuer-General thinks contains such information as may be necessary to determine the amount of compensation to be paid.

12B. Hearing

- (1) At a hearing of an appeal before the Valuer-General, the appellant and the acquiring officer may call evidence and may be given the opportunity to be heard either in person or by a person authorised to act on their behalf.

- (2) If the appellant or the acquiring officer or both, fail to appear before the Valuer-General at the time and place appointed, the Valuer-General may proceed to determine the appeal.
- (3) Despite subsections (1) and (2), the Valuer-General may, if he or she thinks fit and if both parties consent, sign an appeal without an oral hearing.
- (4) The examination of any witness at any inquiry under this section is to be made on oath or affirmation administered by the Valuer-General.
- (5) The Valuer-General is not bound by the rules of evidence.

12C. Decisions of the Valuer-General

- (1) The decision of the Valuer-General is to be given to the appellant and the acquiring officer in writing along with a statement of the Valuer-General's reasons for the decision.
- (2) The Valuer-General may dismiss an appeal if:
 - (a) the appeal is not based on matters relevant to paragraphs 9(1)(a) to (h); or
 - (b) the Valuer-General is satisfied that the appeal is frivolous or vexatious.
- (3) If the Valuer-General dismisses an appeal, he or she must give written notice of his or her decision to the applicant and the acquiring officer.
- (4) If the Valuer-General allows the appeal, he or she must:
 - (a) assess the compensation and make a determination; and
 - (b) give written notice of his or her decision to the applicant and the acquiring officer.
- (5) Any custom owner or owners of any land or any other person interested in the land who is not satisfied with the decision of the Valuer-General under

this section, may within 28 days after the date on which the decision of the Valuer-General is made, appeal to the Supreme Court.

12D. Power to award costs

The Valuer-General may order a party to pay to the other party such costs and expenses as it considers reasonable, and may apportion any such costs between the parties or any of them in such manner as he or she thinks fit.

12E. Offences in relation to an appeal

A person who, with intent to deceive, makes a false or misleading statement or a material omission in any information given to the Valuer-General, commits an offence punishable on conviction to a fine not exceeding VT2,000,000."

13 Section 13

Delete "thirty", substitute "14"

14 Section 14

Repeal the section, substitute

"14. Payment of compensation

A compensation payment determined under section 9 is to be made to the custom owner of the land or any other person interested in the land:

- (a) if no appeal is made to the Valuer-General under section 12 – as soon as practicable after the appeal period under subsection 12(1) and the notification period under section 13 expires; or
- (b) if an appeal is made to the Valuer-General under section 12 and no subsequent appeal is made to the Supreme Court under subsection 12(5) – as soon as practicable after the appeal period under subsection 12(5) and the notification period under section 13 expires; or
- (c) if an appeal is made to the Supreme Court under subsection 12(5) – as directed by the Supreme Court; or
- (d) if pursuant to a custom owners agreement under section 11 – as soon as practicable after the notification period under section 13 expires."

15 After section 14

Insert

“14A. Payment of compensation to Custom Owners Trust Account

If any sum which is due as compensation for the acquiring of a land or easement under this Act is due but the customary ownership of the land is in dispute, the payment for compensation is to be paid to the Custom Owners Trust Account.

14B. Custom owners Trust Account

- (1) The Custom Owners Trust Account is established.
- (2) There is to be paid into the Account, any sum of which is due as compensation for the acquiring of a land or easement under this Act which is not able to be paid as the customary ownership of the land is in dispute.
- (3) The Custom Owners Trust Account is to be operated and maintained by the Director General of the Ministry of Finance and Economic Management.
- (4) Funds may be withdrawn from the Account and paid to the custom owner of the land that have been determined as custom owners under the Custom Land Management Act No. 33 of 2013.”

16 At the end of section 16

Add

- “(3) An order made under this section must be entered in the Land Leases Register by the Director.”

17 After section 19

Insert

“19A. Service of notices and other documents

- (1) Any notice, document or payment which is required to be made to any person under this Act may be served:
 - (a) personally; or
 - (b) by leaving it at the person’s residential or work address; or

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- (c) by sending it to the person's legal counsel:
 - (i) by prepaid post; or
 - (ii) by email; or
 - (iii) by fax ; or
 - (d) by sending it to the person's postal address.
- (2) For the purposes of paragraph (1)(a) a notice, document or payment is served personally on a person:
- (a) by giving it to the person; or
 - (b) if the person does not accept the notice, document or payment:
 - (i) by putting it down in the person's presence and telling the person what it is; or
 - (ii) by serving it on a chief or a pastor of the church who lives in the area where it is believed the person named in the notice, document or payment, is living.
- (3) If a person named in the notice, document or payment is deceased, service of the notice, document or payment may be made to the legal representatives of the deceased's estate."