

No. 47 of 2022.

Land Commission Act 2022.

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SCHEDULE.



No. 47 of 2022.

AN ACT

entitled

Land Commission Act 2022,

Being an Act to -

- (a) establish the Land Commission of Papua New Guinea and provide for its constitution and jurisdiction and for other purposes;
- (b) facilitate the tenure conversion of customary land under the *Land (Tenure Conversion) Act 1963*;
- (c) make provision for the efficient disposal of settlement claims on land acquired prior to 1975 by the Pre-Independence Administration of Papua New Guinea;
- (d) make provision for the creation and maintenance of a National Land Registry for the registration of all national land;
- (e) ensure that a settlement payment is paid for land acquired by the State prior to Independence Day by the expropriating authority, giving full weight to the National Goals and Directive Principles and taking into account the interests of the State as well as the person or persons affected;
- (f) merge the functions of the National Lands Commission and the Land Titles Commission into the Land Commission of Papua New Guinea;
- (g) repeal the *Land Titles Commission Act 1962*;
- (h) repeal the *National Lands Registration Act* (Chapter 357),

MADE by the National Parliament, to come into operation in accordance with a notice published in the National Gazette, by the Head of State, acting with, and in accordance with, the advice of the Minister.

PART I. - PRELIMINARY.

1. COMPLIANCE WITH CONSTITUTIONAL REQUIREMENTS.

(1) This Act, to the extent that it regulates or restricts a right or freedom referred to in Subdivision III.3.A (*basic rights*), III.3.B (*fundamental rights*) and Subdivision III.3.C of the *Constitution* (*qualified rights*) namely -

- (a) the liberty of the person conferred by Section 42; and
- (b) the right to freedom from arbitrary search and entry conferred by Section 44.

(2) This Act is a law that is made for the purpose of giving effect to the national interest in public order and public welfare, the purpose of protecting the exercise of rights and freedoms of other persons, and for public purposes that, in the considered opinion of the Parliament, are reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind, and in particular to give effect to Section 54(a) (*special provision in respect of certain lands*) of the *Constitution* by providing for the recognition of the title of the State to certain land that is required for public purpose, the title to which may be, or may appear to be, in doubt.

(3) For the purposes of Section 41 of the *Organic Law on Provincial Governments and Local-level Governments*, it is hereby declared that this Act relates to a matter of national interest.

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2. INTERPRETATIONS.

(1) In this Act, unless the contrary intention appears -

“Chief Commissioner” means the Chief Commissioner appointed under this Act;

“Claimant” means a person making a claim under this Act, and includes a person who -

(a) is joined as a claimant under Section 48; or

(b) is deemed to have made a claim under Section 45;

“Commissioner” means the Chief Commissioner, a Deputy Chief Commissioner, a Commissioner or an Assistant Commissioner or a Special Commissioner appointed under Section 4 of the *Land Disputes Settlement Act 1975*;

“Decision as to Title”, in relation to any land means, subject to Paragraph (b) -

(a) a decision at first instance as to title to the land by a Court or by the Commission; and

(b) in the case of a determination by an Assistant Commissioner under Section 53 of this Act, that determination as confirmed, modified, carried or reversed under Section 50 of this Act;

“Deputy Chief Commissioner” means a Deputy Chief Commissioner appointed under this Act;

“evidence” means all information, facts, matters and things (including hearsay evidence, expressions of opinion and the results of any inquiries or investigations made by the Commission under Section 53 or Section 83(4), in relation to the decision appealed against) that was properly before or present to the mind of the Commission and which the Commission ought properly to have taken into account in arriving at the decision appealed against, together with all inferences proper to be drawn therefrom;

“Independence Day” means the 16th day of September 1975;

“land”, includes an interest in land, whether arising out of and regulated by custom or otherwise;

“landowner”, includes a customary kinship group, customary descent group and customary local group or community;

“Minister” means the Minister for Justice, unless otherwise specified;

“national land” means any land declared under Section 38 or 43 to be national land;

“prescribed person” is -

(a) a claimant who is a biological person from an area within Papua New Guinea that has a direct interest and customary interest through lineage in the declared land; or

(b) a customary group which the claimant represents or by virtue of his membership of which he makes the claim; or

(c) a person or customary group who or which is the predecessor in title of the claimant or of the group referred to in Paragraph (b), as the case may be; or

(d) a person or group acting on behalf of, or claiming as co-owner of a right with, any such person or group referred to in Paragraphs (a), (b) or (c).

“prescribed time” means three calendar months after the date of publication of a notice declaring a particular land to be national land;

“the Commission” means the Land Commission of Papua New Guinea or in short the Commission established by this Act;

“the Registrar” means the Registrar of the Commission appointed under this Act;

“the Registrar of Titles” means the Registrar of Titles appointed under the *Land Registration Act 1981*;

“the Special Commissioner” means a Special Commissioner appointed under this Act.

(2) For the purposes of this Act, a person who is partly descended from an indigenous inhabitant of Papua New Guinea and who, by virtue of that descent, acquires rights by custom to or in respect of customary land shall be deemed to be a landowner in relation to those rights.

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3. ACT BINDS THE STATE.

This Act binds the State.

4. OBJECTIVES OF THE ACT.

- (1) The objectives of the Act are to -
 - (a) provide an independent quasi-judicial process for the expeditious determination of land tenure conversion applications regarding customary land under the *Land (Tenure Conversion) Act 1963*; and
 - (b) to align the functions and jurisdiction of the Commission, as an independent quasi-judicial tribunal to other legislation and bodies responsible for dealing with land matters; and
 - (c) to have an independent quasi-judicial process that protects national land as being acquired for public purposes by determining national land and to ensure settlement claims are properly assessed.

PART II. - ESTABLISHMENT OF THE COMMISSION.

5. CONSTITUTION OF THE COMMISSION.

- (1) There shall be established a Land Commission for Papua New Guinea.
- (2) The Commission shall consist of a Chief Commissioner and such numbers of Deputy Chief Commissioners, Commissioners, Assistant Commissioners and Special Commissioners as are respectively determined by the Chief Commissioner.
- (3) The Chief Commissioner shall be the head of the Commission.

6. APPOINTMENT AND TENURE OF COMMISSIONERS.

- (1) The Commissioners -
 - (a) shall be -
 - (i) in the case of the Chief Commissioner, appointed by the Head of State, acting on advice of the Judicial and Legal Services Commission for a term not exceeding four years and is eligible for re-appointment; and
 - (ii) in the case of all Deputy Chief Commissioners and Commissioners, appointed by the Head of State, acting on advice of the Minister for Justice for a term not exceeding four years and is eligible for re-appointment; and
 - (b) hold office on such terms and conditions as the contract of employment prescribes.
- (2) A Commissioner who has attained the normal retirement age of 60 years shall retire from the Commission by giving due notice under the contract of employment.
- (3) A Chief Commissioner may be terminated from office by the Head of State, acting on advice of the Judicial and Legal Services Commission, on the grounds of misbehaviour or physical or mental incapacity or as specified under this Act.
- (4) Subject to Section 9, where there is a vacancy, the Head of State, acting on advice may, by notice in the National Gazette, appoint a person to be an Assistant Commissioner, and shall hold office on such terms and conditions as are prescribed in the contract of employment.
- (5) Where a person who holds an office of Principal Magistrate or Magistrate is appointed a Commissioner, he may, notwithstanding that appointment, continue to hold the office of Principal Magistrate or Magistrate, as the case may be.

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(6) For the purposes of the *Public Service (Management) Act 1995*, the Chief Commissioner is deemed to be a Department Head within the meaning of the Act.

7. OATH OF OFFICE, ETC.

A Commissioner shall before proceeding to discharge the duties of his office, take before the Head of State or a person authorised by the Head of State an oath or affirmation in the form in Schedule 1.

8. PROTECTION AND IMMUNITIES.

A Commissioner has the same protection, privileges and immunities as a Judge.

9. QUALIFICATION REQUIRED FOR COMMISSIONERS.

(1) A person is not eligible to be appointed a Commissioner unless he has been admitted to practice as a lawyer under the *Lawyers Act 1986*.

