

REPUBLIC OF VANUATU

BILL FOR THE CUSTOM LAND MANAGEMENT (AMENDMENT) ACT NO. OF 2021

Explanatory Note

This Bill amends the Custom Land Management Act No. 33 of 2013 (“the Act”).

The Act, and subsequent amendments of 2014, 2016 and 2017 of the Act have amalgamated the following functions into a single process:

- (a) the issuing of a negotiator’s certificates under the Land Reform Act [CAP 123]; and
- (b) the process of custom land owners’ determination under the Act; and
- (c) the process of lease creation under the Land Leases Act [CAP 163].

This has created a lot of administrative and legal challenges in the last 6 years.

The main objectives of this Bill are:

1 To streamline and separate the processes

Given the amendments under the Land Reform Act [CAP 123], the Custom Land Management Office (“CLMO”) will no longer be required to identify the custom owners of customary land over which an application for negotiator’s certificate relates. The CLMO will only be responsible for the management and facilitation of custom owners and use rights determination over customary land and their appointed representatives before any application for a negotiator’s certificate is lodged with the Department of Lands.

2 To fully restore the respect of customary institutions, authorities and customary rules and procedures

Articles 51 and 78 of the Constitution (Sixth) (Amendment) Act No. 27 of 2013 recognises that appropriate customary institutions have the final authority to resolve customary land ownership and use rights disputes in accordance with rules of custom. In compliance with this amendment, Parliament enacted the Act which came into force in 2014. The Act gives legal recognition to a nakamal and an Area Land Tribunal as the only customary institutions to resolve customary land ownership and use rights disputes. There is no provision for the review of any of substantive decisions of the customary institutions by the upper courts.

However, the procedures set out under the Act for determining custom land ownership and use-rights disputes by the nakamal or Area Land Tribunal provides that all the decisions have to be made by all the members of the nakamal or Area Land Tribunal as whole, based on western concept of consensus where all members must agree in order to be recognised by law. These practices have undermined the responsibilities and authority of customary institutions, authorities and rules of custom which resulted in the majority of cases over the last 6 years are yet to be resolved.

This Bill removes the requirement of consensus by all members of a nakamal or an Area Land Tribunal in determining custom land ownership and use rights disputes and provides only that decisions made by nakamal or any Area Land Tribunal are to be made in accordance with the rules of custom of that area in which that land is situated.

3 To establish, administer and maintain a national registry

Currently, the declared custom land owners or their representatives' rights and interests are registered under the Land Leases Act [CAP 163] ("the Land Leases Act"). However, declared custom land owners rights and interests and their appointed representative lists change from time-to-time. Once changes are made, these changes cannot automatically be reflected in the land leases registry due to the fact the registrable interests under the Land Leases Act in most cases can only be undertaken under the authority of the Supreme Court.

This Bill will therefore separate the custom owners' rights and interests under the Act, and lessees' rights and interests under the Land Leases Act by creating a National Registry under the Act. The information from this National Registry can be used by anyone intending to apply for a negotiator's certificate under the Land Reform Act [CAP 123].

4 To remove community land officer positions

In the 2013 amendment of the Act, a provision was made to include the appointment of community land officers to help custom land officers in the performance of their functions under this Act. Community land officers are fulltime public servants serving in the communities such as teachers, police, and other public servants. This provision of appointing community land officers was made without proper consultations and consent from the different Commissions. Therefore, in the last 6 years, it was difficult to implement this provision. Furthermore, public servants serving in communities were not comfortable in undertaking the roles due:

- (a) to high risks both from the communities and the respective Commissions; and
- (b) to the fact that these positions are voluntary and without budgetary support.

Therefore, due to the difficulty in implementing this provision, this Bills will remove all provisions relating to community land officers.

Minister of Justice and Community Services



REPUBLIC OF VANUATU

**BILL FOR THE
CUSTOM LAND MANAGEMENT
(AMENDMENT) ACT NO. OF 2021**

Arrangement of Sections

1	Amendment	2
2	Commencement.....	2

REPUBLIC OF VANUATU

BILL FOR THE CUSTOM LAND MANAGEMENT (AMENDMENT) ACT NO. OF 2021

An Act to amend the Custom Land Management Act No. 33 of 2013.