(2) A person is not qualified to be, or to remain a Commissioner if he is -

- (a) a member of Parliament; or
- (b) a member of a Provincial Government; or
- (c) a member of a Local-level Government; or
- (d) an office-holder in a registered political party; or
- (e) undischarged bankrupt or insolvent; or
- (f) of unsound mind within the meaning of any law relating to the protection of the person and property of persons of unsound mind; or
- (g) under conviction or sentence of imprisonment or sentence of death.

10. POWERS, ETC., OF DEPUTY CHIEF COMMISSIONER.

(1) Subject to Section 18, the Chief Commissioner may, by instrument in writing, delegate to a Deputy Chief Commissioner any of his functions with respect to the matters or class of matters.

(2) A delegation under Subsection (1) shall come into operation in accordance with a notice published in the National Gazette.

11. ASSISTANT COMMISSIONERS AND SPECIAL COMMISSIONERS.

(1) Subject to Section 9, the Head of State, acting on advice of the Minister, may appoint a person as a Special Commissioner or Assistant Commissioner or to act in the office of a Commissioner-

- (a) where the Commissioner is absent on leave or is for any other reason unable to discharge the duties of his office; or
- (b) during any vacancy in the office of a Commissioner.

(2) A person appointed under Subsection (1) shall hold office on such terms and conditions as the contract of employment prescribes.

(3) A person appointed under Subsection (1) shall, before proceeding to discharge the duties of his office, take before the Head of State or a person authorised by the Head of State an oath or affirmation in the form in Schedule 1.

(4) For the avoidance of doubt, where a Commissioner dies or resigns, the Head of State acting on advice may appoint a person to act until a Commissioner is appointed in accordance with Subsection 6(1).

12. ASSESSORS.

(1) The Minister may, by notice in the National Gazette, appoint a number of persons who are knowledgeable with the customs relating to land in a particular area, to form a panel of assessors.

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(2) The Commission may from time to time select such number of persons as it considers necessary from the panel appointed under Subsection (1) to sit as assessors on any dispute before the Commission, relating to land in a particular area.

13. SEAL.

(1) There shall be a seal of the Commission which shall be affixed to all records of decisions and other official documents relating to the function of the Commission which would otherwise require the affixing of the seal.

(2) The seal of the Commission shall be authenticated by the signature of the Chief Commissioner or where the Chief Commissioner is not available the Deputy Chief Commissioner.

14. JUDICIAL NOTICE.

(1) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it is duly fixed.

15. REGISTRAR OF THE COMMISSION.

(1) There shall be a Registrar for the Commission who shall be appointed by the Chief Commissioner.

(2) There shall be such number of Deputy Registrars as determined by the Chief Commissioner responsible for:

- (a) the keeping of a Register for National Land; and
- (b) the keeping of a Register of Titles issued under the *Land (Tenure Conversion) Act 1963*; and
- (c) the keeping of any other record related to the functions of the Commission.

PART III. - JURISDICTION AND FUNCTIONS OF THE COMMISSION.

Division 1. - General.

16. JURISDICTION AND FUNCTIONS OF THE COMMISSION.

(1) Without limiting the generality of Subsection (1), the functions of the Commission are as follows:

- (a) to determine applications made under Section 7 of the *Land (Tenure Conversion) Act 1963*; and
- (b) to determine all claims to national lands before the Commission, under this or any other Act; and
- (c) subject to this Act, to determine claims for settlement payment on national land under this Act; and
- (d) to declare an area to be public roads, public rights of way or water and areas reserved for public purposes in or over customary land within an adjudication area before the Commission; and
- (e) to determine a claim that the land the subject of the notice under Section 5(4) of the *Land Act 1996*, is customary land referred by the Minister for Lands; and
- (f) to enquire into land that was acquired before and on Independence Day that is undeveloped or is not currently required for public purposes, and make a recommendation to the Minister for Lands under Section 9 of the *Land Act 1996*; and
- (g) to determine customary land ownership pursuant to the direction of the Head of State under the *Land Disputes Settlement Act 1975*.

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(2) A citizen or a group of no less than six citizens may apply to the Commission in the prescribed form for registration in the name of that citizen or the class of citizens of any customary land or of an interest in customary land.

17. GENERAL JURISDICTION, ETC., OF THE COMMISSION.

For the avoidance of doubt, the jurisdiction, practice and procedure of the Commission are as provided by or under this Act, regulations or rules under this Act or any other Act.

Division 2. - Functions and powers of the Chief Commissioner.

18. FUNCTIONS OF THE CHIEF COMMISSIONER.

(1) In addition to any other powers, duties, functions and jurisdiction conferred by or under this or any other Act, the Chief Commissioner is responsible for the function and administration of the Commission.

(2) A delegation under Section 10 is revocable, in writing, and does not prevent the performance of any function by the Chief Commissioner.

(3) A delegation under Subsection (2) shall come into operation in accordance with a notice published in the National Gazette.

19. TRANSFER OF CASES.

(1) The Chief Commissioner may, on the application of a party or in his discretion, after consultation with the Commissioner dealing with the matter, transfer the matter, at any time before a decision has been made, to another Commissioner or to the three Commissioners appointed under Section 20, on the following grounds -

- (a) the value of the land in dispute; or
- (b) the complexity or importance of the issues involved; or
- (c) the convenience of the parties and the Commission; or
- (d) any other sufficient cause justifying the transfer.

(2) The Commissioner(s) shall proceed to hear and determine the matter as though it had been commenced before the Commissioner or three Commissioners where the matter has been transferred under Subsection (1).

(3) All evidence and results of any investigations or inquiries shall be deemed to be evidence before the Commissioner(s) and shall be given due consideration by the Commissioner(s) on the matter transferred under Subsection (1).

20. THREE COMMISSIONERS MAY HEAR CASES.

(1) The Chief Commissioner may appoint three Commissioners, which shall include the Chief Commissioner or Deputy Chief Commissioner, to deal with a matter before the Commission on the following grounds -

- (a) the value of the land in dispute; or
- (b) the complexity or importance of the issues involved; or
- (c) any other sufficient cause for the appointment.

(2) A sitting of the Commission composed of three Commissioners appointed under Subsection (1) shall be presided over -

- (a) by the Chief Commissioner and two other Commissioners so appointed by the Chief Commissioner; or
- (b) by a Deputy Chief Commissioner and two other Commissioners appointed by the Chief Commissioner.

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21. POWER TO MAKE PRACTICE DIRECTIONS.

The Chief Commissioner may make practice directions not inconsistent with this Act or for purposes of the other Acts to which the Commission has jurisdiction prescribing matters that are required or permitted, necessary or convenient for the carrying out of the functions of the Commission.

Division 3. - Duty to keep register.

22. ESTABLISHMENT OF REGISTER FOR THE COMMISSION.

(1) There shall be established a Register for the Commission which shall keep a record of all documents filed and proceedings taken in any matter showing the dates on which such documents are filed or such proceedings taken for purposes of this Act.

(2) The Register shall be in such form and contain such particulars as prescribed under this Act or other Act, Regulation, Rules and any practice directions issued by the Chief Commissioner, for purposes of maintaining the following -

- (a) applications made under the *Land (Tenure Conversion) Act 1963*; and
- (b) subject to this Act, applications to determine claims for settlement payment on national land; and
- (c) subject to this Act, a Register of National Land; and
- (d) any applications for review made before the Commission; and
- (e) a record of any referral made to a higher court; and
- (f) any application made under the *Land Act 1996*; and
- (g) any application made under the *Land Disputes Settlement Act 1975*; and
- (h) a record of all decisions made by a Commissioner; and
- (i) the Register shall be in such form and contain such particulars as prescribed.

23. DUTY OF THE COMMISSION TO KEEP REGISTER.

(1) The Commission shall maintain records of the decisions, proceedings and transcripts of the Commission for both land tenure conversion applications of customary land under the *Land (Tenure Conversion) Act 1963* and settlement payments made under this Act and any other related matter.

(2) Where a decision is made for settlement payment over national land under this Act, the decision shall be forwarded in the prescribed form to the Solicitor General for certification, and cause the settlement payment over that national land to be published in the National Gazette.

(3) For the purposes of Section 29 of this Act the decision is conclusive evidence that the national land is free from any claim of settlement payment or compensation.

(4) The Registrar, on receipt of a copy of a declaration under Section 27, shall register as national land, land the subject of the declaration.

(5) For purposes of this Act, the Registrar shall keep a register of all lands declared as national land.

PART IV. - DECLARATION OF NATIONAL LAND.

Division 1. - General.

24. SAVING OF NATIONAL TITLE UNDER OTHER LAWS.

This Act does not derogate any rights of the State to or in respect of land under any other law.

25. DECLARATION OF ADDITIONAL PUBLIC PURPOSES, ETC.

For the purposes of Section 53 of the *Constitution* and of this Act, and of any other law -

- (a) the following purposes are public purposes:
 - (i) the purposes defined as public purposes in Section 2 of the *Land Act 1996*; and
 - (ii) a purpose of -
 - (A) urban development, being development within a town; or
 - (B) land settlement, including the maintenance of existing land settlement schemes, and any settlement for the provision of land for Papua New Guineans; and
- (b) the acquisition of land or of anything on land for a purpose or reason connected with a purpose referred to in Paragraph (a) is an acquisition for a purpose that is reasonably justified and reasonably justifiable in a democratic society that has a proper regard for the rights and dignity of mankind.

26. DESCRIPTION.

Where in this Part a notice or declaration is to contain a description of land, the description must be sufficient to identify and locate the land and its boundaries.

27. MINISTER TO ADVISE REGISTRAR OF DECLARATIONS.

Where the Minister makes a declaration of national land under Sections 41 and 46 a copy of the declaration shall be provided to the Registrar.

28. REGISTRAR MAY REQUIRE FURTHER DESCRIPTION OF LAND.

Where the Registrar is of the opinion that the description of the land contained in the declaration under this Act does not comply with Section 26, he may request the Minister to furnish a further description.

29. EFFECT OF REGISTRATION.

An entry in the Register is conclusive evidence that the State has title to the land described in the entry.

30. REGISTRAR MAY ISSUE CERTIFICATE.

The Registrar of the Commission may, on payment of the prescribed fee, issue a certificate in the prescribed form certifying that the land described in the certificate has been registered.

31. CERTIFICATE OF TITLE EVIDENCE OF REGISTRATION.

A certificate issued by the Registrar under Section 30 of the Act shall be received in all courts of justice as evidence of the particulars contained in it.

32. RECTIFICATION OF REGISTER.

The Registrar -

- (a) may, on such evidence as seems to him sufficient; or
 - (b) shall, on the order of the National Court,
- correct errors in the Register and in certificates and copies of entries and supply entries omitted to be made under this Act.

33. SEARCH.

Subject to any practice direction issued by the Chief Commissioner, any person may, on payment of the prescribed fee, have access in the Register for the purpose of inspection during the official hours and days prescribed.

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34. COPIES.

Subject to this Act and any practice direction issued by the Chief Commissioner, any person shall, on payment of the prescribed fee, shall be entitled to search for, request and obtain copies of any entry in the Register.

Division 2. - Land acquired before Independence Day.

35. APPLICATION OF DIVISION 2.

This Division does not apply to rights in respect of lands that -

- (a) was acquired by the State on or after Independence Day; or
- (b) are the subject of a decision of the Commission giving title to customary land.

36. GENUINE DISPUTE.

(1) For the purposes of this Division, a genuine dispute concerning any land may exist notwithstanding the fact that the land is, as a matter of law, vested in one or more of the parties to the dispute.

(2) Notwithstanding this Act, the genuineness of a dispute is justiciable before the National Court.

37. NOTICE OF INTENTION TO DECLARE NATIONAL LAND WHERE LAND WAS ACQUIRED BEFORE INDEPENDENCE DAY.

(1) Where, in the opinion of the Minister for Lands -

- (a) any land was acquired before Independence Day by a pre-Independence Administration in Papua New Guinea; and
- (b) the land is required for a purpose or a reason that is declared or described by Section 25 or by an Organic Law or another Act to be -
 - (i) for a public purpose; or
 - (ii) a reason that is reasonably justified in a democratic society that has a proper regard for the rights and dignity of mankind,

the Minister for Lands may, by notice in the National Gazette, state his intention to make a declaration that the land or any part of the land is national land, not earlier than the expiry of three months following the date of publication of the notice.

(2) A notice under Subsection (1) shall -

- (a) contain a description of the land; and
- (b) reference to any genuine dispute, where the Minister for Lands is of the opinion that there may be a genuine dispute as to whether the land was acquired validly from the customary owners, and
- (c) specify the estate acquired in the land.

(3) An omission of a reference to any genuine dispute under Paragraph (2)(b) shall not be deemed to imply that a genuine dispute does not exist.

38. DECLARATION OF NATIONAL LAND ACQUIRED BEFORE INDEPENDENCE DAY.

(1) Where the Minister for Lands has published a notice under Section 37 in respect of any land, he may after the expiry of three months following the date of publication of the notice in the National Gazette and compliance by him with the requirements of Section 93, declare by notice in the National Gazette that the land or any part of the land, is national land.

(2) A declaration made under Subsection (1) shall -

- (a) contain a description of the land; and
- (b) specify the estate in the land acquired by the State.

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39. APPEALS AGAINST DECLARATIONS OF NATIONAL LAND.

- (1) Subject to Section 36 a declaration under Section 38 -
- (a) shall not be subject to any appeal or review before any legal proceedings; and
 - (b) compensation is not payable in respect of or arising out of any such declaration, except as provided for in Subsection (2).
- (2) A person aggrieved by a declaration under Section 38, may make a claim for settlement payment in accordance with Section 45.

Division 3. - Land acquired on or after Independence Day.

40. NOTICE OF INTENTION TO DECLARE NATIONAL LAND WHERE LAND ACQUIRED AFTER INDEPENDENCE DAY.

(1) Where the State has acquired land on or after Independence Day for any purpose, the Minister for Lands shall, by notice in the National Gazette, make known his intention to make a declaration that the land is national land, not earlier than the expiry of three months following the date of publication of the notice.

- (2) A notice under Subsection (1) shall -
- (a) contain a description of the land; and
 - (b) state that any person aggrieved by the notice may make representation to the Minister for Lands within 60 days of -
 - (i) the date of publication of the notice in the National Gazette; and
 - (ii) compliance by the Minister for Lands with the requirements of Section 93; and
 - (c) specify the estate acquired in the land.

41. PERSON AGGRIEVED BY NOTICE MAY MAKE REPRESENTATION TO THE MINISTER FOR LANDS.

Any person aggrieved by a notice under Section 40 may, within 60 days of -

- (a) the date of publication of the notice in the National Gazette; and
 - (b) compliance with the requirements under Section 93,
- make, in writing, a representation to the Minister for Lands.

42. DUTY TO KEEP RECORD OF STATE ACQUISITIONS OF NATIONAL LAND.

Where the State has acquired land under the *Land Act 1996* or under Section 40(2)(a) and (c), the details of the acquisition after Independence Day, shall be kept in the Register of national land.

43. DECLARATION OF NATIONAL LAND ACQUIRED ON OR AFTER INDEPENDENCE DAY.

(1) Where the Minister for Lands has published a notice under Section 40, in respect of any land he may -

- (a) after the expiry of three months following -
 - (i) the date of publication of the notice in the National Gazette; and
 - (ii) compliance by him with the requirements of Section 93; and
- (b) after consideration of any representations made to him under Section 41, declare, by notice in the National Gazette, that the land, or any part of the land, is national land.

- (2) A declaration made under Subsection (1) shall -
- (a) contain a description of the land; and
 - (b) specify the estate in the land acquired by the State.

Division 4. - Effect of ownership of national land.