Be it enacted by the President and Parliament as follows-

1 Amendment

The Custom Land Management Act No. 33 of 2013 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 CUSTOM LAND MANAGEMENT ACT NO. 33 OF 2013

**1 Section 2 (Definitions of “community land officer”,
“consensus”, “Land Leases Act”, and “Land Reform Act”)**

Repeal the definitions.

2 Section 2 (Definition of “custom owners”)

Repeal the definition, substitute

“**custom owners** means:

- (a) any lineage, family, clan, tribe or other group; or
- (b) a sole surviving member of any group under paragraph (a),

regarded by the rules of custom of the area in which the land is situated, as the perpetual owner or owners of that land;”

3 Section 2 (Definition of “recorded interest in land”)

Repeal the definition, substitute

“**recorded interest in land** is a decision made by:

- (a) a customary institution; or
- (b) a Supreme Court or Island Court prior to the commencement of this Act,

as to who the custom owners of an area of land are which when recorded, will be used by the National Coordinator as a basis for the identification of custom owners and representatives of the custom owners;”

4 Section 9

Repeal the section.

5 Part 3

Repeal the Part.

6 Section 23

Repeal the section, substitute

“23. Custom owners may request custom land officer to attend meeting

Custom owners intending to resolve a dispute as to ownership of custom land using the customary processes, must write to the National Coordinator and request that a custom land officer attend the meeting of the nakamal.”

7 Subsection 25(4)

Delete “consensus of”

8 Subsection 32(5)

Delete “consensus of all”

9 Section 49

Delete “or a community land officer” (wherever occurring)

10 Subsection 49(2)

Delete “customary”, substitute “custom”

11 Section 50

Repeal the section, substitute

“50. National Registry

- (1) The National Registry is established.
- (2) The National Coordinator must keep and maintain in the National Registry a list of all:
 - (a) recorded interests in land; and
 - (b) land disputes.
- (2) The National Coordinator must ensure that the following information are included in the National Registry:

- (a) in the case where there is a recorded interest in land – information relating to:
 - (i) the identified custom owners of the land including the list of current members of the custom owner group of the land; and
 - (ii) the names of the nominated representatives of the custom owner group; and
 - (iii) the location and description of the land; and
 - (iv) a sketch or survey map showing the boundaries of the land; and
 - (v) any other features of the land as the National Coordinator considers necessary; and
- (b) in the case where there is a land dispute – information relating to:
 - (i) the disputing parties; and
 - (ii) the location and description of the land; and
 - (iii) a sketch or survey map showing the boundaries of the land; and
 - (iv) any other features of the land as the National Coordinator considers necessary.
- (3) The National Coordinator must ensure that any variation made to the representatives of the custom owners in accordance with section 50A, is recorded in the National Registry.
- (4) The National Coordinator must ensure that the information in the National Registry are kept up to date.

50A. Representatives of the custom owners

- (1) The custom owners must decide, during a meeting with the custom land officer present, which persons should be recognised as the representatives of the custom owners.
- (2) All representatives of the custom owners must not act without the consent of the custom owners.
- (3) Custom owners may meet at any time with the custom land officer present and pass a resolution to vary their representatives if a member of their representative:
 - (a) is a deceased; or
 - (b) is physically or mentally incapacitated to carry out his or her duties efficiently; or
 - (c) acts without the consent of the custom owners.
- (4) The custom land officer must attend the meeting referred to in subsections (1) and (3) and record in writing, the resolution of the meeting. The resolution must be signed by all the custom owners and by the custom land officer.”

12 Section 51 (heading)

Delete “list”, substitute “National Registry”

13 Section 52 (heading)

Delete “custom owner list”, substitute “National Registry”

14 Paragraph 52(b)

Delete “list”, substitute “National Registry”

15 Sections 54 and 55

Repeal the sections.

16 Schedule 1 - subclause 5(2)

Delete “by consensus”, substitute “in accordance with the rules of custom of the area in which the land is situated”