44. OWNERSHIP OF NATIONAL LAND.

Subject to any rights in or under it, granted or purported to be granted by the State or by a pre-Independence Administration in Papua New Guinea, national land -

- (a) vests in the State on the date of a declaration made under Section 38 or 43 to the extent of the estate declared; and
- (b) may be dealt with in the same way as any other land, the property of the State.

PART V. - SETTLEMENT PAYMENTS.

45. CLAIMS FOR SETTLEMENT PAYMENTS.

(1) Within the prescribed time after the publication of a declaration under Section 38, or within such further time as the Commission, allows, a person who is aggrieved by the declaration under Section 38 may make a claim to the Commission for a settlement payment in respect of the land, the subject of the declaration.

(2) A claim under Subsection (1) shall be made in the prescribed manner, but does not prevent the Commission from accepting a claim in any manner, on such conditions as to notice or further particulars or otherwise, as the Commission deems proper.

46. ADMISSIBILITY OF CLAIMS.

(1) A claim under Section 45 is admissible only if -

- (a) subject to Subsection (3), a prescribed person had made, before Independence Day, a previous claim to the land, under a law; and
- (b) subject to Subsection (4), no payment (including *ex gratia* payment) for the land or for the right was made to the prescribed person in respect of a purported acquisition by a pre-Independence Administration; and
- (c) the subject land is required for a public purpose and developed in accordance with that purpose.

(2) Where, in the opinion of the Commission -

- (a) there were special reasons which made it reasonable that no previous claim referred to in Subsection (2)(a) was made; and
- (b) in the circumstances of the particular case it would not be just to enforce the provisions of that paragraph,

the Commission may admit a claim which is otherwise admissible under Subsection (2).

(3) For the purposes of Subsection (2)(b) -

- (a) it is irrelevant whether or not a payment was made in cash; and
- (b) no account shall be taken of any payment the amount or value of which was, in the opinion of the Commission, insignificant when compared with the value of the land at the time when the payment was made, whether or not the value can be precisely estimated.

47. PRELIMINARY DECISION AS TO ADMISSIBILITY OF CLAIMS.

(1) Before proceeding further in the matter of a claim under Section 45, the Commission shall decide whether the claim is admissible in accordance with Section 46.

(2) A person who is aggrieved by a decision of the Commission under Subsection (1) may appeal to the National Court.

48. JOINDER OF OTHER PARTIES.

(1) Where in its opinion it would be just and convenient to do so, the Commission may order that a person or group who did not make a claim under Section 45 but was entitled to make such a claim to be joined in any proceedings as a claimant.

(2) An order under Subsection (1) may be made subject to such conditions as the Commission thinks just.

(3) A person or group joined under Subsection (1) shall be deemed to have made a claim within the prescribed period within the meaning of Section 44.

49. CONFLICTING CLAIMS.

(1) Where more than one claim is made under Section 45 in respect of any land and the claims are in conflict or inconsistent, the Commission shall -

(a) order that the matter of the conflict or inconsistency be dealt with under the *Land Disputes Settlement Act 1975*, as if it were a dispute as to the ownership of an interest in customary land within the meaning of that Act; and

(b) adjourn the proceedings until the matter of the conflict or inconsistency has been dealt with accordingly.

(2) Where an order is made in accordance with Subsection (1)(a) -

(a) the provisions of the *Land Disputes Settlement Act 1975*, (other than Sections 45 and this section) apply accordingly; and

(b) any order made under that Act as between the claimants is binding on the Commission in the proceedings under this Act so far as it relates to the matter of the conflict or inconsistency.

50. AWARD OF SETTLEMENT PAYMENTS.

(1) Where the Commission is satisfied in relation to a claim under Section 48 that the claimant is a person -

(a) who would be or is a representative of a customary group who would be, the owner of a customary right in any land that has been the subject of a declaration under Section 38 if no acquisition of the land by a pre-Independence Administration had taken place, the Commission shall, subject to Subsections (2) and (3); or

(b) the claimant or where the claim is made by the claimant as a representative of a customary group or to a member or representative of the group authorised by the group to accept payment,

make an order for settlement payment in accordance with this Section.

(2) Where an order is made under Subsection (1), the Commission may make further orders for the distribution of the settlement payment between the persons, customary group or members of the groups concerned.

(3) Subject to Section 49, where there are more claims than one under Section 45 in respect of a parcel of land, for the purposes of an order under Subsection (1) or (2) the Commission shall consolidate the claims or treat them as consolidated.

(4) The settlement payment shall be made by the Secretary for Finance out of monies available for that purpose upon advice from the Attorney-General given after certification by the Solicitor General on the recommendation of the Commission.

51. AMOUNT OF SETTLEMENT PAYMENTS.

(1) The total amount of settlement payments made under this Act in respect of any parcel of land shall be an amount prescribed by a regulation.

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(2) An amount of settlement statement that is not consistent with the prescribed regulation shall not be binding on the State.

(3) For the purposes of calculating the amount of compensation, any parcel of land shall be deemed to be in a town if it was situated in a town as at the date of the publication of the declaration under Section 38.

(4) Subject to Subsection (5), if the size of the land the subject of a declaration under Section 31 is relatively small it would, had it been acquired on the date of the claim, have represented a large portion of the total land available for use to the owners, relative to their then and likely future needs, the Commission may recommend to the Minister, where it considers just to do so, for the settlement payment calculated under Subsection (1) to be increased by an amount not exceeding 50 percent.

(5) The Minister may accept or reject, wholly or in part, a recommendation by the Commission under Subsection (4).

52. APPEALS AGAINST DECISIONS OF THE COMMISSION.

Subject to Section 47, no appeal lies against any decision of the Commission under this Act, otherwise than on the ground of a failure to comply with the principles of natural justice.

PART VI. - DETERMINING OWNERSHIP TO NATIONAL LAND.

Division 1. - Determination of disputes.

53. DETERMINATION OF CUSTOMARY LAND DISPUTES.

After the period limited by Part IX for review of or appeal against a decision of the Commission has expired, and any proceedings on review have been completed and any appeals have been decided -

- (a) a determination of the Commission under this or any other Act is, subject to Section 93, for all purposes and as against all persons conclusive evidence of the customary land ownership as at the date of the decision, of the land the subject of the decision and of rights, titles, estates and interests in the land as set out in the decision; and
- (b) the Commission shall forward a copy of its decision to the Registrar of Titles, who shall make such entries in Registers kept by him and issue such documents as are necessary, or as are directed by the Commission, to give effect to the decision of the Commission.

Division 2. - Mediation and Local Land Court.

54. POWER TO MEDIATE.

(1) At any stage of a hearing before the Commission under this or any other Act, the Commission may mediate between the parties in order to effect a settlement of any matter in dispute.

(2) Notwithstanding Subsection (1) and depending on the nature of the matter in dispute, the Commission may -

- (a) refer the matter to the Local Land Court to be dealt with under the *Land Disputes Settlement Act 1975*, where the matter concerns customary land; or
- (b) where the matter is incidental to the hearing before the Commission, the Chief Commissioner may appoint a Commissioner who is not presiding over the hearing before the Commission to mediate between the parties.

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55. LOCAL LAND COURT MAY MAKE ORDER.

(1) Notwithstanding anything in this Act, a Local Land Court having jurisdiction over an area in which any land is situated, the subject of a dispute as to ownership by custom or to the right to its use by custom, may on the application of a party to the dispute, make an order authorising the use or occupation of the land, water or reef by one of the parties to the dispute and restrain the other party to the dispute or other persons from interfering with the use or occupation of the land, water or reef.

(2) For the purposes of Subsection (1), where a dispute is unlikely to come before a Local Land Court for hearing within a month and, in the interim, action is needed to preserve the peace, then a temporary order may be made pursuant to Section 30 of the *Land Disputes Settlement Act 1975*, to -

- (a) authorise the use or occupation of land; or
- (b) prohibit the use or occupation of land; or
- (c) restrain a party from interfering with the use of occupation of land.

(3) The order made shall give due consideration to the wellbeing and livelihood of all persons who habitually reside on the land, the subject of the dispute.

(4) A person who does not comply with an order issued under Subsection (1) shall be guilty of an offence.

Penalty: K500.00 or imprisonment for one month.

(5) The Local Land Court making an order under this section has jurisdiction over an offence referred to in Subsection (4).

(6) Subject to the provisions of this section, an appeal shall not lie from a Local Land Court in respect of an order made under this section.

(7) Where an order is made under Subsection (1), the Local Land Court shall forthwith transmit to the Commission the official copy of the record, the depositions and any other documentary evidence relating to the dispute, and the Commission shall hear and determine the matter as if the party in whose favour the order was made, had made an application to have the dispute heard and determined by the Commission in accordance with this Act.

PART VII. - PROCEDURE AND EVIDENCE.

56. PROCEDURES, ETC., OF THE COMMISSION.

(1) Subject to this and any other Act, the procedures of the Commission are as determined by it.

(2) The Commission shall comply with the principles of natural justice.

(3) All hearings of the Commission shall be -

- (a) conducted in public; and
- (b) heard before one Commissioner or such number of Commissioners as appropriate.

(4) The Commission -

- (a) is not bound by technical rules of procedure; and
- (b) shall -
 - (i) investigate, and inform itself on any matter before it in such manner as it considers proper; and
 - (ii) admit such relevant information as is available.

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- (5) Any matter before the Commission shall be filed with the Registrar for purposes including -
- (a) registration and record management, and where necessary consulting the Registrar of Titles; or
 - (b) where the Registrar is of the opinion that the description of the national land to which a claim for settlement payment is made is inadequate for the purpose of properly identifying and locating the land and its boundaries, the Registrar may require the Registrar of Titles to furnish a further description; or
 - (c) properly identifying the jurisdiction of the Commission by which the matter is to be dealt with; or
 - (d) to ensure compliance with any process under this Act or practice directions as issued by the Chief Commissioner; or
 - (e) to ensure service of matters filed are made to individuals or groups concerned; or
 - (f) appropriate advice and referral to appropriate land dispute settlement body; or
 - (g) to verify for purposes of settlement payments made under Part V of the Act that a claim has been made and settled; or
 - (h) to advice on any fees and charges prescribed under this Act or other Act; or
 - (i) to offer advice or direction to seek legal representation or otherwise proper representation for purposes of a matter before the Commission.

(6) For the avoidance of doubt, the application of Subsection (4)(b) includes matters under a declaration made by the Minister for Lands under Section 41, regarding land the subject of a customary land ownership dispute being heard by the Commission.

57. AGREEMENTS FOR SETTLEMENT.

(1) At any stage of any hearing or proceedings before the Commission or the National Court under this Act, the parties may agree upon an amicable settlement of the matter, upon such terms and conditions as are agreed upon by the parties.

(2) The agreement for settlement may include a waiver of any rights or alleged rights by any party, including -

- (a) a representative of the parties in any capacity, in defeasance of the rights of any person holding under or through him; and
- (b) the owners or alleged owners of any customary land not only on behalf of themselves but also on behalf of all other persons who would otherwise have subsequently become entitled to the land by custom, and in defeasance of the customary rights of those persons.

(3) An agreement for settlement shall be made or incorporated into the decision of the Commission on the matter in question or the decision of the National Court on appeal, as the case may be, unless the Commission or the Court is satisfied that it would be improper so to do.

(4) Where an agreement for settlement provides for payment of compensation, that provision may be enforced -

- (a) where the amount or value of the compensation, as agreed, does not exceed K10,000.00 as if it were an order of a District Court; and
- (b) where the amount or value of the compensation, as agreed, exceeds K10,000.00 as if it were an order of the National Court.

(5) For the purposes of any appeal to or from the National Court, a refusal to make or incorporate an agreement for settlement into a decision of the Commission or the National Court shall be deemed to be a decision or order of the Commission or the Court, as the case may be.

58. POWER TO SUMMON WITNESSES.

(1) Where the Commission is of opinion that a person is able to give material evidence and will not voluntarily appear for the purpose of being examined as a witness at any hearing or proceedings held by or before the Commission, the Commission shall issue a summons directed to that person, requiring him to be and appear before the Commission at a time and place specified in the summons, to testify what he knows concerning the matter the subject of the hearing or proceedings.

(2) A summons issued under Subsection (1) shall be served, and proof of service given, in such manner and subject to such conditions as are prescribed by the Land Commission Rules or as prescribed by practice directions issued by the Chief Commissioner.

(3) A summons under this section may be oral or in writing and in the case of an oral summons may be served by being communicated to the person concerned by the Commission or by a person authorised by the Commission.

(4) The Commission may by instrument signed by a Commissioner, require a person to produce a document, book or paper in his possession or control.

(5) A person who, when summoned or required under this section to give evidence or to produce a document, book or paper in his possession or control, fails without reasonable excuse (proof of which is on him) -

- (a) to attend before the Commission at the time and place appointed in the summons or requirement; or
 - (b) to be sworn or make an affirmation; or
 - (c) to answer any question put to him by the Commission; or
 - (d) to produce the document, book or paper,
- is guilty of an offence.

Penalty: A fine not exceeding K3,000.00 or imprisonment for one month.

59. EXAMINATION TO BE ON OATH.

(1) Subject to the provisions of the *Oaths, Affirmations and Statutory Declarations Act 1962*, a person appearing to give evidence before the Commission shall be examined on oath.

(2) The Commission may administer or cause to be administered to a person appearing to give evidence before it an oath or affirmation as a witness.

60. POWER TO ORDER WITNESSES OUT OF HEARING.

The Commission may, if it thinks fit, at any time during any hearing or proceedings, order that all witnesses, other than the parties and the witnesses under examination to remain outside and beyond the hearing of the Commission until required to give evidence.

61. TRANSCRIPT OF EVIDENCE, ETC.

(1) A record of the evidence given in a matter before the Commission shall be taken and subscribed by the Commission.

(2) The Commission shall keep a record of any inquiries or investigations made by it under this Act.

62. DUTY TO INSPECT THE LAND.

(1) Subject to Subsection (2), the Commission shall inspect the relevant land during the hearing of a matter at first instance.

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(2) The duty imposed by Subsection (1) may be discharged by assessors selected under Section 12(2) of this Act, in inspecting the land and reporting to the Commission on the inspection.

63. REFUSAL OF WITNESSES TO ATTEND.

A person who has been duly summoned as a witness before the Commission, and to whom reasonable expenses of conveyance and attendance have been tendered, shall not, without reasonable excuse (proof of which lies upon him) -

- (a) refuse or fail to attend in obedience to the summons; or
- (b) refuse to take an oath or make an affirmation as a witness when so required by the Commission.

Penalty: K3,000.00 or imprisonment for one month.

64. PROTECTION OF OFFICERS.

(1) A Commissioner or other person appointed or employed for the purposes of the Commission is not personally liable for anything done or omitted to be done by him in good faith in the exercise of his powers or the performance of his duties.

(2) An action taken by a person in respect of the marking of boundaries and the preparation of demarcation plans for the purposes of the Commission shall be deemed not to contravene any law in force in Papua New Guinea relating to surveys, but nothing in this Act contained shall be deemed to authorise a person to obliterate, remove or deface a distinguishing mark or land mark or beacon erected or placed on land under any such law.

65. MARKING OF LAND BY THE COMMISSION.

The Commission or a Commissioner may place such marks on any land, or cause such marks to be placed on any land, the subject of a proceeding before the Commission or of a decision of the Commission or within an adjudication area as it or he considers necessary or desirable.

66. LEGAL REPRESENTATION.

Subject to this Act, a person who is entitled to be heard at any hearing or proceedings before the Commission or needs any assistance for purpose of the applications may be represented at that hearing for those proceedings by a lawyer, an officer of the Public Service or other person who has first obtained the leave of the Commission.

67. CONTEMPT OF THE COMMISSION.

- (1) A person shall not -
- (a) during any hearing or proceedings held before the Commission -
 - (i) wilfully interrupt the hearing or proceedings; or
 - (ii) conduct himself disrespectfully towards the Commission or a Commissioner; or
 - (iii) assault or wilfully obstruct a person in attendance at that hearing or those proceedings; or
 - (b) refuse or fail to comply with an order or direction lawfully made or given by the Commission.

Penalty: K5,000.00 or imprisonment for term not exceeding five years.

(2) For the purposes of this section, any person or authority or head of institutions or organisations that have an interest in any matter that comes before the Commission shall comply with any orders or directions issued by the Commission or a Commissioner and any person or authority or the head of any institution or organisation that fails to comply with such orders or directions, is guilty of an offence.

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Penalty: K5,000.00 or imprisonment for term not exceeding five years.

(3) The provisions of Subsection (2) do not apply to or in relation to an Acting Commissioner exercising jurisdiction under Section 53.

(4) A regulation may prescribe for the enforcement procedures under this section.

68. OBSTRUCTION OF COMMISSION OR DEMARCATION COMMITTEE.

A person shall not in any way hinder or obstruct a Commissioner or a member of a Demarcation Committee in the exercise or performance of any of his powers, functions or duties under this or any other Act.

Penalty: K5,000.00 or imprisonment for a term not exceeding five years.

69. MOVING, ETC., OF LAND MARKS.

A person shall not, unless authorised by or under this Act or by the Commission, a Commissioner (the burden of proof of which lies upon him), wilfully or negligently remove, obliterate or deface a mark placed on any land by the Commission or a Commissioner.

Penalty: K2,000.00 or imprisonment for three months.

70. SERVICE ON LANDOWNERS.

(1) Where, in connection with any proceedings, matter or thing before the Commission, a notice or thing is to be given to or served on the owners or alleged or purported owners of customary land, it may, whether or not it has been given to or served on owners or alleged or purported owners of customary land, be given to or served on the Ward Councillor or Village Court Magistrate of that area, which giving or service shall, subject to any order to the contrary by the Commission, be deemed to be good service on the owners or alleged or purported owners of customary land.

(2) Where a notice or thing is given to or served on the Ward Councillor or Village Court Magistrate under Subsection (1), he shall, unless he is satisfied that the notice or thing has in fact been given to or served on the person whom it affects -

- (a) take all practicable steps to give the notice or thing to, or serve it on owners or alleged or purported owners of customary land; and
- (b) post a copy of the notice or thing on a conspicuous place on the land to which it relates; and
- (c) notify details of the notice or thing in the area in which the land is situated by any method by which it is customary to transmit orders or news within that area.

(3) Where the Ward Councillor or Village Court Magistrate has taken action in accordance with Subsection (2) and is not satisfied that the owners or alleged or purported owners of customary land whom the notice or thing affects either have been given or served with the notice or thing or have had reasonable opportunity of obtaining details of the notice or thing, he may apply to the Commission for an order as to the sufficiency of service, and the Commission may make such order as it deems just.

71. STATE TO ASSIST IN RELATION TO CUSTOMARY RIGHTS.

The State shall, in all proceedings before the Commission, assist the Commission in its investigation and determination, and, in particular, shall make available to it all documents and information relating to the proceedings and available to the State.

72. REASONS FOR JUDGMENT.

The reasons for the decision of the Commission in a matter before it shall be recorded by the Commission in writing.

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73. COPIES OF FINDINGS TO BE SENT TO DISTRICT OFFICES.

A certified copy of a decision of the Commission shall be forwarded to and held in the district office of the district in the province in which the land the subject of the decision is situated.

74. FEES.

- (1) There shall be paid such fees in respect of proceedings under this Act as are prescribed.
- (2) The fees prescribed under this Act may vary from area to area in Papua New Guinea.

PART VIII. - REMOVAL OF CERTAIN MATTERS TO NATIONAL COURT.

75. DISPUTE AS TO CUSTOMARY LAND, ETC.

(1) Where a matter before the Commission involves a dispute as to whether any land is or is not customary land, the National Court may, at any time before a decision has been given and on the application of any party to the proceedings before the Commission, order that the matter be removed into the National Court.

- (2) Where a matter is removed into the National Court under Subsection (1) -
 - (a) the proceedings in the matter and the records specified in Section 61 (if any) shall be transmitted to the Registrar of the National Court; and
 - (b) the Court shall proceed on the matter as if it had commenced in that Court; and
 - (c) the Court may direct that all evidence already taken before the Commission shall be evidence before the Court.

76. TAKING OF EVIDENCE FOR NATIONAL COURT.

(1) Where a matter is removed into the National Court under Section 75, the Court may direct that evidence in the matter be taken before the Chief Commissioner, a Deputy Chief Commissioner or a Special Commissioner.

- (2) On the taking of evidence under Subsection (1) -
 - (a) the practice and procedure of the Commission applies; and
 - (b) the Commissioner has and may exercise, for the purpose of taking evidence, all the powers, protection and immunities of the Commission as if he were hearing a matter under Section 54.

(3) Evidence taken under Subsection (1) is evidence in the proceedings in the National Court under Section 84.

PART IX. - APPEALS, ETC.

Division 1. - Appeals and references to the National Court.

77. RIGHT OF APPEAL.

(1) A person aggrieved by a decision of the Commission, whether after review under Division 2 of this Part or otherwise, may appeal to the National Court within 90 days after the decision or the review of the decision.

(2) For the purposes of Subsection (1), in relation to a final order under the *New Guinea Land Titles Restoration Act 1951*, the period for appeal runs from the date on which the written final order is issued by the Commission.

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(3) Notwithstanding anything in Subsection (2), a Judge may, where he thinks it desirable in the interests of justice to do so, extend the time for appeal, but no such extension shall be granted after the Registrar of Titles has, in pursuance of the decision of the Commission, made any entry in a Register kept by him or issued any documents of title.

(4) The power to extend the time for appeal under Subsection (4) applies whether or not, in any particular case, the time for appeal had expired at the date of commencement of the *Land Titles Commission (Appeals) Act 1970*, or has expired at the time when the application is made to a Judge to extend the time for appeal.

- (5) An appeal under Subsection (1) may be made only on the ground that -
- (a) the Commission has exceeded its jurisdiction; or
 - (b) the decision was against the weight of the evidence; or
 - (c) the hearings of the Commission were conducted in a manner contrary to natural justice; or
 - (d) the Commission was wrong in law.

(6) In this or any other Act in force in Papua New Guinea, a reference to a decision of the Commission shall be read as a reference to a decision of the Commission as affected by the decision on an appeal under this section.

78. POWERS OF NATIONAL COURT ON APPEAL.

(1) On an appeal under Section 77 against a decision of the Commission, the National Court may require the Commission to furnish to it -

- (a) the record of the evidence taken by the Commission; and
- (b) copies of all documents before the Commission; and
- (c) the record of any inquiries or investigations made by the Commission under Section 53(1) or Section 83(4) in relation to the matter of the decision; and
- (d) the reasons for the decision,

authenticated by the Commission.

- (2) Upon the hearing of the appeal, the National Court shall inquire into the matter and may -
- (a) adjourn the hearing from time to time; or
 - (b) receive fresh evidence if in the opinion of the Court that evidence is relevant and the party seeking to rely on it was not negligent in failing to adduce it before the Commission; or
 - (c) if the justice of the case so requires, substitute for the decision any decision that might have been given by the Commission; or
 - (d) remit the case in whole or in part for hearing or for further hearing before the Commission.

(3) Where the records which may be required to be furnished under Subsection (1) in relation to an appeal are in the opinion of the National Court not adequate to allow the Court to come to a proper decision on the appeal, the Court shall -

- (a) require the Commission to furnish to it any further information, matter or thing relating to the decision; or
- (b) remit the case in whole or in part for hearing or further hearing under Subsection (2)(d).

79. CASE STATED TO NATIONAL COURT.

(1) In the course of an inquiry into or the hearing of a matter, the Commission may, and upon the order of a Judge shall, temporarily refrain from making a decision and state a case on a question (other than a question of fact only) for determination by the National Court.

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(2) Subject to the *National Court Rules 1983*, the proceedings in or in connection with a case stated under this section shall be as directed by the National Court.

(3) The Commission shall incorporate in its decision such declarations and directions as are necessary to give effect to the determination made by the National Court under this section.

(4) For the avoidance of doubt, this Section does not apply to applications for settlement payments to national land under Part V of this Act.

Division 2. - Reviews by Commission.

80. APPLICATION OF THIS DIVISION.

The provisions of this Division do not apply to -

- (a) a decision of the Commission constituted by the Chief Commissioner or a Deputy Chief Commissioner or by three Commissioners; or
- (b) a decision of the Commission on settlement payments on national land under Parts IV and V of this Act.

81. APPLICATION FOR REVIEW.

(1) A person aggrieved by a decision of the Commission may, within 90 days after the decision, apply to the Chief Commissioner for a review of the decision, unless action had already been taken under Division 1 of this Part in relation to the decision.

(2) An application for a review shall specify the grounds on which the application is made.

82. REVIEW ON MOTION OF CHIEF COMMISSIONER.

Within the period referred to in Section 83, the Chief Commissioner shall consider the records relating to a decision of the Commission, and may refer the decision for review under this Division.

83. REVIEW OF DECISIONS.

(1) Upon receipt of an application for review or the making of a reference under this section the decision shall be reviewed by the Commission constituted by the Chief Commissioner or a Deputy Chief Commissioner, or by three Commissioners appointed by the Chief Commissioner for the purpose one of whom shall be the Chief Commissioner or a Deputy Chief Commissioner.

(2) The Commissioner who made the decision to be reviewed shall not sit on the review.

(3) The Commission in dealing with the review shall consider the records relevant to the decision and receive such evidence (if any) and make such inquiries (if any) as it considers necessary, and may -

- (a) affirm or quash the decision; or
- (b) if the justice of the case so requires, substitute for the decision any decision that might have been given.

(4) Where the Commission consisting of three Commissioners appointed under Subsection (1) is reviewing a decision -

- (a) the sitting of the Commission shall be presided over -
 - (i) where the Chief Commissioner is one of the three Commissioners by the Chief Commissioner; or
 - (ii) in any other case by a Deputy Chief Commissioner appointed by the Chief Commissioner for the purpose; or
- (b) the Commission may act on evidence and inquiries taken or made, as the case may be, by one of those Commissioners, if that Commissioner is so authorised by the other two Commissioners; and

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- (c) the opinion of the Commission shall be:
 - (i) where there is a majority opinion; or
 - (ii) in any other case the opinion of the Commissioner presiding.

84. PROCEDURE.

The provisions of Part VII with the necessary or applicable changes, apply to and in relation to a review of a decision under this Division.

PART X. - MISCELLANEOUS.

85. OWNERSHIP OF CUSTOMARY LAND FOR CERTAIN PURPOSES.

(1) Subject to Subsection (2), for the purposes of the Commission, in relation to the ownership of customary land -

- (a) no account shall be taken of, or reference made to, persons other than persons living at the relevant date; and
- (b) living persons who, under custom, are regarded as owners of customary land shall be treated as the beneficial owners of that land by custom; and
- (c) without otherwise limiting the discretion of the Commission to inquire into and determine the existence of custom relating to land, where a landowner exercises a customary right to exclude others from land and that right is recognized and not disputed by other persons, that fact is *prima facie* evidence that the land is customary land owned by that first-named landowner.

(2) Nothing in Subsection (1) shall operate or be taken to operate so as to defeat any customary rights which exist or may come into existence in favour of any person.

86. INFANT LANDOWNERS.

For the purposes of the Commission and notwithstanding anything to the contrary in any other law in force in Papua New Guinea, the Commission may, if it considers it equitable so to do, agree to any matter or thing on behalf of a landowner who is an infant.

87. POWER TO AWARD COMPENSATION.

(1) If the Commission finds that a person (other than the State) is in occupation of any customary land in respect of which the Commission determines that ownership rights are held by another person, where in the opinion of the Commission -

- (a) the recognition of that ownership might cause undue hardship to the person in occupation of the land; or
- (b) it would otherwise be just to order the making of compensation to the person in occupation of the land; or
- (c) the person in occupation of the land is a *bona fide* occupant,

the Commission may order that compensation be made to that person by the person whom the Commission has determined holds the ownership rights.

88. AWARD OF COMPENSATION.

(1) Compensation awarded under this section shall be such as in the opinion of the Commission, is fair and reasonable, having regard to all the circumstances of the case.

(2) Subject to Subsection (1) "the circumstances of the case" include -

- (a) the difference between the value of the improvements to the land in question which existed at the date of the determination of the ownership rights in that land and the value of the improvements to that land (if any) at the time when the person in occupation of the land at the date of the determination commenced that occupation; and

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- (b) the degree to which the owner had already been effectively deprived of his right of use at the time when that deprivation occurred or should be taken to have occurred; and
 - (c) the person occupying the land could have known or has knowledge of the fact that the land to which he occupies does not belong to him.
- (3) An order for compensation under this section may be enforced -
- (a) where the amount or value of the compensation, as assessed by the Commission, does not exceed K10,000.00 as if it were an order of a District Court; and
 - (b) where the amount or value of the compensation, as assessed by the Commission, exceeds K10,000.00 as if it were an order of the National Court.

89. DEPRIVATION OF INTERESTS UNDER DECISIONS, ETC.

(1) Where, in the opinion of the National Court, by a decision of the Commission, or by any registration, entry in a Register, document or thing made, issued or done in pursuance of any such decision, a person (other than a party to the proceedings or matter) is deprived of any land, and compensation or damages for that deprivation has or have not been recovered and is or are not recoverable under any law in force in Papua New Guinea, the National Court may make an order for the payment to that person of such sum as the Court thinks just as compensation for the land of which he has been deprived.

(2) A sum ordered to be paid under Subsection (1) shall be paid by the State out of moneys appropriated for the purpose or, if the National Court so orders, out of the Assurance Fund established by the *Land Registration Act 1981*.

90. COMMISSION TO MAKE INQUIRIES AND HOLD HEARING.

The Commission shall, within Papua New Guinea and (to the extent prescribed by regulations under the Act) within the Commonwealth of Australia and a Territory of or under the authority of the Commonwealth of Australia, make or cause to be made such inquiries and hold such hearings as it considers necessary or convenient for the purposes of the Commission.

91. CONFLICT WITH REGISTERED TITLE.

Subject to this section, where a decision of the Commission is in conflict with a title previously registered under the *Land Registration Act 1981*, that registered title shall, to the extent of the conflict, prevail.

92. COSTS.

(1) The Commission may order that the costs, or part of the costs, of and incidental to any proceedings before it incurred by any party, be paid by any other party, and may tax the amount of the costs to be paid or specify the manner in which they are to be taxed.

(2) Costs directed by the Commission to be paid to a party may be recovered by that party as a debt.

93. NOTICE.

- (1) Where the Minister has made, in respect of any land -
- (a) a notice of intention under Section 37 or 40; or
 - (b) a declaration under Section 38 or 43; or
 - (c) where, in the case of a notice of intention under Section 37 or a declaration under Section 38, there is known to be a genuine dispute, give the notice or declaration to the parties to the dispute in so far as they are known to him; and
 - (d) cause it to be published at the office of any Local-level Government in whose area the land or part of the land is situated; and

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- (e) publish it by any radio broadcasting service which specifically serves the district in which the land or part of the land is situated; and
 - (f) give notice in such other places and in such other manner as he considers appropriate, the Minister may require, for the purposes of giving notice, direct -
 - (g) a Local-level Government; or
 - (h) a Local-level Government Special Purposes Authority; or
 - (i) a Provincial Government; or
 - (j) a District Officer,
- to act as his agent in giving notice.

- (2) For the purposes of Subsection (1), where a party consists of more than one person it is sufficient that the notice of intention or the declaration be given -
- (a) where a representative of the party has commenced acting on behalf of that party to that representative; or
 - (b) to any member of the party apparently over the age of 18 years, provided that the person is informed that the notice of intention or the declaration is required to be given to the party.

94. WITNESS' FEES, ETC.

A witness appearing before the Commission is entitled to such witness' fees and expenses as are prescribed by Regulation.

PART XI. - TRANSITIONAL AND SAVINGS.

Division 1. - General.

95. TRANSITIONAL AND SAVINGS.

- (1) This section relates to a repeal given effect to under this Act.
- (2) For purposes of this Act -
 - (a) any matter that is before the National Lands Commission and made under the *National Land Registration Act 1977*, shall be deemed for all purposes a matter before the Land Commission made under this Act; and
 - (b) any matter that is before the Land Commission and made under the *Land Titles Commission Act 1962*, shall be deemed for all purposes a matter before the Land Commission made under this Act; and
 - (c) any proceeding in any court of competent jurisdiction relating to the National Land Commission and the exercise of its functions and jurisdiction made under the *National Land Registration Act 1977*, shall be deemed for all purposes relating to the Land Commission as made under this Act; and
 - (d) any proceeding in any court of competent jurisdiction relating to the Land Titles Commission and the exercise of its functions and jurisdiction made under the *Land Titles Commission Act 1962*, shall be deemed for all purposes relating to the Land Commission as made under this Act; and
 - (e) any direction, decision or referral by the Minister or an appropriate authority to the National Lands Commission made under the *National Land Registration Act 1977*, shall be deemed for all purposes a direction, decision or referral made to the Land Commission as made under this Act; and
 - (f) any direction, decision or referral by the Minister or an appropriate authority to the Land Titles Commission made under the *Land Titles Commission Act 1962*, shall be deemed for all purposes a direction, decision or referral made to the Land Commission as made under this Act; and

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- (g) any appointments to the position of a National Lands Commission Commissioner or officer made under the *National Land Registration Act 1977*, shall be deemed for all purposes an appointment made under this Act; and
- (h) any appointments to the position of a Lands Titles Commission or Officer made under the *Land Titles Commission Act 1962*, shall be deemed for all purposes an appointment made under this Act; and
- (i) for the avoidance of doubt, any staff, asset, equipment, records or administrative item or matter of the National Lands Commission and the Land Titles Commission shall on the coming into operation of this Act be deemed for all purposes the staff, asset, equipment, records or administrative item or matter of the Land Commission.

(3) For the avoidance of doubt, the amendments given effect to by this Act, the Land Titles Commission functions and jurisdiction under the -

- (a) *Land Titles Commission Act 1962*, repealed; and
- (b) *Land (Tenure Conversion) Act 1963*; and
- (c) and any other Act,

shall continue to be exercised by the Land Commission under and subject to this Act.

96. REFERENCE TO REPEALED LEGISLATION.

Any references in an existing legislation to the *Land Titles Commission Act 1962*, and the *National Land Registration Act 1977*, shall be deemed to mean this Act.

97. REGULATIONS.

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Without limiting in any way the operation of Subsection (1), the Regulations may provide for -

- (a) the appointment of a Registrar, Deputy Registrar and other officers of the Commission; and
- (b) the establishment of a central Registry of the Commission and regional registries of the Commission; and
- (c) the Regulations may make provision for regulating and prescribing the practice and procedure to be followed in matters before the Commission, and for regulating and prescribing all matters incidental to or relating to any such practice and procedure or which are necessary or convenient to be prescribed for the conduct of any business of the Commission.

98. RULES.

(1) The Chief Commission, may make rules, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

(2) Any rules made under Subsection (1) will take effect upon a notice in the National Gazette.

Division 2. - Application of repealed laws to declaration of National Land.

99. APPLICATION OF LAND TITLES COMMISSION ACT 1962 (REPEALED).

(1) Subject to Sections 53 and 100, on the date of publication in the National Gazette of a declaration under Section 38 in relation to any land all parties to any proceedings before the Land Titles Commission in relation to the land or any part of the land shall be deemed to have made a claim under Section 45.

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(2) Any process commenced under the *Land Titles Commission Act 1962*, (repealed) is subject to Section 91, 100 and 101 of this Act.

100. APPEALS, ETC., UNDER THE *LAND TITLES COMMISSION ACT 1962* (REPEALED).

(1) Where, immediately before a declaration is made under Section 38 in relation to any land -

- (a) an appeal under Section 38 of the *Land Titles Commission Act 1962*, (repealed) was pending the National Court shall hear and determine the appeal; or
- (b) an application under Section 34 of the *Land Titles Commission Act 1962*, (repealed) and section 59 of this Act was pending,

the Commission shall deal with the application, as if the declaration had not been made.

(2) In a case to which Subsection (1) applies the Registrar shall not take action in accordance with Section 23(5) until the appeal or application has been finally dealt with.

(3) Any process commenced under the *Land Titles Commission Act 1962*, is subject to Sections 91, 100 and 101 of this Act.

Division 3. - Determination of disputes and claims under the Land Titles Commission Act 1962, (repealed) and National Land Registration Act 1977 (repealed).

101. DETERMINATION OF DISPUTES OVER LAND COMMENCED UNDER THE *LAND TITLES COMMISSION ACT 1962* (REPEALED).

(1) The Commission has, jurisdiction to hear and determine all disputes, claims and matters and may make such preliminary inquiries and investigations as it deems necessary for purposes of hearing and determining the disputes and claims that are current and pending before the Commission under the *Land Titles Commission Act 1962*.

(2) After a review of or appeal against a decision of the Commission under Section 86 has expired and any proceedings on the review have been completed and any appeals have been decided -

- (a) a determination of the Commission under this or any other Act is for all and as against all persons, conclusive evidence of the ownership as at the date of the decision, of the land which is the subject of the decision and that of the rights, titles, estates and interests in the land as set out in the decision, subject to Section 91; and
- (b) the Commission shall forward a copy of its decision to the Registrar of Titles, who shall make such entries in Registers kept by him and issue such documents as are necessary, or as are directed by the Commission, to give effect to the decision of the Commission; and
- (c) the powers of the Commission to hear and determine all disputes or claims concerning the ownership by custom of, or the right by custom to use land shall abate.

102. DETERMINATION OF DISPUTES OVER NATIONAL LAND UNDER THE *NATIONAL LAND REGISTRATION ACT 1977* (REPEALED).

(1) Subject to Section 91 the Commission has, jurisdiction to hear and determine all matters and proceedings concerning declaration or registration of national land under the *National Land Registration Act 1977*.

(2) Subject to Section 91, where a matter considered, heard or determined under the *National Land Registration Act 1977*, has been appealed against by any party, and the appeals have been decided, a determination of the Commission under this or any other Act is for all purposes and as against all persons conclusive evidence of state ownership of the national land in the National Land Register.

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(3) Upon hearing and determination of all matters under Subsection (1), the jurisdiction of the Commission to further hear and determine disputes or matters relating to national land shall cease and all disputes relating to the decisions, awards and determinations of the Commission shall be appealed to the National Court by way of judicial review of the decision to declare land as national land under Part VIII of this Act or any other Act.

SCHEDULE.

Sec.7.

Oath.

“I,, do swear that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of the Chief Commissioner (or Deputy Chief Commissioner or Commissioner, or acting Commissioner, as the case may be) under the *Land Commission Act* and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will. So help me God!”

Affirmation.

“I,, do solemnly and sincerely promise and declare that I will be faithful and bear true allegiance to Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, that I will well and truly serve Her in the office of Chief Commissioner or (Deputy Chief Commissioner or Commissioner, or acting Commissioner, as the case may be) under the *Land Commission Act* and that I will do right to all manner of people according to law, without fear or favour, affection or ill-will.”

I hereby certify that the above is a fair print of the *Land Commission Act 2022*, which has been made by the National Parliament.

Clerk of the National Parliament.
2 SEP 2022

I hereby certify that the *Land Commission Act 2022*, was made by the National Parliament on 21 April 2022, by an absolute majority in accordance with the *Constitution*.

Speaker of the National Parliament.
2 SEP 2022